

GUIDANCE NOTES FOR CCHR TRIAL MONITORING CHECKLIST

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NOTE: This checklist guidance is guidance only and should not be construed as definitive. Its purpose is to explain the meaning and purpose of each question. The use of examples has been limited to avoid confusion. It is not possible to provide definitive guidance and examples to cover every potential relevant development at trial. Trial Monitors should therefore continue to apply their own initiative and discretion to ensure the data collected is accurate, credible, reportable and in line with the general purpose of the questions and the Checklist overall.

MAIN CHECKLIST

A. GENERAL TRIAL INFORMATION

Question 1: Overview

Question	1(a) Date of the Trial
Guidance	Record the date that the trial took place. Also include the start time - this is when the judge announces the commencement of trial(9.00am for example).

Question	1(b) Monitors
Guidance	Record the name(s) of the trial monitor(s) in attendance at the trial.

Question	1(c) Court
Guidance	Indicate the court at which the trial took place: Phnom Penh Court, Kandal Provincial Court, Banteay Meanchey Court, Rattanakiri Court or another Court.

Question	1(d) Judges
Guidance	Record the names of all judges.

Question	1(e) Clerk
Guidance	Record the name of the clerk for the trial.

Question	1(f) Number of accused?
Legal basis	Defining juveniles: Article 38 of the Penal Code and Article 1 of the Convention on the Rights of the Child
Legal terms	<p><i>Legal Person</i> – A legal person is an entity such as a company, organization, or association that is accorded legal status as a ‘person’ for the purposes of legal proceedings but is not a human individual (defined as a ‘natural person’).</p> <p><i>Juvenile</i> – A juvenile is an individual under the age of 18.</p>
Guidance	<p>Record the number of accused by placing a number in the relevant section of the checklist. Numbers should only be placed in the ‘Present’ and ‘Absent’ sections and should be lined up with the other relevant categories – gender and age – to determine where the number should be placed.</p> <p>Each accused should only be counted once – the numbers in this section should add up to the total number of accused (both present and absent).</p> <p>If there are juvenile accused the trial monitor should complete Annex I for each juvenile.</p> <p>Example: There are five accused persons, but only three are present at trial.</p>

	Of the three present, all are adults, one is female and two are male.		
	Of the two absent, one is a juvenile (or was at the time the offense was allegedly committed) and one is an adult. Both are female.		
Total: 5			
Adult:	Male:	Present: 2	Absent:
	Female:	Present: 1	Absent: 1
Juvenile:	Male:	Present:	Absent:
	Female:	Present:	Absent: 1
Legal Person Representative:	Male:	Present:	Absent:
	Female:	Present:	Absent:

Question	1(j) Number of victims?
Legal terms	<i>Victims</i> – A person who has suffered or experienced loss as a result of the commission of a crime.
Guidance	Record the number of victims by placing a number in the relevant section of the checklist, following the same approach as that set out above for accused persons.

Question 2: Right to a public hearing

Article 316 of the CCPC – *“Trial hearings shall be conducted in public”*

Article 10 of the UDHR and **Article 4(1) of the ICCPR** – Everyone is entitled to a *“fair and public hearing”*

Human Rights Committee, General Comment No. 32: paragraph 28– *“All trials in criminal matters...must in principle be conducted orally and publicly...Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public...”*

Question	2(a) Was notice of the hearing posted on a public notice board outside the court room?
Guidance	Prior to attending each trial, the trial monitor should examine the area surrounding the entrance to the court building and the area surrounding the entrance to the court room itself to determine whether there are any public notices giving details of the time and location of each hearing.
Yes/No	Indicate ‘Yes’ if information regarding the time and location of the monitored trial is displayed on a public notice board outside the court room. Indicate ‘No’ if no such information is displayed.

Question	2(b) Were members of the public or media prevented from entering or asked to leave/removed from the courtroom?
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Guidance	<p>Before entering the court room themselves, the trial monitor should observe others to determine whether anyone is being prevented from attending the trial.</p> <p>If it appears that people are being questioned prior to entering the court room or are being denied entrance, the trial monitor should take notes about what is happening.</p> <p>Once inside the court room continued observation of the entry point may not be possible.</p> <p>The trial monitor should continue to remain aware of the possibility of those attending the trial being asked to leave or removed by court staff during the trial and, if this occurs, the trial monitor should take notes as to what happened.</p>
Yes/No	<p>Indicate 'Yes' if any member of the public or media is observed being denied entry to the court room, asked to leave, or removed.</p> <p>Indicate 'No' if none of the above situations are observed.</p>
Details	<p>If answering 'Yes', please provide details of the number of people observed being denied entry or removed, how they are removed or denied, who was responsible for preventing them from attending, and the reason given for preventing entry or removing from the court room.</p>

Question 3: Right to understand the nature of the charge

Question	3(a) Did the judge state the charge?
Legal basis	<p>Article 325 of the CCPC– “<i>The presiding Judge shall inform the accused of the charges he is accused of.</i>”</p> <p>See also Article 14(3)(a) of the ICCPR.</p>
Legal terms	<p>Charge: The offense which the accused person has been charged with by the indictment issued by the investigating judge or the citation.</p>
Guidance	<p>The trial monitor should observe whether the trial judge states the offense with which the accused is charged <i>prior to or during questioning of the accused.</i></p> <p>It is important that the judge states the charge prior to or during questioning of the accused so as to allow the accused to understand the nature of the offense with which they are charged when answering questions. The clerk may also announce the charge at the beginning of the trial. This is also sufficient to answer this question, ‘Yes’.</p>
Yes/No	<p>Indicate 'Yes' if the clerk or judge states the charge against the accused prior to or during questioning of the accused.</p> <p>Indicate 'No' if the clerk or judge <i>does not</i> state the charge against the accused prior to or during questioning of the accused.</p>

Question	3(b) Did the Judge state the relevant law?
Legal basis	Article 325 of the CCPC – “ <i>The presiding Judge shall inform the accused of the charges he is accused of.</i> ” See also Article 14(3)(a) of the ICCPR.
Guidance	The trial monitor should observe whether the clerk or the judge states the name of the law which the accused is alleged to have breached and the article of the law creating the alleged offense prior to the questioning of the accused.
Yes/No	Indicate ‘Yes’ if the Judge states both the name of the law and the relevant article of the law. Indicate ‘No’ if the Judge: 1) only states the name of the law or the article of the law, but not both; or 2) If the judge does not state either the name of the law or the article of the law.

Question	3(c) Did the judge state the date of the alleged offense
Legal basis	Article 325 of the CCPC and Article 14(3)(a) of the ICCPR.
Guidance	The trial monitor should listen to and observe proceedings to determine whether the judge or clerk states the date that the offense is alleged to have taken place. The trial monitor should also observe whether the date that the offense is alleged to have taken place is stated prior to or during the questioning of the accused. This is important because the accused should know clearly the nature of the allegation against him or her when facing questions.
Yes/No	Indicate ‘Yes’ if, <i>prior to or during the questioning of the accused</i> , the judge or clerk states the date on which the alleged crime is alleged to have taken place. Indicate ‘No’ if the Judge or clerk did not state the date on which the crime is alleged to have taken place, <i>prior to or during the questioning of the accused</i> .

Question	3(d) Did the Judge state the place of the alleged offence?
Legal basis	Article 325 of the CCPC and Article 143(a) of the ICCPR.
Guidance	The trial monitor should listen to and observe proceedings to determine whether the clerk or the judge states the location or place that the offense is alleged to have been carried out. The trial monitor should also note whether the location or place that the offense is alleged to have taken place is stated prior to or during the questioning of the accused. This is important because the accused should know clearly the nature of the allegation against him or her when facing questions.
Yes/No	Indicate ‘Yes’ if, <i>prior to or during questioning of the accused</i> , the Judge announced the place where the alleged crime is said to have been carried out. Indicate ‘No’ if the Judge did not announce the place where the alleged crime is said to have been carried out <i>prior to or during the questioning of the accused</i> .

Question	3(e) Did the clerk or the judge state the parties involved?
Legal basis	Article 322 of the CCPC : <i>“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.”</i>
Legal terms	<i>Accused</i> : Person charged with the alleged offence.
Guidance	The trial monitor should listen to and observe whether the court clerk or the judge states the names of the accused, and other parties.
Yes/No	Indicate ‘Yes’ if the clerk or the judge, at the beginning of the hearing, states the names and identifies the parties involved. Indicate ‘No’ if the clerk or the judge does not state the names and does not identify the parties involved.

Question	3(f) If required was an interpreter provided?
Legal basis	Article 330 of the CCPC : <i>“If necessary, the presiding Judge may seek the assistance of an interpreter/translator.”</i> See also, Article 14(3)(f) of the ICCPR.
Guidance	The trial monitor should observe whether the trial involves an accused, witness, victim, or any other party who is unable to fully understand proceedings as carried out in the Khmer language or if the accused is deaf, that a necessary interpreter is available for sign language. The answer to this question is based on opinion. The trial monitor must indicate whether in their opinion any party (accused, victim, or witness) required an interpreter due to an inability to understand Khmer. It is not necessary for the accused or their lawyer to have requested an interpreter or translator. The default answer to this question is ‘N/A’. The trial monitor should indicate ‘N/A’ in trials where all parties are able to fully understand the proceedings as conducted in Khmer. If any party appears unable to fully comprehend proceedings due to not understanding Khmer, the trial monitor should note whether a translator/interpreter was provided by answering ‘Yes’ or ‘No’. It is important to provide a translator/interpreter to ensure that the accused is able to understand the nature of the charge and the evidence against them, and that they are able to present a defense.
Yes/No	Indicate ‘Yes’ if an interpreter/translator was required and was provided. If answering ‘Yes’, the trial monitor should provide further details (see below). Indicate ‘No’ if an interpreter was required and was not provided. Indicate ‘N/A’ if an interpreter was not required because all parties were capable of fully understanding proceedings in the Khmer language.

Details	If answering 'No', the trial monitor should provide details about why they thought an interpreter was required.
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Question	3(g) If required, were provisions/experts made for disabilities?
Legal basis	Article 331 of the CCPC : <i>"The presiding Judge may call on any person who is able to communicate with the deaf and mute person."</i>
Guidance	<p>The trial monitor should observe whether the trial involves an accused, witness, victim, or any other party who has a disability that is likely to impair their ability to fully understand or participate in proceedings. Examples of disability could include deaf, blind or other physical handicap.</p> <p>To ensure that all parties are able to fully understand and participate in the proceedings, special provision should be made to assist those with disabilities. This is particularly important in the case of the accused to ensure that they are able to understand the nature of the charge and the evidence against them, and that they are able to present a defense.</p> <p>The answer to this question is based on opinion. The issue is whether the trial monitor believes that any party (accused, victim, witness) was unable to fully understand or participate in the proceedings due to a disability. It is not necessary for the party or their lawyer to have specifically mentioned the disability and requested assistance.</p>
Yes/No	<p>Indicate 'N/A' if it does not appear that any party has a disability that would impair their ability to understand and participate in proceedings.</p> <p>If it appears that any party has a disability that would impair their ability to understand and participate in proceedings:</p> <p>Indicate 'Yes' if the court made some effort to respond to the disability through the provision of assistance to help the disabled party understand and participate in proceedings.</p> <p>Indicate 'No' if the court <i>did not</i> make any effort to respond to the disability and <i>did not</i> provide assistance to help the disabled party understand and participate in proceedings.</p>
If Yes, Type of Provision	<p>Indicate 'Hearing' if the provisions or experts were required for a party who was deaf or partially deaf.</p> <p>Indicate 'Vision' if the provisions or experts were required for a party who was blind or partially blind.</p> <p>Indicate 'Other' if provisions or experts, other than those concerning hearing and vision, were required to assist a party with a disability to fully understand and participate in proceedings.</p>
Details	The trial monitor should indicate why they felt provisions or experts for disabilities were required.

Question 4: Explanation of Rights

Question	4(a) Did the Judge inform (I) and explain (E) to the accused their right to legal representation?
Legal basis	<p>Article 38 of the Constitution: “Every citizen shall enjoy the right to defense through judicial recourse.”</p> <p>Article 14(3)(d) of the ICCPR: “In the determination of any criminal charge against him, everyone shall be entitled to...be informed, if he does not have legal assistance, of this right...”</p> <p>See also, Article 301 of the CCPC; Article 1 and 5 of the Basic Principles on the Role of Lawyers.</p>
Legal terms	<i>Self-defense</i> : When the accused appears before the court alone, without legal representation, and defends himself, they are acting in self-defense - defending themselves.
Guidance	<p>This question is only relevant where the accused is not already represented by a lawyer. Therefore, if the accused is represented by a lawyer, the accused should answer this question ‘N/A’. N/A may also apply when the accused is tried in absentia.</p> <p>Where the accused is not represented by a lawyer, the trial monitor should listen to and observe the proceedings to determine whether the judge informs the accused about the right to legal representation. There is a distinction between being informed of a right and having the right explained. The Judge informs the accused of their right if they tell the accused that they have this right. The Judge has explained the right if they explain what this right means, helping the accused to understand how it might be exercised.</p> <p><i>This question relates only to the judge informing and explaining the right. Whether or not the right is in fact exercised is irrelevant to this question and should play no role in determining the answer to this question.</i></p>
Yes/No	<p>Indicate ‘N/A’ if the accused is represented by a lawyer.</p> <p>If the accused is not represented by a lawyer:</p> <p>Indicate ‘I only’ if the Judge informed but did not explain the right to legal representation.</p> <p>Indicate ‘I and E’ if the Judge informed <i>and</i> explained the right to legal representation.</p> <p>Indicate ‘Neither I nor E’ if the Judge did not inform or explain the right to legal representation.</p>

Question	4(b) Did the Judge inform (I) and explain (E) to the accused their not to answer or answer?
Legal basis	Article 14(3)(g) of the ICCPR : In determination of any criminal charge against him,

	everyone has the right, “ <i>not to be compelled to testify against himself or to confess guilt.</i> ”
Legal terms	<p><i>Self-incriminate</i>: Where the accused says something that either indicates or suggests that they committed the offense they are <i>incriminating</i> themselves – self incrimination.</p> <p><i>Right to silence</i>: The accused has the right to refuse to comment or provide an answer when questioned, either prior to or during their trial. This includes the right not to self-incriminate and the right to remain silent when questioned.</p>
Guidance	<p>The trial monitor should listen to and observe whether the judge tells the accused about the right to remain silent and to not answer questions. There is a distinction between being informed of a right and having the right explained. The Judge informs the accused of their right if they tell the accused that they have this right. The Judge has explained the right if they explain what this right means, helping the accused to understand how it might be exercised.</p> <p><i>This question relates only to the judge informing and explaining the right. Whether or not the right is in fact exercised is irrelevant to this question and should play no role in determining the answer to this question.</i></p>
Yes/No	<p>Indicate ‘I only’ if the Judge only informed the accused that they have a right to silence.</p> <p>Indicate ‘I and E’ if the Judge informed the accused that they have a right to silence and explained the meaning of this right.</p> <p>Indicate ‘Neither I nor E’ if the Judge did not inform the accused of their right to silence or did not explain the meaning of the right.</p>

Question 5: Right to call and examine witnesses

Article 153 of the CCPC: “*The investigating judge may question any person whose response is deemed useful to the revelation of the truth...The investigating judge may also arrange a confrontation between the charged person...and witnesses.*”

Article 294, 295, and 296 of the CCPC: Summons of witnesses in case of indictment, citation, and immediate appearance, respectively.

Article 297 of the CCPC: “*Inculpatory witnesses who have never been confronted by the accused shall be summonsed to testify at the hearing.*”

Article 298 of the CCPC: “*At their expenses, the accused and civil party may summons witnesses who have not been summonsed by the Prosecutor.*”

Article 14(3)(e) of the ICCPR: “*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.*”

See also, **Articles 133 and 179** of the **CCPC**.

Question	5(a) Was there anything to suggest that any party was not given the opportunity to call
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	witnesses?
Legal basis	<p>Article 298 of the CCPC: <i>“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”</i></p> <p>Article 14(3)(e) of the ICCPR: <i>“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.”</i></p>
Guidance	<p>The trial monitor should listen to and observe proceedings to determine whether there is anything to suggest that any party was not given the opportunity to call witnesses. This is most likely to be evident through a request to call a witness that the judge denies or through a protest from a party that has already been denied the opportunity to call a witness.</p> <p>In the interests of equality and a fair trial all parties should be given ample opportunity to present their case, including calling any witness relevant to the case.</p>
Yes/No	<p>Indicate ‘Yes’ if anything was said or done during the proceedings to suggest that any party was <i>denied</i> the opportunity to call a witness or witnesses that they wished to call.</p> <p>If answering ‘Yes’, the trial monitor should provide further details (see below).</p> <p>Indicate ‘No’ if there was nothing said or done during proceedings to suggest that a party was not given the opportunity to call witnesses.</p>
If Yes, Which Party?	<p>Indicate ‘P’ if the prosecution was denied the opportunity to call witnesses.</p> <p>Indicate ‘D’ if the accused was denied the opportunity to call witnesses.</p> <p>Indicated ‘CP’ if a civil party was denied the opportunity to call witnesses.</p>
Details	<p>The trial monitor should provide details about what was said or done to lead them to believe that a party had been denied the opportunity to call witnesses and any response from the judge.</p>

Question	5(b) Were the witnesses present in the courtroom before they were questioned?
Legal basis	Article 322 of the CCPC : <i>“The experts and witnesses shall retreat and move to the waiting room prepared for them, from which they cannot see or hear anything in the court room.”</i>
Legal terms	<i>Witness</i> – An individual who testifies in person at a hearing under oath with first-hand or expert testimony relevant to the case.
Guidance	<p>This question is only relevant where witnesses appear before the court in person. If no witnesses are called during the trial, this question should be answered ‘N/A’.</p> <p>If witnesses are called during the hearing, the trial monitor should observe whether they were present in the courtroom prior to giving their testimony or whether they were waiting outside and only entered when it was time to give their testimony.</p>

	<p>Article 322 of the CCPC states that prior to giving testimony witnesses should retreat from the court room and wait in a waiting room where they cannot see or hear the proceedings in the court room. This is because as a case develops in court, and evidence and witness testimony is presented, a witness may be influenced to change the nature of the testimony they are to present to the court, either to protect one of the parties involved or themselves. If they think that their testimony will be controversial or that it does not fit with the other evidence presented, they may also become intimidated or doubt their version of events. Therefore, it is important that witnesses are not influenced by what happens in court prior to the delivery of their testimony in order to ensure that their testimony is credible and genuine.</p>
Yes/No	<p>Indicate 'N/A' if no witnesses appeared in person during the hearing.</p> <p>Indicate 'Yes' if any of the witnesses were present in the courtroom before they gave testimony.</p> <p>Indicate 'No' if none of the witnesses were present in the courtroom before they were questioned.</p>

6. Presentation of Evidence

Article 321 of the CCPC: *“Unless it is provided otherwise by law, in criminal cases all evidence is admissible...The court has to consider the value of the evidence submitted for its examination following the judge’s intimate conviction. The judgment of the Court may be based only on the evidence included in the case file or which has been presented at the hearing. 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.”*

Article 334 of the CCPC: *“Until the end of the trial hearing, the accused, the civil party, and civil defendants may make written statements and submit all documents and evidence that they think will be conducive to ascertain the truth.”*

Article 294, 295, and 296 of the CCPC: Summons of witnesses in case of indictment, citation, and immediate appearance, respectively.

Article 297 of the CCPC: *“Inculpatory witnesses who have never been confronted by the accused shall be summonsed to testify at the hearing.”*

Article 298 of the CCPC: *“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”*

Article 14(3)(e) of the ICCPR: *“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.”*

Question	6(a) Was evidence/witness presented?
Legal basis	Article 321 and 334 of the CCPC.

Legal terms	
Guidance	<p>The trial monitor should listen to and observe proceedings to determine the evidence presented by each party (prosecutor, defense and, if applicable, civil party) during the hearing in furtherance of their case.</p> <p>The trial monitor should tick the corresponding boxes to note which of the following types of evidence were presented by each party.</p> <p>Witness statement: A statement made by a witness who does not appear in court in person. Read out in open court.</p> <p>Witness testimony: The testimony of a witness as recounted in person by a witness during the hearing.</p> <p>Document: A written or printed record bearing original, official or legal information.</p> <p>Confession: A verbal or written statement by an accused person in which they admit that they committed an offense.</p> <p>Physical Object: A physical piece of evidence other than a document or statement – for example, a weapon or item of clothing found at the crime scene.</p>
Yes/No	<p>Indicate 'Yes' if evidence or witnesses were presented to the court at any stage during the trial by the Prosecutor, Defense and/or Civil Parties.</p> <p>Indicate 'No' if no evidence was presented or witnesses called by any of the parties involved in the trial.</p>
Details	<p>If evidence is presented and/or witnesses called, the trial monitor should note the party (prosecutor, defense or, where applicable, civil party) that presented it and the type of evidence that was presented i.e. documentary evidence, witness statement etc.</p>

Question	6(b) Did the judge rule that any of the evidence presented was inadmissible?
Legal basis	<p>Article 321 of the CCPC: <i>"Unless it is provided otherwise by law, in criminal cases all evidence is admissible...Declaration given under physical or mental duress shall have no evidentiary value."</i></p> <p>Article 38 of the Constitution: <i>"Confessions obtained by physical or mental force shall not be admissible as evidence of guilt."</i></p>
Legal terms	<p><i>Inadmissible</i> – If evidence is inadmissible it is ruled out as a consideration by the judge in coming to their decision.</p>
Guidance	<p>The trial monitor should listen to and observe the judge during the presentation and consideration of evidence, particularly if there is a dispute as to the reliability of any particular piece of evidence, and note whether the judge indicated that any evidence was inadmissible.</p> <p>The trial monitor should take notes about the nature of the evidence that was rejected as inadmissible and the reason given by the judge for ruling that it is inadmissible.</p>
Yes/No	<p>Indicate 'Yes' if the judge states that <u>any</u> evidence is inadmissible (does not need to be a confession, or the result of physical or mental duress – the judge may rule inadmissible for other reasons).</p>

	<p>Details: Provide details of the nature of the rejected evidence and any reason given by the judge for ruling it inadmissible.</p> <p>Indicate 'No' if the judge does not rule that any evidence is inadmissible.</p> <p>Indicate 'N/A' if no evidence was presented at trial.</p>
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7. Right to full disclosure of evidence

Question	7(a) Was there anything to suggest that any party <i>was not given</i> the opportunity to present evidence?
Legal basis	Article 321 and 334 of the CCPC
Legal terms	
Explanation	<p>In the Cambodian system, the majority of evidence relied upon by the court will have been compiled in the case file by the investigating judge. However, Article 334 of the CCPC also provides that any party can submit any document or evidence that they think is conducive to ascertaining the truth until the end of the hearing.</p> <p>The trial monitor should listen to and observe proceedings to determine whether there is anything to suggest that any party was denied the opportunity to present evidence. This is most likely to be evident through a request to present evidence that the judge denies or through a protest from a party that has already been denied the opportunity to present evidence.</p> <p>In the interests of equality and a fair trial all parties should be given ample opportunity to present their case, including presenting any evidence relevant to the case.</p>
Yes/No	<p>Indicate 'Yes' if there is anything to suggest that any party was denied the opportunity to present evidence at any stage during the trial.</p> <p>Indicate 'No' if there was nothing to suggest that any party was denied the opportunity to present evidence at any stage during the trial.</p>
Details	<p>The trial monitor should indicate which party was denied an opportunity to present evidence by marking 'Prosecutor', 'Defense' or 'Civil Party'.</p> <p>The trial monitor should also note what led them to believe that a party was denied the opportunity to present evidence, any reason given by the judge for denying that opportunity, and the nature of the evidence the party wished to call.</p>

Question	7(b) Was there anything to suggest that any party <i>was not given</i> the opportunity to question witnesses?
Legal basis	Article 297 of the CCPC: "Inculpatory witnesses who have never been confronted by the accused shall be summonsed to testify at the hearing."

	Article 14(3)(e) of the ICCPR: “Everyone shall be entitled... to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on <i>This behalf under the same conditions as witnesses against him.</i> ”
Legal terms	<i>Inculpatory</i> – tending to suggest guilt
Guidance	<p>This question only applies when the witness is present at the trial. The trial monitor should listen to and observe proceedings to determine whether anything is said or done by any party to suggest that they have been denied an opportunity to question or challenge a witness.</p> <p>This is most likely to be evident if the judge denies a request to question one of the witnesses giving testimony at the trial. However, parties may also rely on witness statement without calling the witness to testify in person.</p> <p>For example, a witness may give a witness statement that incriminates the accused at the investigation stage and then not be summonsed or fail to appear in court to provide testimony in person. In such circumstances, unless the charged person had been given an opportunity to question and challenge the witness at the investigation stage under Article 153 of the CCPC, they will not have had an opportunity to question the witness. Note that Article 297 of the CCPC states that all inculpatory witnesses – that is, witnesses whose testimony incriminates the accused – must be summonsed to testify at the hearing. This is to ensure that an accused person has a chance to question and respond to the witness in person.</p> <p>The trial monitor should note what led them to believe that a party was not given the opportunity to question a witness.</p>
Yes/No	<p>Indicate ‘Yes’ if there was anything to suggest that any party was <i>denied</i> the opportunity to question witnesses.</p> <p>Indicate ‘No’ if there was no indication that any party was denied the opportunity to question witnesses.</p> <p>Indicate ‘N/A’ if no witness testimony or statements were presented as evidence.</p> <p>Linked data: If indicating ‘No’ on this question, because there is no witness testimony (or statements) presented, Question 5(b) should also be ‘N/A’ because there were no witnesses.</p>
If Yes, Which Party?	<p>Indicate ‘P’ if there is anything to suggest that the Prosecution was not given the opportunity to question witnesses at any stage during the trial.</p> <p>Indicate ‘D’ if there was anything to suggest that the Defense/accused was not given the opportunity to question witnesses at any stage during the trial.</p> <p>Indicate ‘CP’ if there was anything to suggest that a Civil Party was not given the opportunity to question witnesses at any stage during the trial.</p>
Details	The trial monitor should provide details about what was said or done to lead them to believe that a party had been denied the opportunity to call witnesses and any response

	from the judge.
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Question	7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?
Legal basis	<p>Article 319 of the CCPC: <i>“Before the hearing, the lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk. The lawyer or the secretary of the lawyer may be authorized by the court president to copy documents in the case file at their own cost, under the supervision of the court clerk.”</i></p> <p>Article 391 of the CCPC: <i>“The General Prosecutor and lawyers may consult the case file prior to the hearing.”</i></p> <p>See also Articles 129, 145, 149, 170, 259 and 428 of the CCPC.</p>
Legal terms	
Guidance	<p>The trial monitor should listen to and observe proceedings to determine whether any party states that they have not had access to evidence that is referred to or presented in court by another party.</p> <p>All evidence in the case file should be available to both sides prior to the hearing and they should also be made aware of any additional evidence to be presented by the opposing party.</p> <p>This is important to ensure that all parties have a sufficient opportunity to examine and respond to evidence and that one party does not have an unfair advantage in presenting their case.</p>
Yes/No	<p>Indicate ‘Yes’ if there was anything said or done during the hearing to suggest that the same evidence <i>was not</i> available to all parties.</p> <p>Indicate ‘No’ if nothing was said or done during the hearing to suggest that the same evidence <i>was not</i> available to both all parties.</p> <p>Indicate ‘N/A’ if no evidence was presented to the court from any parties at any point throughout the trial.</p> <p>If ‘Yes’, the trial monitor should note which party appeared not to have had access to the evidence in the case file or presented in court by ticking the relevant box – the prosecutor or the accused (if self represented) or the defense counsel or a Civil Party.</p>
Details	The trial monitor should also note what led them to believe that one party did not have access to the same evidence as the other side, the nature of the relevant evidence, and any reason provided or inferred as to why the evidence had not been available.

Question	7(d) Was the accused or defense counsel denied the opportunity to have the last word?
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Legal basis	Article 335 of the CCPC : “... the accused and his lawyer shall be always the last ones to speak.”
Guidance	<p>The trial monitor should note whether the accused or his legal representative was the last to offer arguments to the judge and, if not, whether the judge gave the defense the opportunity to speak last.</p> <p>This provision of Article 335 of the CCPC is important because it ensures that the defense (either the accused or defense council) has the opportunity to respond fully to all arguments and evidence presented by the prosecution.</p> <p>Note: This question relates to substantive argument on the merits of the case.</p>
Yes/No	<p>I Indicate ‘Yes’ if the defense was not given the chance to have the last word.</p> <p>Indicate ‘No’ if the defense:</p> <ul style="list-style-type: none"> (a) Was the last to offer arguments to the judge before the hearing was closed; or (b) If the accused or their lawyer were offered a chance by the judge to speak last, but declined to do so. <p>Indicate ‘N/A’ if the accused was tried in absentia and without legal representation Linked data: This question is marked ‘N/A’, Questions 16(a) and (b) should be marked ‘No’</p>
Accused/Defense Counsel	<p>Indicate Accused if the accused was self represented and had the last word.</p> <p>Indicate Defense Counsel if the defense Counsel had the last word</p> <p>Do not indicate if defense denied opportunity to have the last word, or if accused tried in absentia without legal representation.</p>

8. Independence, impartiality and conduct of the Judge

Article 128 of the **Constitution**: “The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”

Article 288 of the **CCPC**: “Any sitting judge who has been acting as a Prosecutor or Deputy Prosecutor or investigating judge upon a certain case may not participate in the adjudication of that case, otherwise the judgment shall be deemed null and void.”

Article 14(1) of the **ICCPR**: “... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Article 2 of the **Code of Ethics for Judges and Prosecutors**: “Judge and prosecutor shall fulfill their duty independently with basis for evaluation of fact and legal knowledge without being subjected to such influences as persuasion, pressure, intimidation or interference from any person or people or reasons whether directly or indirectly in offer to be perceived as an individual with just manner, and having clear reasons to make judgment. Judge and prosecutor shall dismiss any irregular attempts that manipulate their judgments.”

Article 14 of the **Code of Ethics for Judges and Prosecutors**: “Judge and prosecutor shall not have financial benefits or any other benefits directly or indirectly from the cases they handle.”

See also, **Articles 556 and 557** of the **CCPC**.

Question	8(a) Was there anything to suggest that the judge had an interest in the case beyond their usual judicial role?
Legal basis	See summary. Articles 556 and 557 of the CCPC : Applications for disqualification of a judge.
Legal terms	<i>Impartial</i> : Not biased - the judge should not favor either side but should decide the case based only on the evidence before them. <i>Independent</i> : Free from political, social or financial influence. The judge should not be influenced by the considerations of others and should decide the case purely on the basis of law and evidence.
Explanation	The judgment of the court should be based solely on the evidence before the court. It is, therefore, important that the Judge is independent and impartial and does not have an interest of any nature in the outcome of the hearing. The trial monitor should look out for any indication before, during, or after the hearing that the Judge has been improperly influenced or manipulated by one of the parties or that the judge has a personal interest in the outcome of the trial. Affirmative answers to this question are not conclusive and rely at least to some degree on speculation. Therefore, it is important for the trial monitor to make notes about the circumstances that led them to believe the judge had an interest in the case.
Yes/No	Indicate ' Yes ' if the trial monitor suspects for any reason that the judge had an interest in the case beyond their usual judicial role. Indicate ' No ' if the trial monitor has no reason to suspect that the judge had an interest in the case beyond their usual judicial role.
If Yes, What is the Nature of the Perceived Interest?	Indicate ' Familial ' if there is anything to suggest that the judge is connected by family ties to any of the parties, witnesses etc involved in the trial. For example, the Judge is an uncle of the victim. Indicate ' Political ' if there is anything to suggest that the judge has received political pressure to decide the case in a particular way. Indicate ' Financial ' if there is anything to suggest that the judge could lose or gain financially depending on the outcome of the trial. For example, was there anything to suggest that the judge received or would receive a bribe? Was there anything to suggest that the personal assets of the judge – land, stake in a company etc – would be affected by the outcome of the trial. Indicate ' Other ' if there is anything to suggest that the judge will gain or lose something other than listed depending on the outcome of the trial.
Details	The trial monitor should make detailed notes about what led them to believe that the judge had an interest in the case beyond their usual judicial role and the perceived nature of that interest. I.e. in what way does it seem that the judge will gain financially?

Question	8(b) Did the Judge behave in an intimidating manner towards a party?
Legal basis	Article 8 of Code of Ethics for Judges and Prosecutors: <i>“Judge and prosecutor shall... always maintain just manner and avoid any confrontation or act that may cause suspicion of impartiality.”</i>
Guide	To ensure a fair hearing and as an indication that the judge is impartial and independent, the Judge should not intimidate the accused. Intimidation in this context means to deliberately appear threatening through behavior or manner and content of speech. The judge should act professionally throughout the trial, which means not raising their voice unnecessarily or explicitly threatening the accused when speaking to them.
Yes/No	Indicate ‘Yes’ if through their behavior or the manner and content of their speech the judge appeared to be deliberately or recklessly intimidate the accused. If answering ‘Yes, the trial monitor should provide further detail (see below). Indicate ‘No’ if the judge did not attempt to deliberately or recklessly intimidate the accused.
Details	The trial monitor should note the nature of the intimidating conduct from the judge and the reaction of the accused, threats, shouting etc.

Question	8(c) Did the Judge make discriminatory comments about any party?
Legal basis	Article 8 of Code of Ethics for Judges and Prosecutors: <i>“Judge and prosecutor shall... always maintain just manner and avoid any confrontation or act that may cause suspicion of impartiality.”</i> 201D
Legal terms	
Guidance	The trial monitor should observe whether the judge or judges make any remarks that may be considered discriminatory towards any party to proceedings. This includes any negative remarks based on the persons: race; color; sex (gender); religion; language; national or social origin.
Yes/No	Trial Monitors should indicate ‘Yes’ when they observe the judge making any comments that could be deemed discriminatory towards one of the party’s. Trial Monitors should Indicate ‘No’ when they do not observe the judge making discriminatory remarks about one of the party’s. If indicating ‘Yes’ trial monitors should indicate whether the comment concerned the party’s race, gender or religion in the boxes provided. Trial monitors should indicate other when the comment was a discriminatory remark based on any other feature of the party; for example the party’s national origin. Note: where trial monitors record ‘Yes’ they should also provide details of the nature of the discriminatory comment, such as what the comment was and what made it discriminatory.

Question	8(d) Did the Judge leave the courtroom during the trial?
Legal basis	See summary.
Legal terms	
Guidance	<p>The judge or judges should generally remain present in the courtroom during the course of the hearing to ensure that they are able to hear all evidence and arguments and to prevent speculation about improper influence from external sources.</p> <p>The trial monitor should observe whether the judge or judges leave the court room after the commencement of the hearing for any reason other than a regular adjournment. A regular adjournment is when the session of the hearing has come to the end and all parties take a break and recommence the hearing at a later time or date.</p> <p>If a judge or judges leave(s) the court room after the hearing has commenced, and in the middle of a session, the trial monitor should note the nature of any reason given, and whether the trial was adjourned to await the judge’s return.</p>
Yes/No	<p>Indicate ‘Yes’ if the judge is observed leaving the courtroom midway through a hearing or a session of a hearing.</p> <p>Indicate ‘No’ if the judge is not observed leaving the court room before the completion of the hearing or a regular adjournment.</p>
Details	If a judge or judges leave the courtroom after the hearing has commenced, and in the middle of a session, the trial monitor should note such activity, noting down the time of the departure, any reason given for leaving, and whether the trial was adjourned to await the judge’s return. The trial monitors should also note if no reason is given.

Question	8(e) Did the Judge answer a mobile phone during the trial?
Legal basis	See summary.
Explanation	To ensure a fair hearing and to prevent speculation that the Judge is being influenced by outside parties, the Judge should not answer a mobile phone in court as he must give his full attention to the case being heard. A judge answering a mobile phone while they are presiding over a trial is impolite, shows a lack of regard for the importance of the proceedings and is unprofessional.
Yes/No	<p>Indicate ‘Yes’ if the judge answers a mobile phone during the trial.</p> <p>If answering ‘Yes’, please provide further details (see below).</p> <p>Indicate ‘No’ if the judge does not answer a mobile phone during trial.</p>
Details	Where the judge has answered a mobile phone during a trial, the trial monitor should note whether the judge: <p>(a) Answered, responded briefly, and hung up; or</p>

(b) Answered and had a conversation.

The trial monitor should also note whether the ring tone of the mobile phone was audible or silent and how many times the judge answered the phone call.

9. Deliberation

Article 337 of the **CCPC**: *“The court shall retreat to deliberate in a deliberation room to reach its verdict. No further request may be submitted to the court; no further argument may be raised. The Royal Prosecutor and the court clerk are not authorized to participate in the deliberation.”*

Article 288 of the **CCPC**: *“The roles of sitting judges and those of Prosecutors or Deputy Prosecutors shall be absolutely incompatible with each other. Any sitting judge who has been acting as a Prosecutor, Deputy Prosecutor or investigating judge may not participate in the adjudication of that case, otherwise the judgment shall be deemed null and void.”*

See also: **Articles 2 and 9** of the **Code of Ethics for Judges and Prosecutors**

Question	9(a) Was there a deliberation?
Legal basis	See summary.
Legal terms	<i>Deliberation</i> —Period of time after the trial concludes in which the judge or judges consider the law and the evidence presented during the hearing before coming to a final decision on the case.
Guidance	The judge may take a period of deliberation before deciding a case. If the judge does not immediately pronounce a decision at the conclusion of the hearing but rather continues on to hear a new case, it should be assumed that the judge will deliberate at a later time. If the judge delivers a ruling immediately after the hearing, with no break, there has been no deliberation.
Yes/No	Indicate ‘Yes’ if the judge announces the end of the trial and does not immediately deliver the verdict but instead either retires to deliberate or continues to the next case, with the verdict to be delivered at a later time or date after deliberation. The trial monitor should note the time which the judge announces the end of the hearing and the time of deliberation. Indicate ‘No’ if the judge delivered the verdict immediately after the conclusion of the hearing, without retiring for a period of deliberation. Note down the reason, if known. Indicate “I/U” where there is no information about deliberation.
Detail	The trial monitor should provide any additional details with regards to the deliberation i.e. extensive / how immediate etc.

Question	9(b) Was there anything to suggest that any party spoke to the Judge during deliberation?
Legal basis	Article 337 of the CCPC : <i>“The Royal Prosecutor and the court clerk are not authorized to participate in the deliberation.”</i>
Legal terms	<i>Deliberation</i> –Period of time after the trial concludes in which the judge or judges consider the law and the evidence presented before coming to a final decision on the case.
Guidance	<p>Where possible, the trial monitor should observe the entrance to the deliberation room while the judge is deliberating. The trial monitor should note whether either party – the prosecution or the defense lawyer or any other party – enters the deliberation room at the conclusion of the hearing.</p> <p>Once the hearing has concluded it is inappropriate for either party to attempt to present any further arguments to the judge. Neither the prosecutor nor the court clerk are authorized to participate in the deliberation. For this reason, it is unwise for either the prosecutor or the defense lawyer to enter the deliberation room as it might give the impression that they are attempting to present further arguments or participate in the deliberation.</p> <p>According to CCHR’s own dialogue with Phnom Penh Court officials, court clerks are sometimes required to bring relevant documents to the judge during deliberation. As such, the trial monitor should focus only on the prosecution and defense.</p> <p>Note: this question is somewhat speculative, so the conclusions drawn from this question need to be handled with care.</p>
Yes/No	<p>Indicate ‘Yes’ if either the prosecutor, the defense lawyer, is observed entering the deliberation room after the conclusion of the hearing or, if there is no deliberation room, if the trial monitor believes for any other reason that the prosecutor or defense lawyer spoke to the judge during deliberation.</p> <p>Indicate ‘No’ if no one other than the court clerk was observed entering the deliberation room or, where there is no deliberation room, there was nothing to suggest that either party spoke to the judge during deliberation.</p> <p>Indicate ‘N/A’ where there is no deliberation.</p>
Details	The trial monitor should note which party spoke to the judge during deliberation (i.e. prosecutor, defense, civil party) and any other surrounding circumstances or details.

10. Verdict

Article 321 of the **CCPC**: *“The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing.”*

Article 347 of the **CCPC**: *“The judgment is issued at the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement.”*

Article 357 of the **CCPC**: *“The judgment shall be divided into two parts:*

- *The holding (the arguments of facts and law that led to the court’s decision)*
- *The ruling (the decision of the court)*

The facts shall be clear and unequivocal. The court shall examine each of the charges and arguments presented during the trial. In the holding part of the judgment, the court shall note the offense committed by the accused, the applicable law, the sentence and any civil remedy.”

Article 359 of the **CCPC**: *“All judgments shall be issued and announced during a public hearing session. The ruling part shall be read aloud by the presiding judge.”*

Question	10(a) Was a verdict delivered on the day of the hearing?
Legal basis	Article 347 of the CCPC :
Guidance	The trial monitor should note whether the judge gave a ruling on the same day as the hearing. If the trial monitor leaves the court before the end of the day and is unable to get information about when the ruling was delivered they should answer the question ‘I/U’. If answering ‘No’ the trial monitor should note whether the judge announced the date that the verdict would be delivered.
Yes/No	Indicate ‘ Yes ’ if the verdict was delivered on the day of the hearing. Indicate ‘ No ’ if the verdict was not delivered on the day of the hearing. If ‘No’ the trial monitor should provide further detail (see below)
Details	If ‘No’ the trial monitor should answer the sub-question, indicating whether the date that the verdict would be delivered was announced at the hearing.

Question	10(b) Date of verdict
Guidance	Where the date of the verdict is different to the date of the hearing, the trial monitor should note the date of the verdict, either as it was announced by the judge in the hearing, or as observed by the trial monitor in subsequent monitoring. If the verdict is delivered on the same day as the hearing the trial monitor should answer this question ‘N/A’.

Question	10(c) How many judges were present when the verdict was delivered?
Guidance	The trial monitor should note the number of judges present when the verdict was delivered and tick the corresponding box. If the Trial Monitor is unable to follow up on the announcement of the verdict the Trial Monitor should tick the I/U box

Question	10(d) Was the verdict announced in public?
Legal basis	Article 359 of the CCPC : <i>“All judgments shall be issued and announced during a public</i>

	<i>hearing session.</i>
Guidance	<p>If the trial monitor is present for the judgment or is able to follow up a judgment given on a different day to the hearing, they should note whether the judgment was delivered in public or not.</p> <p>If the trial monitor is unclear whether the judgment was announced in public they should answer this question 'I/U'</p>
Yes/No	<p>Indicate 'Yes' if the judgment was announced in public.</p> <p>Indicate 'No' if the judgment was announced in a closed session.</p> <p>Indicate 'I/U' if the trial monitor was not present for the judgment and there is insufficient information available to determine whether the judgment was announced publicly or not.</p>
Details	If answering 'No', the trial monitor should note any justification or reasoning provided by the court for the judgment being delivered in a closed session.

Question	10(e) Did the Judge inform (I) and explain (E) the procedure and terms of appeal?
Legal basis	<p>Article 375 of the CCPC: Persons entitled to make appeals.</p> <p>Article 376 of the CCPC: Formalities of appeals</p> <p>Article 382 of the CCPC: Time period for appeal</p>
Guidance	<p>The trial monitor should listen to the judge during the delivery of the judgment to determine whether the judge has informed and explained the procedure and terms of appeal.</p> <p>The judge informs the accused of the right to appeal if (s)he tells the accused of their right to appeal the decision.</p> <p>The judge explains the right to appeal and the procedure if (s)he tells the accused that an appeal must be filed with the court clerk and must be filed within one month of the decision.</p>
Answer	<p>The trial monitor should choose one of the following three options depending on the level of information provided by the judge:</p> <p>'Inform' – the judge informed the accused of the right of appeal</p> <p>'Inform and explain'– the judge informed the accused of the right of appeal and explained that an appeal must be filed to the court clerk within one month of the judgment.</p> <p>'Neither inform nor explain' – the judge did not inform the accused of the right of appeal nor the procedure for appeal.</p> <p>N/A – to be used in case the trial monitor cannot follow up the announcement of the verdict.</p>

Total time of hearing: The Court Monitor should calculate the length of time between when the trial first commenced and when the trial finished. If the trial continued over the course of more than one day then this should be indicated and the length of time which it ran for each day should be indicated, as well as a total time. If the Court Monitor was unable to attend any part of the trial this should also be indicated.

Special Note

B. INDIVIDUAL ACCUSED INFORMATION

11. Criminal Responsibility

Question	11(a) Was the accused a juvenile <i>at the time the offense was committed</i>?
Legal basis	Juvenile – Article 38 of the Penal Code and Article 1 of the Convention on the Rights of the Child
Legal terms	<i>Juvenile</i> – ‘Juvenile’ is used here as a legal term meaning an individual under the age of 18.
Guidance	<p>A juvenile is anyone who is under the age of 18.</p> <p>For this question the trial monitor must determine whether the accused was under the age of 18 <i>at the time the offense was alleged to have been committed</i>. This question is relevant because of the differentiated levels of criminal responsibility for juveniles implied by Articles 38 and 39 of the Penal Code.</p> <p>If the accused was a juvenile at the time the offense was committed, sentencing, for example, should reflect this.</p> <p>**Note the distinction between this question and Question 1(f), which records whether any accused persons are under the age of 18 <i>at the time of the trial</i>. Question 1(f) has a different purpose – to determine whether the accused receives appropriate treatment at trial in recognition of their youth.</p>
Yes/No	<p>Indicate ‘Yes’ if the accused was under the age of 18 <i>at the time the offense was alleged to have been committed</i>.</p> <p>Indicate ‘No’ if the accused was over the age of 18 <i>at the time the offense was alleged to have been committed</i>.</p>

12. Legal basis of charges

Question	12(a) Criminal proceedings were conducted through?
Legal basis	CCP: Articles 43 – 47; 122; and 252
Legal terms	<p><i>Judicial Investigation</i> – A judicial investigation is an investigation into the alleged offence ordered by the Prosecutor (Art. 44). It may result in either an indictment – sending the case to court – or a non-suit order, dismissing the case.</p> <p><i>Citation</i> – A citation is an order made to summons the accused to appear before the Court of First Instance (Art. 46).</p>

	<p><i>Immediate appearance</i> – Immediate appearance is an order by the Prosecutor for the accused to appear before the Court of First Instance immediately, that is, on the same day that the accused is arrested and the case file presented to the Prosecutor.</p>
Guidance	<p>Criminal proceedings may be conducted through one of three procedures below (Art. 43). When considering a case file, the Prosecutor must decide whether to:</p> <ol style="list-style-type: none"> 1. Order an investigation and forward the case to the investigating judge (the accused will be summonsed when the date of hearing is fixed); 2. Directly summons the accused to appear before the court through issuing a citation order indicating the date and time the of trial ; or 3. Order the accused to appear before the court immediately if the accused has been arrested by the police that day. <p>This information is important because, for example, a judicial investigation is required in any case involving a felony charge (Article 44 of the CCPC). Also, the procedure of immediate appearance may only be pursued in certain circumstances (Article 47 of the CCPC) and the accused person has certain rights when they are asked to appear immediately (Article 48 of the CCPC).</p> <p>Indicate judicial investigation if reference is made at trial to a formal investigation or to the documents of the Investigating Judge. A judicial investigation may have been conducted while the accused was detained in provisional detention or while they remained at liberty.</p> <p>If there is nothing to indicate a judicial investigation has taken place:</p> <p>Indicate citation if it appears that the accused has been summoned to appear before the court. The accused may have been held in provisional detention or remained at liberty prior to receiving the citation.</p> <p>Indicate immediate appearance if it appears the Prosecutor has ordered the accused to appear <i>on the same day that they were arrested</i>.</p> <p>(If an accused has been detained in provisional detention (for a period exceeding one day), the immediate appearance procedure <u>will not</u> have been invoked and this option should not be selected)</p> <p>Indicate 'I/U' if there is no information provided enabling the trial monitor to select one of the above options.</p>

Question	12(b) Charge against accused?
Legal basis	<p>Article 46 of the Penal Code: Definition of a Felony</p> <p>Article 47 of the Penal Code: Definition of Misdemeanor</p> <p>Article 48 of the Penal Code: Definition of a Petty Crime</p>
Legal terms	Felony – A felony is an offense for which the penalty is more than five years, up to and including life imprisonment.

	<p>Misdemeanor – A misdemeanor is an offense for which the penalty is a period of imprisonment that is more than six days but less than or equal to five years.</p> <p>Petty crime – A petty crime is any offense where the penalty is less than or equal to six days imprisonment.</p>
Guidance	<p>The trial monitor should listen to and observe the clerk and judge to determine the nature of the charge. The clerk or judge will announce whether the charge is a felony, misdemeanour or petty crime. The trial monitor should also note the name of the offense (e.g. murder), the relevant law (e.g. the Penal Code), and the relevant article of law (e.g. Article 199), that each accused is charged with. If the clerk or judge does not announce whether this charge is a felony, misdemeanour or petty crime, the trial monitor should examine the relevant law to determine this after returning to the office.</p> <p>This information is important because different categories of offense carry different requirements. For example, for an accused who is charged with a felony offense, legal representation is mandatory (Article 301 of the CCPC)[Linked to Question 16(b)]. Also, where an accused is charged with a felony, the Prosecutor must open a judicial investigation (Article 44 of the CCPC) [Linked to Question 12(a)].</p> <p>We also need to know the exact nature of the offense which each accused is charged with; different accused persons may be charged with different offenses.</p>
Answer	Indicate whether each accused is charged with a felony, misdemeanor or petty crime and the name of the charge, relevant law, and relevant article of law.

PRE-TRIAL RIGHTS

13. Right to liberty and to be tried without undue delay

Article 38 of the Constitution: *“The...detention of any person shall not be done except in accordance with the law.”*

Article 203 of the CCPC: *“In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section.”*

Article 205 of the CCPC: Reasons for provisional detention

Articles 208 – 214 of the CCPC: Legal limits of provisional detention

Article 9(3) of the ICCPR: *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge...and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody...”*

Article 14(3)(c) of the ICCPR: *“In the determination of any criminal charge against him, everyone shall be entitled: To be tried without undue delay”*

Question	13(a) Date of alleged offence?
Guidance	Record the date that the offence was alleged to have occurred as cited by the Clerk or Judge. Record the date using the DD/MM/YYYY format (DD=day of the month, MM=month, YYYY=Year).

	If the date of the offense is unknown, indicate 'I/U'.
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Question	13(b) Date of arrest?
Guidance	<p>Record the date that the Charged Person was arrested by police, as cited by the Clerk or Judge. Record the date using theDD/MM/YYYY format.</p> <p>If the date of arrest is unknown, indicate 'I/U'</p> <p>Indicate 'N/A'if the accused was not arrested at all but was summonsed to appear before the court.</p> <p>Linked data: If indicating 'N/A' there has been no arrest. Therefore Question 13(d) should be marked 'No' because the accused must be arrested and taken into custody to be place in provisional detention.</p>

Question	13(c) Was there judicial supervision?
Legal basis	Articles 223 – 230 of the CCPC
Legal terms	<p><i>Judicial Supervision</i> – Judicial supervision is an order that may be imposed by an Investigating Judge on a Charged Person if they are under investigation for an offense punishable by imprisonment. It is an alternative to provisional detention and enables the charged person to remain at liberty subject to one or more conditions or obligations as imposed by the Investigating Judge under Article 223 of the CCPC.</p> <p><i>At liberty</i>– 'At liberty' means the accused is not detained in any way.</p>
Guidance	<p>The trial monitor should listen to and observe the clerk and judge to determine whether the accused:</p> <ul style="list-style-type: none"> (a) remained at liberty prior to the trial without any restrictions; or (b) was placed under judicial supervision (at liberty but with restrictions); or (c) was provisionally detained; or (d) some combination of the above. <p>There is a presumption against the use of provisional detention in both the CCPC and the ICCPR. Because of the presumption of innocence an accused person should not, as a general rule, be detained prior to trial. Judicial supervision is a less intrusive and restrictive alternative to provisional detention that allows the accused to remain at liberty subject to court-imposed restrictions on their activities and movements.</p>
Yes/No	<p>Indicate 'Yes' if the clerk or judge indicates that the Charged Person was under judicial supervision (subject to court-imposed restrictions) prior to the hearing.</p> <p>If 'Yes' the answer to 2 (d) is likely to be 'No', though there is a chance that both judicial supervision and provisional detention may have been employed– for example, the accused may have been detained in provisional detention until the statutory limit for provisional detention was reached, at which point the court may have released the accused under judicial supervision.</p> <p>Indicate 'No' if the clerk or judge indicates that prior to the hearing the Charged Person remained at libertyand was not under judicial supervision (no court-imposed restrictions); or</p>

	<p>If the clerk or judge indicates that the accused was detained in provisional detention and was not subsequently released under judicial supervision.</p> <p>Indicate 'I/U' if the information is unavailable to trial monitors.</p>
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Question	13(d) Was there provisional detention?
Legal basis	Articles 203 – 218 of the CCPC
Legal terms	<p><i>Provisional Detention</i> – Provisional detention is detention (imprisonment) imposed on a Charged Person prior to a hearing in accordance with the provisions of the CCPC cited above (Also referred to as pre-trial detention).</p> <p><i>Undue delay</i> – ‘Undue delay’ is any unreasonable delay in the period between the date when the accused is charged and the date of their hearing. The CCPC provides for legal limits on the amount of time the accused can be detained prior to trial.</p>
Guidance	<p>The trial monitor should listen to and observe the clerk and judge to determine whether the accused person was held in provisional detention prior to the hearing. The trial monitor should also seek to determine the date at which the provisional detention commenced and ended. This may require speaking to the judicial police or prison authorities who are supervising the accused prior to trial.</p> <p>If it is clear that the accused was held in provisional detention prior to the hearing but the date that that provisional detention commenced is unclear, the trial monitor can note the date of the arrest as the start date of provisional detention. If the Charged Person remained in detention until the hearing the end date will be the date of the hearing.</p> <p>Record the dates using the DD/MM/YYYY format. <i>The database will use these dates to calculate whether the period of provisional detention exceeded statutory limits.</i></p> <p>This question monitors whether the statutory presumption against provisional detention is being adhered to. It also monitors the length of time the Charged Persons remained in provisional detention prior to a hearing and whether this was longer than the limits set out in the CCPC.</p>
Yes/No	<p>Indicate 'Yes' if the clerk or judge indicates that the Charged Person was detained in provisional detention prior to the hearing.</p> <p>Indicate 'No' if the Judge indicates that the Charged Person remained at liberty or was under judicial supervision prior to the hearing.</p> <p>Indicate 'I/U' if no information is available or it is unclear whether the accused was detained in provisional detention at any stage prior to the hearing.</p> <p>Linked data: If indicating ‘No’ on this question, the trial monitor should mark the second half of Question 21(d) – “was provision detention taken into account?” as ‘N/A’ as there is no provisional detention to take account of.</p>
Note	Where trial monitors have indicated ‘Y’ if possible the trial monitor should indicate the start date of pre-trial detention and the end of the pre-trial detention. Usually speaking

	the end of pre-trial detention will be either the day of the hearing, if that is the same day as the day of the verdict, or the day of the verdict.
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Question	13(e) Was there anything to suggest that female accused held in pre-trial detention were not separated from men?
Legal Basis	Rule 8(a) of the 1955 Standard Rules for the Treatment of Prisoners provides: Men and women shall so far as possible be kept in separate institutions. In institutions which receive both men and women the whole of the premises allocated to women shall be entirely separate
Legal terms	
Guidance	Best practice dictates that women held in any form of detention should be separated from male detainees. Trial Monitors should look for any indications that a female accused held in pre-trial detention was not separated from male detainees. Such indicators include comments from the judge(s); court clerk(s); and parties to proceedings including any comments from the accused themselves.
Yes/No	<p>Trial Monitors should indicate ‘Yes’ where they observe any indicia that female accused held in pre-trial detention were not separated from male detainees.</p> <p>Trial Monitors should indicate ‘No’ when they observe indicia that women were kept separate from men.</p> <p>Trial Monitors should record ‘I/U’ where it is unknown whether the female accused held in pre-trial detention was kept separate from men. Trial Monitors should record ‘N/A’ where the female accused was not held in pre-trial detention.</p> <p>Note: Trial Monitors are not recording whether female accused were kept separate from men while being held in pre-trial detention – they are indicating whether there was anything to suggest that this was the case.</p>

14. Rights during interrogation and the prohibition against torture

Article 38 of the Constitution: “Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.”

Article 321 of the CCPC: “A confession shall be considered by the court in the same manner as other evidence. Declaration given under the physical or mental duress shall have no evidentiary value.”

Article 145 of the CCPC: “A charged person can be interrogated only in the presence of his lawyer.”

Article 14(3)(g) of the ICCPR: “In the determination of any criminal charge against him, everyone shall be entitled: Not to be compelled to testify against himself or to confess guilt.”

Article 7 of the ICCPR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” (See also Article 5 of the UDHR)

Article 15 of the **Convention against Torture**: “...any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings...”

See also, **Articles 210** and **213** of the **Penal Code** outlawing torture.

Question	14(a) Was there anything to suggest the accused confessed to the offense prior to the hearing?
Legal terms	<i>Confession</i> –A verbal or written statement by an accused person in which they admit that they committed an offense.
Guidance	<p>The trial monitor should listen to proceedings to determine whether there is any reference to a confession that was made by the accused <i>prior to the hearing</i>. This will usually be presented by the Prosecution as evidence.</p> <p>It is not necessary to determine whether the confession was genuine or not or whether it was accepted as evidence by the court.</p> <p>This question is important to determine how often the Prosecution relies on a confession as evidence and how often the accused person disputes the validity of the confession.</p>
Yes/No	<p>Indicate ‘Yes’ if there is any indication from the clerk, judge, Prosecutor or other court staff that indicates that the accused may have confessed to the offense <i>prior to the hearing</i>.</p> <p>If answering ‘Yes’ to this question please remember to answer Question 21(e) to indicate whether the judge relied on the confession as evidence in their ruling.</p> <p>Mark ‘No’ if there is no indication that the Charged Person confessed to the crime prior to the hearing.</p> <p>Linked data: If indicating ‘No’ for this question, Questions 14(c) and (d) should be marked ‘N/A’ as there was no confession.</p>

Question	14(b) Was there anything to suggest the accused was interrogated without a lawyer present?
Legal basis	Article 145 of the CCPC : “A charged person can be interrogated only in the presence of his lawyer”
Legal terms	<i>Interrogated</i> – Asked questions by the investigating judge about the alleged offense.
Guidance	The trial monitor should listen to and observe proceedings to determine whether there is any indication, most likely through the objection or statement in court of the defendant or their lawyer, that defendant was interrogated by the investigating judge without a lawyer present.

	<p>The default answer to this question is 'No'. This means unless there is something explicitly said to suggest that the defendant was interrogated by the investigating judge without a lawyer present, 'No' should be indicated. It is not necessary for the trial monitor to determine definitively that the lawyer <i>was</i> present during any interrogation by the investigating judge.</p> <p>This question is most relevant where there has been a confession but should be answered for all trials. The question is important where there has been a confession because a charged person should be interrogated in the presence of their lawyer so that they are fully aware of their legal rights (e.g. not to self-incriminate) and because the presence of a lawyer reduces the likelihood of coercion through threats and the use of violence or torture.</p> <p>*Note: This question only applies to interrogations carried out by an investigating judge. If details are given during proceedings about an interrogation carried out by anyone other than an investigating judge, these details should be recorded in the general notes section of the checklist.</p>
Yes/No	<p>Indicate 'Yes' if the defendant, or their defense lawyer, raises concerns that a lawyer was not present during interrogation by the investigating judge or if there is anything else said or done during the trial to suggest that a lawyer was not present during interrogation by an investigating judge.</p> <p>If Yes, please provide further details (see below).</p> <p>Indicate 'No' if:</p> <ol style="list-style-type: none"> There if there is no information about whether the investigating judge interrogated the defendant; or If an interrogation by the investigating judge is referred to during proceedings but it is clear that a lawyer <i>was</i> present. If an interrogation by the investigating judge is referred to during proceedings but it is <i>unclear</i> whether or not a lawyer was present
Details	<p>If indicating 'Yes' the trial monitor should provide details about what was said or done during the proceedings to suggest to them that a lawyer was not present during an interrogation by an investigating judge.</p>

Question	14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged offense?
Legal basis	<p>Article 321 of the CCPC</p> <p>Article 38 of the Constitution</p> <p>Article 15 of the Convention against Torture</p>
Legal terms	<p><i>Threats</i> – A verbal or written communication conveyed to the accused threatening to inflict physical, financial or any other harm or loss on the accused person or their family or friends.</p> <p><i>Coerce/coercion</i> – The use of pressure or duress to encourage or provoke an involuntary response from the person being coerced. For example, the use of threats is coercion and</p>

	<p>the involuntary response might be a confession.</p> <p><i>Confess/confession</i> – A verbal or written statement by an accused person in which they admit that they committed an offense.</p>
Guidance	<p>This question is only relevant where the accused person has confessed to the alleged offense prior to the hearing. If the accused did not confess to the offense prior to the hearing this question is not applicable ('N/A').</p> <p>If the accused has confessed to the offense prior to the hearing, the trial monitor should listen to and observe proceedings to determine whether there is any indication, most likely through the objection or statement in court of the defendant or their lawyer, that the defendant was, <i>at any stage prior to the hearing</i>, coerced, through the use of threats, into making a confession. The trial monitor need not determine definitively whether any allegations are genuine and whether threats were in fact made – this question measures only whether there are <i>indications</i> or a <i>suggestion</i> that threats were made.</p> <p>*Note: This question is not limited to indications of threats being used during an interrogation by an investigating judge; the trial monitor should also answer 'Yes' if there is an indication that a confession resulted from threats from another source, for example, the police or prison authorities.</p> <p>The default answer to this question is 'No'. This means unless there is something specific said to suggest that the confession of the accused resulted from threats prior to the hearing, 'No' should be indicated. It is not necessary for the trial monitor to determine definitively that there were no threats made.</p> <p>This question is important because both Cambodian and international law state that a confession should not be used as evidence if it results from duress. This is because the confession may be unreliable – the accused person may have confessed out of fear even if they did not commit the offense – and because state authorities should not make threats against citizens.</p>
Yes/No	<p>Indicate 'N/A' if the accused did not confess to the alleged offense prior to the hearing.</p> <p>Indicate 'Yes' if the defendant, or their lawyer, raises concerns that a confession was made as the result of threats against the accused, his family or friends by any state authorities, or if there is anything else said or done during the trial to suggest that the confession of the accused was made as a result of threats.</p> <p>If Yes, please provide further details (see below).</p> <p>Indicate 'No' if there is no information about whether the confession resulted from threats made against the accused, his family or his friends.</p> <p>Linked data: If this question is answered 'N/A' , 14(d) should also be 'N/A' as both are only relevant if there was a confession prior to the hearing.</p>
If Yes,	<p>If this question is marked 'Yes' it is vital that Trial Monitors add as much additional</p>

please explain	<p>information as possible to give further background, including, where possible:</p> <ul style="list-style-type: none"> - What led them to believe threats were used to coerce the accused into confessing (for example, <i>who</i> was it that made a statement indicating this and <i>what</i> did they say); - The nature of the threat or threats; - Who made the threats; and - When and where the threats took place. - Where the accused is female Trial Monitors should record whether the threat or coercion was gender specific or targeted at the persons gender (for example, threats of certain types of sexual assault or threats of certain inappropriate touching; threats against an unborn child etc.) <p>It is not necessary to provide <u>all</u> of the above information – not all of this information will always be available when there is only a suggestion that threats were used. However, if marking ‘Yes’, the Trial Monitor must be able to answer at least the first of these sub-questions – what led them to believe that threats were used.</p>
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Question	14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime?
Legal basis	<p>Article 321 of the CCPC</p> <p>Article 38 of the Constitution</p> <p>Article 15 of the Convention against Torture</p>
Legal terms	<p><i>Violence</i> – Physical force exerted on the accused with the intention of causing bodily harm.</p> <p><i>Torture</i> –The act of inflicting excruciating pain or extreme mental anguish.</p>
Guidance	<p>This question is only relevant where the accused person has confessed to the alleged offense prior to the hearing. If the accused did not confess to the offense prior to the hearing this question is not applicable (‘N/A’).</p> <p>If the accused has confessed to the offense prior to the hearing, the trial monitor should listen to and observe proceedings to determine whether there is any indication, most likely through the objection or statement in court of the defendant or their lawyer, that the defendant was, <i>at any stage prior to the hearing</i>, subjected to violence or torture with the aim of forcing the accused to confess. The trial monitor need not determine definitively whether any allegations are genuine and whether violence or torture were in fact used – this question measures only whether there are <i>indications</i> or a <i>suggestion</i> that violence or torture were used.</p> <p>*Note: This question is not limited to indications of violence or torture being used during an interrogation by an investigating judge; the trial monitor should also answer ‘Yes’ if there is an indication that a confession resulted from threats from another source, for example, the police or prison authorities.</p> <p>The default answer to this question is ‘No’. This means unless there is something specific said during the proceedings or observed to suggest that the confession of the accused</p>

	<p>resulted from violence or torture prior to the hearing, ‘No’ should be indicated. It is not necessary for the trial monitor to determine definitively that there were no violence or torture used.</p> <p>This question is important because both Cambodian and international law state that a confession should not be used as evidence if it results from physical duress or torture. This is because the confession may be unreliable – the accused person may have confessed out of fear even if they did not commit the offense – and because state authorities should not use violence or torture to seek confessions.</p>
Yes/No	<p>Indicate ‘N/A’ if the accused did not confess to the alleged offense prior to the hearing.</p> <p>Indicate ‘Yes’ if the defendant, their lawyer, or anyone else raises concerns that a confession was made as the result of the use of violence or torture against the accused. If Yes, please provide further details (see below).</p> <p>Indicate ‘No’ if there is no information suggesting that the confession resulted from the use of violence or torture against the accused.</p>
If Yes, Please explain	<p>If this question is marked ‘Yes’ it is vital that Trial Monitors add as much additional information as possible to give further background, including, where possible:</p> <ul style="list-style-type: none"> - What led them to believe violence or torture was used to coerce the accused into confessing; - The nature of the violence or torture; - Who inflicted the violence or torture; and - When and where the alleged violence or torture took place. - Where the accused is female Trial Monitors should record whether the violence or torture was gender specific (for example certain acts of sexual assault and inappropriate touching, an act that threatened the life of an unborn child or caused the death of an unborn child) <p>It is not necessary to provide <u>all</u> of the above information – not all of this information will always be available when there is only a suggestion that violence or torture was used. However, if marking ‘Yes’, the Trial Monitor must be able to answer at least the first of these sub-questions – what led them to believe violence or torture was used.</p>

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

Article 98 of the **CCPC**: *“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...The selected person may enter into the custodial site and talk with the detained person for 30 minutes...the selected person may make a written note to be placed on the case file.”*

Article 149 of the **CCPC**: *“The lawyer of a charged person who is in detention may freely communicate with his client in the detention center or in prison. The lawyer may read out part of the case file to his client.”*

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

Question	15(a) Was there anything to suggest that the lawyer for the accused was assigned on the day of the trial?
Legal basis	Article 14(3)(b) of the ICCPR: <i>“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.”</i>
Legal terms	
Guidance	<p>The trial monitor should listen to and observe proceedings to determine whether there is anything to suggest that the lawyer for the accused was assigned on the day of the trial. This includes comments made by counsel, the accused, judges, the court clerks, the prosecutor and any other party to proceedings.</p> <p>Note: Trial Monitors do not have to determine whether the lawyer was actually assigned on the day of the trial; Trial Monitors only have to identify whether there was anything to suggest that the lawyer for the accused was assigned on the day of the trial.</p> <p>This question is important because the defendant and his or her lawyer need to have enough time and access to the relevant documents and evidence to enable them to defend the accused against the charges. Otherwise, the accused is placed at an unfair disadvantage at trial and the trial is unlikely to be fair.</p>
Yes/No	<p>Indicate ‘Yes’ if there is anything to suggest that the accused’s lawyer was assigned on the day of the trial.</p> <p>Note: If Trial Monitors indicate ‘Yes’ they must make note of what the indications were that led them to form the belief that the accused’s lawyer was assigned on the day of the trial.</p> <p>Indicate ‘No’ if there is nothing to suggest that the accused’s lawyer was assigned the day of the trial.</p>
Details	

Question	15(b) Was the issue of adequate time and facilities for preparation raised by the defense?
Legal basis	Article 14(3)(b) of the ICCPR: <i>“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.”</i>
Legal terms	<p><i>Defense</i>—In this context, defense refers to either the accused themselves or the defense lawyer</p> <p><i>Facilities</i> – In this context, facilities refers to evidence and other materials (documents etc.)</p>

	<p>that the defense requires to prepare a defense.</p> <p><i>Exculpatory evidence</i> – Evidence suggesting innocence</p>
Guidance	<p>The trial monitor should listen to and observe proceedings to determine whether either the accused or their legal representation states that they have not had enough time to prepare for a trial. This might lead to a request for an adjournment but this is not required for the issue to have been <i>raised</i>.</p> <p>The accused or their legal representation may also state that they have had inadequate access to materials ('facilities') to prepare a defense. "Adequate facilities" includes access to documents and other evidence; this access should include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. The investigating judge has a duty under Article 127 of the CCPC to collect both inculpatory and exculpatory evidence. Where exculpatory evidence is found, this should be made available to the defense. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence (e.g. indications that a confession was not voluntary).</p> <p>Note: the importance factor for this question is that the accused or their legal representative <i>raised this issue in court</i>. For this question, other indications that the lawyer may not have had sufficient time or resources are not sufficient and the trial monitor should not speculate.</p> <p>This question is important because the defendant and his or her lawyer need to have enough time and access to the relevant documents and evidence to enable them to defend the accused against the charges. Otherwise, the accused is placed at an unfair disadvantage at trial and the trial is unlikely to be fair.</p>
Yes/No	<p>Indicate 'Yes' if the accused or their legal representative raise in court a problem or issue relating to insufficiency of time to prepare for trial or insufficient access to the required materials and evidence.</p> <p>If answering 'Yes' to this question, the trial monitor should provide further details (see below)</p> <p>Indicate 'No' if the accused or their legal representative <i>do not</i> raise in court a problem or issue relating to insufficiency of time to prepare for trial or insufficient access to the required materials and evidence.</p> <p>Indicate 'N/A' if the accused was absent and no lawyer was present at the hearing to represent them.</p>
Details	<p>If answering 'Yes' to this question the trial monitor should note (a) who raised the issue; (b) what issue was raised; and (c) what was the response of the court.</p>

TRIAL RIGHTS

16. Right to be present and to legal representation

Article 300 of the **CCPC**: “The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”

Article 301 of the **CCPC**: “The assistance of a lawyer is compulsory if:

1. The case involves a felony;
2. The accused is a minor.”

Article 38 of the **Constitution**: “Every citizen shall enjoy the right to defense through judicial recourse.”

Article 14(3)(d) of the **ICCPR**: “In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal representation of his own choosing...”

See also, **Articles 46, 98, 143, 149, and 510** of the **CCPC**.

Question	16(a) Was the accused present?
Legal basis	Article 300 of the CCPC and Article 14(3)(d) of the ICCPR .
Guidance	<p>The presence of the accused during their trial is important to ensure they have an opportunity to respond to the charges against them, to testify if they choose, and to question any witnesses.</p> <p>The trial monitor should indicate which of the accused persons were present and which were absent.</p> <p>The information for this question should match that summary given in Question (1)(f)</p>
Yes/No	<p>Indicate ‘Yes’ if the accused was present in person at the hearing.</p> <p>Indicate ‘No’ if the accused was <i>not</i> present in person at the hearing.</p> <p>Linked data: If indicating ‘No’ on this question, the trial monitor should mark:</p> <ul style="list-style-type: none"> - Questions 4(a) and (b) ‘N/A’ because there is no one for the judge to inform and explain the rights to; - Question 15(a) as ‘N/A’ because neither the accused or a lawyer are present to raise the issue. - Questions 17(a), (b) and (d) as ‘N/A’ as the defendant will not be present. <p>If indication ‘No’ on this question AND on Question 16(b), the trial monitor should mark:</p> <ul style="list-style-type: none"> - Question 10(e) ‘N/A’ because there is no one for the judge to inform and explain to; - Question 6(d) ‘N/A’ because no one is present to speak last.

Question	16(b) Was the accused represented by a lawyer?
Legal basis	Article 300 and 301 of the CCPC and Article 14(3)(d) of the ICCPR .
Guidance	The trial monitor should indicate which of the accused were represented by a lawyer. One lawyer may represent more than one accused. An accused who is not present may also be

	<p>represented by a lawyer.</p> <p>This question is important because legal representation greatly enhances the ability of the defendant to communicate with the court and to present a coherent legal defense. Also, in trials involving felony charges or a juvenile accused, legal representation is compulsory in accordance with Article 301 of the CCPC.</p>
Yes/No	<p>Indicate 'Yes' if the accused was represented by a lawyer, including if the lawyer is also representing a co-accused or if the accused is not present in person.</p> <p>Indicate 'No' if the accused was not represented by a lawyer.</p> <p>Linked data: If indicating 'Yes' on this question, the trial monitor should mark:</p> <ul style="list-style-type: none"> - Question 4(a) 'N/A' – the accused is already represented by a lawyer so does not need to be informed of this right and have it explained.

Question	16(c) If the accused is female is she represented by a female lawyer?
Legal Basis	
Guidance	Trial Monitors should record whether the lawyer of any female accused is female
Yes/No	<p>If the accused is female and is represented by a female lawyer Trial Monitors should indicate 'Yes'.</p> <p>If the accused is female and represented by a Male Lawyer Trial Monitors should indicate 'No'.</p> <p>If the female accused is not represented by a lawyer Trial Monitors should record 'N/A'</p>

17. Presumption of Innocence

Article 38 of the **Constitution**: *"The accused shall be considered innocent until the court has judged finally on the case."*

Article 14(2) of the **ICCPR**: *"Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law."*

See also, **Article 11(1)** of the **UDHR** and **paragraph 30** of **Human Rights Committee General Comment No. 32**.

Question	17(a) Did the accused appear before the court in prison uniform?
Legal basis	Article 38 of the Constitution and Article 14(2) of the ICCPR . For particular mention of attributes of guilt, see paragraph 30 of Human Rights Committee General Comment No.

	32.
Legal terms	<i>Presumption of innocence</i> – Considering someone innocent until proven otherwise. Once an accused person is charged with an offense there is a possibility that they will be found guilty of that offense. However, until the court finally rules on the case, the accused person should be considered and treated as innocent.
Guidance	<p>The trial monitor should observe the defendants and note whether they appear in court in prison uniform or prison attire.</p> <p>If the accused has already been convicted of an offense and sentenced to imprisonment and is appearing before the court in prison uniform on a different charge the question should be answered ‘Yes’ but the trial monitor should note these special circumstances.</p> <p>This question is important because if the accused appears before the court in prison uniform they are already being treated as a convicted criminal. The judge and others may be consciously or unconsciously influenced to consider the accused guilty before the accused person has had an opportunity to defend themselves. Appearance before the court in prison uniform could therefore affect the outcome of the trial.</p>
Yes/No	<p>Indicate ‘Yes’ if the accused appeared before the court in prison uniform</p> <p>Indicate ‘No’ if the accused did not appear before the court in prison uniform.</p> <p>Indicate ‘N/A’ if the accused person did not appear in person before the court.</p> <p>Linked data: This question should be marked ‘N/A’ if Question 16(a) is marked ‘No’ because no accused person was present at the hearing.</p>

Question	17(b) Was the accused handcuffed throughout the trial?
Legal basis	Article 38 of the Constitution and Article 14(2) of the ICCPR . For particular mention of attributes of guilt, see paragraph 30 of Human Rights Committee General Comment No. 32 .
Legal terms	<i>Presumption of innocence</i> – Considering someone innocent until proven otherwise. Once an accused person is charged with an offense there is a possibility that they will be found guilty of that offense. However, until the court finally rules on the case, the accused person should be considered and treated as innocent.
Guidance	<p>The trial monitor should observe the defendants and note whether they appear in court in handcuffs.</p> <p>If the accused has already been convicted of an offense and sentenced to imprisonment and is appearing before the court in handcuffs on a different charge the question should be answered ‘Yes’ but the trial monitor should note these special circumstances.</p> <p>This question is important because if the accused appears before the court in handcuffs they are already being treated as a convicted criminal. The judge and others may be consciously or unconsciously influenced to consider the accused guilty before the accused person has had an opportunity to defend themselves. Appearance before the court in</p>

	handcuffs could therefore affect the outcome of the trial. The handcuffing of an accused person during a trial may be reasonable where there is a valid reason for doing so, such as the protection of court staff and the public. However, these circumstances are likely to be limited to particularly violent and aggressive defendants.
Yes/No	<p>Indicate 'Yes' if the accused was handcuffed throughout the trial. If 'Yes', not any circumstances that might have contributed to the decision to handcuff the accused. What was their demeanor in court? What were they charged with?</p> <p>Indicate 'No' if the accused was not handcuffed throughout the trial.</p> <p>Indicate 'N/A' if the accused did not appear before the court in person. Linked data: This question should be marked 'N/A' if Question 16(a) is marked 'No' because no accused person was present at the hearing.</p>

Question	17(c) Were any statements made by the judge about the guilt or innocence of the accused before the ruling was delivered?
Legal basis	Article 38 of the Constitution and Article 14(2) of the ICCPR.
Legal terms	
Guidance	<p>The trial monitor should listen to and observe proceedings to determine whether any statements are made about the guilt or innocence of the accused during the trial, before the ruling is delivered.</p> <p>The trial monitor should use their own analysis to determine whether the statement relates to the guilt or innocence of the accused and is relevant to the purpose of this question. They should not the details of the statement made.</p> <p>The purpose of this question is to help determine whether the trial judge may have prejudged the case and whether they are approaching the evidence and testimony with an open mind before deliberating to consider all aspects of the case and reaching a final decision.</p> <p>If, for example, the judge begins discussing the guilt of the accused during the trial it might be an indication that the presumption of innocence is being ignored and that the judge may have prejudged the case. Similarly if the judge dismisses all inculpatory evidence against an accused during the trial and consistently indicates that the accused person is innocent, it might indicate that the judge has been influenced prior to the trial to find the accused innocent.</p>
Yes/No	<p>Indicate 'Yes' if any statements were made by the judge about the guilt of the accused prior to the delivery of the verdict If the trial monitor indicates 'Yes', please provide details of the statement(s) made by the judge.</p> <p>Indicate 'No' where no statements are made by the judge re: the guilt of the accused.</p>

Question	17(d) Was there anything to suggest that the Judge drew an inference of guilt from the silence of the accused?
Legal basis	Article 38 of the Constitution and Article 14(2) of the ICCPR .
Legal terms	<i>Inference of guilt</i> – Implying or deducing guilt as a result of some act or omission. In this context inferring guilt means concluding that the accused if they choose not to answer a question or testify.
Guidance	<p>This question is only relevant if the accused chooses not to answer a question and/or to testify. If the accused answers all questions and testifies, this question should be marked 'N/A'.</p> <p>The trial monitor should listen to and observe the judge during questioning of the accused to determine whether the judge makes any statement or comment which suggests that they are concluding that the accused must be guilty due to their choice not to answer a question and/or not to testify.</p> <p>If the accused chooses to remain silent this should not generally be taken as an indication of guilt as this is in contravention of the right to be presumed innocent until proven guilty.</p>
Yes/No	<p>Indicate 'N/A' if the accused answered all questions and testified or if the accused was tried in absentia or the right to remain silent is not informed or explained by the judge.</p> <p>Indicate 'Yes' if the judge makes any statement or comment indicating that they are concluding or may conclude that the accused is guilty if they do not answer a question or testify.</p> <p>Indicate 'No' if the judge makes any statement or comment indicating that they are concluding or may conclude that the accused is guilty if they do not answer a question or testify.</p>

18. Prohibition against double jeopardy

Question	18 (a) Was there anything to suggest that the accused has been tried and sentenced for this offense previously?
Legal basis	<p>Article 12 of the CCPC: "... any person who has been finally acquitted by a court judgment cannot be prosecuted once again for the same act, even if such act is subject to different legal qualification."</p> <p>Article 14(7) of the ICCPR: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted."</p>
Legal terms	<i>Double jeopardy</i> : A procedural defense that prevents a defendant from being tried for a second time on the same or similar charges following a legitimate acquittal or conviction. (For double jeopardy to be relevant the charges must relate to the same act or omission that was previously tried – e.g. the murder of a man, Bob, alleged to have taken place at

	3.15pm on Saturday 11 th of December 2003.
Guidance	<p>The trial monitor should listen to and observe the proceedings to determine whether there is any indication that the accused has previously been tried for the same offense relating to the same alleged facts.</p> <p>An indication would be one of the parties to the proceedings questioning whether the defendant has already been tried for this offense.</p> <p>The most likely person to raise this issue is the defendant themselves or their lawyer (though others such as the clerk, judge or prosecutor might also raise the issue)</p>
Yes/No	<p>Indicate 'Yes' if there is any indication to suggest that the accused had been tried for this offense previously.</p> <p><i>If answering 'Yes' to this question the trial monitor should take additional notes as suggested below.</i></p> <p>Indicate 'No' if there is no evidence to suggest that the accused had been tried for this offense previously.</p>
Details	<p>If answering 'Yes' to this question the trial monitor should note what led them to believe that the accused had previously been tried for the offense, what the offense was, the parties involved, when they might have previously been tried, the outcome of that trial and any response from the court to this issue in the trial being monitored.</p>

19. Prohibition against retroactive legislation

Question	19(a) Was the law under which the accused is charged in force on the date the offense was allegedly committed?
Legal basis	<p>Article 3 of the Penal Code: <i>"Only the act constituting an offense that is provided in the criminal provisions in force gives rise to criminal punishment. Only penalty that is provided in the criminal provisions in force gives rise to criminal punishment."</i></p> <p>Article 15 of the ICCPR: <i>"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."</i></p> <p>See also Article 11(2) of the UDHR.</p>
Legal terms	<p><i>Retroactive application of law</i> – Retroactive means applying something to the past. No one should be charged with a criminal offense for an act that was not illegal at the time it was committed.</p>
Guidance	<p>The trial monitor should have recorded the charge, the relevant law, and the relevant article of law for each accused under Question 12(b). Was this legislation in force <i>at the time the offense was allegedly committed</i>? The date that the alleged offense was committed should have been recorded in Question 3(c). The trial monitor may need to wait until they return to the office to check the date that the legislation entered into force.</p> <p>This question is of particular relevance due to the introduction of a large range of new offenses with the entry into force of the Penal Code. This question may also be relevant</p>

	to other legislation, however.
Yes/No	<p>Indicate 'Yes' if the law or the article of law under which the accused has been charged was in effect <i>on the date the offense was allegedly committed</i>.</p> <p>Indicate 'No' if the law or the article of law under which the accused has been charged was not in effect <i>on the date the offense was allegedly committed</i>.</p> <p>If indicating 'No', the trial monitor should note the relevant details for the purposes of verification, case studies, and reporting.</p>

20. Verdict

Article 321 of the **CCPC**: *"The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing."*

Article 347 of the **CCPC**: *"The judgment is issued at the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement."*

Article 348 of the **CCPC**: *"The court may only decide on acts stated in the indictment, the citation, or on the written record of immediate appearance."*

Article 357 of the **CCPC**: *"The judgment shall be divided into two parts:*

- *The holding (the arguments of facts and law that led to the court's decision)*
- *The ruling (the decision of the court)*

The facts shall be clear and unequivocal. The court shall examine each of the charges and arguments presented during the trial. In the holding part of the judgment, the court shall respond to the written arguments submitted by any party. In the ruling part of the judgment, the court shall note the offense committed by the accused, the applicable law, the sentence and any civil remedy."

Article 359 of the **CCPC**: *"All judgments shall be issued and announced during a public hearing session. The ruling part shall be read aloud by the presiding judge."*

Question	20(a) Was the accused held in provisional detention prior to the verdict?
Legal basis	Articles 203 – 218 of the CCPC
Legal terms	<p><i>Provisional Detention</i> – Provisional detention is detention (imprisonment) imposed on a Charged Person prior to a hearing in accordance with the provisions of the CCPC cited above (Also referred to as pre-trial detention).</p> <p><i>Ruling</i>– The decision of the judge/court on the merits of the case.</p> <p><i>Undue delay</i> – 'Undue delay' is any unreasonable delay in the period between the date when the accused is charged and the date of their hearing. The CCPC provides for legal limits on the amount of time the accused can be detained prior to trial.</p>
Guidance	<p>This question is only relevant where the verdict is delivered on a different day to the day of the trial. If the verdict is delivered on the same day as the trial, this question is not applicable ('N/A')</p> <p>The trial monitor should listen to and observe the clerk and judge to determine whether the accused person was held in provisional detention prior to the delivery of the verdict.</p>

	<p>If the clerk or judge do not indicate this information, answering this question may require speaking to the judicial police or prison authorities who are supervising the accused prior to the delivery of the verdict.</p> <p>This question provides further information about the amount of time an accused person spent in provisional detention before the court had determined their guilt or innocence. It is relevant to the question of <i>undue delay</i> and consideration of the legal limits of provisional detention as set out in the CCPC.</p>
Yes/No	<p>Indicate 'Yes' if the verdict was delivered on a different day to the day of the trial and the clerk or judge indicated (or it was otherwise apparent) that the accused was detained in provisional detention prior to the delivery of the verdict.</p> <p>Indicate 'No' if the verdict was delivered on a different day to the day of the trial and the clerk or judge indicated (or it was otherwise apparent) that the accused was NOT detained in provisional detention prior to the delivery of the verdict (i.e. they were free prior to the delivery of the verdict)</p> <p>Indicate 'I/U' if the verdict was delivered on a different day to the day of the trial but it is unclear, and there is insufficient information to determine, whether the accused was detained in provisional detention between the end of the trial and the delivery of the verdict.</p>

Question	20(b) What was the Court's ruling?
Legal basis	Article 357 of the CCPC
Legal terms	<p><i>Ruling</i> – the decision of the court on the merits of the case.</p> <p><i>Acquitted</i> – If the accused person is <i>acquitted</i> of a charge, they are found not guilty.</p>
Guidance	<p>The trial monitor should listen to the judge delivering the ruling and indicate the outcome.</p> <p>This question is important because it allows us to consider the effects of other aspects of the trial on the eventual outcome.</p>
Answers	<p>Indicate 'Guilty' if the judge found that the accused person was guilty of 1 or more offences.</p> <p>Indicate 'Not guilty' if the accused person is acquitted of all charges.</p> <p>Indicate 'Re-investigated' if the judge does not find the accused guilty or not guilty but instead orders the case to be re-investigated.</p> <p>Indicate 'Pre-Trial' if the judge has made a decision concerning an issue preceding the trial, for example where the judge makes a decision concerning a request for release from Pre-Trial detention.</p>

Question	20(c) Did the Judge refer to the relevant law and article of the law?
Legal basis	Article 357 of the CCPC : <i>“In the ruling part of the judgment, the court shall note the offense committed by the accused, the applicable law...”</i>
Legal terms	<p><i>Article of law</i> – A specific provision within a law. For example Article 200 of the Penal Code.</p> <p><i>Elements of an offense</i> – Often an offense is made up of a number of different <i>elements</i> – a combination of acts and intentions that when present together constitute an offense. For example,</p> <p>If only one element of an offense is proven then the accused person should not be found guilty.</p>
Guidance	<p>The trial monitor should listen to the judge as they deliver the ruling to determine whether they refer to the relevant law and article of the law in their judgment.</p> <p>This question helps to monitor whether the judges are basing their judgments on the law and considering the elements of an offense as set out in the relevant article of law.</p>
Yes/No	<p>Indicate ‘Yes’ if the Judge referred to the relevant law and article of the law. Note the law and the article referred to.</p> <p>Indicate ‘No’ if the Judge did not refer to the relevant law and article of law or referred to one but not both.</p>

Question	20(d) Did the Judge refer to the evidence in the case file or presented in court when delivering the judgment?
Legal basis	Article 321 of the Penal Code : <i>“The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing.”</i>
Legal terms	
Guidance	<p>The judge should give reasoning based on law and evidence. The judge must consider all the evidence when making their decision.</p> <p>The trial monitor should listen to the judge or clerk as they are reading the judgment and note whether any reference is made to the evidence in the case file or evidence presented in court.</p>
Yes/No	<p>Indicate ‘Yes’ if the Judge referred to evidence that was included in the case file or presented in court.</p> <p>Indicate ‘No’ if the Judge did not refer to <i>any</i> evidence when delivering their judgment or referred <i>only</i> to external considerations such as politics or political opinion.</p>

Question	20(e) Did the Judge rely on a confession as evidence?
Legal basis	<p>Article 321 of the CCPC: <i>“Unless it is provided otherwise by law, in criminal cases all evidence is admissible...Declaration given under physical or mental duress shall have no evidentiary value.”</i></p> <p>Article 38 of the Constitution: <i>“Confessions obtained by physical or mental force shall not admissible as evidence of guilt.”</i></p>

Legal terms	
Guidance	<p>This question is only relevant if the accused person confessed to the alleged offense at any stage prior to the hearing. If the accused did not confess to the offense prior to the hearing this question should be answered 'N/A'.</p> <p>When the judge is delivering his or her judgment the trial monitor should listen to the reasoning provided for the decision. The trial monitor should note whether the judge mentions their reliance on the confession as evidence of the guilt of the accused. The judge may not mention the evidence they have relied on in making their decision and it may therefore not be possible to answer this question accurately. If it is unclear whether a confession has been relied upon, the trial monitor should not guess or make an inference but instead should indicate 'I/U'.</p> <p>Where a confession is available as evidence the judge may choose not to rely on the confession where there is a danger that the confession resulted from coercion, violence or torture and is not a genuine confession. This may result in the judge choosing not to rely on a confession that is available as evidence before the court.</p>
Yes/No	<p>Indicate 'N/A' if the defendant did not confess to the alleged crime prior to the hearing and/or a confession was not presented as evidence.</p> <p>Indicate 'Yes' if the judge indicated when giving his or her reasoning for their decision that they had relied upon a confession as evidence.</p> <p>Indicate 'No' if the judge explicitly indicates that, although a confession was available for consideration as evidence, the judge did not rely on the confession (due to unreliability).</p> <p>Indicate 'I/U' if a confession <i>was</i> available for consideration by the court but it is unclear whether the judge relied upon the confession in coming to their decision.</p>

21. Sentence

Article 43 of the Penal Code – Principal Penalties: *“The principal penalties are of a prison term and a fine.”*

Article 96 of the Penal Code – Individual Principles of Penalty: *“The court pronounces penalties based on seriousness of the penalty and circumstances of the offence, of personality of the accused, of his/her mental state of mind, resources and burdens, motives as well as his/her conduct after committing the offence, in particular towards the victim.”*

See also:

Article 53 of the Penal Code – Categories of Additional Punishment

Article 72 of the Penal Code – Community Work

Article 76 of the Penal Code – Reprimand

Article 104 of the Penal Code – Suspended Sentence

Article 117 of the Penal Code – Probationary Suspended Sentence

Article 355 of the CCPC – Judgment on civil remedy

Question	21(a) Was the accused sentenced to imprisonment?
Legal basis	Article 43 of the Penal Code– Principal Penalties Article 44 of the Penal Code – The minimum and maximum of prison terms Article 51 of the Penal Code –Inclusion of duration of pre-trial detention
Legal terms	<i>Probationary Suspended sentence</i> –The sentence will not be implemented as long as the accused meets certain conditions imposed by the court. If the conditions are broken the sentence will be implemented.
Guidance	The two principal penalties imposed by the court are imprisonment and fines. The trial monitor should listen to the clerk or the judge as they are reading the judgment and sentence and note whether the sentence includes a period of imprisonment. If the sentence does include a prison sentence the trial monitor should note the period of imprisonment and whether or not pre-trial detention will be taken into account as time served. If the defendant receives a suspended or suspended probationary sentence involving the potential for imprisonment, this question should be answered ‘No’ and the details of the sentence should be recorded in Question 22(d) as an alternative sentence.
Yes/No	Indicate ‘ Yes ’ if the clerk or the judge indicated that the defendant was sentenced to imprisonment for the offense. Indicate ‘ No ’ if there was no indication that the defendant was sentenced to imprisonment for the offense. This includes where the sentence has been suspended.
Details	Length – Total period of imprisonment Prison – Name of prison Probation – The period that the condemned person is obliged to stay inside prison. Pre-trial detention taken into account – Was the time of pre-trial detention taken into account when the judge was determining the sentence? This should be answered by ‘ Yes ’ when it is indicated that the judge has taken into account PTD; ‘ No ’ when the judge has not taken into account PTD in determining the sentence; ‘ I/U ’, where it is unclear whether or not, or the extent to which, the judge has taken PTD into account when determining sentence; ‘ N/A ’ – where the accused was not sentenced to prison or fined.

Question	21(b) Was the accused ordered to pay a fine?
Legal basis	Article 43 of the Penal Code– Principal Penalties
Explanation	The two principal penalties imposed by the court are imprisonment and fines. The trial monitor should listen to the clerk or the judge as they are reading the judgment and sentence and note whether the sentence includes a fine. If the sentence does include a fine, the trial monitor should note the amount of the fine ordered to be paid. If the defendant receives a suspended or suspended probationary sentence involving the potential payment of a fine, this question should be answered ‘No’ and the details of the

	sentence should be recorded in Question 22(d) as an alternative sentence.
Yes/No	Indicate ' Yes ' if the clerk or the judge indicated that the defendant was sentenced to pay a fine for the offense. Indicate ' No ' if there was no indication that the defendant was ordered to pay a fine for the offense. This includes where the sentence has been suspended.
Details	The trial monitor should note how much the fine is.

Question	21(c) Was the accused ordered to pay compensation?
Legal basis	Article 355 of the CCPC : <i>“In the criminal judgment, the court shall also decide upon civil remedies. The court shall determine the admissibility of the civil party application and also decide on the claims of the civil party against the accused and civil defendants.”</i> See also, Article 14 of the CCPC .
Legal terms	<i>Compensation</i> – Money paid to a victim to compensate or make up for their loss.
Guidance	The trial monitor should listen to the clerk or the judge as they are reading the judgment and sentence and note whether the sentence includes any compensation. If the sentence does include compensation, the trial monitor should note the amount of compensation ordered to be paid and who the compensation must be paid to.
Yes/No	Indicate ' Yes ' if the clerk or the judge indicated that the defendant was sentenced to pay compensation to a victim for the offense. Indicate ' No ' if there was no indication that the defendant was ordered to pay compensation to a victim for the offense.
Details	The trial monitor should provide details of the amount of compensation ordered and who it must be paid to.

Question	21(d) Was there any other alternative sentence?
Legal basis	Articles 39 and 40 of the Penal Code – Measures to apply against Minors Articles 53 of the Penal Code – Categories of Additional Punishment Article 55 of the Penal Code – Civil rights may be deprived Article 72 of the Penal Code – Community Work Article 76 of the Penal Code – Reprimand Article 104 of the Penal Code – Suspended Sentence Article 117 of the Penal Code – Probationary Suspended Sentence
Legal terms	
Guidance	The Penal Code introduces a range of new alternative sentences in addition to imprisonment, fines and compensation. These sentences allow the court greater discretion when sentencing and include a number of options that are less punitive (punishment focused) and more focused on rehabilitation. The trial monitor should listen to the clerk or the judge as they are reading the judgment and sentence and note whether the accused receives a sentence of anything other than imprisonment, a fine, and/or and order to pay compensation. Alternative sentences for this question includes sentences that are deferred (suspended) or probationary as such

	sentences allow the accused to avoid the full sentence.
Yes/No	Indicate ' Yes ' if the clerk or the judge indicated that the defendant received a sentence other than, or in addition to, imprisonment, a fine, or compensation. This includes where a sentence of imprisonment or a fine is suspended. Indicate ' No ' if there was no indication that the defendant was sentenced to an alternative sentence other than imprisonment, a fine or compensation.
Details	If answering 'Yes' the trial monitor should provide details of the alternative sentence.

Question	21(e) Was there anything to suggest that the judge based his or her ruling on evidence that was not in the case file or presented at trial?
Legal basis	Article 321 of the CCPC : " <i>The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing.</i> "
Guidance	<p>The trial monitor should listen to and observe the trial proceedings to determine the source of the evidence being presented. When the judge is delivering their judgment the trial monitor should note the evidence that the judge relied on in coming to their decision. When considering what was said during the trial proceedings, is there anything to suggest that that evidence that the judge relied upon was not in the case file or presented in court.</p> <p>For example, did it become clear during the trial that a key document or witness statement was not included in the case file and was not presented at trial [this is only one example – the trial monitor needs to use their own analysis to answer this question. The details provided can be used to double check the accuracy of the observation/analysis later]. If this evidence was nevertheless relied on by the judge in coming to his or her decision, this is a breach of Article 321.</p> <p>Note: Not all evidence in the case file will necessarily be <i>presented</i> at trial.</p> <p>The reason this question is important is that the accused and his or her legal representative should have an opportunity to refute or explain all evidence against the accused. If the evidence is not in the case file or presented at trial, it is unlikely the defense side will have had a chance to review the nature of the evidence and will therefore not be in a position to respond to it.</p>
Yes/No	Indicate ' Yes ' if there if anything was said or done during the trial or during the delivery of the judgment to suggest that the evidence <i>relied upon by the judge</i> in making his or her decision <i>was not in the case file or presented at trial?</i> If answering 'Yes', please provide further details (See below)
	Indicate ' No ' if nothing was said or done during the trial or during the delivery of the judgment to suggest that the evidence <i>relied upon by the judge</i> in making his or her decision <i>was not in the case file or presented at trial?</i> Note: This is the default answer

Details	<p>If answering ‘Yes’ to this question, the trial monitor should provide details of:</p> <ul style="list-style-type: none"> (a) The nature of the evidence that was relied upon in making the judge’s decision but not included in the case file or presented at trial; and (b) What led the trial monitor to believe or know that this evidence was not presented in the case file or presented at trial. <ul style="list-style-type: none"> • Note: Not all evidence in the case file will necessarily be <i>presented</i> at trial.
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Question	21(f)If applicable, were the sentencing provisions of the Penal Code used in sentencing?
Legal Basis	<p>Article 10 of the Penal Code provides that “The new provisions which provide for less severe sentences are immediately applicable. However, the final sentences are carried out regardless of the severity of the imposed sentences.</p> <p>The new provisions which provide for more severe sentences can be applicable only to the acts committed after the effective date of these provisions”</p>
Legal terms	
Explanation	<p>This question is of particular relevance due to the introduction of a large range of new offences and penalties with the entry into force of the Penal Code. Articles 9 and 10 govern which penalties are applicable where the offense and penalty provisions of the Penal Code replace previous legislation.</p> <p>Note that this question may also be relevant to other legislation, however.</p>
Yes/No	<p>Indicate ‘Yes’ if the Penal Code provisions have been used during the sentencing of the accused</p> <p>Note: Trial Monitors must answer question 21(g) if they answer ‘Yes’ to this question.</p> <p>Indicate ‘No’ if Penal Code provisions were not used to sentence the accused</p>
Details	<p>Two possibilities to consider when answering question 21(f):</p> <ol style="list-style-type: none"> 1. The sentencing provisions of the Penal Code were used in sentencing because of the fact that the alleged offense occurred after the date that the Penal Code came into force. 2. The sentencing provisions of the Penal Code were used in sentencing because of the fact that the alleged offense occurred prior to the date that the Penal Code came into force because it is less severe than the UNTAC Law.

Question	21(g)If yes to question 21(f), were the retroactive sentencing provisions of the Penal Code applied correctly?
Legal Basis	<p>Article 10 of the Penal Code provides that “The new provisions which provide for less severe sentences are immediately applicable. However, the final sentences are carried out regardless of the severity of the imposed sentences.</p> <p>The new provisions which provide for more severe sentences can be applicable only to the acts committed after the effective date of these provisions”</p>

Legal terms	Retroactive application of law – Retroactive means applying something to the past. No one should be charged with a criminal offense for an act that was not illegal at the time it was committed.
Explanation	<p>Linked Question: Trial Monitors must only record a response to this question if they have indicated ‘Yes’ in question 21(f).</p> <p>The trial monitor should have recorded the relevant law and article of law under which the accused was charged and convicted in Questions 12(b) and 21(c). The trial monitor should also have noted the sentence handed down to the accused in Questions 22(a) – (d). Was the penalty or penalties which the accused received as a sentence in force <i>at the time the offense was allegedly committed</i>? The date that the alleged offense was committed should have been recorded in Question 3(c). The trial monitor may need to wait until they return to the office to check the date that the penalty provisions of the relevant legislation entered into force and the severity of the penal code sentence in comparison to the sentence available under the previous legislation. If the accused person is a juvenile, the trial monitor should also check that the sentence imposed complies with Article 160 of the Penal Code.</p> <p>As indicated above this question is of particular relevance due to the introduction of a large range of new offences and penalties with the entry into force of the Penal Code. Articles 9 and 10 govern which penalties are applicable where the offense and penalty provisions of the Penal Code replace previous legislation.</p>
Yes/No	<p>Indicate ‘Yes’ if the law or the article of law under which the accused has been sentenced was in effect <i>on the date the offense was allegedly committed</i> and the penalty was applicable in accordance with Articles 9 and 10 of the Penal Code.</p> <p>Indicate ‘No’ if the law or the article of law under which the accused has been sentenced was not in effect <i>on the date the offense was allegedly committed</i> and/or the penalty was not applicable in accordance with Articles 9 and 10 of the Penal Code.</p>
Details	If indicating ‘No’, the trial monitor should note the relevant details for the purposes of verification, case studies, and reporting.
N/A	<p>If the answer is ‘No’ from question 21(f), the trial monitor should indicate ‘N/A’ for question 21(g).</p> <p>If there is no retroactive sentencing, the trial monitor should indicate ‘N/A’ for question 21(g).</p>

ANNEX I: JUVENILE ACCUSED

22. Age (juvenile)

Question	22(a) What was the age of the accused at the time the offense was committed?
Legal basis	Articles 39 and 40 of the Penal Code – Measures to apply against Minors
Guidance	<p>If the age of the accused at the time the offense was committed is announced at trial the trial monitor should note which age range the accused falls into: Under 14, between 14 and 15, or between 16 and 17.</p> <p>The trial monitor should also note the specific age of the accused in their notes.</p> <p>If there is no information about the age of the accused at the time the offense was committed the trial monitor should indicate 'I/U'.</p>

Question	22(b) If the accused was under the age of 14 at the time the offense was committed did the judge acknowledge the accused's lack of criminal responsibility due to the age of the accused?
Legal basis	Articles 38 and 39 of the Penal Code.
Guidance	<p>Article 38 of the Penal Code states that the age of adult criminal responsibility is 18 years old. Criminal convictions may be given to juveniles 14 years and above if the circumstance of the offense or personality of the accused justify. It can be inferred from these Articles that no one under the age of 14 may be criminally prosecuted.</p> <p>If one of the accused was under the age of 14 years at the time the offense was committed they should not be held criminally responsible and the judge should acknowledge this. This should result in the juveniles acquittal.</p> <p>The trial monitor should determine whether the judge makes any statement, either throughout the trial, or during the judgment acknowledging that the accused was not old enough to have criminal responsibility at the time the offense was committed.</p>
Yes/No	<p>Indicate 'N/A' if none of the accused were under the age of 14 at the time the offense was committed or if there is insufficient information to determine whether the accused was under the age of 14 at the time the offense was committed.</p> <p>Indicate 'Yes' if the judge explicitly recognized that the juvenile could not be prosecuted due to their lack of criminal responsibility at the time the offense was committed.</p> <p>Indicate 'No' if the judge continued to try the accused as normal, without acknowledging the fact that they should not attract criminal responsibility for their actions.</p>

23. Provisional detention

Question	23(a) Age at the time of provisional detention?
Legal basis	Articles 212 – 214 of the CCPC
Guidance	<p>If the accused was not held in provisional detention prior to the hearing the trial monitor should mark this question as 'N/A'.</p> <p>The trial monitor should listen to proceedings to attempt to discern the age of the accused at the time they were arrested and detained in provisional detention.</p> <p>Juveniles under the age of 14 should not be detained in provisional detention (Article 212).</p> <p>Articles 213 and 214 set out the legal limits for accused persons between the age of 14 – 16, and 16 – 18 for felony and misdemeanor charges respectively.</p>
Yes/No	<p>Indicate 'N/A' if the juvenile accused was not held in provisional detention.</p> <p>If the age of the accused at the time they were detained in provisional detention is announced at trial or otherwise discernable, the trial monitor should note which age range the accused falls into: Under 14, between 14 and 15, or between 16 and 17. The trial monitor should also note the specific age of the accused at the time of detention in their general notes for the trial. .</p> <p>If the accused was detained in provisional detention but there is not enough information to determine their age at the time of detention, the trial monitor should indicate 'I/U'.</p>

Question	23(b) Was there anything to suggest that the accused was not separated from adults during provisional detention?
Legal basis	<p>Article 166 of the Penal Code: <i>"The jailed minors are detained in the special quarters, separated from the adults."</i></p> <p>See also, Articles 10(2)(b) and 10(3) of the ICCPR.</p>
Guidance	<p>If the accused was <i>not</i> held in provisional detention prior to the hearing the trial monitor should mark this question as 'N/A'.</p> <p>The trial monitor should listen to proceedings to attempt to determine if anything is said or done to suggest that the accused was not separated from adults during provisional detention. Such an indication might include, for example, a complaint from the accused or their lawyer, or some other comment from court staff.</p> <p>Both the Penal Code and international standards state that juveniles should be detained separately from adults in provisional detention. This is important because juveniles are particularly vulnerable to physical violence and may be negatively influenced by adults who are being held in prison.</p>
Yes/No	<p>Indicate 'N/A' if the juvenile accused was not held in provisional detention.</p> <p>Indicate 'Yes' if anything was specifically said or done to suggest that the accused was not separated from adults during provisional detention.</p>

	Indicate 'No' if there was nothing specifically said or done to suggest that the accused was not separated from adults during provisional detention (the default answer).
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24. Trial

Question	24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?
Legal basis	Articles 14(1) of the ICCPR
Guidance	<p>Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial where the interest of the private lives of the parties so requires and that a judgment can be prevented from public disclosure where the interests of a juvenile so require.</p> <p>The trial monitor should note whether any special measures were taken to protect the privacy of the accused during the hearing. Special measures might include, for example, a closed or partially closed hearing, the use of a screen to protect the identity of the accused while testifying or the use of video testimony.</p>
Yes/No	<p>Indicate 'Yes' if the court took any specific measure to protect the privacy of the accused juvenile.</p> <p>Indicate 'No' if the court <i>did not</i> take any specific measure to protect the privacy of the accused juvenile.</p>
Details	If answering 'Yes', the trial monitor should provide details of the specific measures implemented to protect the privacy of the accused juvenile.

Question	24(b) Did the judge give the accused juvenile the chance to express his or her views freely, either personally or through a legal representative?
Legal basis	Articles 12 of the Convention on the Rights on the Child
Guidance	The trial monitor should listen to and observe proceedings to determine whether the judge made a special effort to seek the views of the accused juvenile. This might include, for example, directly addressing the accused juvenile in asking for their view or asking through the legal representative of the accused if the accused juvenile has anything they wish to say.
Yes/No	<p>Indicate 'Yes' if the judge specifically sought the views of the juvenile accused.</p> <p>Indicate 'No' if the judge did not seek the views of the juvenile accused.</p>

25. Sentence

Question	25(a) Did the judge cite Article 38 or 39 of the Penal Code when sentencing the accused?
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Legal basis	<p>Article 38 of the Penal Code: <i>“The criminal legal age is set at 18 (eighteen) years of age.”</i></p> <p>Article 39 of the Penal Code: <i>“The minors who committed an offence are subject to the measures of surveillance, education, protection and assistance. However, the court may pronounce a criminal conviction against a minor of 14 (fourteen) years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.”</i></p>
Guidance	<p>The trial monitor should listen to the judge when (s)he is delivering the judgment and sentence to note whether the judge makes reference to Article 38 or 39 of the Penal Code.</p> <p>These articles create a presumption against criminal conviction for juvenile accused, with alternatives such as surveillance, education and assistance to be preferred.</p> <p>The trial monitor should note whether one, both or none of the provisions are referred to.</p> <p>This question is important because it helps us determine whether the courts are implementing the new provisions relating to juveniles in the Penal Code.</p>
Yes/No	<p>Indicate ‘Article 38’ if the judge referred only to Article 38 in the judgment or sentencing.</p> <p>Indicate ‘Article 39’ if the judge referred only to Article 39 in the judgment or sentencing.</p> <p>Indicate ‘Both’ if the judge referred to both Article 38 and 29 in the judgment or sentencing.</p> <p>Indicate ‘Neither’ if the judge referred to neither Article 38 nor Article 29 in the judgment or sentencing.</p> <p>Indicate ‘N/A’ where the accused was acquitted.</p>

Question	25(b) Was there anything to suggest the judge considered imposing a non-prison sentence?
Legal basis	<p>Article 38 of the Penal Code: Legal age of criminal responsibility</p> <p>Article 39 of the Penal Code: Measures to apply against minors</p> <p>Article 40 of the Penal Code: Types of measures</p> <p>Article 72 of the Penal Code: Community Work</p> <p>Article 76 of the Penal Code: Reprimand</p>
Guidance	<p>The trial monitor should listen to the judge when (s)he is delivering the judgment and sentence to note whether the judge has imposed or considered imposing an alternative sentence – a non-prison sentence. Such sentences might include an order for supervision, community work, or education.</p> <p>The judge may have considered a non-custodial sentence if, for example they cite Article 39 of the Penal Code, acknowledging that non-custodial sentences are to be preferred but that the circumstances of the offense or personality of the juvenile offender necessitate imprisonment.</p> <p>Juveniles should not generally be imprisoned particularly for misdemeanor offences. Instead they should be diverted to rehabilitative programs.</p>
Yes/No	Indicate ‘Yes’ if the judge imposed or appeared to consider imposing a non-custodial

(non-prison) sentence.

Indicate '**No**' if the judge sentenced the accused juvenile to imprisonment and did not appear to consider a non-custodial sentence as an alternative.

Indicate '**N/A**' if the accused juvenile was acquitted and was not sentenced.