



មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា
Cambodian Center for Human Rights

FAIR TRIAL RIGHTS NEWSLETTER EXPLANATION OF RIGHTS

www.cchrcambodia.org

Issue 3: November 2017

The Cambodian Center for Human Rights (CCHR) has been conducting trial monitoring since 2009, to observe criminal trials in Cambodian courts and to assess their adherence to international and Cambodian fair trial standards. Since March 2013, CCHR's Fair Trial Rights Project has been monitoring hearings in the Phnom Penh Appeal Court. This is the third in a series of quarterly newsletters that will analyse the findings of CCHR's monitoring. Previous issues are available online ([Issue 1](#) and [Issue 2](#)). The present newsletter focuses on the obligation for the Judges to inform the accused of the charges against him or her, and their duty to explain their right to legal representation or self-defense as well as their right to be silent in order to avoid self-incrimination.

Relevant Legal Framework

Those accused of criminal offenses must be informed of the nature of the acts for which they have been charged, at the earliest opportunity. Judges have the obligation to provide an adequate explanation and to make sure that the accused understands the nature and cause of the charge against him or her. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive information to a lawyer, in cases where the accused person is legally represented. In addition, judges must also inform the accused of their right to seek legal representation, or to self-defense. Finally, the judges shall further ensure that the accused is aware of his or her right to remain silent, and not to confess guilt. Such notification of rights must be performed by judges during trials, at the earliest opportunity.

The right for everyone to have a defense is enshrined in Article 38 of the Constitution of the Kingdom of Cambodia (the Constitution), while Article 128-New of the Constitution, states that "the judicial power is the guarantor of impartiality and the protector of the citizens' rights and liberties." The judges shall fulfill

Article 325: Code of Criminal Procedure of the Kingdom of Cambodia (CCPC)
"The presiding judge shall inform the accused of the charges he is accused of."

their duties in strict respect of the law, in all honesty and conscientiousness, in accordance with Article 129-New of the Constitution. Articles 300, 301 of the CCPC further provide that an

accused has the right to be represented by a lawyer of his or her own choosing and Article 396 of CCPC also states the extension on procedural rules applicable to the Court of First Instance to the Court of Appeal. It means that the rules that apply to hearings of the Court of First Instance, including the explanation of rights to the defendants, shall also apply to the Court of Appeal.

Further, Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a party and which is incorporated into domestic law by Article 31 of the Constitution, states that "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." Its paragraph (3) (d) further provides that everyone is entitled to be tried in one's presence, and to defend himself or herself in person, or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right. Finally, paragraph (3) (g) of the same article protects individuals against self-incrimination, that is, against the use of force or threats to obtain a confession of guilt by someone. Pursuant to Article 2 of the ICCPR, Cambodia must respect and ensure respect for the fair trial rights contained in Article 14, and take all necessary steps to adopt law or other measures necessary to give effects to those rights.

The implementation of the explanation of rights at trial stages is essential in order to ensure that the accused has an opportunity to present the best possible defense to any charges against him or her.

Findings from CCHR's Trial Monitoring

CCHR monitors not only whether judges inform the accused of his or her entitlement to the individual



rights, but also whether full explanations of these rights are given. During the period of monitoring at Phnom Penh Appeal Court, namely between 1 November 2016 to 8 August 2017, CCHR monitored 316 cases. All cases concerned the explanation of rights *i.e.* the right to be informed of and to understand the nature of the charges, the right to legal representation or to self-defense, and the right to remain silent by judges during the hearings. During the monitoring period, the judges informed and explained the nature of the charges in the vast majority of the cases (276). In 38 cases however, only parts of the charges were explained to the Defendant. In two cases, the judges did not inform the Defendant about the charges altogether. The judges informed to the accused about his or her right to legal representation or defend himself/herself for 12 cases (3.80%) but explained the right only in one case (0.30%). In 33 cases (10.40%) the judges neither informed nor explained to the accused about his/her right to legal representation and self-defense. In 207 cases (65.50%) a lawyer represented the accused, and therefore there was no need for the Judges to inform the Accused about his right to have a lawyer. In 63 cases (20%), the accused was not present at trial. Insofar as the right to remain silent is concerned, only in 25 cases (7.90%) did the judges both inform and explain this right to the accused. In 17 cases (5.30%), the accused were only informed of this right, and in 211 cases, or 66.80 %, the judges failed to even mention this right. Finally, in 63 cases (20%), the accused was not present at the hearing.

Explanation of Rights in Numbers

Did the judge state all relevant charges against all defendants?				
Period	Total	Items	Numbers	%
1 Nov 2016 to 8 Aug 2017	316	State all	276	87.40
		State some	38	12
		None	2	0.60

Did the judge inform (I) and explain (E) to the accused his/her right to legal representation or self-defense?				
Period	Total	Items	Numbers	%
1 Nov		I only	12	3.80

2016 to 8 Aug 2017	316	I & E	1	0.30
		Neither	33	10.40
		Lawyer represented	207	65.50
		N/A*	63	20

Did the judge inform (I) and explain (E) to the accused his/ her right to remain silent?				
Period	Total	Items	Numbers	%
1 Nov 2016 to 8 Aug 2017	316	I only	17	5.30
		I & E	25	7.90
		Neither	211	66.80
		N/A*	63	20

* N/A: no presence of accused

Based on the above figures, it is clear that only in a small number of cases did the judges provide full explanations of their rights to the accused. Therefore, the accused's rights have not been fully respected, and the practice did not conform national and international standard related to fair trial rights.

Recommendations:

CCHR calls on the judges to:

- Inform and fully explain their rights to the defendants during the trial;
- Promote the exercise of the accused's rights;
- Fully implement the concept of fair trial rights based on national and international standards, and to follow the best practices in the Extraordinary Chambers in the Courts of Cambodia (ECCC).

CONTACT

Should you have questions or require further information, please contact us by:

Tel : (+ 855) 23 72 69 01

Email : info@cchrcambodia.org

Trial Monitoring Database: tmp.sithi.org