



FAIR TRIAL RIGHTS NEWSLETTER The Fair Trial Rights of Women Defendants

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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 Court of Appeal.

This newsletter is part of a series of [newsletters](#) that analyze the findings of CCHR’s monitoring. The present newsletter focuses on the fair trial rights of women defendants, including the right to be presumed innocent, pre-trial detention, the right to be present at trial and the right to legal representation, and the right not to be compelled to confess guilt or to testify against oneself. It includes the data collected by CCHR through trial monitoring conducted in 2021 and a comparison with data collected in previous years. All the data collected is publicly available in our trial [monitoring database](#).

Equality of Women & Men before the Law

Both national and international law guarantees equality of women and men before the law. It, therefore, offers equal protection to all defendants accused of criminal offenses, including to women defendants. Article 31 of the Constitution of the Kingdom of Cambodia (“the Constitution”) provides that all citizens must be equal before the law, irrespective of their gender, while Article 45 abolishes all forms of discrimination against women and states that men and women are “equal in all fields.” The equality of men and women before the law is also guaranteed in Article 15 (1) of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) ratified by Cambodia. Article 3 of the Covenant on Civil and Political Rights (“ICCPR”), to which Cambodia is a party, also ensures the equality of civil and political rights of men and women.

The Constitution of The Kingdom of Cambodia

Article 31

“Khmer citizens shall be equal before the law, enjoying the same rights, freedoms and obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.”

Article 45

“All forms of discrimination against women shall be abolished. [...]”

In addition, 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 laws or other measures necessary to give effect to those rights.

While women and men are faced with similar issues inside Cambodia’s justice system, the effect is disproportionately felt

on women, thereby amounting to *de facto* discrimination. Women continue to face challenges in accessing justice and women defendants receive little respect for their fair trial rights. In addition, the Cambodian justice system, in which women are highly underrepresented, lacks gender sensitivity, hinders both women victims and defendants from accessing adequate justice.

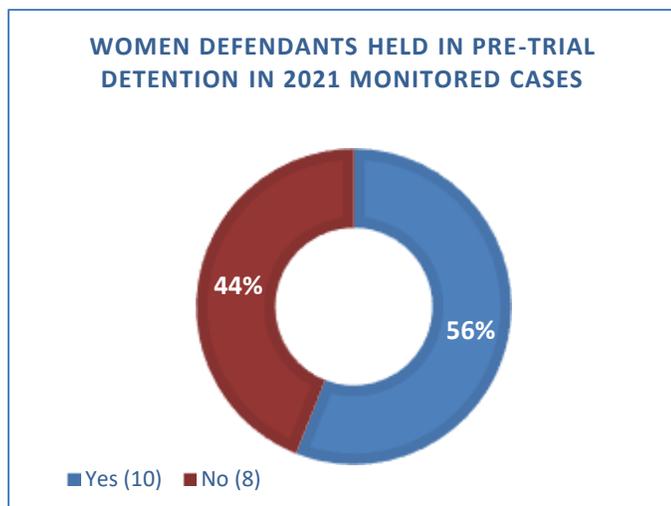
In 2020, only 15% of judges, 14% of prosecutors, and 22% of lawyers were women in Cambodia.

Pre-trial detention of women defendants

The exceptional character of pre-trial detention in criminal cases is protected by Articles 203 and 205 of the Cambodian Code of Criminal Procedure (“CCCP”). Yet, in practice, the use of pre-trial detention is quasi-systematic in Cambodia, which is highly detrimental to women defendants who are mothers of young children or pregnant. Mothers can be exceptionally vulnerable to loss resulting from infringement of their rights and imprisonment where a mother is separated from her child or where the child is also in the prison can have [physical and emotional consequences](#) on both mother and child. International law ([The Bangkok Rules](#)) emphasizes that women’s specific situation should be considered when making detention decisions, especially in the case of pre-trial detention. Pregnant women and mothers of young children are [routinely held](#) in pre-trial detention, with no consideration of their situation or of

the mother’s and child’s wellbeing. As an illustration, in [July 2018](#), out of the 135 mothers, 138 children and 30 pregnant women detained in Cambodia’s prisons, nearly half were being held in pre-trial detention. The number of detainees in Cambodia’s prisons, including the number of incarcerated women, has [skyrocketed](#) since the Cambodian Government launched its “war on drugs” campaign in 2017, with over 70% of women being held for drug offenses. In 2019, the [CEDAW Committee](#) expressed its concerns over the lack of consideration given by Cambodian Courts to the specific situation of women when making decisions about detention, which led to unnecessary detention of women, including pregnant women and mothers, and a devastating impact on children left without their primary caregivers or detained with their mothers in inadequate conditions. The lack of access to essential healthcare services in Cambodia’s prisons, especially for pregnant detainees, was also another issue raised by the CEDAW Committee.

The results of CCHR’s trial monitoring conducted at the Phnom Penh Court of Appeal between 1 January and 31 December 2021 show that of the 18 women defendants (out of 118 defendants) involved in the 14 monitored cases (out of 85 cases), 56% of them (10 out of 18) were held in pre-trial detention.

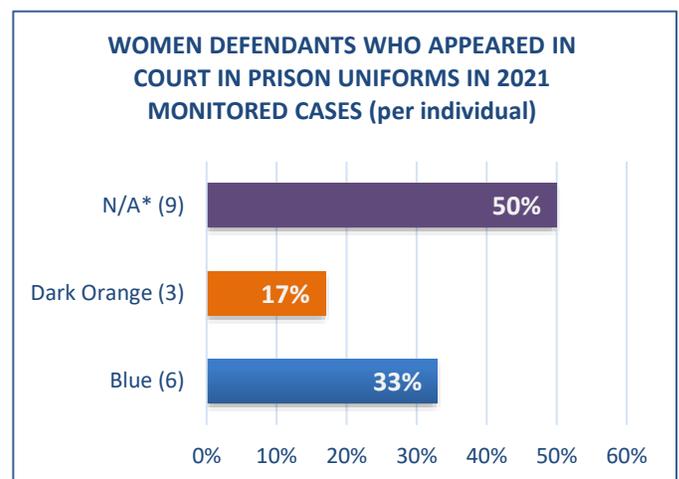


The presumption of innocence of women defendants

The [right to be presumed innocent](#) is a fundamental right guaranteed to everyone, including to women defendants, under both domestic and international law. Article 38 of the Constitution of the Kingdom of Cambodia provides that “*the accused shall be considered innocent until the court has judged finally on the case.*” It echoes Article 14(2) of the ICCPR, which states that “*everyone charged with a criminal offense shall have the*

right to be presumed innocent until proved guilty according to law.” This right manifests itself in many different ways and encompasses the right of the defendant to appear before the court with the appearance and dignity of a free and innocent person.

Yet, in Cambodia, many defendants appear at their trial wearing prison uniforms, including the blue uniform of convicted persons in contravention of their presumption of innocence. Out of all the women defendants involved in the cases monitored by CCHR in 2021, 14 were present at their trial (78%), of whom nine were wearing prison uniforms (50%). Overall, 33% (6 out of 18 defendants) of the women defendants were wearing the blue uniform of convicted persons while 17% (3 out of 18 defendants) appeared before the Court wearing the dark orange uniform.



* N/A refers to women defendants who were absent at their trial or not held in pre-trial detention.

The right to be present at trial and the right to legal representation of women defendants

The [right to be present at trial and the right to legal representation](#) are fundamental fair trial rights guaranteed to all, including to women defendants. The right to present at trial is essential as it permits the accused to hear the case against them and to present their defense. Holding a trial without the accused person present hinders their ability to defend themselves. Trials *in absentia* are permissible under international human rights law in exceptional circumstances and when it is required in the interest of justice. If those conditions are not met, the absence of the accused renders the trial unlawful.

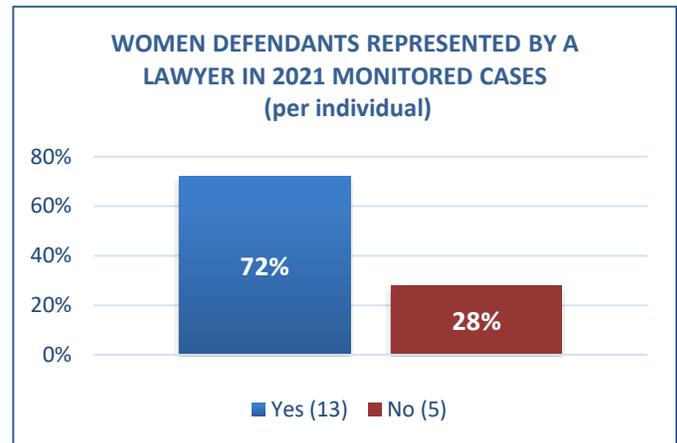
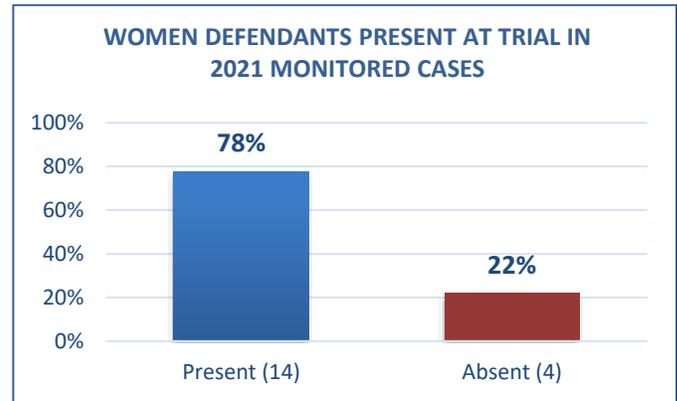
In order to present an effective defense, it is vital that the accused can access a lawyer to represent them as

legal procedures are complex and without competent legal assistance, the accused may lack the knowledge of the law and the court system to properly defend themselves in court. Financial constraints should not prevent the accused from obtaining legal representation. Where individuals cannot afford to pay for a lawyer, the law dictates that the relevant authorities should provide a lawyer free of charge.

These rights are enshrined in both domestic and international law. Article 300 of CCCP states that *“the accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by him/herself. The accused may also make a request to have a lawyer appointed for him/her in accordance with the Law on the Statute of Lawyers.”* Article 14(3)(d) of ICCPR states that *“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.”*

However, Cambodian law makes the assistance of a lawyer compulsory in two circumstances only. According to Article 301 CCCP, legal representation is mandatory if the case involves a felony charge or/and if the accused is a minor. Cambodian legislation does not make legal representation mandatory for adults defendants charged with misdemeanors or petty offenses. This contradicts international human rights standards, which require the right to legal representation to be universally applicable, irrelevant to the classification of offenses. In addition, despite commendable efforts made by the Cambodian government in recent years to increase legal aid in Cambodia, free access to legal representation [remains limited](#) for many indigent defendants due to a lack of a national legal aid policy, an insufficient budget allocated to legal aid and a shortage of legal aid lawyers. Cambodia’s inadequate legal aid provisions also [disproportionally affect](#) women, especially in rural areas.

Of the 18 women defendants involved in the cases monitored by CCHR in 2021, 22% (4 out of 18) were not present at their trial. In addition, 28% (5 out of 18) were not represented by a lawyer.



The right not to be compelled to confess guilt or to testify against oneself of women defendants

Every individual accused, including women, have the [right not to be compelled to confess guilt and to testify against themselves](#). This twofold safeguard is enshrined in both domestic and international human rights law and protects women defendants from forced confessions and, therefore, from torture and other cruel, inhuman, or degrading treatment or punishment, as well as from self-incrimination. Article 14(3)(g) of the ICCPR outlines that *“in the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt.”* Article 7 of the ICCPR enshrines the prohibition of torture or any other cruel, inhuman or degrading treatment or punishment. Article 38 of the Constitution of the Kingdom of Cambodia prohibits any physical abuses against individuals and outlines that confessions obtained by physical or mental force must not be admissible as evidence of guilt. In addition, Article 321 of CCCP states that *“[...] 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 [...].”*

Of the 18 women defendants involved in the cases monitored by CCHR between 1 January and 31 December 2021, one woman defendant (5.5%) stated that violence or torture was used against her to obtain a confession to the alleged crimes during the investigation stage committed by the judicial police.

RECOMMENDATIONS

CCHR calls on the Royal Government of Cambodia and judges of the Phnom Penh Court of Appeal to ensure the following:

- The judges of the Court of Appeal should take into consideration the specific situations of women before taking their decision on pre-trial detention in order to avoid the unnecessary detention of mothers of young children and pregnant women as well as prison overcrowding;
- The Ministry of Justice and Ministry of Interior shall issue and disseminate clear guidelines that defendants who are subjected to criminal proceedings must be allowed to appear in court wearing civil clothes;
- The judges of the Court of Appeal should ensure that the accused who are brought to court wearing a convict uniform to use their civil uniform instead during hearings to preserve their presumption of innocence;
- 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.
- Judges should respect the right to legal representation universally, irrespective of the type of crime, as provided under international law;
- The judges of the Court of Appeal should promptly and thoroughly investigate any claim by a defendant that threats, torture or violence were used against them to coerce them into confessing;
- If investigations find reasonable grounds to believe that a confession or other evidence was obtained in a coercive or violent manner, the Court should rule the evidence inadmissible and ensure relevant re-trials are conducted.

Previous issues of CCHR's Fair Trial Rights newsletter are available on CCHR's website ([Issue 1](#), [Issue 2](#), [Issue 3](#), [Issue 4](#), [Issue 5](#), [Issue 6](#), [Issue 7](#), [Issue 8](#), [Issue 9](#), [Issue 10](#), [Issue 11](#), [Issue 12](#), [Issue 13](#) and [Issue 14](#)). You can also read our 2018 annual [report](#), 2019 annual [report](#), 2020 annual [report](#), and 2021 annual [report](#) on "Fair Trial Rights in Cambodia: Monitoring at the Court of Appeal," outlining key findings from its monitoring of the Court of Appeal in Phnom Penh between 1 November 2016 to 31 December 2020.