



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights

October 2020

Fair Trial Rights in Cambodia
Monitoring at the Court of Appeal
Annual Report (1 November 2018-31 October 2019)



Cambodian Center for Human Rights (CCHR)

This report on “Fair Trial Rights in Cambodia” (the “Report”) is a publication of the Fair Trial Rights Project, implemented by the Cambodian Center for Human Rights (“CCHR”). CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia, in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia’s development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s claim for freedom.

For more information, please visit www.cchrcambodia.org.

Queries and Feedback

Should you have any questions or require any further information about this Report, please email CCHR at info@cchrcambodia.org.

This Report and previous reports can be found on CCHR’s Trial Monitoring Database at www.tmp.sithi.org and www.cchrcambodia.org, and at the Cambodian Human Rights Portal, www.sithi.org.

Alternatively, please contact CCHR at:

#798, Street 99, Sangkat Boeng Trabek, Khan Chamkarmon, Phnom Penh, Cambodia

Tel: +855 (0) 23 72 69 01

Fax: +855 (0) 23 72 69 02



Contents

CONTENTS	III
FIGURES	V
ACRONYMS	VI
EXECUTIVE SUMMARY	VII
1. INTRODUCTION	1
1.1. THE RIGHT TO A FAIR TRIAL.....	1
1.1.1. <i>The right to a fair trial under international law</i>	1
1.1.2. <i>The right to a fair trial under Cambodian law</i>	2
1.2. SCOPE AND METHODOLOGY.....	8
2. OVERVIEW	10
3. FAIR TRIAL RIGHTS UPHELD	12
3.1. RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE	12
3.2. RIGHT TO A PUBLIC JUDGMENT.....	14
3.3. PROHIBITION AGAINST RETROACTIVE APPLICATION OF CRIMINAL LAW (PRINCIPLE OF LEGALITY)	15
3.4. PROTECTION AGAINST DOUBLE JEOPARDY.....	16
4. FAIR TRIAL RIGHTS NOT FULLY RESPECTED	18
4.1. THE RIGHT NOT TO BE COMPELLED TO CONFESS GUILT.....	18
4.2. RIGHT TO A PUBLIC HEARING.....	21
4.3. RIGHT TO UNDERSTAND THE NATURE AND CAUSE OF THE CHARGE(S)	22
4.4. RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL	25
4.5. RIGHT TO THE PRESUMPTION OF INNOCENCE	29
4.6. EVIDENTIARY RIGHTS.....	32
4.7. RIGHT TO A REASONED JUDGMENT.....	35
4.8. RIGHTS OF JUVENILES.....	38
5. 2014-2019: EVOLUTION OF FAIR TRIAL RIGHTS PROTECTION	45
5.1. FAIR TRIAL RIGHTS CONSISTENTLY UPHELD SINCE 2014	45
5.2. FAIR TRIAL RIGHTS NOT FULLY RESPECTED.....	46
5.2.1. <i>Variations: From fair trial rights being upheld to not being fully respected</i>	46
5.2.2. <i>Fair trial rights consistently not being fully respected since 2014</i>	49
6. CONCLUSION	52
7. RECOMMENDATIONS	53
7.1. GENERAL RECOMMENDATIONS	53
7.2. RECOMMENDATIONS REGARDING THE RIGHT NOT TO CONFESS GUILT	53
7.3. RECOMMENDATIONS REGARDING THE RIGHT TO A PUBLIC HEARING	53
7.4. RECOMMENDATIONS REGARDING THE RIGHT TO UNDERSTAND THE NATURE AND CAUSE OF THE CHARGE(S).....	54
7.5. RECOMMENDATIONS REGARDING THE RIGHT TO BE PRESENT AT TRIAL AND TO HAVE LEGAL REPRESENTATION	54
7.6. RECOMMENDATIONS REGARDING THE RIGHT TO THE PRESUMPTION OF INNOCENCE	54
7.7. RECOMMENDATIONS REGARDING EVIDENTIARY RIGHTS.....	55
7.8. RECOMMENDATIONS REGARDING THE RIGHT TO A REASONED JUDGMENT	55
7.9. RECOMMENDATIONS REGARDING THE PROTECTION OF JUVENILES' RIGHTS	56
8. BIBLIOGRAPHY	57
8.1. CAMBODIAN LEGISLATION.....	57

8.2.	CAMBODIAN POLICY INSTRUMENTS	57
8.3.	INTERNATIONAL LAW	57
9.	APPENDICES	62
	APPENDIX I: APPEAL HEARING MONITORING CHECKLIST	62
	APPENDIX II: TRIAL MONITORS CODE OF CONDUCT	78

Figures

Figure 1: Overview of cases monitored by CCHR	8
Figure 2: Appeal hearings monitored – felonies, misdemeanors and petty offenses	10
Figure 3: Party bringing the appeal	10
Figure 4: Right to adequate time and facilities to prepare a defense	13
Figure 5: The right to a public judgment	15
Figure 6: Prohibition against retroactive application of criminal law	16
Figure 7: The protection against double jeopardy	17
Figure 8: The right not to be compelled to confess guilt	19
Figure 9: The right to a public hearing	22
Figure 10: The right to understand the nature and cause of the charge(s) - Overview	23
Figure 11: The right to understand the nature and cause of the charge(s) - Details	24
Figure 12: The right to understand the nature and cause of the charge(s) - Evolution	24
Figure 13: The right to be present at trial and to legal representation	27
Figure 14: Explanation of rights	28
Figure 15: The right to remain silent	30
Figure 16: The presumption of innocence	31
Figure 17: Evolution of cases where no reasoned judgment was given between 2014-2018	36
Figure 18: Overview of Court of Appeal’s verdicts	37
Figure 19: Age at the time of the offense	41
Figure 20: Percentage of juveniles held in detention between 2014-2019	42
Figure 21: The protection of juveniles’ privacy	43
Figure 22: Compliance with right to adequate time and facilities to prepare the defense (2014-2019)	45
Figure 23: Information and explanation of the right to remain silent	46
Figure 24: Defendants appearing before the court in prison uniform (2014-2019)	46
Figure 25: The right to understand the nature and cause of the charges (2014-2019)	47
Figure 26: Information and explanation of the right to legal representation or to defend oneself (2014-2019)	48
Figure 27: Right not to be compelled to confess guilt (2014-2019)	49
Figure 28: Evolution of the percentage of juveniles held in pre-trial detention (2014-2019)	50
Figure 29: Evolution of the percentage of cases where measures were taken to protect juveniles' privacy (2014-2019)	50

Acronyms

BAKC	The Bar Association of the Kingdom of Cambodia
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CCPC	Code of Criminal Procedure of the Kingdom of Cambodia
Checklist	The checklist used by CCHR Trial Monitors to record trial data when monitoring trials
Checklist Guidance	Comprehensive guidance notes to help CCHR Trial Monitors understand each question in the Checklist
Code of Conduct	A document outlining the obligations of non-interference, objectivity and confidentiality to which CCHR Trial Monitors are bound
Constitution	The Constitution of the Kingdom of Cambodia
Court of Appeal	The Phnom Penh Court of Appeal of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
Database	The database in which CCHR Trial Monitors store trial data recorded on checklists
ECHR	European Court of Human Rights
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
N/A	Non-Applicable
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Criminal Code	The Criminal Code of the Kingdom of Cambodia
Project	CCHR Trial Monitoring Project
Reporting Period	1 November 2018 and 31 October 2019
RGC	Royal Government of Cambodia
Trial Monitor	CCHR trial monitor
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children’s Emergency Fund
UNSRSHRC	United Nations Special Rapporteur on the Situation of Human Rights in Cambodia
UNTAC	United Nations Transitional Authority in Cambodia
UNTAC Law	Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992

Executive Summary

The functioning of the criminal justice system in the Kingdom of Cambodia continues to be a major concern. Criticisms of the system are myriad and include, amongst others, a lack of independence, insufficient access to legal representation, prison overcrowding, excessive use of pretrial detention and the use of the judiciary to target critical voices.

The Royal Government of Cambodia (“RGC”) have demonstrated a commitment to addressing some of these criticisms, and 2019 witnessed a number of improvements in terms of the judicial system in Cambodia. Efforts made included the augmentation of the legal aid budget in 2019 and measures taken in order to improve access to legal aid in the provinces.¹ The launch of the Strategic and Operational Plan for Implementation of Juvenile Justice Law in December 2018 is also welcome development.²

Between 1 November 2018 and 31 October 2019 (the “Reporting Period”), CCHR’s Fair Trial Rights Project (the “Project”) monitored 239 criminal trials at the Court of Appeal (the “Court”) in order to assess the Court’s adherence to fair trial rights as set out in international and Cambodian law. This Report presents and analyzes the data collected during the Reporting Period, and, in doing so, aims to contribute to transparency, accountability and positive change in Cambodia.

The Report is structured as follows:

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

Overview: Outlines the data underlying the report, such as the number of cases monitored and the number of defendants involved.

Fair Trial Rights Upheld: Identifies which fair trial rights are being respected at the Court of Appeal, through an analysis of the data collected during CCHR’s monitoring, while also outlining key trends in terms of adherence to international fair trial rights standards by the Court of Appeal, comparing the data collected since July 2014. Each right is discussed in a separate sub-section, which also sets out the applicable domestic and international legal provisions, and explains the meaning of the specific right.

Fair Trial Rights Not Fully Respected: Outlines those fair trial rights which are not sufficiently being respected at the Court of Appeal, presenting key data gathered during CCHR’s monitoring. The evolution of the protection accorded to these rights since July 2014 is also discussed. Each right is discussed in a separate sub-section, which also sets out the applicable domestic and international legal provisions, and explains the meaning of the specific right.

¹ Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’, UN Doc No. A/HRC/42/31, 31 July 2019, para. 30, <https://cambodia.ohchr.org/en/publications-materials/reports/annual-reports>. (OHCHR Annual Report 2019); ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’, UNSRHRC, UN Doc A/HRC/42/60, 27 August 2019, para. 66, <https://cambodia.ohchr.org/en/un-human-right-mechanisms/annual-report-of-special-rapporteur>. (“Annual Report 2019, UNSRHRC”).

² Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, ‘Juvenile Justice Law Strategic and Operational Plan 2018-2020’, December 2018, https://www.unicef.org/cambodia/media/456/file/JJLSOP_Eng_0.PDF%20.pdf.

Conclusions and Recommendations: Contains recommendations addressed to various bodies of the judiciary and institutions, including the RGC, the Ministry of Justice (“MoJ”), law enforcement authorities, prison authorities, as well as non-governmental organizations (“NGOs”) in relation to the Report’s findings.

The Report finds that a number of key fair trial rights were guaranteed before the Court of Appeal – including the right to have adequate time and facilities to prepare one’s defense and the right to a public judgment. In addition, the Court of Appeal consistently upheld the protections against double jeopardy and against non-retroactivity.

Fair Trial Rights Protected by the Court of Appeal

- Right to adequate time and facilities to prepare a defense
- Right to a public judgment
- Prohibition against retroactive application of criminal law
- Protection against double jeopardy

Regrettably, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. Contrary to the last reporting period, the right not to be compelled to confess guilt has been classified as being not fully respected due to the remaining high number of defendants who have faced violence or torture, which had been used to force them into confessing the alleged crime (15 defendants out of 352 defendants parties to the monitored cases). The fundamental right to a public hearing is not fully respected, as none of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom, precluding people from being informed about the hearing. Further, the right to understand the nature and cause of the charges continues to be considered not fully respected, since the percentage of cases where the defendants were informed of the nature and cause of the charges against them did not improve compared to last year’s monitoring (only 67.4% this Reporting Period compared to 69% in 2017/2018). The right to have legal representation was not always respected: about 25% of the defendants accused of misdemeanor crimes were not represented by a lawyer.

Further, in 20 out of the 239 cases monitored by CCHR, the judges failed to inform the accused about her/his right to legal representation, a concerning trend. Similarly, the presumption of innocence remains not fully respected, with judges failing to inform defendants about their right to remain silent in 66% of the cases, and 21.9% of defendants have appeared in court in the same prison uniform as convicts. Much like in previous years, the lack of respect for the right to a reasoned judgement remains problematic. In 47.5% of monitored cases where a judgment was rendered, the judges failed to cite the legal provisions and evidence upon which they relied to reach their verdict. Instead, they only stated that the Court of First Instance’s judgment was upheld or overturned, without explaining why. Last but not least, the rights of juvenile defendants, who are entitled to special protection under international human rights law and Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy.

Fair Trial Rights not fully respected at the Court of Appeal

- Right not to be compelled to confess guilt
- Right to a public hearing

- Right to understand the nature and cause of the charges
- Right to legal representation and to be present at trial
- Right to presumption of innocence
- Evidentiary rights
- Right to a reasoned judgment
- Rights of juveniles

The Report compares this year’s data with that of 2014/2015, 2016/2017 and 2017/2018, in order to identify trends and analyze the evolution of fair trial rights in the Kingdom.³ While the majority of the findings are similar, two points emerge: first, the right to understand the nature and cause of the charges, which CCHR found was protected in 2014/2015 and 2016/2017, moved to the “not fully respected” section in 2017/2018 and 2018/2019. In 2018/2019, only in 67.4% percent of the monitored cases did the judge state all the relevant charges against all the defendants (compared to 69% in 2017/2018, 86% in 2016/2017 and 100% in 2014/2015). While this could be due to a number of factors, including the number or type of cases monitored by CCHR, this remains a considerably worrisome finding, as the right to know the charges against you is one of the most fundamental fair trial rights. Second, the right not to confess guilt (protection against self-incrimination), after having been considered as protected in 2017/2018, has been re-classified as not fully respected in 2018/2019. Indeed, in 4.3% of the cases monitored, the defendants alleged that their confession had been obtained through violence or torture. This is highly problematic and such cases must be immediately and thoroughly investigated by the competent authorities.

Several key fair trial rights have been consistently upheld by the Court of Appeal since 2014, including the right to have adequate time and facilities to prepare a defense, the right to a public judgment, the non-retroactive application of the law and the prohibition against double jeopardy. Regrettably, an equal number of rights have been consistently not fully respected since 2014, such as the right to a public hearing, evidentiary rights, the right to a reasoned judgment and the rights of juveniles. This creates significant cause for concern, particularly given the fact that those issues had been brought to the attention of the authorities on multiple occasions.

The Report ends with key thematic recommendations for the Court of Appeal to address the shortcomings identified in the Report and improve respect for fair trial rights throughout Cambodia. Key recommendations include:

- Following the best practices of the ECCC and training judges on fair trial rights;
- Developing a form listing all information which a judge must give to a defendant, including key charge information such as the date and location of the alleged offense, the parties involved and applicable law; their right to be presumed innocent; and their right to legal representation;
- Posting daily schedules of hearings on the information boards outside the courtroom at least 24 hours prior to the hearing;
- Allowing defendants to appear in court wearing civilian clothing;
- Investigating allegations that a confession was not given freely;

³ CCHR’s Fair Trial Rights monitoring Project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for this period.

- Ensuring the burden of proof is always placed on the correct party, particularly where it is alleged a statement of confession was obtained under duress
- Developing clear guidelines regarding the presentation and evaluation of evidence;
- Ensuring that judgments rendered are in writing include the relevant law and key evidence on which they rely; and
- Strengthening and speeding up the implement the Law on Juvenile Justice, particularly regarding privacy and alternatives to detention.

CCHR hopes that the data, analysis and recommendations set out in this Report will assist the RGC's efforts to improve the judicial system and respect for fair trial rights, and support those working to ensure that the judicial system in Cambodia is fair and equal for all.

1. Introduction

1.1. The Right to a Fair Trial

The right to a fair trial forms a key component of respect for the rule of law and ensures the proper administration of justice. The right is internationally recognized and enshrined in international law by the United Nations Universal Declaration on Human Rights (“UDHR”) and the United Nations International Covenant on Civil and Political Rights (“ICCPR”), amongst other instruments.⁴ The right to a fair trial is also guaranteed in Cambodia by the Constitution of the Kingdom of Cambodia (“Constitution”), and further elaborated in other domestic laws such as the Code of Criminal Procedure and the Law on Juvenile Justice.

1.1.1. The right to a fair trial under international law

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

The UDHR⁵ and the ICCPR⁶ both guarantee the right to a fair and public hearing by an independent and impartial tribunal. The ICCPR further elaborates on the various components of a fair trial, which includes, but are not limited to, the following rights and principles:

- The right to a public hearing;⁷
- The presumption of innocence;⁸
- The right to be tried without undue delay;⁹
- The right to understand the nature and cause of the charge;¹⁰
- The right to adequate time and facilities to prepare a defense;¹¹
- The right to legal representation;¹²
- The protection against self-incrimination (not to confess guilt as a result of coercion or inducement);¹³ and
- The right to appeal to a higher court on grounds of fact and law.¹⁴

Article 10 of the UDHR

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

⁴ See also American Convention on Human Rights, 22 November 1969, Art. 8; African Charter on Human and Peoples Rights, 27 June 1981, Art. 7; European Convention on Human Rights, 4 November 1950, Art. 6; European Charter of Fundamental Rights of the European Union, 7 December 2000, Art. 47-50.

⁵ Universal Declaration of Human Rights (“UDHR”), United Nations General Assembly, 10 Dec 1948, Art. 10, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁶ International Covenant on Civil and Political Rights (“ICCPR”), United Nations General Assembly, 16 Dec. 1966, Art. 14 (1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷ ICCPR, Art. 14 (1).

⁸ ICCPR, Art. 14 (2).

⁹ ICCPR, Art. 14 (3) (c).

¹⁰ ICCPR, Art. 14 (3) (a).

¹¹ ICCPR, Art. 14 (3) (b).

¹² ICCPR, Art. 14 (3) (d).

¹³ ICCPR, Art. 14 (3) (g).

¹⁴ ICCPR, Art. 14 (5).

Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution incorporates international human rights obligations into Cambodian domestic law.¹⁵ Further, international human rights norms, including provisions of the ICCPR, are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.¹⁶

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

The right to a fair trial is protected in Cambodia, through general and specific provisions set out in a number of legal instruments. The basic framework for a fair trial is provided for by the Constitution which guarantees the following rights for Khmer citizens:

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

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

The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), adopted in 2007,¹⁷ establishes in detail how suspects should be treated. It sets out the roles and responsibilities of judges, prosecutors and defense counsel; from the initiation of an investigation to the time of arrest and throughout the entire criminal process until the final appeal. The Criminal Code of the Kingdom of Cambodia (“Criminal Code”), which was promulgated in 2009 and came into force in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing.¹⁸

Additionally, the three fundamental laws pertaining to judiciary, namely the Law on the Organization of the Court,¹⁹ Law on the Statute of Judges and Prosecutors,²⁰ and the Law on the Organization and Function of the Supreme Council of Magistracy,²¹ adopted in 2014, aim to ensure the independence of the judiciary power, and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws, which were drafted without any prior publication or consultation with civil society, the public or other stakeholders, have been criticized for weakening the separation of powers and the independence of the judiciary. They effectively

¹⁵ Constitution, Art. 31: *‘The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights,* http://www.sithi.org/temp.php?url=law_detail.php&lg=&id=222. The updated version of the Constitution, as last amended in February 2018, is not yet available online.

¹⁶ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007, p. 2, http://www.ccc.gov.kh/detail_info_en.php?txtID=453.

¹⁷ The CCPC replaced sections of the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (“UNTAC Law”). It can be found at http://sithi.org/temp.php?url=law_detail.php&id=190.

¹⁸ The Criminal Code can be found at http://sithi.org/temp.php?url=law_detail.php&id=154.

¹⁹ The Law on the Organization of the Court is available at <http://www.arbitrationcouncil.org/uploads/433e3-01.-law-on-the-org-of-the-courts-english.pdf>.

²⁰ The Law on the Statute of Judges and Prosecutors is available at <http://www.arbitrationcouncil.org/uploads/58448-02.-law-on-the-status-judges-english.pdf>

²¹ The Law on the Organization and Function of the Supreme Council of Magistracy is available at <http://www.arbitrationcouncil.org/uploads/f173c-03.-law-on-scm-english.pdf>.

give the executive direct control over the judiciary by increasing the level of influence of the Ministry of Justice (“MoJ”) over judges and prosecutors, through its involvement over judicial budgets, appointments, promotions, tenure and removal.²²

Finally, the Law on Juvenile Justice, adopted in July 2016 and came into force in January 2017,²³ sets out the norms and procedures in dealing with minors who commit criminal offences.²⁴ The law needs to be strictly applied in order to safeguard the rights and best interests of the minor.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).²⁵ It identifies four guiding principles, emanating from the Constitution, to guide legal and judicial reform: the rights of individuals, the principle of liberal democracy, the separation of powers, and the rule of law. The Strategy also sets out seven strategic objectives,²⁶ which formed the basis of a Legal and Judicial Reform in a National Strategic Development Plan (“NSDP”) for 2014-2018.²⁷ The first of these objectives was the improvement of the protection of fundamental rights and freedoms. Furthermore, in May 2017, the Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice initiated a 100 Days Campaign aimed to assess the performance and efficiency of courts.²⁸ The campaign aimed to update strategies and reform the justice system to make it more reliable, precise and applicable, and to improve the image of the courts as well as the trust and confidence of the public. As of September 2017, the first phase of the process was completed, and the preliminary results showed three main challenges: planning and

²² ‘Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia, Access to Justice in Cambodia’, JST7 - Joint Submission 7, CCHR, Destination Justice and ADHOC, 12 July 2018, Section 2, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx>. (“Access to Justice UPR Submissions of 12 July 2018”); see also ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’, CCHR, May 2014, [https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf); ‘Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20status%20of%20J%20and%20P,%20ENG%20May%202014%20final.pdf>; ‘Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20SCM%20Draft%20law,%20ENG%20May%202014%20final.pdf>; ‘Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20org%20of%20courts,%20ENG%20May%202014%20final.pdf>.

²³ Law on Juvenile Justice, <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf>.

²⁴ See also UNICEF, Q&A on the newly adopted Juvenile Justice Law in Cambodia, 19 Sep 2016, <http://unicefcambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html>.

²⁵ See ‘Government’s Policy Performance’, Cambodian Rehabilitation and Development Board (“CRBD”) and Council for the Development of Cambodia (“CDC”), 2004, para. 16, http://www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.html.

²⁶ The objectives are: 1) Improvement of the protection of fundamental rights and freedoms; 2) Modernization of the legislative framework; 3) Provision of better access to legal and judicial information; 4) Enhancement of the quality of legal processes and related services; 5) Strengthening of judicial services, i.e. judicial power and prosecutorial services; 6) Introduction of alternative dispute resolution mechanisms; 7) Strengthening of legal and judicial sector institutions to fulfill their mandates. See ‘Government’s Policy Performance’, Cambodian Rehabilitation and Development Board (“CRBD”) and Council for the Development of Cambodia (“CDC”), 2004, paras 15-24, http://www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm.

²⁷ Council for Legal and Judicial Reform, Plan of Action for Implementing the Legal and Judicial Reform Strategy, adopted by the RGC at the Plenary Session on 29 April 2005; see also RGC, National Strategic Development Plan 2014-2018, pp. 9-12, paras 2.11 to 2.23, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_364549.pdf (translation). The original version is available at http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf.

²⁸ Notification on 100 Days Campaign to Assess the Performance and Efficiency of Courts, dated on 12 May 2017, issued by The Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice, <https://www.facebook.com/334873460054405/photos/a.336969683178116/654031978138550/?type=3&theater> (only available in Khmer); ‘Ministry to undertake its own study of courts’, *The Phnom Penh Post*, 15 May 2017, <https://www.phnompenhpost.com/national/ministry-undertake-its-own-study-courts>.

strategy, human and financial resources, and communications between courts and the public.²⁹ The second phase started in September 2017; however since then no further update on the process was made publicly available.³⁰ The RGC released a new NSDP for 2019-2023 in mid-2019, which outlines the RGC's key priorities, one being to promote the justice service by improving effective work of law enforcement officials, and strengthening the public's trust in the judiciary section and fighting injustice.³¹

The Courts and relevant Ministries have made a number of announcements in recent times which, if/when implemented, could lead to noticeable improvements to the situation of those facing injustice in the Kingdom:

- Yearly training for judges and prosecutors on technical skills, professional ethics and international human rights law.³²
- The building of a new detention center for inmates below 18 years of age, in Kandal province, Kandal Stung district.³³ The juvenile rehabilitation center will be the first of its kind in the country.³⁴ Construction started in February 2020, with an estimated completion date in early 2021.³⁵
- The development of a nationwide legal aid policy, to provide legal representation to marginalized groups in rural areas of Cambodia.³⁶
- An increase in the BAKC's yearly funding to 300,000 USD, which would allow it to provide lawyers to poor defendants in around 3,000 cases.³⁷
- The creation of "lawyer rooms" to be included in all courtrooms throughout the country, wherein those without the financial means can consult with a lawyer free of charge.³⁸
- The establishment of three regional appeal courts in Battambang, Tbong Khmum and Preah Sihanouk provinces,³⁹ the plan to build four more,⁴⁰ and plans to fully train and deploy Court of Appeal judges

²⁹ 'Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies', *Vayo Fm*, 9 September 2017, <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>.

³⁰ 'Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies', *Vayo Fm*, 9 September 2017, <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>.

³¹ NSDP 2019-2023, <http://www.mop.gov.kh/DocumentEN/NSDP%202019-2023%20in%20KH.pdf> p. 205-206, para 4.21(7).

³² 'National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cambodia', UN Doc. A/HR/WG.6/32/KHM/1, Royal Government of Cambodia, para. 19, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement> ("RGC Report for the 3rd Cycle of the UPR").

³³ 'Juvenile rehab centre in Kandal breaks ground', *the Phnom Penh Post* 20 February 2020, <https://www.phnompenhpost.com/national/juvenile-rehab-centre-kandal-breaks-ground>

³⁴ 'First youth detention center planned', *Khmer Times*, 27 Jun 2018, <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/>.

³⁵ 'Juvenile rehab centre in Kandal breaks ground', *the Phnom Penh Post*, 20 February 2020, <https://www.phnompenhpost.com/national/juvenile-rehab-centre-kandal-breaks-ground>

³⁶ 'Legal policy on marginalized groups finished by gov't, EU', *the Phnom Penh Post*, 3 September 2018, <https://www.phnompenhpost.com/national/legal-policy-marginalised-groups-finished-govt-eu>; 'End of mission statement', United Nations Special Rapporteur on the situation of human rights in Cambodia ("UNSRSHRC"), 8 Nov 2018, p. 4, para. 2, https://cambodia.ohchr.org/sites/default/files/pressstatementsource/181108%20ENG_END%20OF%20MISSION%20STATEMENT.pdf ("8 November 2018 UNSRSHRC End of Mission Statement"); 'Report of the Special Rapporteur on the situation of human rights in Cambodia', UNSRSHRC, 15 Aug 2018, para. 79, http://cambodia.ohchr.org/sites/default/files/Annual-reports/Annual%20Report%202018%20of%20SR%20-%20A_HRC_39_73_EN.pdf ("15 August 2018 UNSRSHRC Report").

³⁷ 'No more lawyer shortage', *the Phnom Penh Post*, 18 October 2018, <https://www.phnompenhpost.com/national/no-more-lawyer-shortage>; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2.

³⁸ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21', Royal Government of Cambodia, 15 Nov 2018, para. 18B, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement> ("RGC Report for the 3rd Cycle of the UPR").

³⁹ 'Three new appeals courts are scheduled to be completed in 2019', *Construction Property*, 6 Jul 2018, <https://www.construction-property.com/khread-news-1240/> (Khmer only); see also RGC Report for the 3rd Cycle of the UPR, paras 18C, 40; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2.

⁴⁰ 'Three new appeals courts are scheduled to be completed in 2019', *Construction Property*, 6 Jul 2018, <https://www.construction-property.com/khread-news-1240/> (Khmer only).

to regional courts of appeal.⁴¹ The regional appeal courts started holding trials in 2020, with Tbong Khmum and Battambang commencing operations in April and May respectively, and Preah Sihanouk commencing operations in September 2020.⁴²

- The creation of a working group to deal with the issue of overcrowding in Cambodian prisons.⁴³
- The adoption of a separate budget of 500 million Riels (approx. 123,511 USD) for “legal services for women”,⁴⁴ and the announcement of a government-backed team of 50 lawyers to provide free-of-charge services for women workers involved in legal disputes.⁴⁵
- The study of the possibility to insert the United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (“the Bangkok Rules”).⁴⁶
- The preparation of a draft law setting out minimum standards in connection to gender-based violence.⁴⁷
- Reports that the Ministry of Justice plans to draft a law aimed at compensating those who have been wrongly imprisoned.⁴⁸
- The Cambodian Human Rights Committee (“CHRC”) to form a legal aid group to defend the poor whose rights have been violated⁴⁹
- Speeding up the court process for the women detainees awaiting trial.⁵⁰
- The RGC raising judicial reform to one of their top priorities, as peace and stability cannot be sustained without social justice and a fair and just judiciary system⁵¹

More generally, the RGC undertook certain measures to continue reforming the justice system, including by undertaking capacity building, improving independence and impartiality of the courts and the separation of powers, respect for individual rights, to “gain more trust from the public”.⁵² As noted above, the RGC also

⁴¹ 15 August 2018 UNSRSHRC Report, para. 81.

⁴² ‘Preah Sihanouk Appeal Court in full service’, *Khmer Times*, 7 September 2020, <https://www.khmertimeskh.com/50761092/preah-sihanouk-appeal-court-in-full-service/>

⁴³ ‘Taskforce set to address overcrowding prisons’, *the Phnom Penh Post*, 30 November 2018, <https://www.phnompenhpost.com/national/taskforce-set-address-overcrowding-prisons>.

⁴⁴ RGC Report for the 3rd Cycle of the UPR, para. 17; ‘Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State’, 11 Sep 2018, p. 25, para. 4, <http://cambodia.ohchr.org/sites/default/files/Annual-reports/Addendum%20%20to%20the%20Annual%20Report%20of%20SR%202018.pdf>; ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21’, OHCHR, 15 November 2018, para. 17, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement>.

⁴⁵ ‘Cambodia’s Hun Sen promises legal aid for ‘vulnerable women’’, *Voice of America*, 2 March 2019, <https://www.voacambodia.com/a/cambodia-legal-aid-women-garment-industry/4809828.html>; ‘Cambodian Premier Urges Workers to Seek Legal Aids from “Samdech Hun Sen Legal Team”’, *Fresh News Asia*, 20 February 2019, <http://en.freshnewsasia.com/index.php/en/localnews/13056-2019-02-20-05-58-57.html>.

⁴⁶ RGC Report for the 3rd Cycle of the UPR, para. 42.

⁴⁷ ដំ ដោគជាតា, “សង្គមស៊ីវិលពិភាក្សាលើសេចក្តីព្រាងច្បាប់ជួយទៅដល់ស្ត្រីនិងកុមារីរងគ្រោះដោយអំពើហិង្សា (មានសំឡេង)”, “[translation: Civil Society Discusses Draft Laws to Address Violent Women and Girls], Women’s Media Center of Cambodia, 13 Jun 2018, <https://wmc.org.kh/ngo-women/>, [only available in Khmer].

⁴⁸ ‘Ministry plans law to compensate those wrongly imprisoned by courts’, *Khmer Times*, 30 Aug 2018, <https://www.khmertimeskh.com/50528036/ministry-plans-law-to-compensate-those-wrongly-imprisoned-by-courts/>.

⁴⁹ CHRC to form legal assistance team, 7 August 2019, <https://www.phnompenhpost.com/national/chrc-form-legal-assistance-team>

⁵⁰ ‘PM: Speed up trial for over 20,000 women in detention’, 17 February 2020, <https://www.phnompenhpost.com/national/pm-speed-trial-over-20000-women-detention>

⁵¹ ‘No Pain, No Gain Hun Sen opens a new reform chapter for Cambodia’, *Khmer Times*, 4 September 2019, <https://www.khmertimeskh.com/639844/no-pain-no-gain-hun-sen-opens-a-new-reform-chapter-for-cambodia/>

⁵² RGC Report for the 3rd Cycle of the UPR, para. 74; OHCHR, Annual Report 2019, para. 30; UNSRHR, Annual Report 2019, para. 34, 39.

improved funding for and access to legal aid⁵³ and launched the Strategic and Operational Plan for Implementation of Juvenile Justice Law.⁵⁴

However, a number of concerns remain over the judicial system and the administration of justice, such as:

- The extensive pre-trial detention, lack of use of bail and resulting overcrowding in Cambodian prisons.⁵⁵ In November 2019, there were 36,600 detainees, 3,000 of which were women and 1,793 minors.⁵⁶ As of April 2020, there were 37,990 people in detention, of whom only 11,097 had received a conviction.⁵⁷
- Allegations of lack of independence and impartiality of the judiciary.⁵⁸
- Ongoing impunity.⁵⁹
- Limited access to legal aid, and particularly the lack of a comprehensive legal aid policy, the insufficiency of the legal aid budget and the limited number of legal aid lawyers and services.⁶⁰
- Limited access to courts in areas outside of Phnom Penh.⁶¹
- The fact that access to justice remains a challenge for persons with disabilities, whether victims or alleged offenders.⁶²
- The insufficient access to legal information such as laws, regulations and judicial decisions.⁶³
- The lack of protection of detained women and their children.⁶⁴
- The lack of women in the judiciary.⁶⁵
- The absence of specific procedures and measures for victims of gender-based violence, including domestic violence,⁶⁶ and the fact that perpetrators of sexual and gender-based violence often go unpunished.⁶⁷

⁵³ OHCHR, Annual Report 2019, para. 30; UNSRHRC, Annual Report 2019, para. 66.

⁵⁴ Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, 'Juvenile Justice Law Strategic and Operational Plan 2018-2020', December 2018.

⁵⁵ 'Time for bail: ending needless mass detention in Cambodia', *Licadho*, 1 November 2018, http://www.licadho-cambodia.org/collection/36/prisons_pre-trial_detention_cambodia; Access to Justice UPR Submissions of 12 July 2018, Section 5.1; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 3; 15 August 2018 UNSRSHRC Report, paras 13 (f), 46; 'OHCHR Compilation on Cambodia', OHCHR, 12 November 2018, para. 47, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/25/PDF/G1833725.pdf?OpenElement>.

⁵⁶ RGC Report for the 3rd Cycle of the UPR, para. 40.

⁵⁷ 'New Justice Minister vows reforms and speedier trial procedures', *Khmer Times*, 2 April 2020, <https://www.khmertimeskh.com/708544/new-justice-minister-vows-reforms-and-speedier-trial-procedures/>.

⁵⁸ Access to Justice UPR Submissions of 12 July 2018, Section 2; Annual Report 2019, UNSRHRC, para. 58.

⁵⁹ Access to Justice UPR Submissions of 12 July 2018, Section 2.3; Annual Report 2019, UNSRHRC, para. 58.

⁶⁰ Access to Justice UPR Submissions of 12 July 2018, Section 3; OHCHR, Annual Report 2019, para. 30; UNSRHRC, Annual Report 2019, para. 66.

⁶¹ Access to Justice UPR Submissions of 12 July 2018, Section 4.3.; UNSRHRC, Annual Report 2019, para. 66.

⁶² 15 August 2018 UNSRSHRC Report, para. 48; UNSRHRC, Annual Report 2019, para. 67.

⁶³ Access to Justice UPR Submissions of 12 July 2018, Section 4;

⁶⁴ 'The war on drugs' youngest inmates', *the Phnom Penh Post*, 27 April 2018, <https://www.phnompenhpost.com/national-post-depth/war-drugs-youngest-inmates>.

⁶⁵ Access to Justice UPR Submissions of 12 July 2018, Section 5.5, para. 47.

⁶⁶ Access to Justice UPR Submissions of 12 July 2018, Section 5.5, para. 48; 15 August 2018 UNSRSHRC Report, para. 14 (a); UNSRHRC, Annual Report 2019, paras 67, 69.

⁶⁷ 'Summary of Stakeholders' submissions on Cambodia', OHCHR, 7 November 2018, para. 39, https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/e_1.pdf; 15 August 2018 UNSRSHRC Report, para. 49; 'OHCHR Compilation on Cambodia', OHCHR, 12 November 2018, para. 45, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/25/PDF/G1833725.pdf?OpenElement>; 15 August 2018 UNSRSHRC Report, para. 27; UNSRSHRC, 'Assessing protection of those at risk of being left behind', addendum to the Report of the Special Rapporteur on the situation of human rights in Cambodia, 2 September 2019, UN Doc No A/HRC/42/60/Add.1, para. 33 ("UNSRSHRC, 'Assessing protection of those at risk of being left behind'").

- Lack of respect for the right to be tried without undue delay.⁶⁸
- Existing inconsistencies in the use and assessment of evidence in criminal cases.⁶⁹
- Lack of transparency regarding court-related fees⁷⁰ and the operations of the Ministry of Justice and judicial institutions.⁷¹
- The insufficient implementation of the Law on Juvenile Justice.⁷²
- A lack of sufficient protection for children who are victims or witnesses of crimes,⁷³ of comprehensive social and child protection systems and of trained social workers across the country.⁷⁴

The RGC itself recognized that “the implementation of the competent authorities such as judges and prosecutors is generally based on national laws, both in the case proceeding and decision making without considering the substance of the international human rights laws.”⁷⁵

⁶⁸ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 4 ; 15 August 2018 UNSRSHRC Report, para. 13 (g).

⁶⁹ 15 August 2018 UNSRSHRC Report, para. 80.

⁷⁰ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 6. The Ministry of Justice is finalizing the list of these fees, *see* 15 August 2018 UNSRSHRC Report, para. 13 (d).

⁷¹ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 6.

⁷² Access to Justice UPR Submissions of 12 July 2018, Section 5.6; 15 August 2018 UNSRSHRC Report, para. 27; UNSRHRC, Annual Report 2019, para. 67; UNSRSHRC, ‘Assessing protection of those at risk of being left behind’, para. 33.

⁷³ UNSRSHRC, ‘Assessing protection of those at risk of being left behind’, para. 33.

⁷⁴ 15 August 2018 UNSRSHRC Report, para. 28.

⁷⁵ RGC Report for the 3rd Cycle of the UPR, para. 70.

1.2. Scope and Methodology

Figure 1: Overview of cases monitored by CCHR

	Overview of monitored cases		
	2017/2018	2018/2019	Total
Number of cases	213	239	452
Number of individuals	315	352	667
Felonies	99	89	188
Misdemeanors	111	150	261
Petty offenses	3	0	3
Juveniles (individuals)	9	22	31
Women (individuals)	36	47	83

Throughout the Reporting Period, CCHR’s Trial Monitors attended criminal trials at the Court of Appeal on a daily basis using a specifically designed trial-monitoring checklist (the “Checklist”) that includes more than 70 questions focusing on a number of key fair trial rights including the following:⁷⁶

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

In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Court of Appeal. CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes (“Checklist Guidance”)⁷⁷ to provide an understanding of the legal basis and purpose of each question, and ensure a uniform interpretation of each question. The Trial

⁷⁶ CCHR’s Appeal Hearing Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=96&l=en>.

⁷⁷ Guidance Notes for CCHR Appeal Court Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=97&l=en>.

Monitors were also provided with a legal framework document which outlines the relevant national and international laws underpinning each question in the Checklist.

CCHR paid particular attention to the fact that the right to appeal⁷⁸ encompasses the right to be granted a full review. In other words, the review of an appeal must involve both the legal and material aspects of the person's conviction and sentence⁷⁹; it must provide "for a full evaluation of evidence and the conduct of trial."⁸⁰

Finally, CCHR is committed to the international principles applicable to trial monitoring⁸¹ and has devised a code of conduct (the "Code of Conduct") for its Trial Monitors.⁸² The Code of Conduct outlines the obligations of non-interference, objectivity, and confidentiality by which the Trial Monitor is bound.

CCHR's trial monitoring at the Court of Appeal did not target specific trials. The trials to be monitored were randomly selected, on the basis of the court's schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitors observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself, no additional interviews or dialogues took place; except where the Trial Monitor made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but adjourned to a later date. After each trial, the data gathered was entered into the CCHR Trial Monitoring Database (the "Database").⁸³

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

A final draft of the present Report was sent to the President of the Court of Appeal, for comments and recommendations, and CCHR's Project team met with the Court of Appeal on 13 August 2020 to discuss the findings. The meeting included the President, Deputy President, General Prosecutor, Deputy General Prosecutor, the General Secretary and the Deputy General Secretary of the Court of Appeal. Once published, Project staff will request specific meetings with representatives of the Court of Appeal and with other justice sector organizations, bodies and institutions to discuss which recommendations will be addressed. These meetings will serve as a basis for an exchange of ideas, to provide insight into the challenges faced by those working to strengthen the justice system, and to promote the implementation of the recommendations set out in the Report.

⁷⁸ ICCPR, Art. 14 (5); CCPC, Art. 375.

⁷⁹ UN Human Rights Committee, General Comment 32, 2007 ("UN HRC General Comment 32"), para. 48.

⁸⁰ UN Human Rights Committee, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia*, 6 April 1998, in UN doc. GAOR, A/53/40 (vol. II), p. 111, para. 18.11, <http://juris.ohchr.org/Search/Details/833>.

⁸¹ See 'Fair Trial Manual', Amnesty International, 1998, <https://www.amnesty.org/en/documents/POL30/002/1998/en/>; 'What is a Fair Trial: A Basic Guide to Legal Standards and Practice', Lawyers Committee for Human Rights, 2000, https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf; 'Trial Monitoring: A Reference Manual for Practitioners', Organization for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights, 2008, <http://bit.ly/2CVLX77>; 'Trial Observation Monitoring', International Commission of Jurists, 2002, <https://www.osce.org/odihr/94216>.

⁸² CCHR Trial Monitoring Code of Conduct, <http://tmp.sithi.org/index.php?p=detail&id=60&l=en>.

⁸³ CCHR Trial Monitoring Database, http://tmp.sithi.org/data/advanced_search/search.php?appeal=1&l=en#go.

2. Overview

This section of the Report sets out the raw data recorded on the Checklist from the 239 trials monitored at the Court of Appeal between 1 November 2018 and 31 October 2019, which will be evaluated throughout the Report. It further compares the findings with that of CCHR's previous reports, outlining trends and highlighting areas where improvements were made, and others where deterioration can be seen.

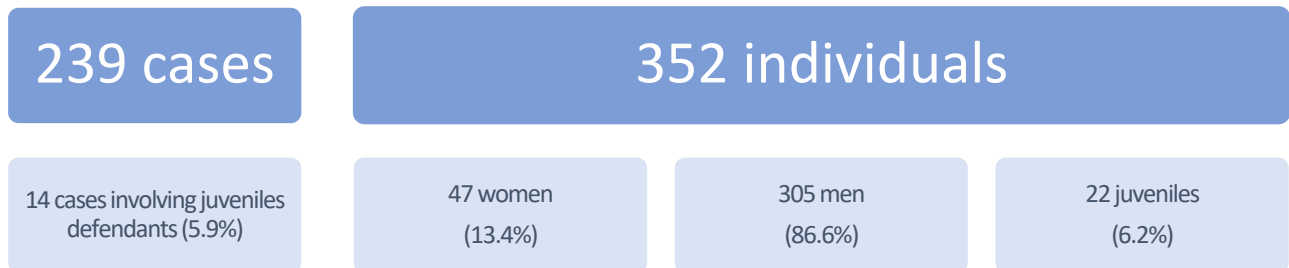
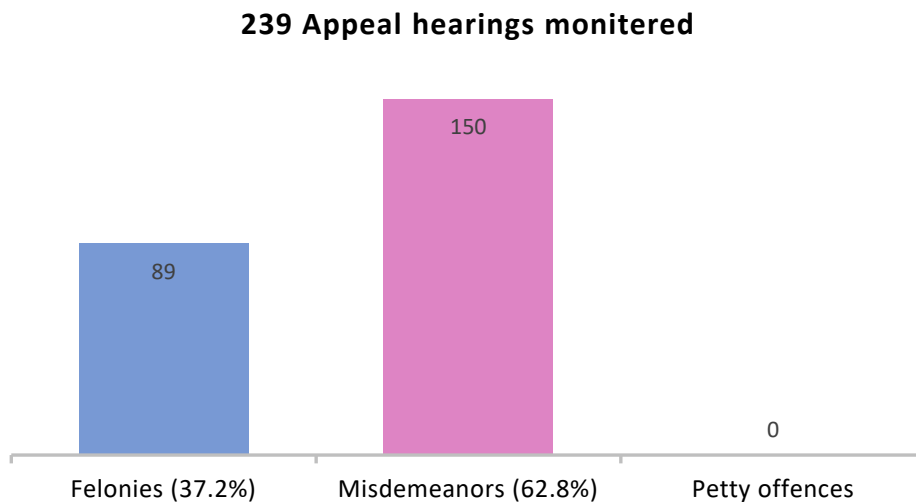


Figure 2: Appeal hearings monitored – felonies, misdemeanors and petty offenses⁸⁴



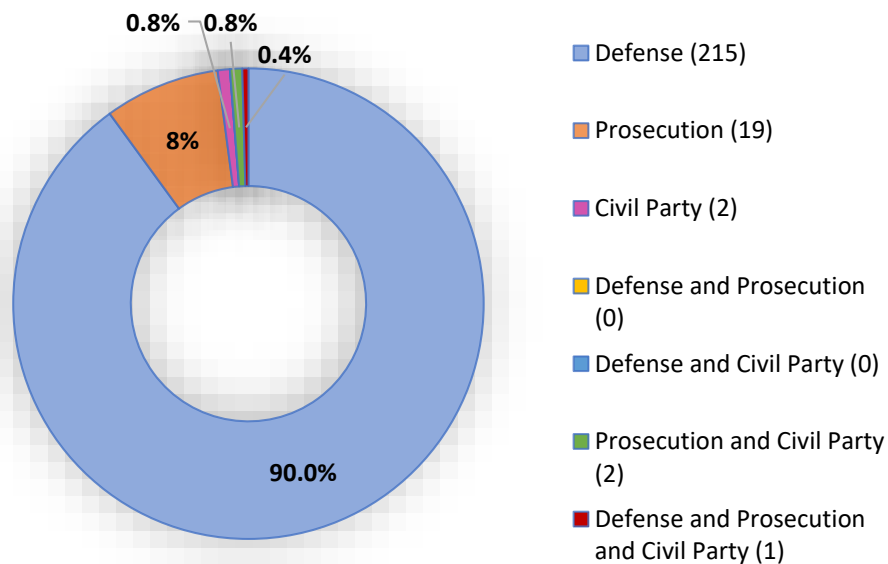
Article 46 of the Criminal Code defines a felony as any offense for which the maximum penalty is imprisonment of more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for more than six days and less than or equal to five years. According to Article 48, a petty offense is one for which the maximum sentence of imprisonment incurred is six days or less, or, punishable solely by a fine.⁸⁵ As demonstrated by Figure 2, the majority of cases monitored by the project concern misdemeanor offences.

Figure 3: Party bringing the appeal⁸⁶

⁸⁴ This data is based on the total number of cases monitored (239).

⁸⁵ Criminal Code, Art. 48.

⁸⁶ This data is based on the total number of cases monitored (239).



A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance, the General Prosecutor attached to the Court of Appeal, the convicted person, and the civil party or civil defendant (both regarding the civil matter).⁸⁷ Figure 3 shows that the vast majority of appeals (90%) were filed by the defense.

The table below outlines, in the trials monitored by CCHR, the rights which were respected and those which were not fully complied with:

Fair Trial Rights Upheld	Fair Trial Rights not fully respected
<ul style="list-style-type: none"> • Right to adequate time and facilities to prepare a defense • Right to a public judgment • Prohibition against retroactive application of criminal law • Protection against double jeopardy 	<ul style="list-style-type: none"> • Right not to be compelled to confess guilt • Right to a public hearing • Right to understand the nature and cause of the charges • Right to legal representation and to be present at trial • Right to presumption of innocence • Evidentiary rights • Right to a reasoned judgment • Rights of juveniles

The section below analyzes the implementation of the different relevant components of fair trial rights by the Court of Appeal during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights which are respected in the Court of Appeal, and then shed light on the practices which are not fully respected fair trial rights.

⁸⁷ CCPC, Art. 375.

3. Fair Trial Rights Upheld

Fair Trial Rights Protected by the Court of Appeal

- Right to adequate time and facilities to prepare a defense
- Right to a public judgment
- Prohibition against retroactive application of criminal law
- Protection against double jeopardy

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

Sources in Cambodian and International Law

ICCPR Article 14(3)(b)	“In the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”
CCPC Article 48	“[...] If the accused requests such time or if the court finds that the case may not be tried immediately, the trial shall be adjourned to another trial date [...]”
CCPC Article 98	“After a period of twenty-four hours from the beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person selected by the detainee [...] The selected person may enter into the custodial site and talk with the detained person for 30 minutes under conditions guaranteeing the confidentiality of the discussion. Following the discussion, the selected person may make a written note to be placed on the case file.”
CCPC Article 145	“When a charged person has a lawyer, the investigating judge shall summon the lawyer at least five days before the interrogation takes place. During that period, the lawyer may examine the case file [...]”
CCPC Article 259	“The General Prosecutor of the Court of Appeal and lawyers may examine the case file until the beginning of the hearing. The General Prosecutor of the Court of Appeal shall provide a written submission to the court clerk at least one day before the hearing date [...]”
CCPC Article 319	“Before the hearing, lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk [...]”
Law on Juvenile Justice Article 29	“Whenever the prosecutor decides to issue the initial charge, s/he shall promptly and directly notify the minor and, if appropriate, the minor’s designated representative or support person and minor’s lawyer of the initial charge in order to prepare the defense.”

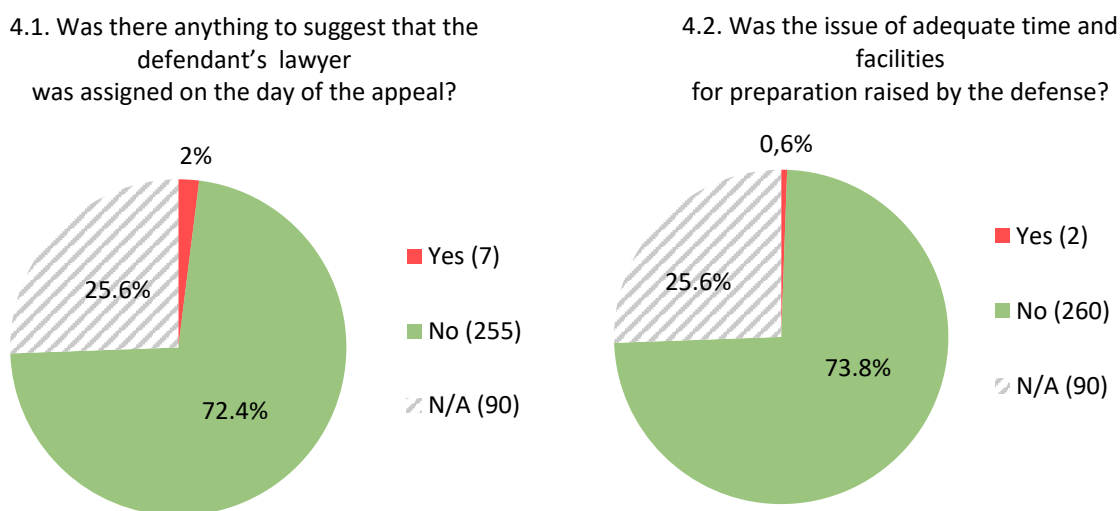
Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense. The length of time that is “adequate” depends on the circumstances of each case,⁸⁸ however, the

⁸⁸ UN HRC General Comment 32, para. 32.

guiding principle is that the accused must be able to properly prepare to challenge the prosecution's evidence, investigate, and present defense witnesses. It is the role of the defense to request the adjournment of the trial if they reasonably feel that the time for the preparation of the defense is insufficient.⁸⁹

The necessary facilities to prepare a defense include access to case documents and evidence so that the accused is fully aware of the charges against him/her, and so that he/she is able to provide full instructions to his/her lawyer.⁹⁰ In particular, this includes access to all materials that the prosecution plans to present in court and those that are exculpatory.⁹¹ At the appeal stage this also means that, in order to effectively exercise his or her right to appeal, the defendant should have access to a duly reasoned, written first instance judgment and the transcripts of the trial, in order to prepare his/her case.⁹² In addition, the rights to adequate time and facilities to prepare a defense require the provision of facilities enabling confidential communications with counsel.⁹³

Figure 4: Right to adequate time and facilities to prepare a defense⁹⁴



While the monitoring of the appeal hearing did not provide CCHR with all the requisite information to assess whether or not the accused had sufficient time and adequate facilities to prepare their defense, from the information that is available to CCHR, it is very positive to note that the great majority of monitored cases indicated that the right was respected. CCHR found that only 2% of all defendants had their lawyers assigned to them on the day of the appeal, and that most were given a lawyer early on in proceedings. This constitutes a decrease compared to 2017/2018 where 5% of the defendants were assigned a lawyer on the day of the appeal. In addition, in only 2 instances did a defendant's lawyer raise the issue of lack of adequate preparation.

⁸⁹ UN HRC General Comment 32, para. 32.

⁹⁰ UN HRC General Comment 32, para. 33.

⁹¹ UN HRC General Comment 32, para. 33.

⁹² UN HRC General Comment 32, para. 49; *See i.e.* UN HRC Communication No. 1797/2008, *Mennen v. The Netherlands*, 27 July 2010, paras 8.2.-8.4.

⁹³ UN HRC General Comment 32, para. 34.

⁹⁴ This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored. For figure 4.1., N/A refers to cases in which defendant was not represented by a lawyer. For figure 4.2., N/A refers to cases where the defendant was absent and no lawyer was present at the hearings to represent them.

3.2. Right to a public judgment

Sources in Cambodian and International Law	
ICCPR Article 14(1)	"[...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."
CCPC Article 317	"In all cases, the court shall announce the judgment during a public session."
Law on the Organization of the Court Article 7	"[...] In all cases, a judgment shall be announced publicly [...]"

Under Article 14(1), even when the public is excluded from a trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public.⁹⁵ There are only a few exceptions to this rule, such as when the interest of juvenile persons requires the judgment not to be made public (see Section 4.8. Rights of Juveniles).⁹⁶

The right to a public judgment is key to ensuring transparency and accountability. People must be able to see justice being delivered, furthermore, allowing the public to attend trials limits the judges' abilities to act arbitrarily. It is also important in terms of access to legal information as it allows the public to know what type of behavior is, or is not, prohibited under the law.

The RGC National Strategic Plan for 2014-2018 aims to "introduc[e] court register data by information system" and "enhanc[e] access to judicial information, including on court decisions and proceedings, periodic administrative reports and administrative information regarding pending cases, including status and scheduling information".⁹⁷ In practice however, while some efforts have been made, for instance to make court hearing schedules available, key information - in particular court decisions - remains largely unavailable. While the Constitutional Council regularly publishes its decisions,⁹⁸ those from other courts are largely impossible to access. This lack of access makes applying legal precedent impossible, and hinders lawyers from mounting effective legal defenses. It was also announced by the Ministry of Justice that it would create a data center in Phnom Penh in order to facilitate data collection and analysis from the Court of First Instance.⁹⁹

⁹⁵ UN HRC General Comment 32, para. 29.

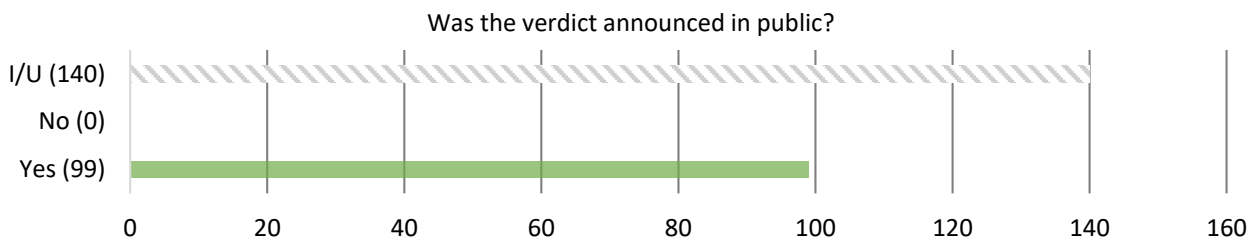
⁹⁶ UN HRC General Comment 32, para. 29.

⁹⁷ 'National Strategic Development Plan', 2014-2018, RGC, para. 2.16, http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf.

⁹⁸ 'Constitutional Council of Cambodia', Website, <http://www.ccc.gov.kh>.

⁹⁹ '2019 Annual Report of the UN OHCHR Secretary General', OHCHR, para. 35, <https://cambodia.ohchr.org/sites/default/files/Ohchr-report/Role%20and%20achievements%20of%20the%20Office.pdf>

Figure 5: The right to a public judgment¹⁰⁰



In all the cases for which the information was available (99), the right to a public judgment was respected.

3.3. Prohibition against retroactive application of criminal law (Principle of Legality)

Sources in Cambodian and International Law	
UDHR Article 11(2)	“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”
ICCPR Article 15	“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”
Criminal Code Article 3	“Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred.”
Criminal Code Article 10	“A new provision which prescribes a lighter penalty shall be applicable immediately. However, final judgments shall be enforced regardless of the severity of the relevant penalties. A new provision which prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force.”

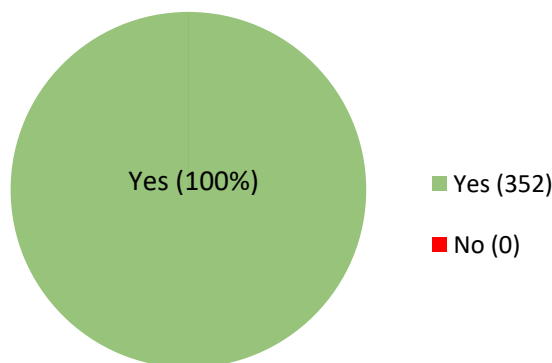
Article 15 ICCPR contains the principle of legality and prohibits the retroactive application of criminal law, reflecting the principles of *nullum crimen sine lege* (no crime except in accordance with the law), and *nulla poena sine lege* (no punishment except in accordance with the law). This means that no one can be found guilty of a criminal offense for an act or omission that did not constitute a criminal offense at the time the

¹⁰⁰ This data is based on the total number of 239 cases monitored. I/U refers to cases in where the information was not available, or cases that were not followed up because the Trial Monitor was not present at the date of verdict delivery.

alleged action or omission took place. Similarly, the penalty imposed may not be heavier than the one applicable at the time the criminal offense was committed.

Figure 6: Prohibition against retroactive application of criminal law ¹⁰¹

Was the law under which the defendant is charged in force on the date the offence was allegedly committed?



None of the trials monitored indicated that the law under which the defendant was charged was not in force on the date the offense was allegedly committed. CCHR’s findings therefore show that the protection against non-retroactivity of the law is protected. This trend is constant since 2014.

3.4. Protection against double jeopardy

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

Article 14(7) of the ICCPR contains the principle of *ne bis in idem* and establishes the right of a person not to be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and the penal procedure of each country.¹⁰² This prohibition does not prohibit the retrial of an individual after a higher court quashes a conviction, nor the resumption of a criminal trial if justified by “exceptional circumstances”, such as the discovery of new evidence.¹⁰³ There are a number

¹⁰¹ This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored.

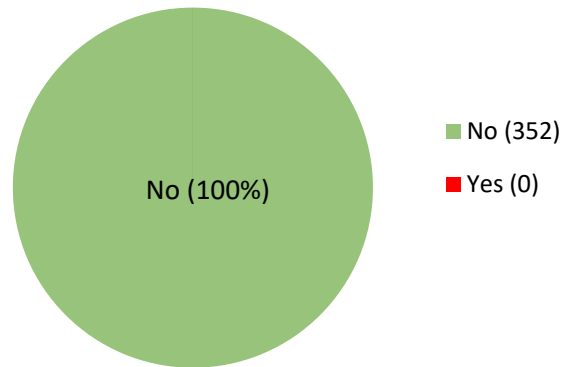
¹⁰² UN HRC General Comment 32, para. 54.

¹⁰³ UN HRC General Comment 32, para. 56.

of benefits of having this finality, both to the individual accused and the society as a whole, including legal certainty and avoidance of wasting of legal resources.

Figure 7: The protection against double jeopardy¹⁰⁴

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



It is encouraging to note that none of the 352 defendants involved in the 239 cases monitored by CCHR had already been tried and sentenced for the same offence in the past. The protection against double jeopardy is therefore guaranteed. Notably, this trend has been constant since 2014.

¹⁰⁴ This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored.

4. Fair Trial Rights Not Fully Respected

A number of rights are not guaranteed and/or implemented in a fully satisfactory manner, and thus threaten individuals' right to a fair trial. These rights are:

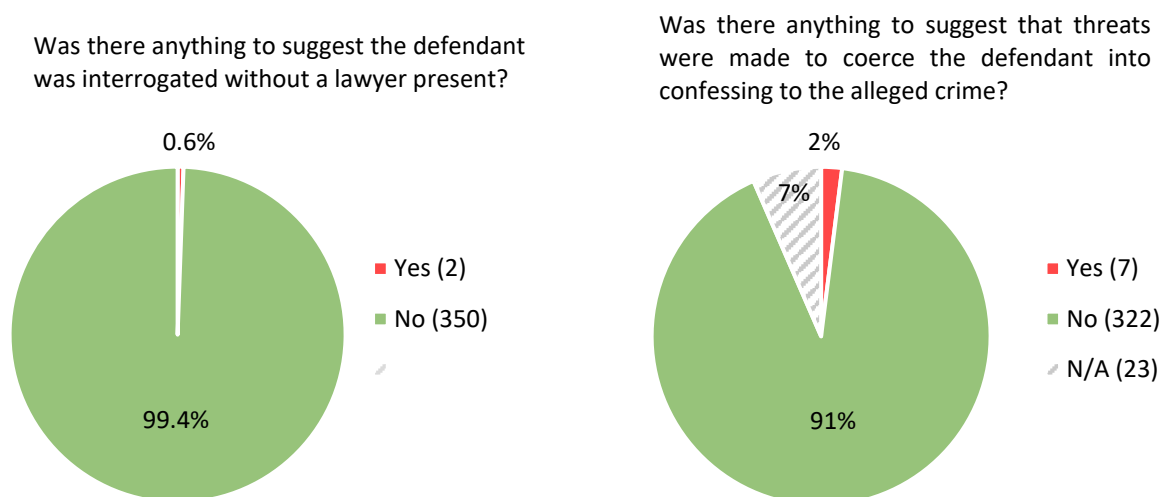
- The right not to be compelled to confess guilt;
- The right to a public hearing;
- The right to understand the nature and cause of the charges;
- The right to legal representation and to be present at trial;
- The right to presumption of innocence;
- Evidentiary rights;
- The right to a reasoned judgement; and
- The rights of juveniles.

4.1. The right not to be compelled to confess guilt

Sources in Cambodian and International Law	
UDHR Article 5	“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
ICCPR Article 14(3)(g) Article 7	“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.” “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment [...]”
Constitution Article 38	“The law prohibits all physical abuse of any individual. The law protects the life, honor and dignity of citizens [...]”
CCPC Article 145	“[...] A charged person can be interrogated only in the presence of his lawyer. However, if the lawyer was properly summoned but does not show up on the specified date and time, the investigating judge can question the charged person without the presence of his lawyer. The absence of the lawyer shall be noted in the written record of the charged person’s interrogation [...]”
CCPC Article 321	“[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...]”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minors shall ensure the observance of the following principles: [...] Shall prohibit torture, corporal punishment, or other physical or mental treatments which is cruel, inhumane, or degrading to minors [...]”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right not to be forced to give testimony against him/herself [...]”

Article 14(3)(g) of the ICCPR guarantees the right of an individual “not to be compelled to testify against himself or to confess guilt”.¹⁰⁵ This right is twofold: first, the suspect or accused must not be compelled or forced to provide evidence against himself/herself. When a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.¹⁰⁶ Should any confession or statement be made in violation of Article 7 ICCPR (prohibition on torture), it must be excluded from the evidence, except if used as evidence that torture or other treatment prohibited by Article 7 occurred.¹⁰⁷ In other words, the suspect/accused enjoys the unfettered right not to provide evidence that could be used against him/her.¹⁰⁸ Should a person refuse to testify against himself/herself, or to confess guilt, the circumstances in which judges draw any negative inference from this silence are restricted.¹⁰⁹ In the case of a juvenile, the law is more general: he/she must not be compelled to “give testimony”.¹¹⁰ This right is also guaranteed under all Articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Article 15,¹¹¹ as the right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman, or degrading treatment or punishment.

Figure 8: The right not to be compelled to confess guilt¹¹²



¹⁰⁵ See also Convention on the Rights of the Child (“CRC”), Art. 40(2)(b)(iv).

¹⁰⁶ UN HRC General Comment 32, para. 41; see also UN Human Rights Committee, *Deollall v Guyana*, Communication 912/2000, UN Doc CCPR/C/82/D/912/2000, 2004, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, UN Doc CCPR/C/81/D/1033/200, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263–1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>; Extraordinary Chambers in the Courts of Cambodia, *Kaing Guek Eav alias Duch* (Case 001), Trial Chamber, Judgment, 26 July 2010, para. 360 (“the following interrogation techniques [...] inflicted severe physical pain or mental suffering for the purpose of obtaining a confession or of punishment, and constituted torture: severe beating, electrocution, suffocation with plastic bags, water-boarding, puncturing, inserting needles under or removing finger and toe nails, cigarette burns, forcing detainees to pay homage to images of dogs or objects, forced feeding of excrement and urine, direct or indirect threats to torture or kill the detainees or members of their family, the use of humiliating language, plunging detainees’ heads in a water jar and lifting by the hands tied in the back, and one proven instance of rape”).

¹⁰⁷ UN HRC General Comment 32, para. 41.

¹⁰⁸ ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

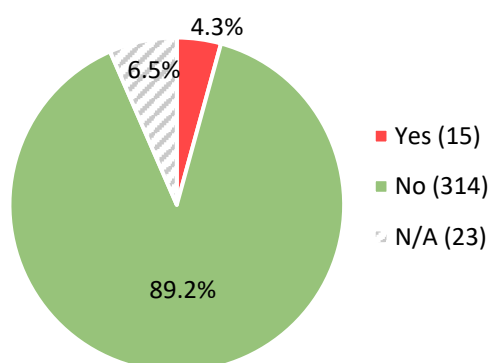
¹⁰⁹ European Court of Human Rights (“ECtHR”), *Condron v. the United Kingdom*, 2000, para. 56, <http://hudoc.echr.coe.int/eng?i=001-58798>; ECtHR, *Beckles v. the United Kingdom*, 2002, para. 58, <http://hudoc.echr.coe.int/eng?i=001-60672>.

¹¹⁰ CRC, Art. 40(2)(b)(iv).

¹¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Art. 15: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” <http://cambodia.ohchr.org/sites/default/files/Treaty/CAT-EN.pdf>.

¹¹² This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored. N/A = Neither the defendant nor his/her lawyer was present, there was therefore no one to raise the issue.

Was there anything to suggest that violence or torture were used to coerce the defendant into confessing to the alleged crime?



During the Reporting Period, 2 of the 352 defendants insinuated that they had been interrogated without their lawyer being present. 7 individuals (2%) alleged that they were threatened into giving a confession, while 15 individuals (4.3%) stated that violence or torture was used on them in order to obtain a confession to the alleged crimes during the investigations carried out by the judicial police. While the trend shows a slight decrease in comparison to the 2017/2018 reporting period, where the right was classified as overall being respected, the fact that no significant improvement was made and that allegations of threats or violence have been consistently made since the beginning of the Reporting Period justifies classifying this right as being not fully respected.

International Human Rights Law Terminology:

- *Non-derogable right*: A right whose application cannot be suspended by government in circumstances of “state of emergency under Article 4 ICCPR.
- *Absolute right*: A right to which no restrictions are allowed.
- *Peremptory norm of general international law (jus cogens)*: “[A] norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹¹³

While the number of cases in which there were indications of coercion or torture during interrogations (either psychological or physical) are small in number, it is nevertheless a matter of serious concern. The prohibition of torture has indeed a special status in international human rights law. Not only is it a non-derogable right, it is also an absolute right. It is widely accepted that the prohibition of torture is a peremptory norm of international law (*jus cogens*).¹¹⁴

The Court of Appeal must investigate these claims thoroughly. If any claim of coercion is substantiated after an investigation, judges are under a legal obligation to rule the subsequent confessional evidence inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner. While this is an issue that should be dealt with during the investigation stage of proceedings, appeal judges must also

¹¹³ International Law Commission, ‘Report of the International Law Commission on the Work of its Seventy-first Session’, Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10), 2019, para. 56, available on <https://legal.un.org/ilc/reports/2019/>.

¹¹⁴ M. Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2nd edn, N.P. Engel 2005), p. 157.

remain vigilant and ensure that any claims of coercion that have not been dealt with during the pre-trial stages of the case are thoroughly investigated before the trial is allowed to proceed any further.

During the consultation meeting between the Court of Appeal and CCHR to discuss the findings of the present Report on 13 August 2020, the Court of Appeal stated that no coercion or violence had been used against defendants during their trials. They stated some defendants who confessed guilt at earlier stages of their trial used this as an excuse to deny their previous confessions. They said that the judges required the accused to provide evidence of violence, such as a wound or scar. In addition, they stated that if any accused confessed to the crime, this would be considered in sentencing for a sentence reduction.¹¹⁵

4.2. Right to a public hearing

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

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances, for example when the court considers that a public hearing will cause “significant damage” to public order, national security or morality, or if there is a juvenile defendant (see 4.8. Rights of Juveniles).¹¹⁷ Only in those exceptional circumstances can all or part of the public be excluded. In any other circumstances, the hearings must be open to the public, including members of the media, and cannot exclude a particular category of persons.¹¹⁸ The right to a public hearing also involves an obligation on courts to make information regarding the time and venue of the oral

Guarantees in case of in camera hearings

Even if the public or part of the public is excluded from the hearings due to exceptional circumstances, there remains safeguards in order to ensure publicity. In such a situation, the judgment, including the essential findings, evidence and legal reasoning, must be made public.¹¹⁶ Only in a very few cases (ex: if required by the interests of juveniles) can exceptions be made to this last safeguard.

¹¹⁵ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

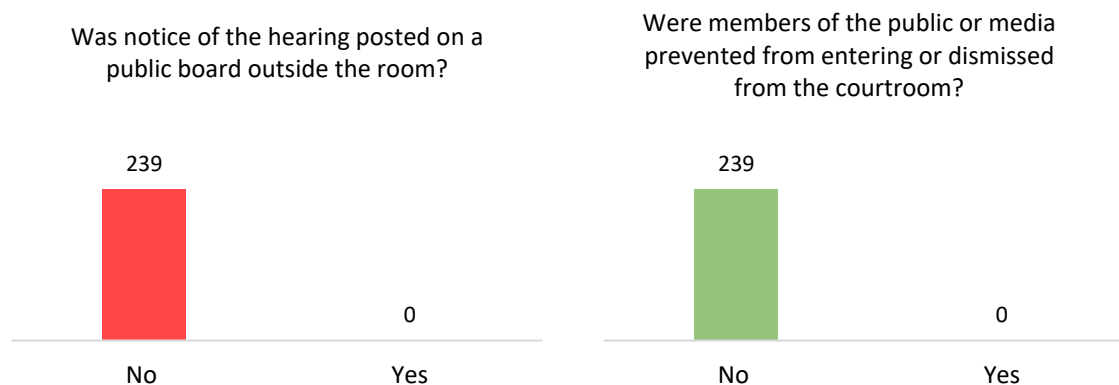
¹¹⁶ UN HRC General Comment 32, para. 29.

¹¹⁷ CCPC, Article 316 states that the court may order a complete or partial in camera hearing if it considers that a public hearing will cause significant damage to public order or morality, but a written explanation of such a decision must be included alongside the judgment on the merits of the case. Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial for reasons of “morals, public order (*ordre public*) or national security in a democratic society,” where publicity would prejudice the interests of justice or where the interest of the private lives of the parties so requires. Article 47 of Law on Juvenile Justice states that the cross-examination and pronouncement of judgment of juvenile case shall be conducted in closed court.

¹¹⁸ UN HRC General Comment 32, para. 29.

hearings available to the public and to provide, within reasonable limits, adequate facilities for public attendance.¹¹⁹

Figure 9: The right to a public hearing¹²⁰



Hearing notices are one way of promoting public hearings by informing the public, who should be allowed access to the courtrooms in which trials are taking place. In April 2017 and 2018, the Court of Appeal¹²¹ recognized that there was a lack of hearing notices in relation to the Court’s schedule and informed CCHR that they would take action in order to improve the public’s access to hearings; however, since then, there were no updated public hearing notices posted outside the courtrooms. Since 2014, the lack of notices about hearings has been a constant issue, and it is essential that concrete steps are taken to remedy this deficiency.

In the consultation meeting on the present Report, the Court of Appeal raised that judges never prohibit the public from entering the courtroom during trials in practice, but displaying a public trial schedule is an administrative issue and is not required by the law. They stated that the right to a public hearing applies to the parties of a case only, and does not include having a published trial schedule. Furthermore, the Court of Appeal explained that budget and materials were an issue for the national courts, however the new General Secretary of the Court of Appeal has prioritized this and has been developing a webpage to post information of cases. They stated this will exclude the names of defendants, in order to protect the defendant’s privacy.¹²²

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

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

¹¹⁹ UN HRC General Comment 32, para. 28; UN Human Rights Committee, *Van Meurs v. The Netherlands*, Communication No. 215/1986, UN Doc. CCPR/C/39/D/215/1986, 1990, para. 6.2, <http://juris.ohchr.org/Search/Details/311>.

¹²⁰ This data is based on the 239 cases that were monitored.

¹²¹ On 5 April 2018 and 27 August 2019 CCHR’s Fair Trial Monitoring Project team met with the Court of Appeal in order to discuss the findings contained in the 2016/2017 and 2017/2018 reports.

¹²² On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

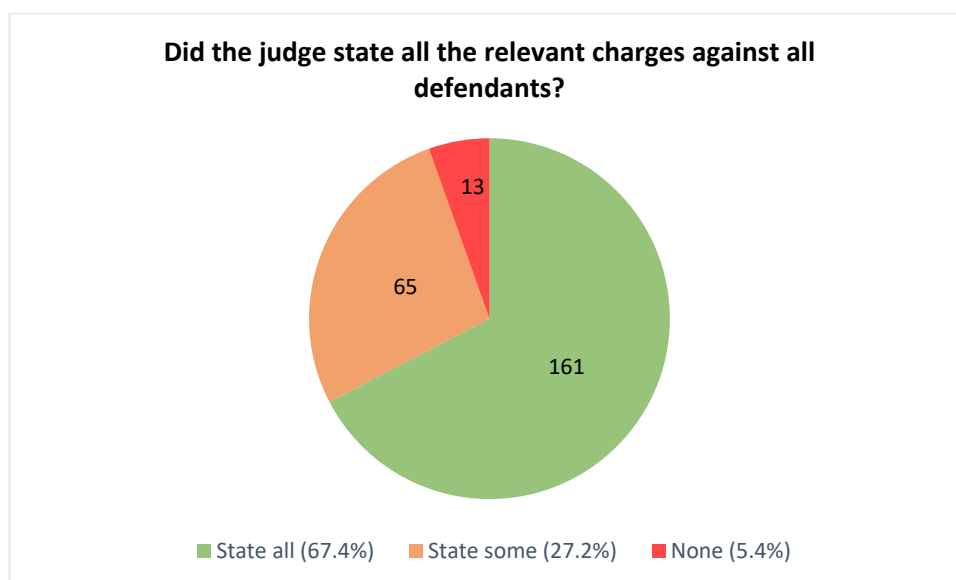
ICCPR Article 14(3)(f)	“In the determination of any criminal charge against him, everyone shall be entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”
CCPC Article 322	“The court clerk shall call the names of the accused, civil parties, civil defendants, victims, witnesses and experts and verify the identity of those persons.”
CCPC Article 325	“The presiding judge shall inform the accused of the charges he is accused of.”
CCPC Article 330	“If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
CCPC Article 331	“When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person cannot read or is illiterate, the presiding judge shall call on an interpreter/translator for him under the conditions stated in Article 330 [...] The presiding judge may call on any person who is able to communicate with the deaf and mute person.”
CCPC Article 396	“[T]he rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to refuse to answer questions with or without the presence of a lawyer [...] The right to be informed of the charge(s) [...]”
Law on Juvenile Justice Article 51	“At the commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights: The rights at trial as stipulated in Article 6 (procedural right of minor) of this law [...].”

Those accused of criminal offenses must be informed “promptly” of the nature of the offense with which they have been charged. This allows for individuals to properly prepare a defense. To comply with obligations under Article 14 of the ICCPR, information regarding charges must be given as soon as the accused is formally charged with a criminal offense under domestic law or as soon as the individual is publicly named as an accused. This can be done either orally (only if later confirmed in writing), or in writing provided that the information indicates both the law and the alleged general facts on which the charge is based.¹²³ It should be noted that CCHR’s Trial Monitors collect data at the commencement of a trial, and therefore at this point in time the accused should already be well aware of the charges against them as a result of arrest/pre-trial detention procedures. However, it is nonetheless important for judges to remind the accused person of this information and to ensure that the accused understand the information. This is particularly important in cases where charges may have been changed or amended between the initial arrest/charge and the actual trial.

Figure 10: The right to understand the nature and cause of the charge(s) - Overview¹²⁴

¹²³ General Comment No. 32. See also: *Williams v. Jamaica* in which the Committee further clarified that detailed information about the charges must be provided at “the beginning of the preliminary investigation or the setting of some other hearing which gives rise to a clear official suspicion against the accused.”

¹²⁴ This data is based on the 239 cases that were monitored.



In the majority of cases (161 of 239, or 67.4%) judges did inform the defendants of all relevant charges against them. However, in nearly one third of cases monitored by CCHR during the Reporting Period defendants were not informed of the totality of the relevant charges against them, which is worrisome. Therefore, CCHR decided to classify this right as being not fully respected.

Figure 11: The right to understand the nature and cause of the charge(s)-Detail¹²⁵

Data	Yes		No	
	N ^o	%	N ^o	%
Did the judge state the relevant law?	163	68.2%	76	31.8%
Did the judge state the date of the offense?	217	90.8%	22	9.2%
Did the judge state the place of the offense?	204	85.4%	35	14.6%
Did the judge state the parties involved?	218	91.2%	21	8.8%
If required, was an interpreter provided? ¹²⁶	9	100%	0	0%

The figures above show that in the majority of cases, judges at the Court of Appeal re-stated the charges, facts, dates and information related to the charges. The right to understand the nature of the charge at the appeal stage of proceedings was therefore largely respected. When compared with findings from the monitoring of 2017/2018, respect for this right has only marginally improved as outlined in the table below.

Figure 12: The right to understand the nature and cause of the charge(s) - Evolution¹²⁷

¹²⁵ This data is based on the 239 cases that were monitored.

¹²⁶ An interpreter was only required in 9 cases.

¹²⁷ This data is based on the 213 cases that were monitored in 2017/2018 and the 239 cases that were monitored in 2018/2019.

	2017/2018	2018/2019
Percentage of cases where the judge stated all the charges	69%	67.4% (- 1,6)
Percentage of cases where the judge stated the relevant law	63%	68.2% (+ 5,2)
Percentage of cases where the judge stated the date of the offense	94.8%	90.8% (- 4)
Percentage of cases where the judge stated the place of the offense	78.4%	85.4% (+7)
Percentage of cases where the judge stated the parties involved	92.5%	91.2% (-1,3)

During the Reporting Period, information not shared by judges mostly related to the relevant law and the location of the offence. Those constitute key details which must be provided to a defendant during a criminal trial. The Court of Appeal stated during the consultation meeting on this Report with CCHR that the judges of Court of Appeal have a summary of the case that they read out before the trial, stating all required information and facts including relevant parties and parties of appeal, but did not state the articles of law as most defendants have already confessed.¹²⁸

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

Sources in Cambodian and International Law	
ICCPR Article 14(3)(d)	“In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”
Constitution Article 38	“Every citizen shall enjoy the right to defense through judicial recourse.”
CCPC Article 143	“When a charged person, who is a minor appears for the first time, he/she “shall always be assisted by a lawyer. If a charged person does not choose a lawyer, the court shall appoint a lawyer according to the Law on the Bar.”
CCPC Article 300	“The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”
CCPC Article 301	“The assistance of a lawyer is compulsory if (i) the case involves a felony; or (ii) the accused is a minor.”

¹²⁸ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

CCPC Article 389	“An accused in detention shall be transferred without delay by the order of the General Prosecutor to the nearest prison or detention center to the seat of the Court of Appeal.”
Law on Prison Article 62	“Besides prisoners, any transfer of detained persons from one prison to another shall be notified to the Prosecutor of the transferring territorial jurisdiction to the Prosecutor of the receiving territorial jurisdiction or the competent General Prosecutor.” (CCHR’s translation)
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] [t]he right to be assisted by a lawyer [...]”
Law on Juvenile Justice Article 50	“The minor shall be assisted by a lawyer during trial [...]”
Law on Juvenile Justice Article 51	<p>“At commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights:</p> <ul style="list-style-type: none"> • The rights at trial as stipulated in article 6 (procedural right of minor) of this law • The right to be present at trial • The right to be protected by the court from hostile or inappropriate cross-examination • The right to ask for recusal of the trial judge • The right to have the last word in the trial • The right to appeal.

Being charged with an offense can be a daunting experience and legal procedures can be complex and confusing. It is therefore vital that individuals have the opportunity to retain legal representation. Furthermore, if the accused cannot afford his or her own counsel, the relevant authorities should provide a lawyer free of charge, if the interests of justice so require.¹²⁹ The gravity of the offense and the existence of some objective chance to win the appeal are factors that must be taken into account in order to assess whether a lawyer should be provided free of charge in the interests of justice.¹³⁰ The right to be represented by a lawyer ensures that the accused has an opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against him/her, explain his/her rights, guide him/her through the trial process and represent his/her interests in court. In Cambodia, it is compulsory for a person to be legally represented if he/she is accused of a felony offense or if he/she is a juvenile. While it is not mandatory to be legally represented if the accused committed a misdemeanor offense (unless he/she is a juvenile), individuals still have the option, if they so wish, to retain a lawyer. In such cases, the burden to retain a lawyer does not rest with the court. In addition, trials must be held in the presence of the accused,¹³¹ as it permits the accused to hear and challenge the case against him/her, and to present a defense.

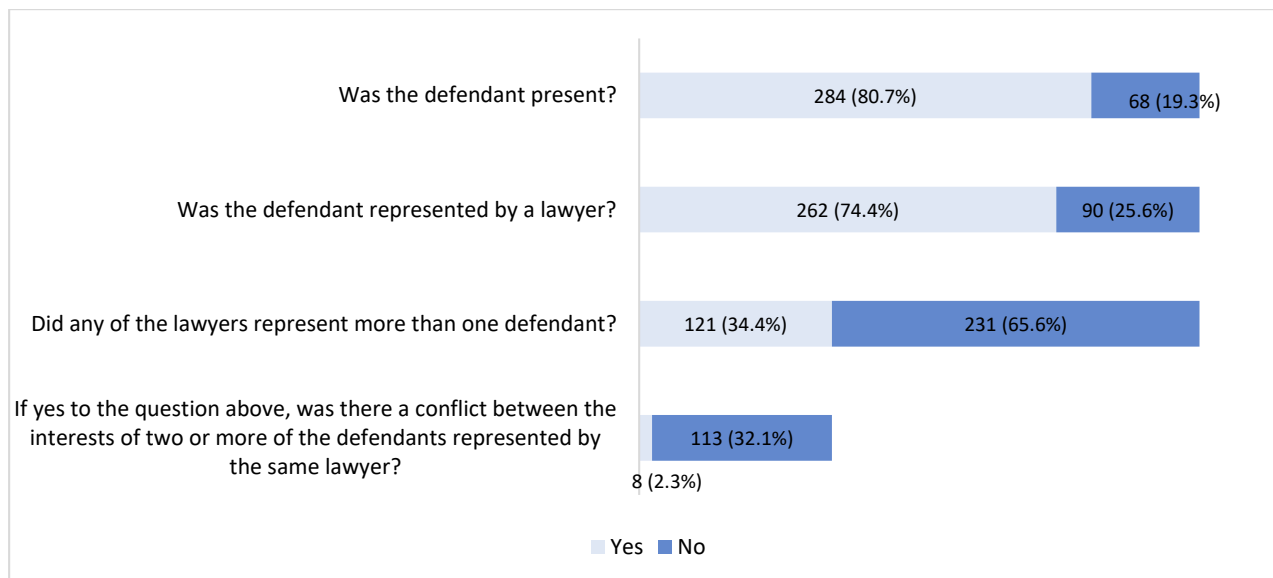
¹²⁹ ICCPR, Art. 14(3)(d); UN HRC General Comment 32, para. 38.

¹³⁰ UN HRC General Comment 32, para. 38.

¹³¹ ICCPR, Art. 14(3)(d); UN HRC General Comment 32, para. 36.

Regarding juveniles, the hearing should take place in the presence of “legal or other appropriate assistance” and – unless found not to be in the best interests of the child – his/her parents or legal guardians.¹³² The right to be present in person is applicable to appeal proceedings, if they involve questions of both fact and law,¹³³ which is the case in Cambodia. While trials *in absentia* are not impermissible under international human rights law, they may be permitted only in exceptional circumstances and when it is in the interests of proper administration of justice.¹³⁴ Cogent justification must be provided for them.¹³⁵ Further, the accused must have unequivocally waived his/her right to appear at trial.¹³⁶

Figure 13: The right to legal representation and to be present at trial¹³⁷



The data between 2017/2018 and 2018/2019 does not differ significantly. The percentage of defendants who were present during the hearing slightly decreased, from 82.5% to 80.7%. Similarly, the number of defendants represented by a lawyer reduced from 76.6% to 74.4%. It remains concerning that only approximately three quarters of defendants were represented by a lawyer.

While the right to legal representation is protected in the majority of the cases (74.4%), in light of the fundamental character of the right to be tried in one’s presence and to have a lawyer, the fact that 25.6% of the defendants charged with misdemeanor crimes were not represented by a lawyer, and that in 19.3% of the cases the defendant was not present is still cause for serious concern. In April 2018, the Court of Appeal’s Deputy Presidents¹³⁸ noted that in most cases, the accused’s absence during hearings was due to the lack of transportation from the detention center to the Court, which falls under the responsibility of the prison authorities. In August 2019, the Court of Appeal stated that they always complied with the procedures under domestic law. For instance, under domestic law legal representation is always required for felony and

¹³² CRC, Art. 40(2)(b)(iii); see also UN HRC General Comment 32, para. 42.

¹³³ UN Human Rights Committee, *Karttunen v. Finland*, Communication 387/1989, UN Doc CCPR/C/46/D/387/1989, 1992, para. 7.3, <http://juris.ohchr.org/Search/Details/402>.

¹³⁴ UN HRC General Comment 32, para. 36.

¹³⁵ UN Human Rights Committee, *Mbenge v. Zaire*, Communication 016/1977, UN Doc CCPR/C/18/D/16/1977, 1983, para. 14.1, <http://juris.ohchr.org/Search/Details/573>.

¹³⁶ UN HRC General Comment 32, para. 36.

¹³⁷ This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored.

¹³⁸ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

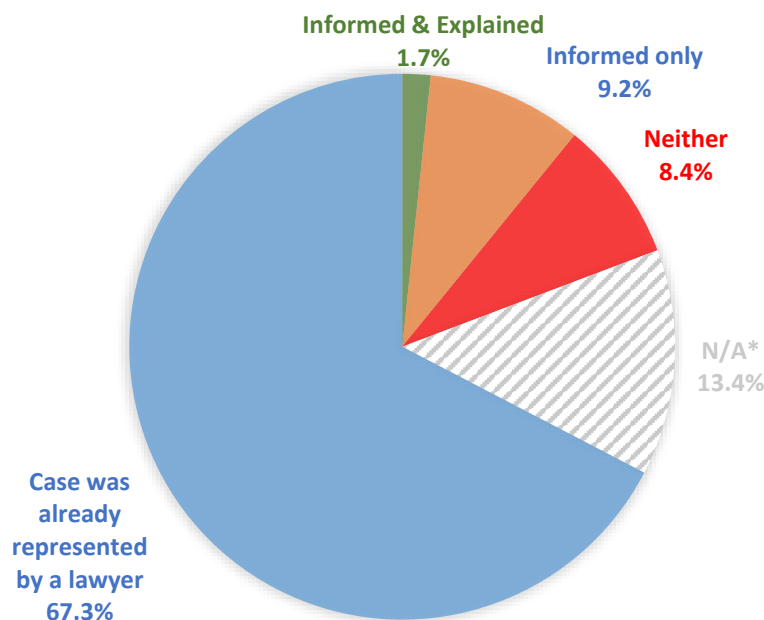
juvenile case hearings, while in misdemeanor cases the accused does not require legal representation, provided they are not minors¹³⁹.

Further, the number of cases where a lawyer represented more than one accused remain the same in 2018/2019 as in 2017/2018. Situations where a lawyer represents multiple accused, while sometimes cost-effective, raise concerns for the individuals' fair trial rights, for instance when one co-defendant's defense or version of events is different, or contradictory, to that of another co-defendant. If the same lawyer represents all the defendants, putting forward one's defense would negatively impact the other, who would then be precluded from having an effective defense and from being adequately represented by counsel. In such cases, a conflict of interest occurs. Each defendant should have a separate lawyer.¹⁴⁰

In 2018/2019, CCHR's Trial Monitors identified conflicts of interests in only 6.6% of the cases where a lawyer was representing several defendants, an increase compared to 2017/2018 (3%).

Figure 14: Explanation of rights¹⁴¹

Did the judge inform and explain to the defendant his or her right to legal representation or to self-defense?



The fact that in 67.3% of the 239 cases monitored by CCHR the defendants had legal representation shows that individuals' rights to access to a lawyer have mostly been protected, remaining stable since 2017/2018. However, in 20 out of 239 cases (8.4%) the judges failed to inform and explain to the accused his/her right to legal representation or the right to represent himself. This constitutes an improvement compared to 2017/2018, when the percentage was 16%. In the consultation meeting between CCHR and the Court of Appeal on this Report, the Court of Appeal confirmed that the judges had a list of rights they were required

¹³⁹ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

¹⁴⁰ Art. 19, see Guidance Notes for CCHR Appeal Court Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=97&l=en>, p. 47.

¹⁴¹ This data is based on the 239 cases monitored. N/A = the defendant was absent.

to inform defendants of. Nevertheless, they stated that while some rights should be informed, some do not need to be informed, which includes the right to presumption of innocence.¹⁴²

In cases where defendants were not present at trial, the absence of the defendant was often due to logistical issues as well as communication problems between the judges and the correctional centers or places of detention. The fact that there is only one Court of Appeal for the entire country requires defendants incarcerated in correctional centers in the provinces to travel to the Court of Appeal in Phnom Penh for the day of their hearing. However, there were many occasions where transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers fail to keep the Court updated about the transfer of detained persons between correctional centers. These logistical problems could be easily addressed by not only the creation of another Court of Appeal, but also by improving the record keeping and communication between the Court and correctional centers. Such concerns would be reduced by the creation of the regional courts of appeal.¹⁴³

In relation to right to legal representation, the Court of Appeal stated in the consultation meeting on this Report that legal representation was only mandatory for felony and juvenile cases. For misdemeanor cases, the state does not guarantee the provision of legal aid, but defendants are not banned from hiring lawyers personally. The Court of Appeal reported they have tried to find legal aid for defendants. There are two rooms for legal consultation between lawyers and their clients at the court, and waiting rooms for defendants, and it is free for lawyers to copy the case files of poor defendants. Moreover, they stated that applying for legal presentation for the poor is difficult as they are required to provide a certificate proving their poor status to the BAKC. Moreover, BAKC has challenges with budget, which means it is often late in responding to applications and providing legal representation. The Court of Appeal stated that judges ask defendants charged with misdemeanor cases about legal aid if they are unrepresented, but some defendants agree to go ahead with the trial without legal aid.¹⁴⁴

4.5. Right to the presumption of innocence

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

¹⁴² On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

¹⁴³ RGC Report for the 3rd Cycle of the UPR, paras 18C, 40; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2; 15 August 2018 UNSRSHRC Report, para. 81.

¹⁴⁴ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

The presumption of innocence is a fundamental and universally recognized fair trial right which applies throughout the period of the criminal investigation and trial proceedings, up to and including the end of the final appeal.¹⁴⁵ It means that one is presumed innocent until proven guilty by law and through a final ruling. The principle that the burden of proof lies with the prosecuting body, not the accused, stems from the presumption of innocence.¹⁴⁶

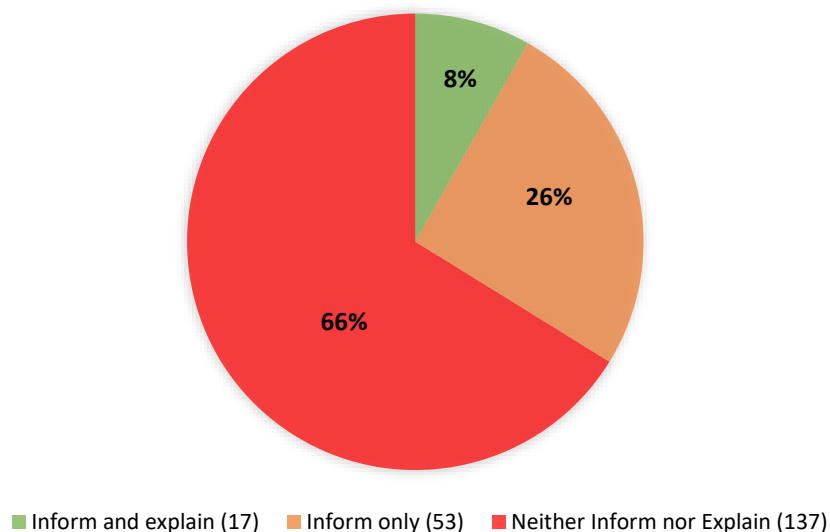
Even if the accused says nothing and presents no evidence, he/she must be acquitted if the prosecution fails to present evidence reaching the requisite burden of proof for a conviction; in other words, it is not for the accused to present evidence to prove that he or she is innocent.

More specifically, the presumption of innocence requires that:

- i. The court or tribunal must not predetermine the case before it;
- ii. Guilt beyond reasonable doubt must be proved by the prosecution;
- iii. The treatment of the accused should not be such as to indicate that he/she is guilty;
- iv. The media should avoid news coverage that undermines the presumption of innocence; and
- v. Public authorities should also refrain from making public statements that would undermine this presumption.¹⁴⁷

Figure 15: The right to remain silent¹⁴⁸

Did the judge inform and explain to the accused his/ her right to remain silent?



The right to remain silent is rooted in the right to the presumption of innocence. In the vast majority of cases (66%), Appeal judges failed to inform and explain the right to remain silent to defendants. This practice, which is intrinsically linked to the presumption of innocence, needs to be addressed as a matter of urgency,

¹⁴⁵ 'The Right to a Fair Trial (Part I), Chapter 6', OHCHR, p. 219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>; 'Fair Trial Manual', *Amnesty International*, p. 125, Section 15.2.

¹⁴⁶ UN HRC General Comment 32, para. 30

¹⁴⁷ UN HRC General Comment 32, para. 30; ECtHR, *Barberá, Messegue and Jabardo v. Spain*, 1998, para. 77, <http://hudoc.echr.coe.int/eng?i=001-57429>.

¹⁴⁸ The data covers the 207 cases (out of 239) where the defendants were present at the hearing.

as it lies at the core of fair trial rights. This needs to be remedied immediately, as the right to remain silent is a cornerstone of the right to a fair trial. However, the Court of Appeal stated in the consultation meeting on this Report that while defendants should be informed of some rights, defendants do not need to be informed of other rights, such as right to presumption of innocence.¹⁴⁹

The right to be presumed innocent includes an obligation on authorities to ensure that no attributes of guilt are attached to the accused during the trial which might undermine the presumption of innocence.¹⁵⁰ When the accused person attends trial in a prison uniform,¹⁵¹ the presumption of innocence is undermined. This is particularly the case when the uniform makes no distinction between remand and convicted prisoners. When remand prisoners attend court in prison uniforms, they are presented in the same way as prisoners who may have already been convicted. As no distinction is drawn between the two categories of prisoners, this practice has the potential to create speculation as to whether the individual accused is in fact already a convicted offender and, as such, may influence the judge's decision, but also the public's perception. Even when accused persons are serving sentences, the fact that they appear before the court in prison uniform is equally prejudicial. The issues of defendants appearing in court in prison uniforms falls within the responsibility of the General Department of Prisons.

International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. The United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules"),¹⁵² adopted by the UN General Assembly in 2015 and which represent internationally recognized best practices for the treatment of prisoners, state that "an untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners." In the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), defendants are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction. Therefore, defendants should be allowed to appear in Court with their own clothing. At the very least, the prison uniform which they wear must be different from that of convicted prisoners. As a result of CCHR's advocacy, change has slowly been taking place in this regard, with more and more remand prisoners appearing in a uniform distinct (orange) from that of convicted prisoners (blue). Further, in a handful of cases, defendants were able to appear before the court in their own clothing.¹⁵³

Figure 16: The presumption of innocence¹⁵⁴

¹⁴⁹ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

¹⁵⁰ UN HRC General Comment 32, para. 30 ["Defendants should normally not be shackled or kept in cages during trials *or otherwise presented to the court in a manner indicating that they may be dangerous criminals*"]; see also ECtHR, *Samoila and Cionca v. Romania*, 04 March 2008, paras 99-101.

¹⁵¹ This referred to the convicted person's blue uniform, which Ministry of Interior issued the Prakas that the blue uniform is for the convicted person whose conviction was final. See CCHR's Fair Trial Rights Newsletter, Prisoners Uniform and Presumption of Innocence, June 2017, https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf.

¹⁵² 'United Nations Standard Minimum Rules for the Treatment of Prisoners', Resolution 70/175, UN General Assembly, Annex, 17 Dec 2015, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁵³ On 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of First Instance was transported to the Court of Appeal for hearing his appeal against the decision, was in civilian clothes. CNRP former president, Kem Sokha, also appeared in Court wearing his own clothing on 1 February 2018.

¹⁵⁴ This data is based on the total number of defendants (352 individuals) involved in the 239 cases monitored. N/A = The defendant was either absent or s/he was not imprisoned.

	Yes	No	N/A
Did the defendant appear before the court in convict uniform?	77 (21.9%)	177 (50.3%)	98 (27.8%)
Was the defendant handcuffed throughout the hearing?	0 (0%)	254 (72.2%)	98 (27.8%)
Were any statement made by the judge about the guilt of the defendant prior to the delivery of the verdict?	2 (0,6%)	350 (99,4%)	
Was there anything to suggest that the judge drew and inference of guilt from the silence of the defendant?	0 (0%)	284 (80.7%)	68 (19.3%)

The Figure above shows that 77 out of 352 defendants still appeared in court wearing the prison uniform for convicts at their hearings – representing 21.9% of the defendants whose cases were monitored by CCHR. This represents a slight decrease compared to 2017/2018, when 26% of the defendants appeared in a convict uniform; such a practice undermines the presumption of innocence. This is particularly concerning given the high level of advocacy made on this matter, which led the Court of Appeal’s Deputy Presidents¹⁵⁵ to state that they would discuss the issue with the Ministry of Interior as well as with the correctional centers in order to identify possibilities to allow defendants to wear their civil clothing during hearings.

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

In the consultation meeting on the findings of the present Report between CCHR and the Court of Appeal, the Court of Appeal stated that the uniform of defendants was set by prison department, and the Court of Appeal did not interfere the practice of the prison department. They report that the prison department is concerned that defendants could escape when they were sent to the courts. The Court of Appeal also stated that the concept of the presumption of innocence did not cover the uniform of defendant, and if the presumptions of innocence extended to this, the use of the terminology ‘accused’ would also violate the right. The Court of Appeal state they prioritized domestic law over international law when parts of the international law could not be complied with due to inconsistencies. They stated that in the case that national laws are in conflict with international law, this should be raised to Ministry of Justice.¹⁵⁶

4.6. Evidentiary rights

Sources in Cambodian and International Law

ICCPR

Article 14(3)(e)

“In the determination of any criminal charge against him, everyone shall be entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

¹⁵⁵ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

¹⁵⁶ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

CCPC Article 153	“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.”
CCPC Article 154	“Before the interview, each witness shall swear in accordance with their religion or beliefs that he/she only speaks the truth. The formality of the oath shall be defined in the annex of this Code.”
CCPC Article 298	“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”
CCPC Article 321	“Unless otherwise required by a law, any evidence in criminal cases is freely admissible. The court shall have a free choice to determine the value of the evidence submitted to the court on the ground of its true belief. The decision of the court shall be based only on the evidence which it has in the file or which has been presented at the hearing. A confession shall be submitted to the court for consideration in the same manner as other evidence. Answers given under the physical or mental duress shall have no evidentiary value. Communications between the accused person and his/her lawyers is not admissible as evidence.”
CCPC Article 324	“At the commencement of the trial hearing, each party may request the court to hear witnesses who are present in the court room but who were not properly summoned to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses and instruct them to retreat to the waiting room.”
CCPC Article 326	“[t]he presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful [...] The Royal Prosecutor, the lawyers and all the parties may be authorized to ask questions. All questions shall be asked with the authorization of the presiding judge. Except for questions asked by the Royal Prosecutor and the lawyers, all questions shall be asked through the presiding judge. In case of objection to a question, the presiding judge decides whether the question should be asked.”
CCPC Article 328	“Before answering the questions, each witness shall swear according to their religion or believe that he/she shall only speak the truth.”
CCPC Article 394	“Following his questioning of the accused, the presiding judge shall hear the civil party and the civil defendants in the order he deems useful. Witnesses and experts will be questioned only if the court so orders.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to present evidence. The right to request to call and pose question to witnesses [...].”

All the decisions of the court must be based exclusively upon the evidence presented during the course of the trial. It is therefore essential that each party has the opportunity to present evidence and call witnesses in support of their case.¹⁵⁷ It is equally important that each party is given the opportunity to cross-examine

¹⁵⁷ CCPC, Art. 334; UNHRC General Comment No. 32, para. 39.

witnesses and to challenge evidence that he/she does not accept.¹⁵⁸ While the provision of evidence *via* a written statement (that is, not during a court hearing) is not contrary to the rights of the accused, it is only compliant with human rights law if the defendant had the right to challenge and question the witness when that witness made the statement, or at a later stage of the proceedings before the trial itself.¹⁵⁹ Finally, pursuant to human rights law, when a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.¹⁶⁰ If the individual alleges a violation of his/her rights, the burden of proof is on the party that took the statement to demonstrate that it was not done under duress, and not on the defendant to show that it was.¹⁶¹ Evidence obtained in violation of this right must not be admissible at trial (*see* 4.1. The right not to be compelled to confess guilt).¹⁶²

From the data collected, out of all 239 cases monitored, it was suggested that a party (the defense) was not given the opportunity to call witnesses in 2 cases. While this is encouraging, evidentiary rights remain not fully respected for two main reasons. First of all, for all the cases in which witnesses were present, witnesses were present in the courtroom before they were questioned. This practice can lead to a witness's testimony being influenced by hearing the testimony of other witnesses prior to giving evidence. A better practice is for witnesses to leave the courtroom and not return until they are called to testify.

In addition, the Court of Appeal must ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity), and that all parties have the opportunity to challenge the evidence. The data collected during the trial monitoring activities reveals that the quality of evidence presented is of great concern. Several confessions were presented during trials as evidence (135 confessions were made and, amongst these, at least 22 confessions were relied on by the judge as evidence). The quality and quantity of evidence presented and considered during a trial hearing is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence and forensic evidence. CCHR's trial monitoring revealed there is no trend of examining this type of evidence at the Court of Appeal. During the consultation meeting on this Report, the judges of Court of Appeal affirmed that they would not ask for evidence from witnesses who have already testified at previous stages of the trial, and only new witnesses are invited to testify during their hearings.¹⁶³

¹⁵⁸ UNHRC General Comment No. 32, paras 13, 39.

¹⁵⁹ *See e.g.* ECtHR, *Mirilashvili v. Russia*, 2008, para. 163, <http://hudoc.echr.coe.int/eng?i=001-90099>; ECtHR, *Asch v. Austria*, 1991, para. 27, <http://hudoc.echr.coe.int/eng?i=001-57676>; ECtHR, *Isgrò v Italy*, 1991, para. 34, <http://hudoc.echr.coe.int/eng?i=001-57653>; ECtHR, *Kostovski v. the Netherlands*, 1989, para. 41, <http://hudoc.echr.coe.int/eng?i=001-57615>.

¹⁶⁰ UN HRC General Comment 32, para. 41; *see also* UN Human Rights Committee, *Deolall v. Guyana*, Communication 912/2000, 2004, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>.

¹⁶¹ UN HRC General Comment 32, para. 41; *see also* UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>.

¹⁶² UN HRC General Comment 32, paras 6, 41; UN Human Rights Committee, General Comment 29, 2001, paras 7, 15, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKolRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iix49nFOsUPO4oTG7R/o7TSsorhtwUUG%2By2PtsYr5BlIdM8DN9shT8B8NpbsC%2B7bODxKR6zdESeXKjilnNU%2BgQ%3D%3D>.

¹⁶³ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019

4.7. Right to a reasoned judgment

Sources in Cambodian Law	
<p>CCPC</p> <p>Article 357</p>	<p>“Every judgment shall have two parts:</p> <ul style="list-style-type: none"> • the ground means the arguments of facts and laws which lead the court to make decision; • the enacting term means decision of the court. <p>The facts shall be clear and beyond a reasonable doubt. The court shall examine all charges and arguments raised during the hearing.</p> <p>In the ground judgment, the court shall respond to written conclusions of the parties.</p> <p>In the enacting term judgment, the court shall note the offense committed by an accused person which is not permissible by an applicable legal texts and any civil remedy.”</p>
<p>CCPC</p> <p>Article 403</p>	<p>“The rules governing the form and signature of the judgment of the court of the first instance shall apply to the judgment of the Court of Appeal.”</p>

The right to a reasoned judgment is inherent to the right to a fair trial, and is included in the right to a public judgment. According to international standards, in order to enjoy the effective exercise of the right to have convictions and sentences reviewed by a higher tribunal, a convicted person is entitled to have, within reasonable time, access to a written judgment which is duly reasoned, for all instances of appeal.¹⁶⁴ Within the Cambodian context, this is respected by both the accused and prosecution having the right to appeal an appeal judgment to the Supreme Court.

The Cambodian Code of Criminal Procedure provides that every judgment by the Court of First Instance should have two parts: the grounds for the judgment, meaning “the arguments of facts and laws which lead the court to make decision” and the decision of the court (Art. 357). The judgment must be clear, and the judges must examine “all charges and arguments raised during the hearing”. It must also respond to the written conclusions of the parties (Art. 357). Article 403 of the Code provides that these provisions equally apply to Appeal Judgments.

In March 2018, the United Nations Special Rapporteur on the Situation of Human Rights in Cambodia, Rhona Smith, highlighted the importance of this right by calling for “greater transparency in judicial decision-making” and “more consistent decisions on evidence and on the application of the law” in order to promote greater legal certainty and improve public perceptions. She recommended that “plans to make public judgments and legal reasoning should be progressed”.¹⁶⁵

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

¹⁶⁴ UNHRC General Comment No. 32, para. 49; UN Human Rights Committee, *V. Francis v. Jamaica*, Communication No. 320/1988, 1993, para. 12.2, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>.

¹⁶⁵ 14 March 2018 UNSRSHRC ‘End of Mission Statement’.

- **The facts:** the judgment must set out the facts for which the person is convicted as clearly as possible, including the date, the location, and the actual event(s). In doing so, the judges must ideally refer to the piece(s) of evidence on which they relied in order to reach the finding, for instance a confession, or a specific witness' testimony, and explain why they relied on it.
- **The law:** the judgment must also include the legal basis on which the ruling is based, both in terms of substantive law (the crime) and of criminal liability (the mode of liability: direct perpetrator, accomplice, etc.).

Having a reasoned judgment is crucial in safeguarding against arbitrariness¹⁶⁶ as it compels the judges to explain their decision, and ensures that the person who is convicted knows why, and what, they are being convicted for.

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

In 2014-2015, judges failed to refer to the relevant law when rendering their verdict 80% of the time, and failed to refer to evidence 73% of the time.¹⁶⁷ In cases monitored by CCHR between 1 November 2016 and 31 October 2017 judgements without adequate reasoning were given 67.5% of the time. During the current Reporting Period, judgements without adequate reasoning were given for 47.5% of the 99 cases where CCHR was present when the judgment was rendered. This constitutes an improvement compared to the last reporting period (1 November 2017- 31 October 2018) where judgements without adequate reasoning were provided for 87.4% of the 95 cases where CCHR was present for the judgment delivery. Nevertheless, the right to a reasoned judgment remained a not fully respected right. As outlined above, the right to a reasoned judgment is one of the most fundamental fair trial rights. It is essential that more attention is given on this issue, in order to protect fair trial rights in Cambodia.

Figure 17: Evolution of cases where judgements without adequate reasoning were given between 2014-2019¹⁶⁸

¹⁶⁶ 'Fair Trial Manual', Amnesty International, p. 174, Section 24.2, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> ('Amnesty International Fair Trial Rights Manual').

¹⁶⁷ 'Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal', CCHR, Jun 2018, p. 37, <http://tmp.sithi.org/index.php?p=detail&id=119&l=en>.

¹⁶⁸ This data is based on the total number of cases for which the trial monitor was present when the judgment was delivered in 2014/2015 (26 cases), 2016/2017 (255 cases), 2017/2018 (95 cases) and 2018/2019 (99 cases).

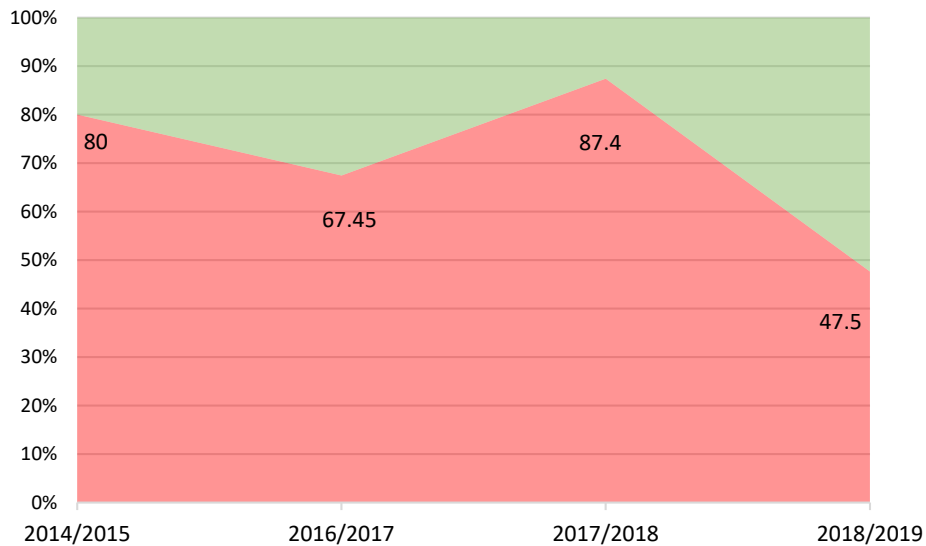
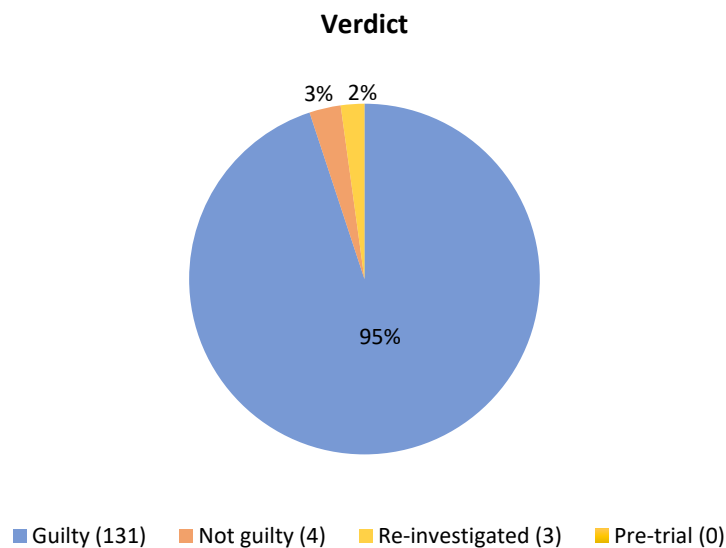


Figure 18: Overview of Court of Appeal's verdicts¹⁶⁹



In 2018/2019, 95% of the defendants whose verdict delivery was attended by CCHR's Trial Monitor were found guilty. CCHR's Trial Monitor noticed that in a significant number of cases, the Court of Appeal upheld the decisions of the Courts of First Instance, a trend which continued from 2016/2017. This, taken together with the lack of a reading of the reasoned decision, creates cause for concern as to whether the accused's fair trial rights were respected.

In nearly all the cases where a judgment was rendered at the time CCHR was monitoring the hearings, the judges failed to justify their ruling. They largely failed to state the provisions of the law and the evidence which they relied upon in their verdict. Instead, the judges merely read and announced the ruling.

In the consultation meeting on this Report, the Court of Appeal explained that the full reasoning is not stated because appeal hearings are not hearings to determine facts, and therefore do not follow the usual legal form. Rather, they are only focused on the legal basis of a decision or court procedure. For example, if a civil party appeals the prior punishment, or parties were absent during delivery of the verdict. They stated

¹⁶⁹ The data presented here relate only to the 138 defendants (out of 352) for whom the verdict was followed or known.

therefore, the judge does not need to outline the full reasoning, only the verdict, and not explaining it does not mean that there is not a full reason for the judgement.¹⁷⁰

4.8. Rights of Juveniles

Sources in Cambodian and International Law	
ICCPR Article 14(1)	ICCPR, Article 14(1): “The Press and the public may be excluded from all or part of a trial [...] when the interests of the private lives of the parties so requires [...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”
CRC Article 40(2)(b)	“States Parties shall, in particular, ensure that [...] [a child has] his or her privacy fully respected at all stages of the proceedings.”
CRC Article 40(4)	“A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training program and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”
Constitution Article 31	“The Kingdom of Cambodia recognizes and respects human rights as stipulated in [...] the covenants and conventions related to [...] children’s rights.”
Constitution Article 48	“The State shall protect the rights of children as stipulated in the Convention on Children.”
CCPC Article 100	“When a detained person is a minor, the judicial police officer shall use all means to notify the parents, legal representatives or any person who is responsible for that minor.”
CCPC Article 212	“A minor under 14 years old may not be temporarily detained. The investigating judge can decide to send the minor temporarily to his guardians or, if there are no guardians, to a Provisional Education and Care Center until the competent judge has made his decision on this issue.”
Criminal Code Article 39	“Minors who committed offences shall be subject to supervision, education, protection and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
Criminal Code Article 40	“Supervisory, educational, protective and assistance measures shall include: returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy; committing the minor to a social service agency which cares for minors; committing the minor to a private organization that is qualified

¹⁷⁰ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

	to receive minors; committing the minor to a specialized hospital or institution; placing the minor under judicial protection.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning a minor shall ensure the observance of the following principles: Consider primarily on actions concerning the best interest of minors; in particular, to ensure the minors’ right to life and maximum survival and development [...] Shall be given an opportunity to express their views freely, and their views shall be given weight according to their age, physical development, intelligence, and cognitive development toward their action; Shall address the child in a friendly manner ¹⁷¹ ; Shall ensure that the arrest, detention or imprisonment of a minor is used only as a measure of last resort and for the shortest period of time [...]”
Law on Juvenile Justice Article 6	<p>“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights:</p> <ul style="list-style-type: none"> • the right to refuse to answer questions with or without the presence of a lawyer • the right not to be forced to give testimony against him/herself • the right to privacy • the right to have medical care and treatment • the right to be informed of the charge • the right to be informed of the arrest to designated representative • the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure • the right to have designated representative participate in the case, unless it is contrary to the best interest of the minor • the right to be assisted by pro bono interpreter, if necessary the right to present evidence • the right to request to call and pose question to witnesses • the right to request bail • the right to ask for revision of the court supervision • the right to contact his/her embassy, consulate if a minor is a foreigner • Other rights which stipulated in other legal instruments that are currently in force.”
Law on Juvenile Justice Article 39	“Pre-trial detention is a measure of last resort [...]”
Law on Juvenile Justice Article 47	“The cross-examination and pronouncement of judgment shall be conducted in closed court [...]”
Law on Juvenile Justice Article 48	“[...] Under special circumstances, the minor’s lawyer, social agent or prosecutor may request the court to place the minor behind the screen or use other alternate means of providing testimony.”
Law on Juvenile Justice	“If the court finds that the minor is below the age of 14 years at the time of commission of the offence, the court shall immediately acquit the minor and

¹⁷¹ Law on Juvenile Justice, Art. 4 (7).

Article 49	immediately release him/her to the custody of designated representative even if there is an appeal made by the prosecutor [...]"
Law on Juvenile Justice Article 54	"Judgment shall be pronounced after the cross examination or at the next trial. In principle, the judgment of the court shall be pronounced in closed court, and in the presence of the minor, designated representative, support person, lawyer, social agent and relevant parties. The judgment may be pronounced without the presence of the minor if it is detrimental to the best interest of the minor."
Law on Juvenile Justice Article 57	"[...] For the best interest of the minor, while awaiting trial, the Court of Appeal or the Supreme Court shall consider the release of the minor. In the case where the trial is adjourned, the Court of Appeal or Supreme Court shall consider releasing the minor."

International human rights law recognizes that juveniles involved in criminal proceedings need special protection.

According to the Convention on the Rights of the Child, which defines a child as any individual below the age of 18,¹⁷² State Parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having, infringed the penal law.¹⁷³ In particular:

- i. States shall establish a minimum age of criminal responsibility under which children shall be presumed not to have the capacity to infringe the penal law.¹⁷⁴ Children who are below that minimum age at the time of the commission of an offence cannot be held responsible in criminal law proceedings.¹⁷⁵ Internationally, the most common minimum age is 14 years old.¹⁷⁶ 14 is also the minimum age set out by Cambodian law.¹⁷⁷
- ii. Children at or above the minimum age of criminal responsibility but below the age of 18 can be formally charged and subjected to child justice procedures in accordance with the Convention.¹⁷⁸ Nevertheless, under the Convention, State parties are required to promote measures for dealing with children without resorting to judicial proceedings, "whenever appropriate and desirable"¹⁷⁹. The measure can either be diversion measures, that is "measures referring children away from the judicial system, any time prior to or during the relevant proceedings" (ex: community service, supervision and guidance by designated officials), or measures in the context of judicial proceedings.¹⁸⁰

Further, a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs; and other alternatives to institutional care shall be

¹⁷² CRC, Art. 1: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

¹⁷³ CRC, Art. 40(3).

¹⁷⁴ CRC, Art. 40(3).

¹⁷⁵ UN Committee on the Rights of the Child, General comment No. 24, 18 September 2019, para. 20 ("UNCRC, General Comment 24"); See also UNHRC General Comment No. 32, para. 43.

¹⁷⁶ UNCRC, General Comment 24, para. 21.

¹⁷⁷ Law on Juvenile Justice, Art. 49.

¹⁷⁸ UNCRC, General Comment 24, para. 21.

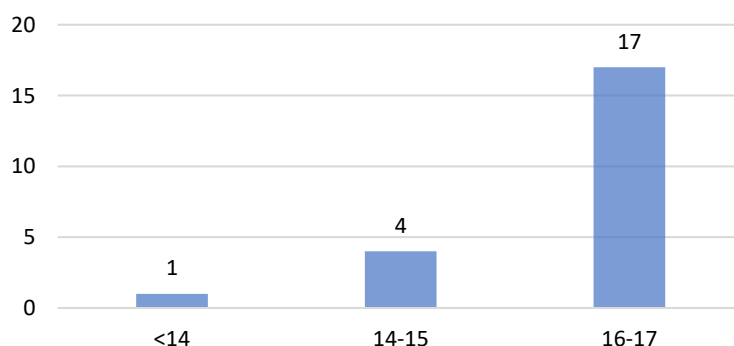
¹⁷⁹ CRC, Art. 40 (3); UNCRC, General Comment 24, para. 13.

¹⁸⁰ CRC, Art. 40 (3); UNCRC, General Comment 24, para. 13; See also UNHRC General Comment 32, para. 44.

available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.¹⁸¹

Juveniles who are accused of having committed a criminal offense are entitled to all the fair trial rights that apply to adults, as well as to additional protections giving due consideration to their age, maturity, and intellectual development. The ICCPR and the Convention on the Rights of the Child (“CRC”), which entered into force in Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings.¹⁸² They are supported by a number of international rules and guidelines. As stated above a number of legal provisions in Cambodian law further provide differential treatment provisions for juveniles in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of minors who have committed criminal offences.

Figure 19: Age at the time of the offense¹⁸³



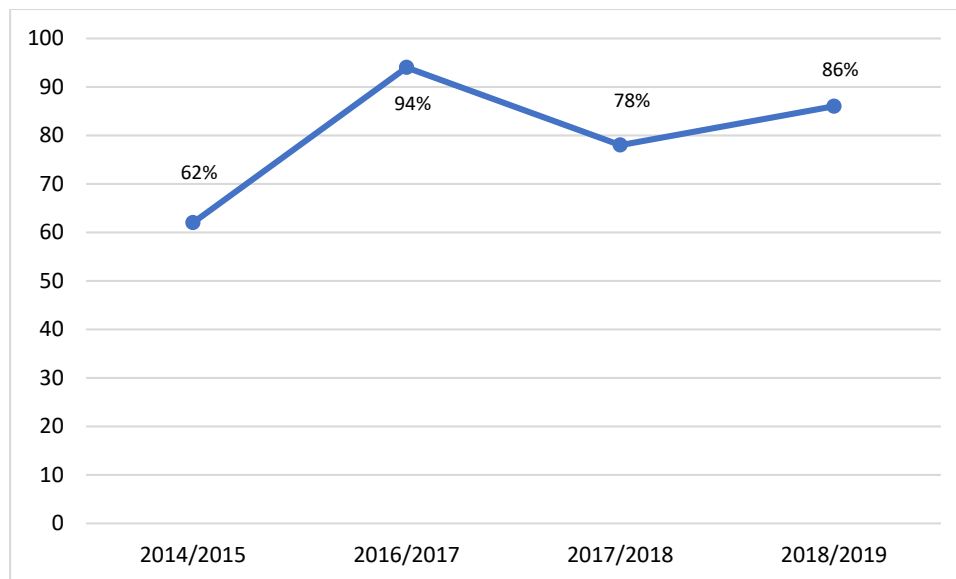
During the Reporting Period, out of the 352 defendants involved in the cases that were monitored, 22 were juveniles at the time of the offense. 19 were held in detention. Most juvenile defendant parties to cases monitored by CCHR during the Reporting Period were aged 16-17 at the time of the offense (17 out of 22, or 77%). 4 defendants (19%) were aged 14-15 at the time of the offence and 1 was younger than 14 (4%). The juvenile under 14 was immediately acquitted by the judge, in accordance with human rights standards, and as has been done consistently in the relevant cases monitored since 2014.

¹⁸¹ CRC, Art. 40 (4).

¹⁸² CRC, Art. 40(2); UNCRC, General Comment 24, paras 38-71; ICCPR, Art. 14; UNHRC General Comment 32, para. 42.

¹⁸³ This data based on the total number of juvenile defendants (22 individuals) involved in the 14 cases monitored.

Figure 20: Percentage of juveniles held in detention between 2014-2019¹⁸⁴



The best interests of the child must be the primary consideration when ordering or imposing penalties upon juveniles found to have infringed criminal law.¹⁸⁵ Deprivation of liberty of juveniles, from the moment of arrest, throughout the proceedings and in sentencing, is to be considered as a measure of last resort, should be employed only in exceptional cases and for the shortest appropriate period of time.¹⁸⁶ The laws should provide for different non-custodial measures and should expressly prioritize the use of such measures.¹⁸⁷ Cambodian law provides for alternative measures to custodial sentences.¹⁸⁸

Thus, the figures above give rise to serious concerns and are at odds with both international and domestic law, as pre-trial detention of juvenile appears to be the norm rather than a measure of last resort. Moreover, for none of the 6 juvenile defendants for whom the verdict was followed or known, did anything suggest that the judge considered imposing a non-prison sentence. The Court of Appeal did not make use of the alternative sentencing options identified in Article 40 of the Criminal Code, and in the Law on Juvenile Justice in Article 28 and Chapter 10 on Diversion, such as committing the minor to a social service agency or to a qualified private organization or a specialized hospital or institution. The Court of Appeal also did not act in compliance with Article 5 of the Law on Juvenile Justice, which requires any person in a public function concerning a minor to act in the best interests of the minor, particularly their right to development, and which states that arrest or detention of minors should only be used as a measure of last resort.

Under human rights law, a juvenile has the right to have his/her privacy respected at all stages of the proceedings.¹⁸⁹ This includes from initial contact with law enforcement until the final decision or, if sentenced, the release from supervision, custody or deprivation of liberty.¹⁹⁰ The underlying rationale is to avoid the harm caused by undue publicity or libel.¹⁹¹ Therefore, the rule should be that child justice hearings

¹⁸⁴ This data is based on the total number of defendants involved in the cases monitored in 2014/2015 (11 juveniles), 2016/2017 (35 juveniles involved in 19 cases monitored), 2017/2018 (9 individuals involved in 8 cases monitored) and 2018/2019 (22 juveniles involved in 14 cases monitored).

¹⁸⁵ CRC, Art. 3(1); *see also* CRC General Comment 10, paras 10, 71.

¹⁸⁶ CRC, Art. 37(b); *see also* CRC General Comment 24, paras 19, 73, 82-95.

¹⁸⁷ CRC General Comment 24, para. 73.

¹⁸⁸ Criminal Code, Art. 40.

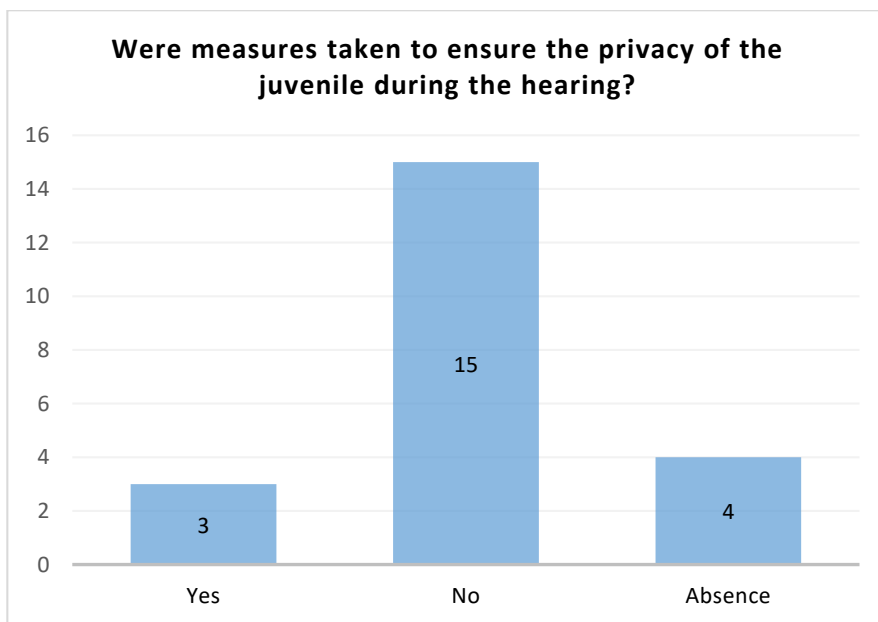
¹⁸⁹ CRC, Art. 40(2)(vii); *see also* CRC, Art. 16 and 40(1); CRC General Comment 24, para. 66.

¹⁹⁰ CRC General Comment 10, para. 64.

¹⁹¹ CRC General Comment 24, para. 70.

are to be conducted behind closed doors, with limited exceptions provided for by the law.¹⁹² Juvenile victims' or defendants' privacy may further be protected by placing the minor behind screens or using other alternative means of providing testimony. The use of tools such as video conferencing systems or closed hearings should be considered. If the verdict or the sentence is to be pronounced in public, the identity of the child should not be revealed.¹⁹³ Finally, any documentation concerning children should be kept strictly confidential and closed to third parties, except for those directly involved in the investigation and adjudication of, and the ruling on, the case.¹⁹⁴ This should be ensured even once the child reaches the age of 18.¹⁹⁵

Figure 21: The protection of juveniles' privacy¹⁹⁶



Measures were taken to protect the privacy during the hearings of only 3 out of 18 juveniles who were present at the trials. Further, all trials were open to the public. Although this constitutes a slight improvement in comparison to 2017-2018, this remains highly problematic, particularly given that the question of the juvenile's right to privacy during criminal trial was extensively discussed with the Court of Appeal on August 2019, and the Court of Appeal refuted the negative findings of the report in relation to the rights of juveniles. In support of this they mentioned the recent installation of video conferencing technology donated by UNICEF to better protect the privacy of juveniles. They also suggested that CCHR record and report judges who do not fully uphold fair trial rights in juvenile cases, as well as instances in which privacy is not fully respected during the hearing to the president of the Court. Furthermore, they raised the fact that the implementation of a diversion scheme for juvenile offenders, requiring alternatives to formal prosecution, was not possible due to a lack of mechanisms in place to support such a scheme.¹⁹⁷ It is deeply regrettable that despite such efforts, it appears that the rights of juveniles are still routinely violated at the Court of Appeal.

¹⁹² CRC General Comment 24, para. 67.

¹⁹³ CRC General Comment 24, para. 67.

¹⁹⁴ CRC General Comment 24, para. 67.

¹⁹⁵ CRC General Comment 24, para. 70.

¹⁹⁶ This data is based on the 18 juveniles that were present during the appeal hearing.

¹⁹⁷ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and general administrative secretariat of the Court of Appeal in order to discuss the findings of 2017/2018 report.

In contrast with the monitoring findings, the Court of Appeal stated during the consultation on the findings of this Report that in cases where there was a juvenile defendant, victim or witness, trials were conducted using barriers and video conferencing. They stated that both trials and the delivery of verdicts for juvenile cases were conducted in closed hearings, even if the juvenile cases had adult defendants.¹⁹⁸

¹⁹⁸ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

5. 2014-2019: Evolution of Fair Trial Rights Protection

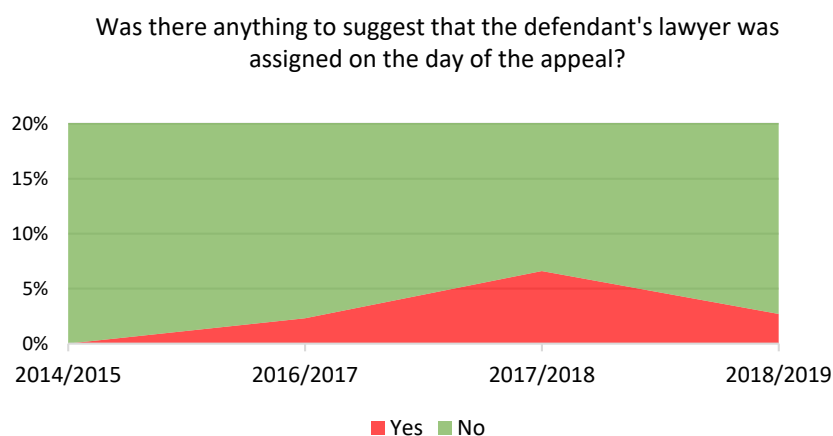
This section outlines key trends in terms of adherence to international fair trial rights standards by the Court of Appeal during the reporting periods from 2014 until 2019.¹⁹⁹

5.1. Fair trial rights consistently upheld since 2014

Several fair trial rights have been consistently upheld by the Court of Appeal since 2014.

The right to adequate time and facilities to prepare the defense. The aspects of the right to adequate time and facilities to prepare the defense monitored by CCHR have been consistently respected since 2014. As demonstrated in the table below, in more than 93.7% of the cases monitored, nothing suggested that the defendant's lawyer was assigned on the day of the appeal.²⁰⁰ Also, in none of the cases monitored since 2014 was the issue of adequate time and facilities for the preparation of the defense raised by the defense.²⁰¹

Figure 22: Compliance with right to adequate time and facilities to prepare the defense (2014-2019)²⁰²



Right to a public verdict. From 2014 until 2019, the verdict was announced in public for all the monitored cases for which information was available on that point.²⁰³

Prohibition against retroactive application of penal legislation. The principle of non-retroactive application of the law has also been consistently respected. In all the cases monitored by the CCHR from 2014 until 2019, the law under which the defendant was charged was in force on the date the offence was allegedly committed.²⁰⁴

¹⁹⁹ Note that CCHR's Fair Trial Rights monitoring project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for that period.

²⁰⁰ This data is based on the monitored cases in which the defendant was represented by a lawyer: 149 cases (out of 161) in 2014/2015, 443 cases out of 562 in 2016/2017, 241 cases out of 315 in 2017/2018 and 262 cases out of 352 cases in 2018/2019.

²⁰¹ This data is based on the monitored cases in which the defendant was present and/or represented by a lawyer: 159 cases (out of 161) in 2014/2015, 444 (out of 562) in 2016/2017, 240 (out of 315) in 2017/2018 and 262 (out of 352) in 2018/2019.

²⁰² This data is based on the monitored cases in which the defendant was represented by a lawyer: 149 cases (out of 161) in 2014/2015, 443 cases out of 562 in 2016/2017, 241 cases out of 315 in 2017/2018 and 262 cases out of 352 cases in 2018/2019.

²⁰³ This data is based on all the cases covered in 2014-2015, 252 cases (out of 341) monitored in 2016-2017, 95 cases (out of 213) monitored in 2017/2018 and 99 cases (out of 239) monitored in 2018/2019.

²⁰⁴ This data is based on the 161 defendants involved in the 128 cases monitored in 2014-2015, the 558 defendants involved in the 340 cases monitored in 2016-2017, the 315 defendants involved in the 213 cases monitored in 2017-2018 and the 352 defendants involved in the 239 cases monitored in 2018/2019.

Protection against double jeopardy. The principle of *ne bis in idem* has been constantly respected since 2014. Indeed, except for 2, there was nothing to suggest that the defendants in the cases monitored from 2014-2019 had been tried and sentenced for the charged offence previously.²⁰⁵

5.2. Fair trial rights Not Fully Respected

Regrettably, a significant number of rights have not been fully respected since 2014. This creates significant cause for concern, particularly given that those issues have been brought to the attention of the authorities on multiple occasions.

5.2.1. Variations: From fair trial rights being upheld to not being fully respected

Right to the presumption of innocence. After being classified as respected for the 2014-2015 reporting period, this right moved to the category of not fully respected rights. While, in no case monitored since 2014/2015 did a judge make any statement about the guilt of the defendant prior to the delivery of the verdict, nor was any defendant handcuffed throughout the hearing,²⁰⁶ there remain several factors justifying this right being classified as being not fully respected. Indeed, in the majority of the cases monitored since 2014, the judge did not inform nor explain to the defendant his or her right to remain silent. Also, there has been an increasing amount of defendants appearing before the court in prison uniform since 2014. As demonstrated by the figure below, the data shows that while only 5.4% of defendants appeared before the court in prison uniform in 2014/2015, 30.3% did so in 2018/2019. This represents only a marginal improvement compared to 2017/2018 where this was the case for 33% of the defendants.

Figure 23: Information and explanation of the right to remain silent²⁰⁷

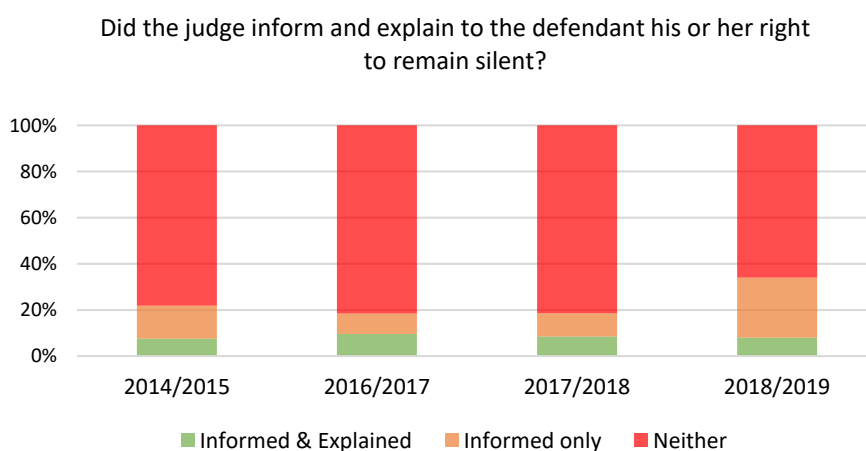


Figure 24: Defendants appearing before the court in prison uniform (2014-2019)²⁰⁸

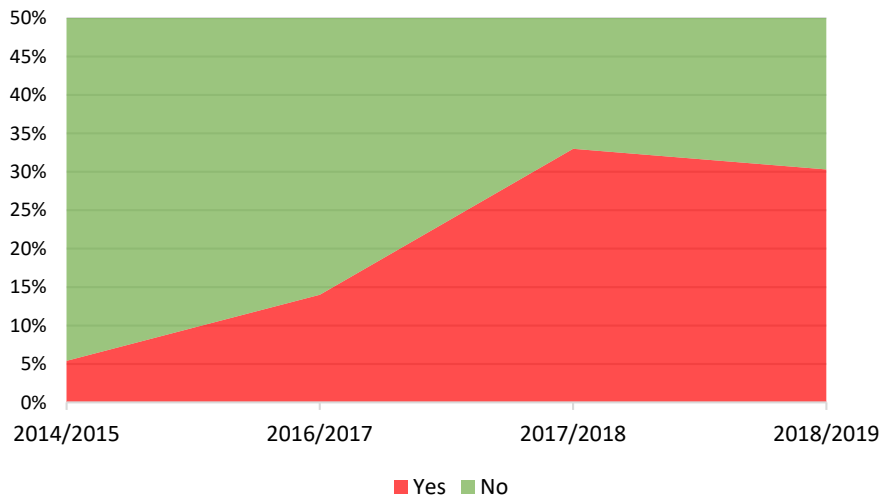
²⁰⁵ This data is based on the monitored cases in which the defendant was present and/or represented by a lawyer: 159 cases (out of 161) in 2014/2015, 444 (out of 562) in 2016/2017, 240 (out of 315) in 2017/2018 and 262 (out of 352) in 2018/2019. There were indications that one defendant had been tried and sentenced for the charged offence previously in 2016-2017 and 2017-2018.

²⁰⁶ This data is based on the total number of defendants involved in the monitored cases during each reporting periods: the 161 defendants involved in the 128 cases monitored in 2014-2015, the 558 defendants involved in the 340 cases monitored in 2016-2017, the 315 defendants involved in the 213 cases monitored in 2017-2018 and the 352 defendants involved in the 239 cases monitored in 2018/2019.

²⁰⁷ This data is based on the monitored cases where the defendants were present at the hearing: 105 cases out of 128 cases monitored in 2014/2015, 271 cases out of the 340 cases monitored in 2016/2017, 188 cases out of the 213 cases monitored in 2017/2018 and 207 cases out of the 239 cases monitored in 2018/2019.

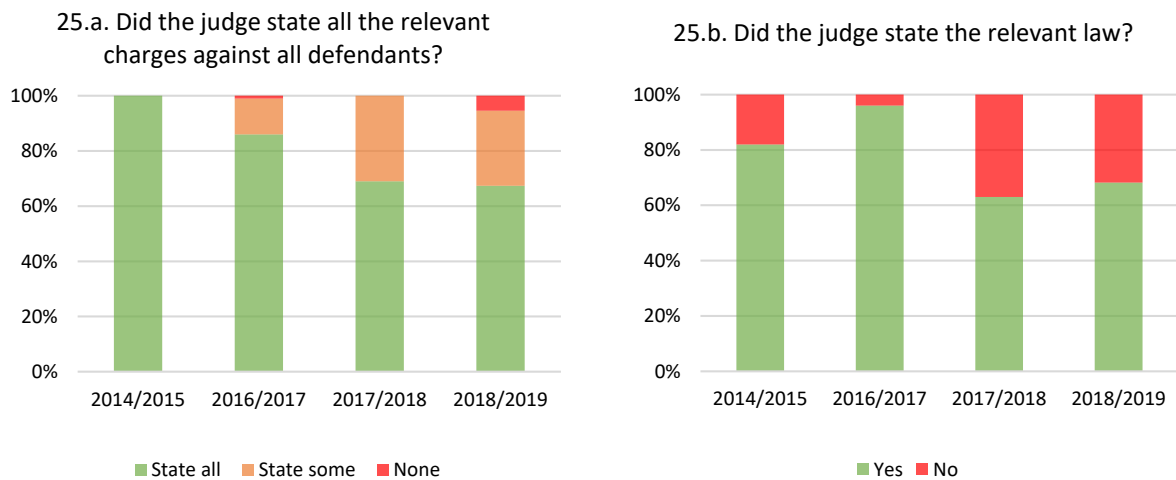
²⁰⁸ This data is based on the number of defendants involved in the monitored cases which were present at the hearing and imprisoned: 129 defendants out of 161 in 2014-2015, 356 defendants out of 558 in 2016/2017, 249 defendants out of 315 in 2017/2018 and 254 defendants out of 352 in 2018/2019.

Did the defendant appear before the court in prison uniform?

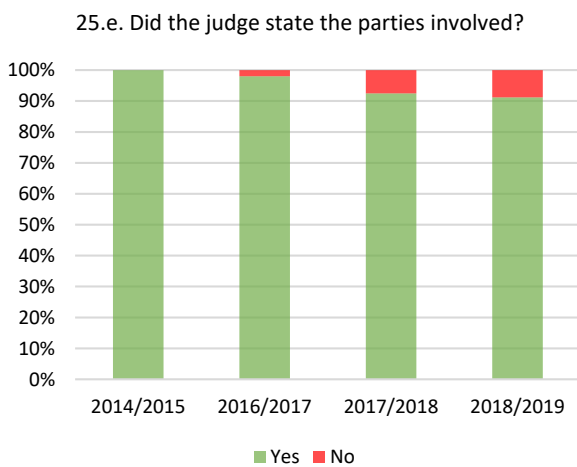
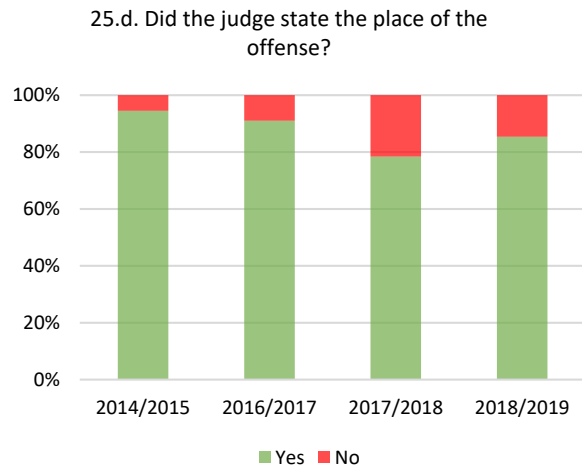
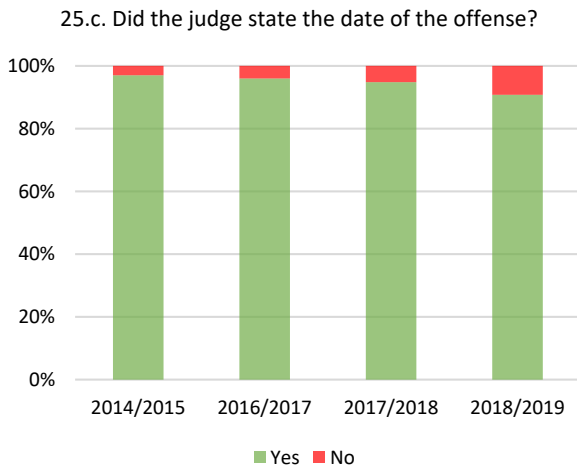


Right to understand the nature and cause of the charges. While being considered respected during the 2014/2015 and 2016/2017 reporting periods, this right has been considered as not fully respected since then. As shown in the figures below, there has been a continued decrease in the percentage of cases in which the judge states all the relevant charges against all the defendants, the date of the offense or the parties involved. There also remains a noticeable percentage of cases in which the judge does not state the relevant law or the place of the offense.

Figure 25: The right to understand the nature and cause of the charges (2014-2019)²⁰⁹



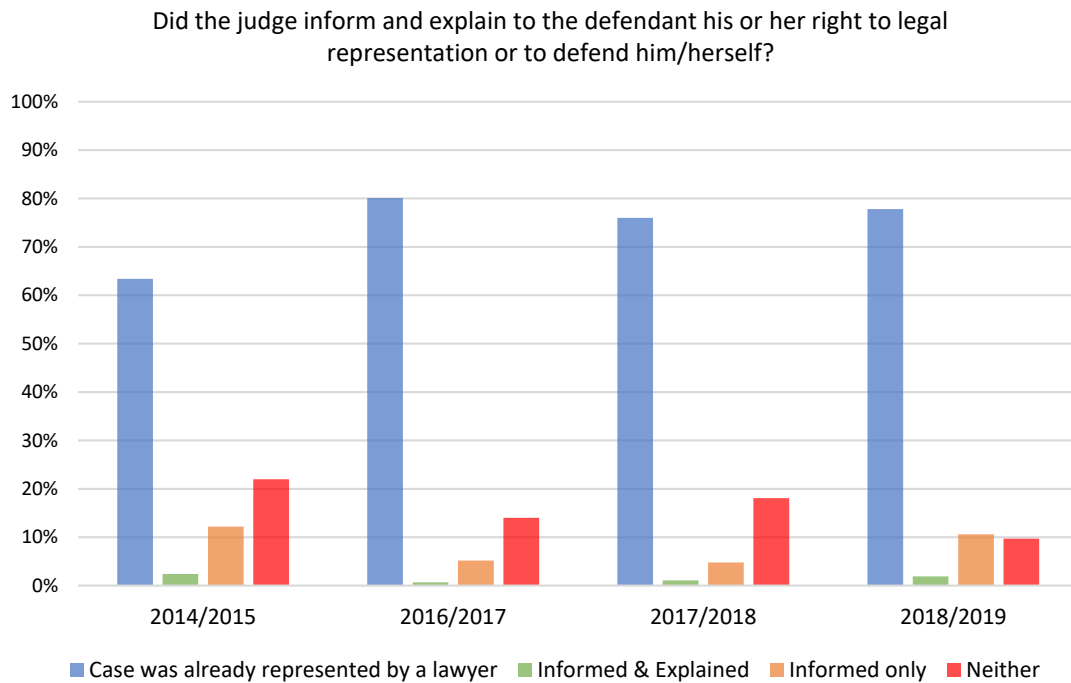
²⁰⁹ The data is based on the 128 cases monitored in 2014/2015 (except for figure 29.a. where the data is based on the 109 cases for which the information is known), the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018 and the 239 cases monitored in 2018/2019.



Right to legal representation and to be present at trial. While being classified as being respected in 2014/2015, this right has since then been classified as not being fully respected. As illustrated by **Figure 13: The right to be present at trial and to legal representation**, the percentage of cases in which the defendants were represented by a lawyer has been decreasing since 2014-2015 (where it amounted to 83.9% of the cases) to 74.4% of cases. Moreover, in almost none of the cases in which the defendant was present did the judge inform and explain to the defendant his or her right to legal representation or to defend him/herself.

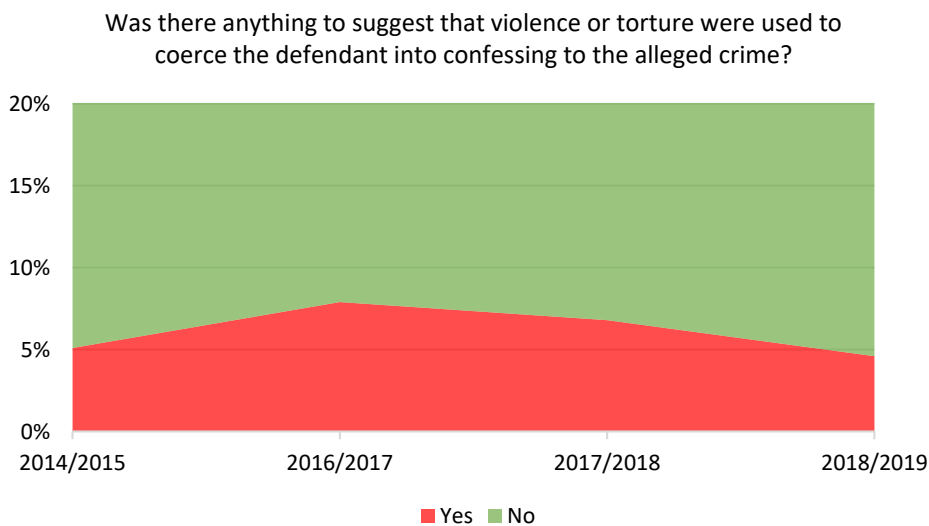
Figure 26: Information and explanation of the right to legal representation or to defend oneself (2014-2019)²¹⁰

²¹⁰ This data is based on the monitored cases where the defendant was present at the hearing: 41 cases (out of 128) in 2014/2015, 272 cases (out of 341) in 2016/2017, 188 cases (out of 213) in 2017/2018 and 207 cases (out of 239 cases) in 2018/2019.



Right not to be compelled to confess guilt. The right not to be compelled to confess guilt was classified as being respected during the reporting period 2017-2018. As explained above in Section 4.1, while the trend in 2018/2019 shows a slight decrease in comparison to the 2017/2018 reporting period, the fact that no significant improvement was made and that allegations of threats or violence have been consistently made since 2014 justified classifying this right as being not fully respected.

Figure 27: Right not to be compelled to confess guilt (2014-2019)²¹¹



5.2.2. Fair trial rights consistently not being fully respected since 2014

²¹¹ This data is based on the number of defendants who were present or whose lawyer was present: 156 defendants (out of 161) in 2014/2015, 516 defendants (out of 562) in 2016/2017, 309 defendants (out of 315) in 2017/2018 and 329 defendants (out of 352) in 2018/2019.

Right to a public hearing. It must be commended that, between 2014 and 2019, only in one case were members of the public or media prevented from entering or dismissed from the courtroom. However, the right to a public hearing has been classified as not being fully respected as, since 2016 when CCHR started monitoring notices, none of the cases monitored between 2016 and 2019 had a notice of the hearing posted on a public board outside the room.²¹²

Right to a reasoned judgment. Respect for the right to a reasoned judgment has remained problematic through all the reporting periods. While there has been a significant improvement in 2018/2019, for a substantial part of the hearings monitored by CCHR where a judgment was rendered at the time that CCHR was monitoring, the judges failed to cite in detail the legal provisions and evidence upon which they relied to reach their verdict (80% in 2014/2015, 67.45% for 2016/2017, 87.4% for 2017/2018 and 47.5% for 2018/2019)(see Figure 17: Evolution of cases where judgements without adequate reasoning were given between 2014-2019

Rights of juveniles. Since 2014, the rights of juvenile defendants, who should be given special protection under international human rights law and Cambodian law, are often ignored: most juveniles were held in pre-hearing detention and in most cases no measures were taken to protect the juveniles’ privacy. Moreover, in none of the monitored cases was there anything to suggest that the judge considered imposing a non-prison sentence.²¹³

Figure 28: Evolution of the percentage of juveniles held in pre-trial detention (2014-2019)²¹⁴

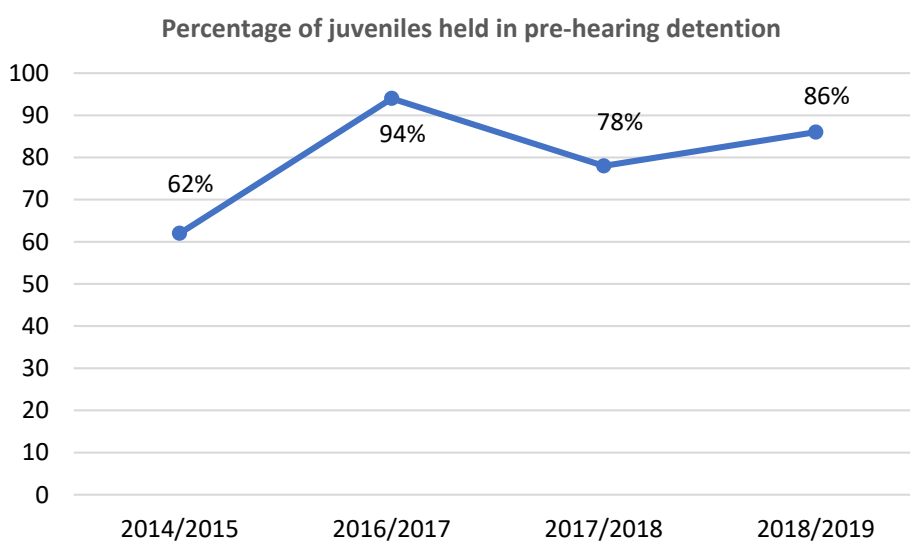


Figure 29: Evolution of the percentage of cases where measures were taken to protect juveniles’ privacy (2014-2019)²¹⁵

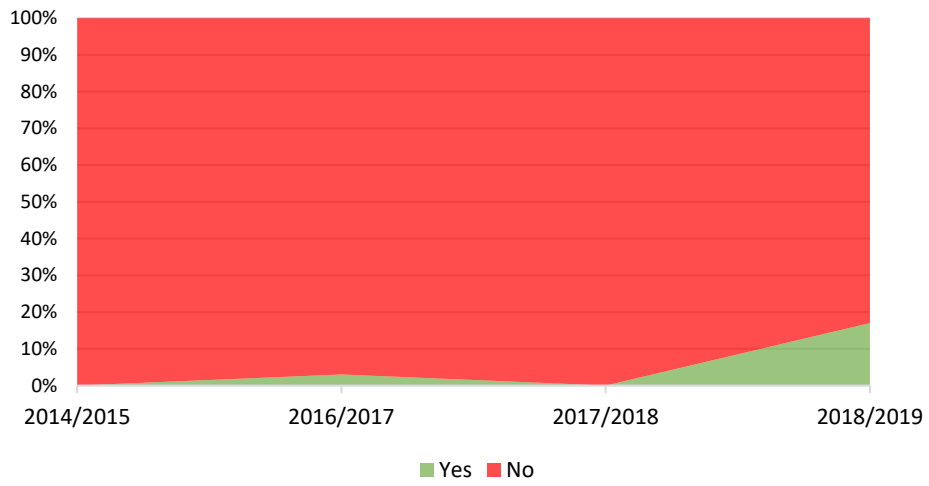
²¹² The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018 and the 239 cases monitored in 2018/2019.

²¹³ This data is based on the number of juvenile defendants for whom the verdict was followed or known: 11 juveniles in 2014/2015, 28 in 2016/2017, 3 in 2017/2018 and 6 in 2018/2019.

²¹⁴ This data is based on the 11 juvenile defendants involved in the cases monitored on 2014/2015, the 35 juvenile defendants involved in cases monitored in 2016/2017, the 9 juvenile defendants involved in the cases monitored in 2017/2018 and the 22 juveniles involved in the cases monitored in 2018/2019.

²¹⁵ This data is based on the 11 juvenile defendants involved in the cases monitored on 2014/2015, the 35 juvenile defendants involved in cases monitored in 2016/2017, the 9 juvenile defendants involved in the cases monitored in 2017/2018 and the 18 juvenile defendants (out of 22) that were present during the appeal hearing in 2018/2019.

Were measures taken to protect the juvenile's privacy?



6. Conclusion

A number of key fair trial rights were guaranteed before the Court of Appeal – including the right to have adequate time and facilities to prepare one’s defense and the right to a public judgment. In addition, the Court of Appeal consistently upheld the protections against double jeopardy and non-retroactivity.

Regrettably however, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The right not to be compelled to confess guilt was not respected during this Reporting Period, with 15 individuals (out of 352 defendants) alleging violence or torture was used on them by police in the investigation stage in order to obtain a confession to the alleged crime and the judges still upheld the guilty verdict. The fundamental right to a public hearing is not fully respected, as none of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom, precluding people from being informed of about the hearing. Further, the right to understand the nature and cause of the charges remains a right which is not fully respected given that only in 67.4% percent of the monitored cases did the judge state all the relevant charges against all the defendants. Similarly, to last year, the right to legal representation was not fully respected: 25.6% of the defendants charged with misdemeanor crimes in cases monitored by CCHR were not represented by a lawyer. Moreover, in 8.4% of the cases, the judge failed to inform the defendant of her/his right to legal representation, a concerning trend.

Similarly, the presumption of innocence remains not fully respected, although there has been a noticeable improvement in comparison to the previous reporting period. In 47.5% of the hearings monitored by CCHR where a judgment was rendered at the time that CCHR was monitoring, the judges failed to cite the legal provisions and evidence upon which they relied to reach their verdict. Last but not least, the rights of juvenile defendants, who should be given special protection under international human rights law and in Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy, and there are no indications that the judges consider imposing a non-prison sentence.

It must be noted while several rights have been consistently protected since 2014, many more have consistently not been fully respected:

- the right not to be compelled to confess guilt (except for 2017/2018);
- the right to a public hearing;
- evidentiary rights;
- the right to a reasoned judgment; and
- the rights of juveniles.

This creates significant cause for concern, particularly given that those issues have been brought to the attention of the authorities on multiple occasions.

When comparing the findings of the current report with those of the last year, the majority of the findings are similar in terms of which rights are upheld and which are not. However, one particular point stands out: the right not to be compelled to confess guilt, which CCHR found was protected in 2017/2018, moved to the “not fully respected” section since there was no significant sign of improvement in the number of individuals alleging having been tortured or subjected to violence to give a confession (4.3% in 2018/2019 and 7% in 2017/2018). Such cases must be immediately and thoroughly investigated by the competent authorities.

This evidence shows that urgent measures are needed in order to protect fair trial rights in Cambodia. The following sections contains key recommendations to assist the RGC and the authorities in their ongoing efforts.

7. Recommendations

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. For example, improved coordination regarding the transportation of defendants from correctional centers to their hearing, asking witnesses to leave the hearing before they make their statements, and requiring that judges explain to defendants their rights. Others can easily be improved by training judges and lawyers in the implementation of fair trial rights. To that end, CCHR welcomes establishment of regional appeal courts in Tbong Khmum, Battambang and Sihanoukville which opened in 2020, as this will address some of the issues raised above. By taking immediate measures to address these concerns, the Court of Appeal could set a precedent, serve as an example to Courts of First Instance and, as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

7.1. General Recommendations

- 7.1.1 The Ministry of Justice should hold regular meetings on the practical implementation of fair trial rights with the judges of the Court of Appeal, following the concept of fair trial rights based on national and international standards.
- 7.1.2 The Ministry of Justice should develop a standard form for judgments and send it to all courts to be implemented. The form should set out the following information in order to ensure that the brief report read by the presiding judge is complete:
- The offense(s) with which the defendant is charged and the relevant law(s);
 - The date, time, location of the alleged offense and relevant parties;
 - The fair trial rights to which the defendant is entitled, as outlined on page 8 of this report.

In particular, his or her right to be presumed innocent until a final and non-appealable judgment is rendered, and the fact that the burden of proof is on the Prosecutor.

- 7.1.3 The judges should ask the defendant directly whether he or she understands the charges and his or her rights. Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

7.2. Recommendations Regarding the Right not to Confess Guilt

- 7.2.1 The Court of Appeal must promptly and thoroughly investigate all claims by defendants of coercion, duress or torture to obtain confessions of guilt before rendering their rule.
- 7.2.2 The Court of Appeal must ensure that if any coercion, duress or torture claims are substantiated following investigations, any evidence or confessions obtained by such methods is inadmissible and relevant re-trials are conducted; and ensure appropriate reparations are made to victims.

7.3. Recommendations Regarding the Right to a Public Hearing

- 7.3.1 The Court of Appeal and the Ministry of Justice should ensure that daily schedules of all hearings are posted on information boards outside the court room at least 24 hours prior to the hearing, and continue to guarantee public access to courtrooms in all but exceptional cases, which would include

that of juveniles. When such information is published on the information board, the name of juveniles should not be spelled out, but instead they should be referred to by their initials, to protect their privacy.

7.4. Recommendations Regarding the Right to Understand the Nature and Cause of the Charge(s)

- 7.4.1 The judges of the Court of Appeal should inform the defendant of the charges against them and provide relevant information such as the date, location, parties involved and the applicable law. This is particularly important in cases where charges may have been changed or amended since the initial arrest/charge. The judges should take particular care to ensure they are sharing the relevant law and location of the offence, as these are the most frequently missed as per page 25 of this Report.
- 7.4.2 The judges of the Court of Appeal should provide a comprehensive explanation of the trial rights of defendant.
- 7.4.3 The judges of the Court of Appeal should ask the defendant directly whether he or she understands the charges against them and his or her rights.

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

- 7.5.1 The Court of Appeal and the General Department of Prisons should consult and coordinate with each other to address any logistical and communication issues as soon as possible regarding the locations of defendants;
- 7.5.2 The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to the General Prosecution to ensure the Court of Appeal gives the information regarding date and time of the appeal hearings to the correct correctional center, in which the defendant is detained;
- 7.5.4 The judges of the Court of Appeal should postpone any hearing if the defendant is not present, even if he or she is represented by a lawyer, unless he or she has unequivocally and formally waived his or her right to be present.
- 7.5.5 The Court of Appeal should ensure that, where a lawyer is representing several defendants in a trial, there is not an inappropriate conflict of interest.
- 7.5.6 The judges of the Court of Appeal should inform and explain to accused their right to legal representation if they do not appear represented.
- 7.5.7 Inform the public about the right to state-sponsored legal aid, including through publications in police offices, prisons and courts buildings.

7.6. Recommendations Regarding the Right to the Presumption of Innocence

- 7.6.1 The judges of the Court of Appeal must unequivocally inform the defendant:
- of his or her right to be presumed innocent until a final judgment is rendered;

- of the fact that the burden of proof is on the prosecutors; and
- that the defendant has the right to remain silent without such silence being used against him or her.

7.6.2 The Ministry of Justice and the Ministry of Interior shall issue and disseminate clear guidelines highlighting that defendants held in pre-trial detention, or those whose trial has started but for whom a final judgement has not been issued, must be allowed to appear in Court wearing civilian clothes.

7.6.3 The judges of the Court of Appeal should allow those defendants who are brought to court wearing a convict uniform to use their civil uniform instead before the hearing.

7.6.4 Promote the greater use of alternatives to pre-trial detention, including judicial supervision,²¹⁶ in accordance with UN SDG 16.3.2.

7.7. Recommendations Regarding Evidentiary Rights

7.7.1 The judges of the Court of Appeal shall inform the defendants of their rights to present evidence in the same conditions as the evidence presented against them.

7.7.2 The judges of the Court of Appeal should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure witnesses are not influenced by other evidence and testimony presented during the trial.

7.7.3 The judges of the Court of Appeal must carefully assess whether the evidence presented to them establishes beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, he or she must be acquitted.

7.7.4 Develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,²¹⁷ and ensure that all judges are trained accordingly.

7.8. Recommendations Regarding the Right to a Reasoned Judgment

7.8.1 Ensure that written judgments are made publicly available, with redactions to be applied where necessary to protect the identity of the defendants, victims or witnesses or for any other reason.

7.8.2 Drawing from the practice of the ECCC,²¹⁸ establish a framework in which judges are obligated to inform and explain the legal and evidential reasons behind their verdict and ensure that reasoned written judgments are given to the defendant.

²¹⁶ 14 March 2018 UNSRSHRC End of Mission Statement, p. 4.

²¹⁷ The practice of the ECCC may prove useful guidance, particularly its internal rules as well as paragraphs 204 to 209 of the case 002/01 Appeal Judgement, see 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 Nov 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf

²¹⁸ See esp. 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 Nov 2016, CaseFile/Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf

7.9. Recommendations Regarding the Protection of Juveniles' Rights

- 7.9.1 Speed up and strengthen the implementation of the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 7.9.2 Follow the best practice of the ECCC and allow juvenile defendant to appear in court wearing their own clothing to court, at all stages of the criminal procedure.
- 7.9.3 Limit pre-trial detention of juveniles to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile's rights.
- 7.9.4 Ensure that judges and prosecutors undergo specific training concerning issues relating to juvenile justice.
- 7.9.5 Examine and make use of alternative sentencing options to custodial sentences for juveniles, and implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone and on the best interests of the minor.
- 7.9.6 The Court of Appeal should introduce a general rule that child justice hearings should be conducted behind closed doors, with limited exceptions provided by law, in order to respect the privacy of juvenile defendants.
- 7.9.7 In cases involving juvenile defendants that are public, steps should be taken to protect the privacy of the defendant, such as the use of privacy screens. The Court of Appeal should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly.
- 7.9.8 The MoJ and the MoSVY should implement a diversion scheme; through which a juvenile offender is supported and rehabilitated within the community as an alternative to formal prosecution. This scheme must be implemented for all first time offenders with the exception of the most serious felony offenses.
- 7.9.9 The Ministry of Justice shall review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on juvenile justice system, including, but not limited to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"),²¹⁹ the UNICEF guidance for legislative reform on juvenile justice,²²⁰ the UNICEF implementation handbook for the convention on the rights of the child²²¹ and the UNICEF law reform and implementation of the convention on the rights of the child report.²²²

²¹⁹ Available at <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

²²⁰ Available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf.

²²¹ Especially p. 107, http://www.unicef.org/publications/index_43110.html.

²²² Especially p. 87, http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf.

8. Bibliography

8.1. Cambodian Legislation

Code of Criminal Procedure of the Kingdom of Cambodia (2007),
http://sithi.org/temp.php?url=law_detail.php&id=190

Constitution of the Kingdom of Cambodia (1993, as amended),
<http://www.ccc.gov.kh/admin/uploads/Constitution%20of%20the%20Kingdom%20of%20Cambodia.pdf>

Criminal Code of the Kingdom of Cambodia (2009),
http://sogi.sithi.org/temp.php?url=media_view2.php&mid=125

Law on Juvenile Justice (2016), http://sithi.org/temp.php?title=Law-On-Juvenile-Justice&url=law_detail.php&lg=&id=283

Law on Prisons of the Kingdom of Cambodia (2011),
[http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Prison%20law%202011%20-%20ENG%20\(unofficial%20translation\).pdf](http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Prison%20law%202011%20-%20ENG%20(unofficial%20translation).pdf)

Proclamation 217 of the Administration of Prisoners (13 March 1998),
http://sithi.org/admin/upload/law/section12_003_1998.pdf

Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period (1992),
https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_11.pdf

8.2. Cambodian Policy Instruments

Cambodian Rehabilitation and Development Board, Council for the Development of Cambodia, *Position Paper, Government's Policy Performance*, http://www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm

Council for Legal and Judicial Reform, *Legal and Judicial Reform Strategy*, Adopted by the Royal Government of Cambodia at the Plenary Session on 20 June 2003, http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf

Council for Legal and Judicial Reform, *Plan of Action for Implementing the Legal and Judicial Reform Strategy*, Adopted by the Royal Government of Cambodia at the Plenary Session on 29 April 2005, http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf

Prime Minister Hun Sen, *Address on Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase II*, First Cabinet Meeting of the Fourth Legislature of the National Assembly, Office of the Council of Ministers, Phnom Penh, 26 September 2008

Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, 'Juvenile Justice Law Strategic and Operational Plan 2018-2020', December 2018,
https://www.unicef.org/cambodia/media/456/file/JJLSOP_Eng_0.PDF%20.pdf.

8.3. International Law

International Treaties and Agreements

United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989,
<https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

United Nations General Assembly, *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, 10 December 1984, <http://cambodia.ohchr.org/sites/default/files/Treaty/CAT-EN.pdf>

United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, <http://www.un.org/en/universal-declaration-human-rights/index.html>

African Union, *African Charter on Human and Peoples Rights*, 27 June 1981, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

Council of Europe, *European Convention on Human Rights*, 4 November 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf

European Union, *European Charter of Fundamental Rights of the European Union*, 7 December 2000, https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Organization of American States, *American Convention on Human Rights*, 22 November 1969, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

Other International Instruments

United Nations, *Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from August 26 to September 6, 1985, Endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

United Nations, *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7 September 1990, <http://hrlibrary.umn.edu/instreet/i3bprl.htm>

United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

United Nations General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*, Adopted by General Assembly resolution 45/112 on 14 December 1990, <http://www.un.org/documents/ga/res/45/a45r112.htm>

United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx>

United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, 29 November 1985, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BeijingRules.aspx>

United Nations Human Rights Committee, General Comment No. 13, *Administration of Justice*, 13 April 1984, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11

United Nations Human Rights Committee, General Comment No. 29, *States of Emergency*, 31 August 2001, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVRcm9YR0iix49nIFOsUPO4oTG7R/o7TSorhtwUUG%2By2PtsIYr5BldM8DN9shT8B8NpbsC%2B7bODxKR6zdESeXKjilnNU%2BgQ%3D%3D>

European Court of Human Rights, *Samoila and Cionca v. Romania*, 4 March 2008, [https://hudoc.echr.coe.int/eng#{"fulltext":\["SAMOILA%20AND%20CIONCA"\],"documentcollectionid2":\["GRANDCHAMBER"\],"chamber":\["CHAMBER"\],"itemid":\["001-85390"\]}](https://hudoc.echr.coe.int/eng#{)

European Court of Human Rights, *Sejdovic v. Italy*, 1 March 2006, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Sejdovic%20v.%20Italy%22%2C%22languageisocode%22:%5B%22ENG%22%22%2C%22documentcollectionid2%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%22%2C%22itemid%22:%5B%22001-72629%22%22%7D>

Human Rights Committee, Communication 1033/2001, *Singarasa v. Sri Lanka*, UN Doc CCPR/C/81/D/1033/200, 21 July 2004, <http://juris.ohchr.org/Search/Details/1125>

Human Rights Committee, Communication 253/1987, *Kelly v. Jamaica*, UN Doc CCPR/C/41/D/253/1987, 8 April 1991, <http://juris.ohchr.org/Search/Details/418>

Human Rights Committee, Communication 912/2000, *Deolall v. Guyana*, UN Doc CCPR/C/82/D/912/2000, 1 November 2004, <http://juris.ohchr.org/Search/Details/1149>

Human Rights Committee, Communication No. 016/1977, *Mbenge v. Zaire*, UN Doc CCPR/C/18/D/16/1977, 25 March 1983, <http://juris.ohchr.org/Search/Details/573>

Human Rights Committee, Communication No. 215/1986 *G. A. Van Meurs v. The Netherlands*, UN Doc CCPR/C/39/D/215/1986, 23 July 1990 <http://hrlibrary.umn.edu/undocs/session39/215-1986.html>

Human Rights Committee, Communication No. 263/1987: *M. Gonzalez del Río v. Peru*, UN Doc CCPR/C/46/D/263/1987, 28 October 1992, <http://hrlibrary.umn.edu/undocs/html/dec263.htm>

Human Rights Committee, Communication No. 320/1988, *V. Francis v. Jamaica*, UN Doc GAOR, A/48/40 (vol. II), 24 March 1993, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>

Human Rights Committee, Communication No. 387/1989, *Karttunen v. Finland*, UN Doc CCPR/C/46/D/387/1989, 23 October 1992, <http://juris.ohchr.org/Search/Details/402>

Human Rights Committee, Communication No. 701/1996, *Gómez v. Spain*, UN doc. GAOR, A/55/40 (vol. II), 20 July 2000, <http://www.un.org/documents/ga/docs/55/a5540vol2.pdf>

Human Rights Committee, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia*, UN Doc. CCPR/C/63/D/632/1995, 6 April 1998, <http://juris.ohchr.org/Search/Details/833>

Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications Nos 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263–1264/2004, 20 October 2008, <http://juris.ohchr.org/Search/Details/1457>

Human Rights Committee, *Mennen v. The Netherlands*, Communication No. 1797/2008, UN Doc CCPR/C/99/D/1797/2008, 27 July 2010, <http://hrlibrary.umn.edu/undocs/1797-2008.html>

Doctrine

Nowak M., *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2nd edn, N.P. Engel 2005)

Fair Trial Manuals

Amnesty International, *Amnesty International Fair Trial Manual*, London: Amnesty International Publications, AI Index POL 30/02/98, 1998, <https://www.amnesty.org/en/documents/POL30/002/1998/en/>

Oliveira, Bárbara and Besharaty-Movaed, Linda, *International Commission of Jurists Trial Observation Manual*, Geneva: International Commission of Jurists, 2002, <http://bit.ly/1fbEWQJ>

Organization for Security and Co-operation in Europe (“OSCE”)/ Office for Democratic Institutions and Human Rights (“ODIHR”), *Trial Monitoring: A Reference Manual for Practitioners*, Poland: OSCE/ODIHR, 2008, http://119.15.85.3:81/2Q2W5FFCC258B17A3ED8F3F4203F2A877E349E04EDDE_unknown_8373D6926552C7A31D8EA892EBD1EF7F54F11DF1_10/hrlibrary.umn.edu/research/trial_observation_manual.pdf

Office of the United Nations High Commission for Human Rights. *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York and Geneva: OHCHR, 2003. “Chapter 6 The Right to a Fair Trial: Part I – From Investigation to Trial” <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf> and “Chapter 7 The Right to a Fair Trial: Part II – From Trial to Final Judgment” <https://www.ohchr.org/Documents/Publications/training9chapter7en.pdf>

Pejic, Jelena and Lesnie, Vanessa, *What is a Fair Trial? A Basic Guide to Legal Standards and Practice*, New York: Lawyers Committee for Human Rights, 2000, http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf

Database

CCHR Trial Monitoring Database, available at <http://tmp.sithi.org/>

9. Appendices

Appendix I: Appeal Hearing Monitoring Checklist

A. General Trial Information

1. OVERVIEW				
1(a) Trial Date:	Start Time:		Room Number:	
1(b) Monitors:				
1(c) Party bringing the appeal (give reasons):	<input type="checkbox"/> Defense <input type="checkbox"/> Prosecution (Court of first instant or Appeal Court) <input type="checkbox"/> Civil Party Reason for appeal: <input type="checkbox"/> I/U Date of Appeal:			
1(d) Judge:	1 st 2 nd 3 rd			
1(e) Prosecutor:				
1(f) Clerk:				
1(g) Lawyer:				
1(h) Number of Accused	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
		Female:	Present:	Absent:
1(i) Number of Victims	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
		Female:	Present:	Absent:
1(j) Original verdict and sentence	Imprisonment: D1: D2: D3: D4: D5	Fine: D1: D2: D3: D4: D5	Compensation: D1: D2: D3: D4: D5	Date of Verdict <input type="checkbox"/> I/U
1(k) Which Court of First Instance is the party appealing from?				
1(l) Which prison was the accused detained?	<input type="checkbox"/> N/A <input type="checkbox"/> I/U			

TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public board outside the courtroom?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Reason:		

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

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

4. EXPLANATION OF RIGHTS

N/A

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

5. RIGHT TO CALL AND EXAMINE WITNESSES

5(a) Was there anything said by any party during	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, which party?		

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

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

6. PRESENTATION OF EVIDENCE:

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

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

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

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

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

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

9. DELIBERATION

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

10 ASSESSMENT OF EVIDENCE

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

11. VERDICT	
11(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, was the date that the verdict would be delivered announced during the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
11(b) Date of verdict:	_____ <input type="checkbox"/> N/A
11(c) How many judge were present when the verdict was delivered?	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> I/U
11(d) Was the verdict announced in public?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U If no, please comment:
11(e) Summary of judge's reasons for verdict :	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
11(f) Were the lawyers representing the parties presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U
11(e) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial? If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No

TOTAL TIME OF HEARING:

SPECIAL NOTE:

B. Individual Defendant Information

12. CRIMINAL RESPONSIBILITY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
12(a) Was the defendant a juvenile at the time the offense was committed? (Please complete annex 1 for each juvenile accused)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

13. LEGAL BASIS OF CHARGES

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
13(b) Charge against defendant Offense: Relevant law: Relevant article of the law:	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense
6(b) Elements of offence to be proven in order to secure a conviction:					

PRE-TRIAL RIGHTS

14. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
14(a) Date of alleged offence:	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A
14 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
14 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
If Yes, what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
What date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14 (e) Was there an application for bail?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
If Yes, Summary of defense application and any proposed					

conditions of judicial supervision;	
Summary of Prosecutor's comments:	
Summary of CP comments:	
Judges' decision and reasons:	

15. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
15(a) Was there anything to suggest the defendant was interrogated without a lawyer present? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
15(b) Was there anything to suggest that threats were made to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
15(c) Was there anything to suggest that violence or torture were used to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

16. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
16(a) Was there anything to suggest that the lawyer of the defendant was assigned on the day of the appeal? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

16(b) Was the issue of adequate time and facilities for preparation raised by the defense? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	---	---	---	---	---

TRIAL RIGHTS

17. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
17 (a) Was the defendant present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17 (b) Was the defendant represented by a lawyer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17(c) Did any of the lawyers represent more than one defendant?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, was there a conflict between the interests of two or more of the defendant represented by the same lawyer	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Details:					

18. PRESUMPTION OF INNOCENCE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
18(a) Did the defendant appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(b) Was the defendant handcuffed throughout the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(c) Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If yes, please provide details:					
18 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

19. PROHIBITION OF DOUBLE JEOPARDY

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

20. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION

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

21. VERDICT I/U

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
21(a) What was the court's ruling?	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
21(b) Did the judge refer to the article of the law under which the defendant had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

21(c) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
21 (d) If the defendant confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

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

JUVENILE DEFENDANT

23. AGE					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5

23(a) Age at the time of the offense	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
23(b) If under the age of 14 at the time of the offense did the judge immediately acquit the juvenile?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

24. PRE-TRIAL DETENTION

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
24 (b) Was there anything to suggest that the juvenile was not separated from adults? Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

25. TRIAL N/A Absent

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
25(a) Were any measures taken to protect the privacy of the juvenile during the hearing? Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
25 (b) Did the judge give the juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

26. SENTENCE N/A I/U

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
26(a) Did the judge cite Article 38 or 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39

of the Penal Code when sentencing the juvenile?	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A
26(b) Was there anything to suggest that the judge considered imposing a non-prison sentence? Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Appendix II: Trial Monitors Code of Conduct

Preparation and prerequisites

General Duties

Confidentiality

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

Prior to Implementation of the Trial Monitoring Project

Preliminary assessments

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

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

Notification

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

Prior to Each trial to be monitored

Preliminary Assessments

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

- Whether there are relevant reports on similar trials in Cambodia;

- Which binding international laws and treaties, if any, pertain to the case;
- What are the domestic laws, substantive and procedural, relevant to the case;
- The relevant Constitutional provisions.

Notification

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

Access

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

During the Trial

General

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

Identification

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

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.
- Wear appropriate clothing.
- Arrive promptly at court.

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

Impartiality and non-interference

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

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