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Cambodian Center for Human Rights

August 2013

Pre-Trial and Trial Procedures
A Handbook for Criminal Procedure in Cambodian
Courts



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Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This handbook – “Pre-Trial and Trial Procedures: A Handbook for Criminal Procedure in Cambodian Courts” – is intended to be a user-friendly guide that concisely lays out the key pre-trial and trial procedures and the basic appeal process in Cambodian courts for easy access and understanding by those without formal legal training. Accordingly, the handbook is primarily aimed at members of the public, law students, and new lawyers, although it may also be useful to experienced lawyers, members of the judiciary and NGOs wishing to have a basic guide to Cambodian criminal procedure.

This handbook was created under the auspices of CCHR’s Trial Monitoring Project, which monitors criminal trials in Cambodia to assess their adherence to standards of fairness as defined in international and Cambodian law.

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1 Introduction

The codification of criminal law and procedure is a relatively recent occurrence in the Kingdom of Cambodia's ("Cambodia") history. The 1993 Constitution of the Kingdom of Cambodia (the "Constitution") provides for the recognition of and respect for human rights, as guaranteed in all relevant international human rights instruments. The International Covenant on Civil and Political Rights guarantees in Article 14 that *"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."*

When the 1991 Paris Peace Accords concluded, the United Nations Transitional Authority ("UNTAC") drafted Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (the "UNTAC Penal Code"), which contained provisions on pre-trial and trial procedures. However, the UNTAC Penal Code was criticized by human rights organizations for failing to comply with international human rights standards. Efforts were subsequently made to draft a criminal code and a code of criminal procedure that would define acts that are criminalized under Cambodian law, who can be held legally responsible for those acts, and the applicable legal procedures, from pre-trial investigations to appeals. The Code of Criminal Procedure of the Kingdom of Cambodia (the "CCPC")¹ was adopted by the Cambodian National Assembly on 7 June 2007, and in 2010 the Criminal Code of the Kingdom of Cambodia (the "Penal Code")² was enacted. Together these documents define the parameters of Cambodian criminal law and procedure, enabling accused persons to have access to the law pertaining to their criminal cases.

This handbook is intended to be a user-friendly guide that concisely lays out the pre-trial and trial procedures in Cambodian courts for easy access and understanding by those without formal legal training. Accordingly, the handbook is primarily aimed at members of the public, law students, and new lawyers. However, the handbook may also be useful to experienced lawyers, members of the judiciary and human rights organizations wishing to have a basic guide to Cambodian criminal procedure.

The first section of this handbook defines the general principles through which a criminal case is initiated. **The second section** describes the different classifications of criminal offenses. **The third section** of the handbook examines the pre-trial process, from the preliminary criminal investigation, to the judicial investigation, the conclusion of the investigation and the appearance of the accused, and the issue of pre-trial detention. **The fourth section** describes the trial process, including the order of questioning of the accused and witnesses. Finally, **the fifth section** briefly describes the rules for filing an appeal against the trial court's judgment.

¹ Available in Khmer at http://sithi.org/temp.php?url=law_detail.php&lg=&id=134 or in English at http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf.

² Available in Khmer at http://www.sithi.org/temp.php?url=law_detail.php&lg=&id=154.

2 General Principles

The CCPC defines the purpose of criminal actions as follows:

*“Criminal actions are brought by Prosecutors for the general interests of a society. Prosecutors initiate criminal proceedings and request the application of the law by investigating and trial judges.”*³

A criminal case is always initiated by a prosecutor. Any victim of a crime can file a complaint, either with the police or with a municipal or provincial prosecutor, whose duties include conducting preliminary investigations.⁴ All public authorities and officers are under a duty to report any felony or misdemeanor that they are made aware of to either the judicial police or to a prosecutor (unless they are bound by professional confidentiality or the law provides an exception).⁵

The CCPC sets out time limitations for bringing a criminal action.⁶ The time limitation depends upon the gravity of the offense⁷ and is ‘interrupted’ when acts of prosecution or investigation are conducted.

One particularity of the Cambodian system – which is based on the *civil law* system, as opposed to the *common law* system – is that a civil action can be brought in conjunction with a criminal action.⁸ The victim of a criminal offense (or his/her legal representative or successor) can therefore seek compensation for the harm suffered before the criminal court⁹ (provided that he/she does so within the time limitations for criminal actions mentioned above).

2.1 Classification of Offenses

All criminal offenses are separated into one of three different categories, depending on the seriousness of the offense and the sentence that it carries. The type of offense will also determine the type of pre-trial procedure to be followed by the court in bringing a case to trial.

- **A felony** is an offense which carries a maximum penalty of imprisonment of between five years and life imprisonment.¹⁰
- **A misdemeanor** is an offense which carries a maximum penalty of imprisonment for between six days and five years.¹¹
- **A petty offense** is any offense where the penalty is a fine and/or imprisonment for a period less than or equal to six days.¹²

³ Art. 4 CCPC

⁴ Art. 40 CCPC

⁵ Art. 42 CCPC

⁶ Arts. 7 and 10 CCPC

⁷ 15 years for a felony; 5 years for a misdemeanor and one year for a petty offense. Crimes against humanity, genocide and war crimes have no statute of limitations. See Arts. 9-10 CCPC

⁸ Art. 2 and 22 CCPC. A civil action can also be brought in front of the civil court, in which case the civil action will be suspended pending the final decision of the criminal court.

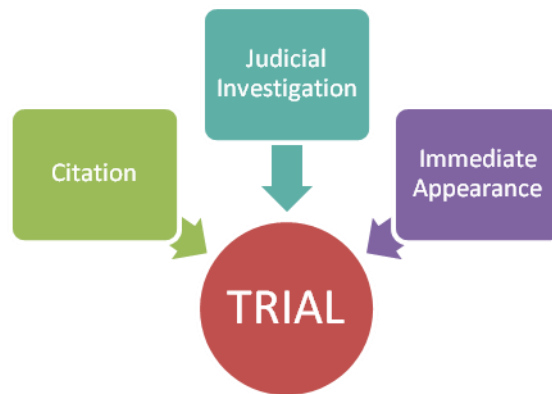
⁹ Arts. 13-15 CCPC

¹⁰ Art. 46 Criminal Code of the Kingdom of Cambodia (“Penal Code”)

¹¹ Art. 47 Penal Code

¹² Art. 48 Penal Code

There are three routes by which a criminal case can be brought to trial, depending on the classification of the offense and the nature of the evidence:¹³



Felony Cases

In the case of a felony, the prosecutor must open a judicial investigation.¹⁴ The exception to this rule is when the felony is classed as a ‘flagrant’ felony (see Section 3.5 below).

Misdemeanor Cases

In the case of a misdemeanor, the prosecutor has a number of options available and will decide which form of pre-trial procedure to follow depending on the facts of the case and the available evidence.¹⁵ As will be discussed in further detail below, in a misdemeanor case, the prosecutor may:

- Open a judicial investigation;
- Summons the accused (“citation”);¹⁶ or
- Order the accused to immediately appear before the Court of First Instance (“immediate appearance”).¹⁷

Petty Offenses

In the case of petty offenses, the prosecutor must issue a citation for the accused to appear before the court.¹⁸

¹³ Art. 43 CCPC

¹⁴ Art. 44 CCPC

¹⁵ Art. 45 CCPC

¹⁶ Art. 46 CCPC

¹⁷ Arts. 47-48 CCPC

¹⁸ Art. 49 CCPC

3 Pre-Trial Procedures

3.1 Preliminary Investigations and Police Powers

The preliminary inquiry is a pre-trial inquiry conducted by judicial police officers.¹⁹ As soon as judicial police officers have knowledge of acts that may constitute a felony or misdemeanor, they may conduct a preliminary inquiry at their discretion or at the request of a prosecutor. If the enquiry relates to a flagrant felony or misdemeanor, they must inform the Royal Prosecutor immediately.²⁰

If they are investigating a felony or misdemeanor, the judicial police may conduct searches and seize exhibits, but they must first obtain the written approval of the occupant of the premises. In the event that approval is denied, or the occupant is absent, the police must obtain authorization from the President of the relevant Court of First Instance, upon a request from the prosecutor, before the search is conducted.²¹ The prosecutor then personally conducts the search.²²

3.1.1 Order to appear

Judicial police officers have the power to summons and interrogate a person who is suspected of an offense or who may be able to provide relevant information in relation to the case.²³ A written record of the interrogation must be kept.²⁴ In cases of flagrant felonies and misdemeanors, the police may also order any person to appear who can provide them with the relevant facts.²⁵

3.1.2 Police custody

Judicial police officers have the power to remand a person into police custody for the purposes of interrogation if the person is a suspect or an individual who has refused to provide the police with information. In the latter case, the police must obtain written authorization from a prosecutor before the individual can be detained.²⁶

The maximum period of detention is **48 hours**. This period runs from the time that the person arrives at the police station. In the case of a felony, this period may be extended with the authorization of the Royal Prosecutor for a further **24 hours**, but only when there is evidence showing that the detained person is guilty and an extension of custody is necessary to properly conduct the inquiry.²⁷

¹⁹ Art. 111 CCPC

²⁰ Art. 89 CCPC

²¹ Art. 113 CCPC

²² Ibid.

²³ Art. 114 CCPC

²⁴ Art. 115 CCPC

²⁵ Art. 94 CCPC

²⁶ Art. 96 CCPC

²⁷ Ibid.

3.1.3 Juvenile detention periods in police custody

Offense Type	Age	Time Limit
Felony	14/15	36 hours
Misdemeanor	14/15	24 hours
Felony	16/17	48 hours
Misdemeanor	16/17	36 hours

These time limits cannot be extended and a minor under the age of 14 may not be detained.²⁸

3.1.4 Custody records

A written record must be kept when any person is placed into police custody. The record must include the following information:²⁹

- The name and position of the police officer who ordered the detention;
- The identity of the detained person;
- The reasons for the police custody;
- The starting date and time of the police custody; and
- The notification of the right to speak to a lawyer or other person after 24 hours.

The record must be signed (or fingerprinted) by the detainee.³⁰

3.1.5 Legal assistance and outside communication

When the detainee has been in police custody for a period of at least **24 hours**, he/she may request to speak to a lawyer or any other person (as long as that person has no connection with the alleged offense).³¹ The selected person must be contacted immediately and may enter the custody site and speak to the detained person for 30 minutes in private. After the discussion, the selected person may make a written note to be placed on the case file.³² In the case of juvenile detainees, a judicial police officer **must** contact the parents of the detainee, the legal representative, or any other person who is responsible for the detainee, as soon as he/she arrives at the custody site.³³

3.1.6 Medical assistance

Either the prosecutor or a police officer may ask a doctor to examine the detained person at any time, to assess whether the person is fit to be detained. If the doctor concludes that the detainee is

²⁸ Ibid

²⁹ Art. 97 CCPC

³⁰ Ibid

³¹ Art. 98 CCPC

³² Ibid

³³ Art. 100 CCPC

not fit to be detained, the judicial police officer must inform the prosecutor, who may then visit the custody site to verify the condition of the detainee.³⁴

3.1.7 End of police detention

The details of the detention period must be noted and held in the Registry of Police Custody.³⁵ A Final Report of Police Custody must then be made, which should include the following information:³⁶

- The full name and position of the judicial police officer who ordered the police custody;
- The identity of the arrested person;
- The reason for the police custody;
- The date and time of the commencement of the police custody;
- The procedures applied for notifying the Royal Prosecutor;
- The procedures applied for notification of the relevant parties in cases of detention of minors;
- The full name of the doctor who examined the detainee, if applicable;
- The identity of any lawyer or other nominated person who spoke to the detainee;
- The full name and position of the judicial authority who approved any time extensions;
- The duration of the interrogation and the duration of any breaks between interrogation periods;
- The decision of the judicial authority at the end of the police custody; and
- Any other relevant details regarding the conditions of the custodial period or any incidents that occurred.

The final report must then be placed on the case file.³⁷

At the conclusion of the period of police custody, the detainee must either be released by or handed over to the Royal Prosecutor for further proceedings.³⁸

3.1.8 Powers to ensure attendance at police stations/courts

There are several methods by which people can be summonsed to appear at a police station or court, either for questioning or to answer criminal charges that have been brought against them.

Order to Appear³⁹	Judicial police officers have the power to summons persons for interrogation during a preliminary inquiry if they are suspected of committing an offense or if they have relevant information about an offense. If the person fails to appear, a prosecutor may issue an Order to Appear, giving the police the power to convey
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³⁴ Art. 99 CCPC

³⁵ Art. 101 CCPC

³⁶ Art. 102 CCPC

³⁷ Ibid

³⁸ Art. 103 CCPC

³⁹ Art. 114 CCPC

	that person to a police station for interrogation.
Subpoena ⁴⁰	An investigating judge may issue a subpoena, ordering a person to appear before him/her. A subpoena can be issued to a charged person or any other person against whom there is evidence of guilt.
Order to Bring ⁴¹	An order issued by an investigating judge to the public forces ordering the arrest of a charged person to facilitate his/her conveyance to court. The order must indicate the charged offense and the substantive law criminalizing the offense.
Arrest Warrant ⁴²	Issued by an investigating judge against a charged person, or any other person against whom there is evidence of guilt. This warrant can only be issued in cases of felonies or misdemeanors and where the person has fled, or his/her whereabouts are unknown, or he/she is staying outside the territory of the Kingdom of Cambodia. It allows the public security forces to search for, arrest and bring the charged person to a prison or detention center. The warrant must indicate the charged offense and the substantive law criminalizing the offense.

3.2 Judicial Investigation

The judicial investigation is a court-based investigation, presided over by an investigating judge. It is a process based on the initial submissions provided to the investigating judge and can be opened against identified or unidentified individuals. It is the prosecutor's responsibility to prepare the initial submission, which must include the following information:⁴³

- A summary of the facts;
- A legal qualification of the facts;
- The relevant provisions of the law and sanctions for the offense; and
- The name(s) of the suspect(s), if known.

⁴⁰ Art. 186 CCPC

⁴¹ Arts. 190-191 CCPC

⁴² Arts. 196 and 198 CCPC

⁴³ Art. 44 CCPC

The initial submission must be signed and dated. If any of the formalities are not adhered to, then the initial submission will be void.⁴⁴

The procedure for a judicial investigation is as follows:⁴⁵



The investigating judge presides over the investigation of the case. The investigating judge may not participate in the trial of a criminal offense that he has knowledge of in his capacity as investigating judge, otherwise the judgement shall be declared void.⁴⁶ An investigating judge has the power to place any person specified in the introductory submission under judicial investigation. Other people may also be placed under investigation, even if they are not specified in the introductory submission, if there is 'precise and coherent' evidence against them.⁴⁷ An investigating judge has an obligation to gather both inculpatory and exculpatory evidence pertaining to the case.⁴⁸ The investigating judge must carry out all investigations that are deemed to be 'useful to ascertaining the truth', which can include site visits by the investigating judge himself/herself, as well as making any necessary requests to other judges or judicial police officers to carry out specific investigative activities.⁴⁹

The prosecutor can make a request to the judge at any time during the investigation to conduct any investigative act that he believes will be useful. The judge has the discretion to refuse any request, but he/she must give written reasons for doing so.⁵⁰

The charged person and any civil party to the proceedings may also make requests to the investigating judge at any point during the investigation.

⁴⁴ Ibid

⁴⁵ Arts. 124-71 CCPC

⁴⁶ Art. 54 CCPC

⁴⁷ Art. 126 CCPC

⁴⁸ Art. 127 CCPC

⁴⁹ Arts. 127, 130 and 132 CCPC

⁵⁰ Art. 132 CCPC

The charged person may ask the investigating judge to:

- Interrogate him/her;
- Question a civil party or witness;
- Visit a particular site; and/or
- Conduct a confrontation (an opportunity for the accused to directly debate and discuss the allegation in court with either the witness or a civil party, ask questions and defend any allegations made against him/her).⁵¹

A civil party may ask the investigating judge to:

- Question him/her;
- Question witnesses;
- Interrogate the charged person;
- Conduct a confrontation; and/or
- Visit a particular site.⁵²

Any such request from a civil party must be submitted in writing, with a statement of reasons. The investigating judge has the discretion to refuse a request from a charged person or a civil party, but must give reasons for his/her refusal.⁵³

3.2.1 Interrogation of charged person

When a charged person initially appears, the investigating judge must take the following actions:

- Check the identity of the charged person;
- Inform him/her of the charge and explain the legal elements of the alleged offense;
- Inform him/her of his/her right to remain silent;
- If the charged person does not wish to exercise his/her right to silence, take a statement from him/her; and
- Inform the charged person of his/her right to choose a lawyer or have one appointed (a minor must always have a lawyer).⁵⁴

A charged person should only be interrogated in the presence of his lawyer, unless 'exceptional circumstances' exist, or if he/she waives his/her right to be represented. If the interrogation is conducted without a lawyer present for the accused, a note to this effect must be made in the written record of the interrogation.⁵⁵ The interrogation is conducted by the judge, although the prosecutor and other lawyers may also ask questions with the permission of the judge. Confrontations can also be conducted during the interrogation.⁵⁶

⁵¹ Art. 133 CCPC

⁵² Art. 134 CCPC

⁵³ Arts. 133-134 CCPC

⁵⁴ Art. 143 CCPC

⁵⁵ Art. 145 CCPC

⁵⁶ Arts. 146-147 CCPC

3.2.2 Interview of civil parties

A civil party may be assisted by a lawyer. If he/she chooses to retain a lawyer, he/she must only be interviewed in the lawyer's presence unless 'exceptional circumstances' exist (such as a risk of losing evidence if the interview is delayed).⁵⁷ The investigating judge conducts the interview, but the prosecutor and other lawyers may, with the judge's permission, also ask questions. Confrontations can also be conducted during the interview.⁵⁸

3.2.3 Interview of witnesses

The investigating judge may question 'any person whose response is deemed useful to the revelation of the truth', without the presence of the charged person and the civil parties.⁵⁹ The judge can also make arrangements for a confrontation between the charged person, civil parties and witnesses. Any person summonsed by the investigating judge can be compelled to appear before the investigating judge. When a witness fails to appear, the judge can issue an 'order to appear', which allows the public police force to apprehend the witness and convey him or her to court.⁶⁰ Judicial police officers may also summon and question witnesses, at the request of the investigating judge.⁶¹

3.2.4 Exhibits and expert reports

An investigating judge can conduct a search in the presence of the occupant(s) of the place or, if the occupant(s) are absent, in the presence of two witnesses chosen by the investigating judge.⁶² The investigating judge cannot conduct searches between the hours of 6:00 P.M. and 6:00 A.M, unless he/she is doing so in a public place, or in a place where drugs are produced, stored, circulated, distributed or consumed.⁶³

The investigating judge may seize any exhibits, and must seal them with an official seal and keep a written record of all searches/seizures carried out.⁶⁴ If any technical issues arise during the course of the judicial investigation, the judge can request an expert report. Requests for expert reports can also be made to the judge by the prosecutor, the charged person or a civil party.⁶⁵

3.2.5 Conclusion of the investigation

When the investigating judge considers that the investigation is concluded, he/she must notify the prosecutor, the charged person, the civil parties and the lawyers. Within two days, he must forward the case file to the prosecutor for examination.⁶⁶ If the prosecutor is satisfied that no further investigations are necessary, he/she must return the case file to the investigating judge with his/her final submission; this must be done within 15 days if the charged person is in custody, or within one

⁵⁷ Art. 150 CCPC

⁵⁸ Arts.151-152 CCPC

⁵⁹ Art. 153 CCPC

⁶⁰ Ibid

⁶¹ Art. 179 CCPC

⁶² Art. 159 CCPC

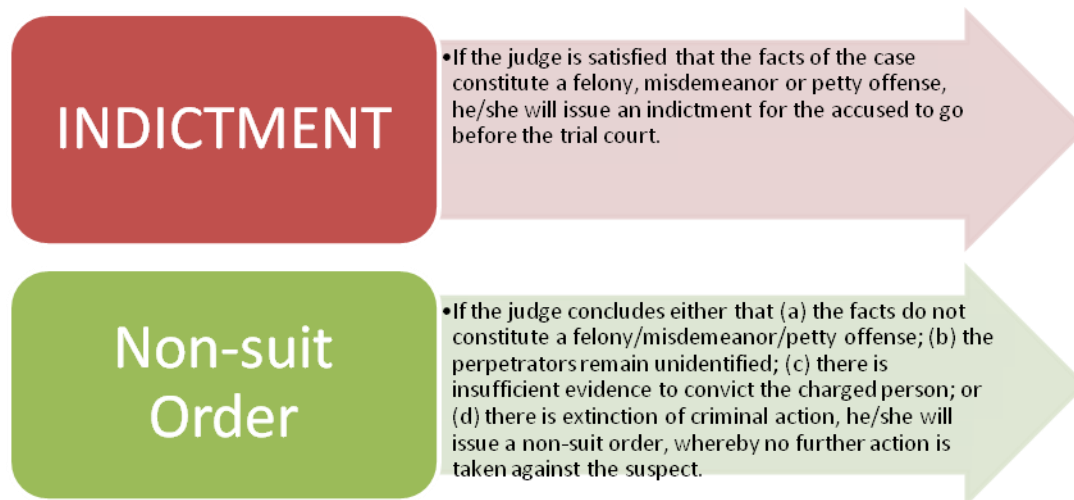
⁶³ Ibid

⁶⁴ Arts. 159-160 CCPC

⁶⁵ Art. 162 CCPC

⁶⁶ Art. 246 CCPC

month if not.⁶⁷ The prosecutor may request the investigating judge to issue one of two types of closing order.⁶⁸



The investigating judge does not have to follow the recommendations of the prosecutor set out in the final submission. The decision on which of the two orders should be issued is a matter for the judge alone, based upon the facts of the case and the evidence presented. A closing order must always be supported by a statement of reasons.⁶⁹

3.3 Citation

A citation is a written summons ordering the accused to attend a Court of First Instance. In cases involving petty offenses, a citation **must** be issued. In cases involving misdemeanors, a citation **may** be issued if the judge chooses not to open a judicial investigation into the allegation.

A citation must include the following details:

- The identity of the accused;
- A summary of the facts of the case;
- A legal qualification of the facts of the case;
- The relevant provisions of the criminal law and the sanction(s) for the offense;
- The location of the court and the time and date of the trial; and
- Confirmation of the right of the accused to be represented by a lawyer.⁷⁰

The trial of the accused will sometimes take place on the date specified in the citation, but in some circumstances the court will grant an application to adjourn the trial.

3.4 Immediate Appearance

Prosecutors may order the accused to appear before the Court of First Instance immediately, if **all** of the following requirements are satisfied:

⁶⁷ Ibid

⁶⁸ Art. 247 CCPC (amended June 2013)

⁶⁹ Ibid

⁷⁰ Art. 46 CCPC

- The offense is a ‘flagrant’ felony or misdemeanor (see Section 3.5 below);
- The offense carries a sentence of imprisonment for not less than one year and not greater than five years;
- The accused is 18 or over; and
- There are ‘substantial’ facts to be tried.⁷¹

When this procedure is implemented, the accused person is taken straight to court and the trial is ordinarily conducted the same day, although the accused is entitled to be represented by a lawyer and to be given time to prepare his/her defense. If the accused requests additional time to prepare his/her defense, or the court finds that the case may not be tried immediately, then the trial shall be adjourned to a later date.⁷² The judgement on the merits of the case must be announced within two weeks of the first appearance by the court; if it becomes clear that the facts of the case necessitate further investigation, then a judicial investigation should be opened.⁷³

3.5 *Flagrante Delicto* Cases

If the alleged offense is a ‘flagrant’ felony or misdemeanor, the prosecutor may order the accused to appear before the Court of First Instance by way of **immediate appearance**.⁷⁴ In cases of flagrant offenses, there are some differences to the way in which the preliminary investigations and pre-trial procedures are ordinarily conducted.

Article 86 of the CCPC sets out the definition of a flagrant felony or misdemeanor as follows:

*“An offense is flagrant if the accused is apprehended either **during the commission of the crime or immediately after the commission of the crime**. The offense is also a flagrant offense if, shortly after a misdemeanor or felony has been committed, **a suspect is in ‘hot pursuit’ by the public or a person is found to have an object, scar, mark or any other evidence from which it can be concluded that he committed or participated in the commission of an offense.**”⁷⁵*

Any person has the power to arrest the suspect and surrender him/her to the nearest judicial police officer, who must in turn inform the Royal Prosecutor.⁷⁶ The judicial police will then conduct a preliminary investigation to gather any relevant facts and information before the accused is sent to court. In contrast to the rules of criminal procedure regarding felonies, misdemeanors and petty offenses (which grant the judicial police discretion when deciding whether to conduct a preliminary inquiry),⁷⁷ in cases of flagrant felonies or misdemeanors the judicial police is required to conduct investigations. As part of its investigation, the judicial police visits the crime site, secures the evidence, and has the authority to order any person at the crime site not to leave until police operations are completed.⁷⁸ The judicial police may also conduct searches at any time of the day.⁷⁹

⁷¹ Art. 47 CCPC

⁷² Art. 48 CCPC

⁷³ Ibid.

⁷⁴ Art. 47 CCPC

⁷⁵ Art. 86 CCPC

⁷⁶ Art. 87 CCPC

⁷⁷ Art. 111 CCPC

⁷⁸ Art. 89 CCPC

When an accused is sent to court, the trial will ordinarily be heard immediately, but may be adjourned and a trial date in the future fixed if further investigations are deemed necessary.⁸⁰

3.6 Pre-Trial Detention

In principle, charged persons should not be held in detention.⁸¹ However, the investigating judge has the power to remand a charged person into custody during the pre-trial proceedings, provided the case is a felony or misdemeanor involving a punishment of one year or more. If the charged person is arrested, and is subject to an Order to Bring, then any period of imprisonment from the date of arrest will be included in the duration of provisional detention.⁸² Article 205 of the CCPC sets out the limited circumstances in which provisional detention can be used:

- Where it is necessary to stop the offense or to prevent the offense from happening again;
- Where it is necessary to prevent the harassment of witnesses or victims, or prevent any collusion between the charged person and accomplices;
- Where it is necessary to preserve evidence or exhibits;
- Where it is necessary to guarantee the presence of the charged person in court;
- Where it is necessary to protect the charged person’s security; or
- Where it is necessary to preserve public order.

The investigating judge who orders provisional detention must issue an order containing his/her reasons for doing so, based on the circumstances listed above.⁸³ The detention order shall instruct the chief of the prison or detention center to receive and detain the charged person and shall include details of the charged person’s identity, the alleged offense, and the investigating judge’s name and position.⁸⁴ The judge may, at any time, order the accused’s release and may do so on the basis of a request from the prosecutor or the accused.⁸⁵ Extensions to provisional detention may be issued by the investigating judge through an order with a statement of reasons for the extension.⁸⁶

3.6.1 Provisional detention periods

The maximum periods of provisional detention are determined by the accused’s age and whether the case involves a felony or misdemeanor offense.⁸⁷

Offense Type	Age	Time Limit	Possible extension
Felony	18 or older	6 months	6 months+6 months
Misdemeanor	18 or older	4 months or ½	2 months

⁷⁹ Art. 91 CCPC. Cf. Art. 113 CCPC, which limits searches in felony, misdemeanour or petty offense cases to between the hours of 6:00am to 6:00pm.

⁸⁰ Arts. 47-48 CCPC

⁸¹ Art. 203 CCPC

⁸² Art. 194 CCPC

⁸³ Art. 206 CCPC

⁸⁴ Arts. 219-222 CCPC

⁸⁵ Art. 215-217 CCPC

⁸⁶ Art. 211 CCPC

⁸⁷ Arts. 208-209 and 213-214 CCPC

		minimum sentence	
Felony	16-18 years old	6 months	
Misdemeanor	16-18 years old	4 months or ½ minimum sentence	
Felony	14-16 years old	4 months	
Misdemeanor	14-16 years old	2 months or ½ minimum sentence	

Where the charged person is over 18 years old, provisional detention for a felony may be extended twice, for a further six months, whereas detention for a misdemeanor may only be extended once by a further two months.⁸⁸ The duration of detention for a misdemeanor committed by any person under 18 years old should not exceed half of the minimum period of sentence set by law.⁸⁹

Minors under the age of 14 cannot be the subject of provisional detention, but may be sent to guardians or a Provisional Education and Care Center.⁹⁰

3.6.2 Request for Release from Provisional Detention

The charged person can be released by initiative of the investigating judge⁹¹ or by request of the prosecutor⁹² or by the accused.⁹³ The investigating judge shall respond to the request within five days after receiving the request. If the request is denied, both the prosecutor and the charged person may ask the investigation chamber to decide instead.⁹⁴ The investigating judge shall inform the prosecutor and the charged person without delay of the order rejecting release. If the investigating judge agrees with the request, he/she shall immediately inform the prosecutor and the charged person may be released if the prosecutor expressly consents to the charged person's immediate release. Otherwise, the charge person shall be kept in prison until the time for filing an appeal by the prosecutor has expired, unless the prosecutor expressly consents to the charged person's immediate release.⁹⁵ In the event that the prosecutor files a complaint against the investigating judge's order of immediate release, the charged person shall be kept in prison until the Investigation Chamber decides on the appeal.⁹⁶

Matters of detention of the accused can also be later decided upon after indictment and at any time during the trial hearing⁹⁷ (for matters regarding the trial phase, please refer to Section 4.1 onwards).

⁸⁸ Arts. 208-209 CCPC

⁸⁹ Art. 214 CCPC

⁹⁰ Art. 212 CCPC

⁹¹ Art. 215 CCPC

⁹² Art. 216 CCPC

⁹³ Art. 217 CCPC

⁹⁴ Arts. 216-217 CCPC

⁹⁵ Art. 276 CCPC

⁹⁶ Ibid.

⁹⁷ Arts. 306-307 CCPC

3.6.3 Completion of Judicial Investigation

When the judge deems the investigation to be complete, he/she will issue a closing order in the form of an indictment or non-suit order.⁹⁸ Once a closing order is issued, provisional detention is terminated unless the judge issues a separate decision to keep the charged person in provisional detention. In this instance, the accused must appear before the trial court within four months of this decision, or he/she shall be released automatically.⁹⁹

3.6.4 Judicial Supervision

If the judge has concerns regarding the conduct of the charged person and fears that there may be interference with the investigation, he/she may impose a Judicial Supervision Order as an alternative to provisional detention. Judicial supervision can only be imposed in cases where the accused is charged with an offense that is punishable by a term of imprisonment and it can be imposed on both adults and juveniles over 14 years old.¹⁰⁰

Article 223 of the CCPC states that a person placed under judicial supervision can be subjected to one or more of the following obligations:

1. Not to go outside the territorial boundaries determined by the investigating judge;
2. Not to change residence without the authorization of the investigating judge;
3. Not to go to certain places determined by the investigating judge;
4. To present himself/herself personally on fixed dates at the police office or military office specified by the investigating judge;
5. To respond to a summons from any person appointed by the investigating judge;
6. To provide all identity documents as requested to the clerk's office at the court;
7. Not to drive motor vehicles;
8. Not to associate with certain people identified by the investigating judge;
9. To deposit a bail surety determined by the investigating judge in accordance with the financial means of the accused;
10. Not to be in possession of any weapon and to forfeit all weapons in his/her possession to the clerk of the court;
11. To undergo a medical examination and/or treatment; and
12. To refrain from engaging in certain professional activities (although a judge may not prohibit parliamentary activities or any kind of union activities).

If the charged person disobeys any of the obligations of judicial supervision, the judge can decide to provisionally detain the charged person. The judge may order such detention regardless of the prescribed term of imprisonment for the offense or whether the accused has already been detained for the maximum periods of detention.¹⁰¹

⁹⁸ Arts. 246-247 CCPC

⁹⁹ Art. 249 CCPC

¹⁰⁰ Art. 224 CCPC

¹⁰¹ Art. 230 CCPC

4 The Trial

4.1 General Conduct of the Trial

The Court of First Instance conducts trials pursuant to the methods of seizure stipulated in Article 291 of the CCP. The conduct of trial hearings is set out in Articles 316-72 of the CCPC.

The accused has the right to a public hearing of his/her case. Only in exceptional circumstances can a trial be held in complete or partial closed session, i.e. if the court considers that a public hearing would 'cause a significant danger to public order or morality'.¹⁰²

Article 333 of the CCPC provides for trials *in absentia*, which means that the court will proceed with the trial even in the absence of the accused.

For felony cases, and cases where the felony charges have related misdemeanors or petty offenses, there must be a bench of three judges. In misdemeanor or petty offense cases, a single judge shall preside over the trial. The trial judge(s) cannot be the same judge(s) that conducted any judicial investigation in the case.

4.2 Testimony and Evidence

After informing the accused of the charges against him/her, **the presiding judge can proceed to question the accused**, asking him/her any question believed to be conducive to ascertaining the truth (the questions shall be both inculpatory and exculpatory).¹⁰³

The **prosecutor**, the **lawyers** and **any other parties** – such as the civil party or civil defendant – can then question the accused as well. All their questions shall be asked with the authorization of the presiding judge.¹⁰⁴

The presiding judge then hears statements from civil parties, civil defendants, victims, witnesses and experts, in whatever order he sees fit. Judicial police officers and agents who have been involved in the investigation may also be questioned as witnesses. The prosecutor, lawyers and all other parties may be allowed to ask questions to each party giving a statement.¹⁰⁵

Article 315 of the CCPC obliges witnesses to appear before the court once they are summonsed.

Exhibits may also be presented and used as evidence.¹⁰⁶

4.3 Closing statements

At the conclusion of the hearing, the parties have the opportunity to make closing statements. Statements are made in the following order:¹⁰⁷

¹⁰² Art. 316 CCPC

¹⁰³ Art. 325 CCPC

¹⁰⁴ Ibid.

¹⁰⁵ Art. 326 CCPC

¹⁰⁶ Art. 332 CCPC

¹⁰⁷ Art. 335 CCPC

1. The civil party, civil defendant and the accused;
2. The lawyer for the civil party;
3. The prosecutor;
4. The lawyer for the civil defendant;
5. The lawyer for the accused.

While the civil party and the prosecutor can then make rebuttal statements, the accused and his lawyer must always be the last to speak.¹⁰⁸

4.4 Deliberation and Judgement

The judge(s) then retire to deliberate. No further arguments may be raised after this point.¹⁰⁹ The verdict may be announced the same day, or the court may adjourn to announce the verdict at a later date.¹¹⁰ In any case, the verdict must be announced publically.¹¹¹

The judgment is divided into two parts:¹¹²

1. The **holding**, where the court examines each of the arguments of facts and law presented at the trial; and
2. The **ruling**, where the court notes the offense committed, the applicable law and the sentence decided upon accordingly – the sentence can include the imposition of civil remedies if appropriate.¹¹³

If the accused is acquitted, no further action is taken. If the court is satisfied that the accused's guilt has been established beyond reasonable doubt, then the court declares a conviction and proceeds to sentence him/her.

If the accused is present at the trial, the judgement is called a **non-default judgement**.¹¹⁴ If the accused is absent, it is a **default judgement**.¹¹⁵

¹⁰⁸ Art. 335 CCPC

¹⁰⁹ Art. 337 CCPC

¹¹⁰ Art. 347 CCPC

¹¹¹ Arts. 317 and 359 CCPC

¹¹² Art. 357 CCPC

¹¹³ Art. 355 CCPC

¹¹⁴ Art. 360 CCPC

¹¹⁵ Art. 362 CCPC

5 The Appeal Procedure

A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance and the General prosecutor attached to the Court of Appeal, the convicted person, the civil party or the civil defendant (both regarding the civil matter of the case).¹¹⁶ Civil parties, or civil defendants, can only submit appeals based on civil interests and cannot bring forward a different request to the Court of Appeal than was brought forward in the Court of First Instance.¹¹⁷

When the decision is appealed by the convicted person, the sentence can only be modified in his/her favor. Thus the Court of Appeal can only either acquit the defendant, reduce the penalty, or requalify the offense, but cannot aggravate the sentence or add any incidental sentence.¹¹⁸ When the appeal is filed by the Royal Prosecutor and General Prosecutor, on the other hand, the Court of Appeal can eventually dismiss an acquittal judgment and add an incidental sentence.¹¹⁹

An appeal against a default judgement ('**opposition motion**') must be submitted in writing within 15 days of notification of the default judgement, or within 15 days of the convicted person receiving knowledge of the judgement, if it was not delivered to him/her by hand, in accordance with the provisions stipulated in Articles 482-490 of the CCPC.¹²⁰ An appeal against a non-default judgement must be submitted within one month of the date that the judgement was announced.¹²¹

In case the Prosecutor has appealed, the accused in detention who appeared before the Court of First Instance shall remain in prison until the Court of Appeal has decided on the appeal.¹²² This applies even though the accused was acquitted at first instance.

When an appeal is filed, it is forwarded to the Court of Appeal and the President of the Criminal Chamber determines a date for the appeal hearing.¹²³ The general steps for appealing a judgement are as follows:¹²⁴

¹¹⁶ Art. 375 CCPC

¹¹⁷ Art. 402 CCPC

¹¹⁸ Art. 399 CCPC

¹¹⁹ Art. 400 CCPC

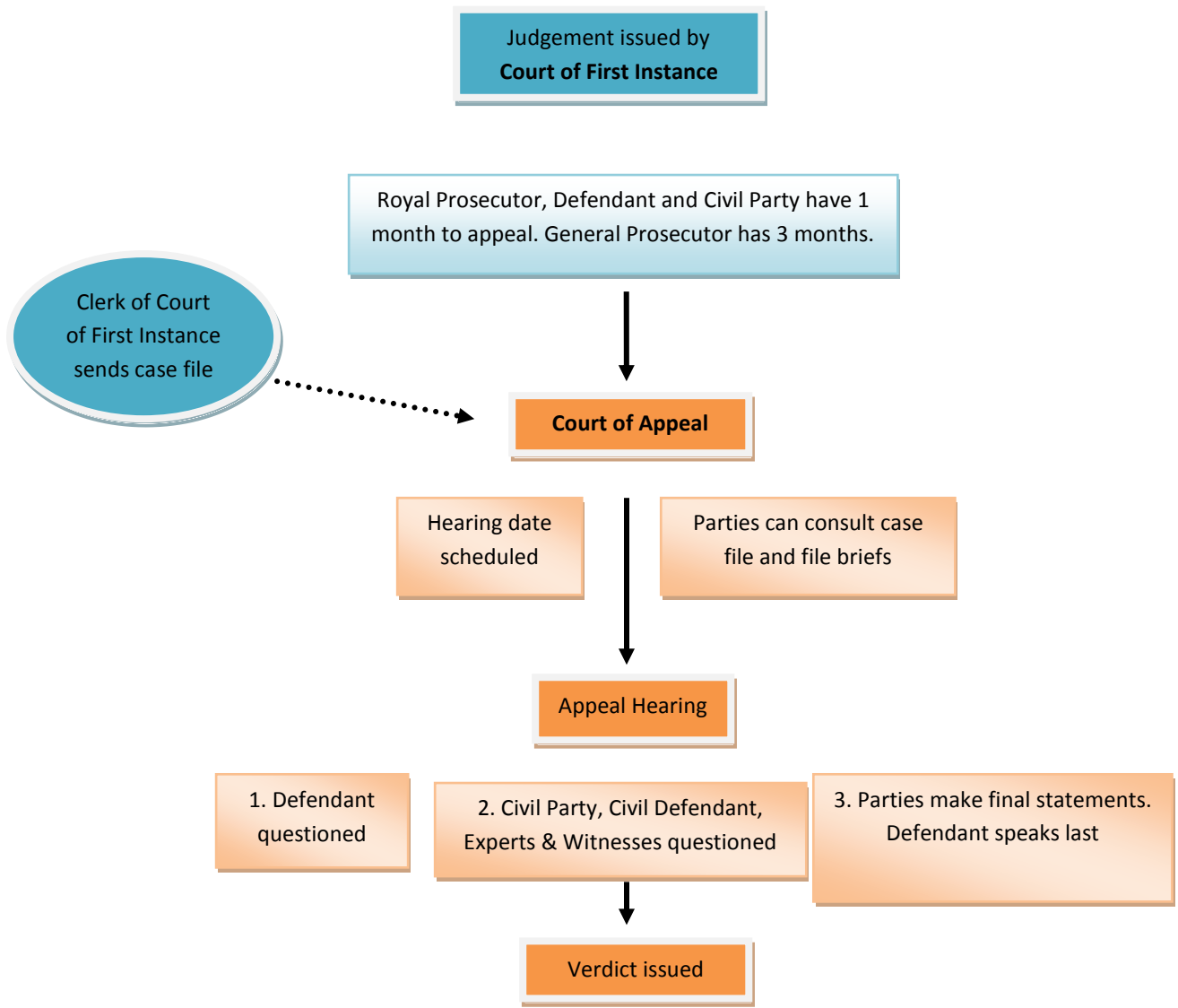
¹²⁰ Art. 368 CCPC

¹²¹ Art. 382 CCPC

¹²² Art. 398 CCPC

¹²³ Arts. 386 and 387 CCPC

¹²⁴ See Arts. 373-416 CCPC for the appeal process relating to judgments, detention orders, and opposition motions against default judgments.



Appeal judgments by the Criminal Chamber of the Court Appeal, as well as decisions made by the Investigation Chamber, may be reviewed through a **request for cassation** filed to the Criminal Chamber of the Supreme Court, either by the General Prosecutor attached to the Supreme Court, the General Prosecutor attached to the Court of Appeal, an accused or convicted person, a person wanted for extradition, a civil party or a civil defendant.¹²⁵ This request needs to be made within one month after the appeal judgment is made by the Criminal Chamber, within fifteen days after the decision is issued by the Investigation Chamber, and only five days in matters of extradition.¹²⁶ The Supreme Court may grant a request for cassation, for example, for grounds of abuse of power, illegal composition of the trial panel, manipulation of facts or failure to comply with procedure.¹²⁷

The Supreme Court may eventually reject the request for cassation in whole or in part, in which case the appellant cannot bring another request for cassation against the same judgment. The Supreme Court can also decide to reverse the judgment of the Court of Appeal in whole or in part, in which case the case shall be returned to the Court of Appeal.¹²⁸

¹²⁵ Arts. 417-418 CCPC

¹²⁶ Art. 420 CCPC

¹²⁷ Art. 419 CCPC

¹²⁸ Arts. 439 and 441 CCPC

Conclusion

To promote and ensure fair trials by competent, independent and impartial courts, it is vital that the Cambodian public and other interested parties have access to and knowledge of the requirements of criminal procedure as contained in the CCPC. Without knowledge of what the applicable pre-trial and trial procedures are pursuant to Cambodian law, the practices of law enforcement agencies, prosecutors and the courts cannot be adequately scrutinized for compliance with both Cambodian law and international human rights standards.

This handbook is not intended to be a comprehensive treatise on pre-trial and trial procedures in Cambodian criminal courts. Rather, it is meant to provide the information necessary to allow individuals without formal legal training to understand how a criminal case should proceed through the courts. Such a handbook would, therefore, be most useful to someone who is facing an investigation or criminal charges, law students, and new lawyers. However, the handbook would also be useful to experienced lawyers, members of the judiciary, human rights organizations, and other entities wishing to gain insight into the Cambodian legal system.