

The Cambodian Center for Human Rights (CCHR) has conducted 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 second in a series of quarterly newsletters that will analyse the findings of CCHR's monitoring. Issue 1 is available online [here](#). This issue focuses on implementation of the right to the presumption of innocence in relation to prisoner uniforms.

Prison Procedure No. 5 (4.3) of Prison Procedure of the Ministry of Interior (2003):

"...Persons found guilty at first instance whose conviction is not yet final may wear their own clothing either in the prison or during their court hearing."

The right to be presumed innocent until proven guilty is a fundamental right under international human rights law that must be respected in all cases where an individual is tried for a criminal offence. This right is

manifested in many different ways, including the principle that a defendant should be allowed to appear before the court in their own clothing. Every defendant is entitled to be brought before a court with the appearance and dignity of a free and innocent person. When a defendant is forced to attend a hearing in the uniform of a convicted person¹ the implication is that the defendant is a guilty criminal and this risks affecting, consciously or subconsciously, the judgment of the presiding judge or judges; the manner in which proceedings are conducted; and ultimately the outcome of the case.

Article 38 of the Constitution of the Kingdom of Cambodia provides that *"Any accused shall be presumed to be innocent until they are finally convicted by the court."* The right to the presumption of innocence is also protected by international human rights law. Article 11(1) of the Universal Declaration of Human Rights ("UDHR") guarantees the right to be presumed innocent until proven guilty. Article 14(2) of the International Covenant on Civil and Political Rights, to which Cambodia is a party, and which, like the UDHR, is incorporated into domestic law by Article 31 of the Constitution, provides that *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."*



CCHR: defendants in convicts' uniform

¹ In this newsletter, a "convicted person" refers to a person who has been found guilty by the court and whose conviction has become final following the exhaustion of all possible appeals. "Appellant" refers to a person who has been found guilty at first instance, but whose conviction is not yet final. "Defendant" refers to any person facing criminal charges who has not been finally convicted (i.e. including both appellants and those who have not yet been tried at first instance).

Rule 111(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), adopted by the General Assembly in 2015, restates the right to presumption of innocence and in Rule 115 states that *“An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.”* While this document is not legally binding on Cambodia or other UN Members, it represents an internationally recognized best practice for the treatment of 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 final conviction.

Under Cambodian norms, the uniform to be worn by prisoners is set out in Prison Procedure No. 5 (4.1), ‘Prisoner Uniforms and Cell Equipment’ of the 2003 Prison Procedure of the Ministry of Interior: *“Admitting officers are to ensure that when a convicted person is admitted to prison, he/she is provided with the following uniform items and cell equipment: two blue cotton shirts with a white stripe around the collar; two pair of blue cotton trousers with a white stripe down each outside leg.”*

Article 4(5)(F) of Prakas No. 217 of 1998 on the Prison Administration of the Ministry of Interior states that *“Appellants who are required to appear before a court shall be given the opportunity to wear their own clothes provided that the clothing is clean and suitable.”* However, according to an article in the Phnom Penh Post dated 16 October 2013 (<http://bit.ly/2r4zJ6o>), Mr. Kuy Bunsorn, General Director of the General Department of Prisons at the Ministry of Interior, said that the Ministry issued a Prakas in 2013, providing that persons who have not yet been convicted or whose convictions are not yet final, but who are detained by the authorities, will now be forced to wear a prison uniform to court. However, in order to ensure they are not confused with convicted persons, who will continue to wear blue and white-striped uniforms, detainees who have not yet been finally convicted will wear a dark orange uniform. While the provision of different uniforms for convicted persons and those whose conviction is not yet final is welcome, in order to ensure that the presumption of innocence is fully respected all defendants whose conviction is not yet final should be able to wear their own clothes to court.

The findings of CCHR’s trial monitoring

Wearing of prisoner uniforms is just one of the elements of respect for the presumption of

innocence monitored by CCHR, alongside other factors such as statements made by judges or court officials suggesting the guilt of the accused. During the period of monitoring at Phnom Penh Appeal Court from 01 November 2016 to 30 April 2017, CCHR monitored 248 cases. All cases concerned individuals who had been convicted at first instance but whose convictions were being appealed and were not yet final. In 24 cases (involving 30 individual defendants), the defendants appeared before the court in blue convict uniforms. It therefore appears that the right to the presumption of innocence is still not being fully respected, although there is some improvement since 2013/2014 when, in the 204 cases monitored by CCHR at the Court of Appeal between 1 March 2013 and 31 January 2014, 52% of the 270 individual defendants appeared in prison uniforms.²

Data of defendants in convict uniforms

Period of hearing	Total Cases	Cases of defendants in the convict uniforms	Numbers of defendants in the convict uniforms
01 November 2016 to 30 April 2017	248	24	30

That defendants whose conviction is not yet final appear before the court in convict uniforms is contrary to the Constitution, the 2013 Prakas, and Prison Procedure No.5. It is also inconsistent with international human rights law, which guarantees the right to the presumption of innocence, and international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Conclusion and Recommendations

Every defendant has the right to the presumption of innocence, and defendants should not be forced to appear before the court in convict uniforms when they have not yet been finally convicted by the court. For these reasons, CCHR recommends that:

- The Ministry of Interior should follow the international best practices implemented by the

² CCHR Report, “Fair Trial Rights in Cambodia Monitoring at the Court of Appeal” (June 2014) <http://bit.ly/1MN4GOY>, p.13.

ECCC, which allow defendants to wear their own clothing to court at all stages of the criminal process until their conviction becomes final.

- The Ministry of Interior should review and revise its existing legal instruments, policies and practices to ensure they are in line with the international standards set out above. Until such revision has taken place, the Ministry of Interior should ensure the wearing of prison uniforms is implemented in accordance with the provisions of the 2013 Prakas.

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