

Cambodian Center for Human Rights

Trial Monitoring Project

Key Trial Monitoring Statistics: January to December 2010



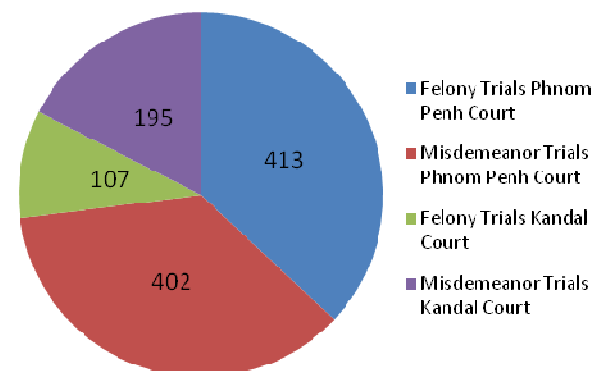
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Key Statistics in 2010

This leaflet illustrates the important statistical information gathered by the Cambodian Center for Human Rights' ("CCHR") Trial Monitoring Project in 2010.

Trials Monitored in 2010

Trials Monitored in 2010



In 2010, CCHR monitored 1,117 trials; 815 Trials at the Phnom Penh Municipal Court ("Phnom Penh Court") and 302 Trials at the Kandal Provincial Court ("Kandal Court"). Of these trials 413 felony trials and 402 misdemeanor trials were monitored at the Phnom Penh Court, whilst 107 felony and 195 misdemeanor trials were monitored at the Kandal Court.

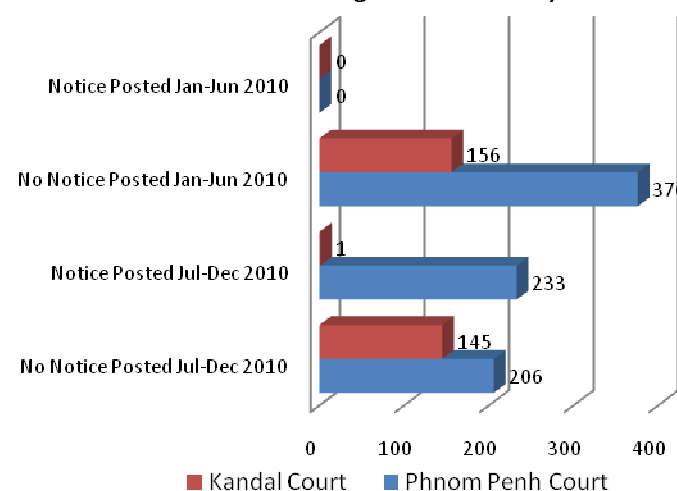
Case Outcomes in 2010

	Phnom Penh Court Felony	Phnom Penh Court Misdemeanor	Kandal Court Felony	Kandal Court Misdemeanor
Guilty	226	267	64	168
Not Guilty	8	17	7	6
Re-investigated	11	6	1	0
Pre-trial	1	0	0	0
Information Unknown	167	112	35	21

The Right to a Public Hearing

Everyone has the right to have their guilt or innocence determined in public trial, except in certain exceptional circumstances.

Notice of Hearing Posted Publicly in 2010

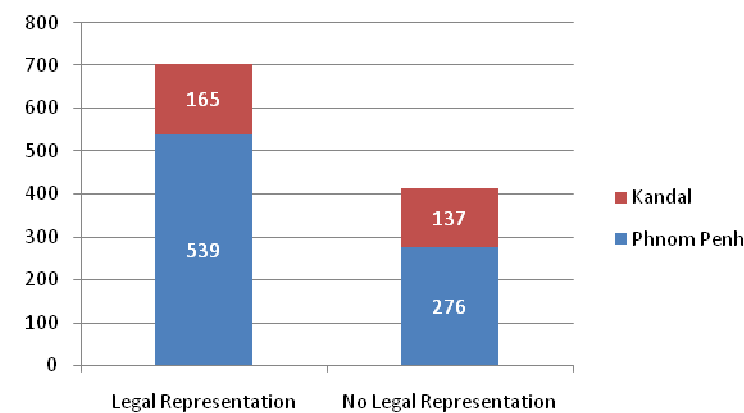


In the first half of 2010, public notice was not posted at any of the 532 trials monitored. In the second half of 2010 notice of the trial was posted on a public notice-board in 233 (53%) of the 439 trials monitored at the Phnom Penh Court. At Kandal Court trial monitors observed public notice of the hearing being posted in 1 (0.6%) of the 146 trials monitored between July and December 2010.

The Right to Legal Representation

Legal procedures and the workings of a law court can be foreign and intimidating to those accused of an offense. To enable a fair trial it is vital to ensure that those accused of offenses have the opportunity to employ an expert advocate with the ability to explain the charges against them and their rights, guide them through the trial process, and represent and defend their interests in court. Legal representation for felonies is mandatory under Article 301 of the Cambodian Criminal Procedure Code ("CCPC").

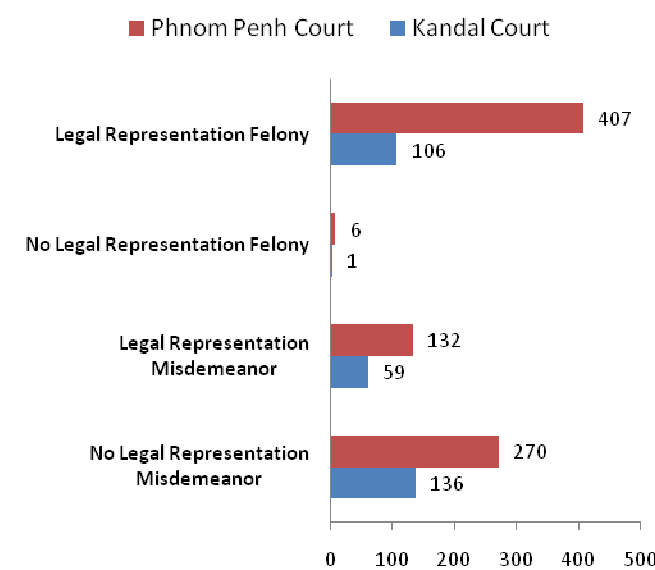
Legal Representation 2010



Of the 1,117 trials monitored in 2010, legal representation was observed in a total of 704 (63%) trials 539 (66%) trials at the Phnom Penh Court and 165 (55%) trials at the Kandal Court.

Representation in Felony and Misdemeanor Trials

Representation by Felony/Misdemeanor



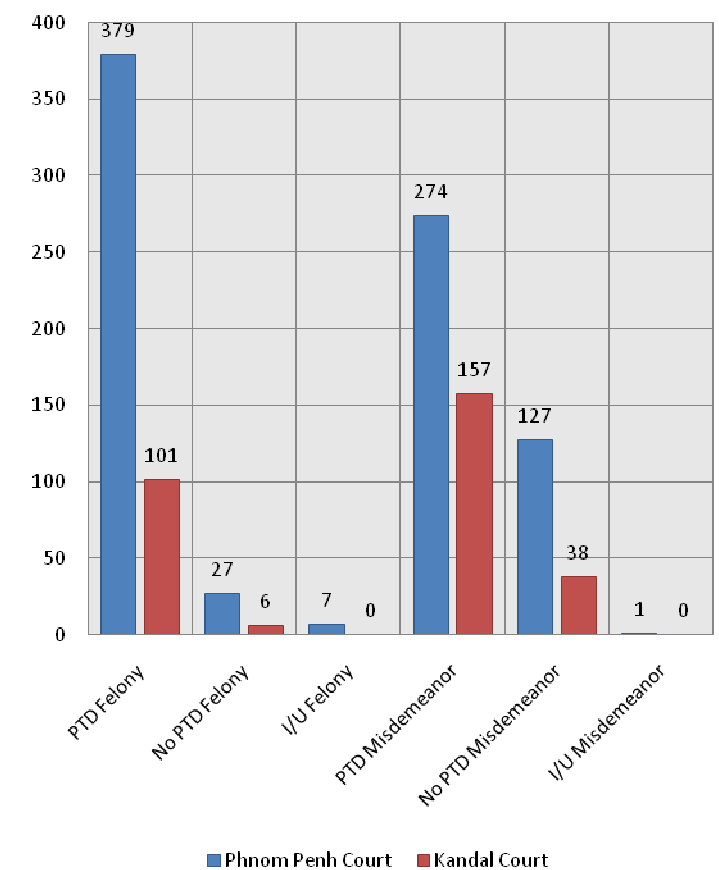
Trial monitors observed legal representation in 407 (99%) of the 413 felony trials monitored at the Phnom Penh Court and 106 (99%) of 107 felony trials monitored at the Kandal Court.

In misdemeanor trials accused were legally represented in 132 (33%) of the 402 monitored trials at the Phnom Penh Court and 59 (30%) of the 195 misdemeanor trials monitored at the Kandal Court.

The Right to Liberty

A statutory presumption against pre-trial detention ("PTD") is created by Article 203 of the CCPC which states that "In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section." PTD levels in both felony and misdemeanor trials observed at both the Phnom Penh and Kandal Courts in 2010 were high.

Pre-trial Detention 2010



At the Phnom Penh Court, PTD occurred in 379 (92%) of the 413 felony trials observed. PTD was not enforced in 27 (6.5%) of the monitored felony trials while information regarding PTD is unknown for 7 (1.5%) of the trials monitored in Phnom Penh. In misdemeanor trials 274 (68%) of the 402 trials observed involved PTD. 127 (31%) trials were observed where PTD was not utilized. PTD information was unavailable in 1 (1%) of the misdemeanor trials monitored at Phnom Penh.

Trial monitors observed PTD in 101 (94%) of the 107 felony trials monitored at Kandal Court during 2010. Pre-trial detention was not used in 6 (6%) of the felony trials observed. PTD was invoked in 157 (81%) of the 195 misdemeanor trials observed at Kandal and was not applied in 38 (19%) of the trials

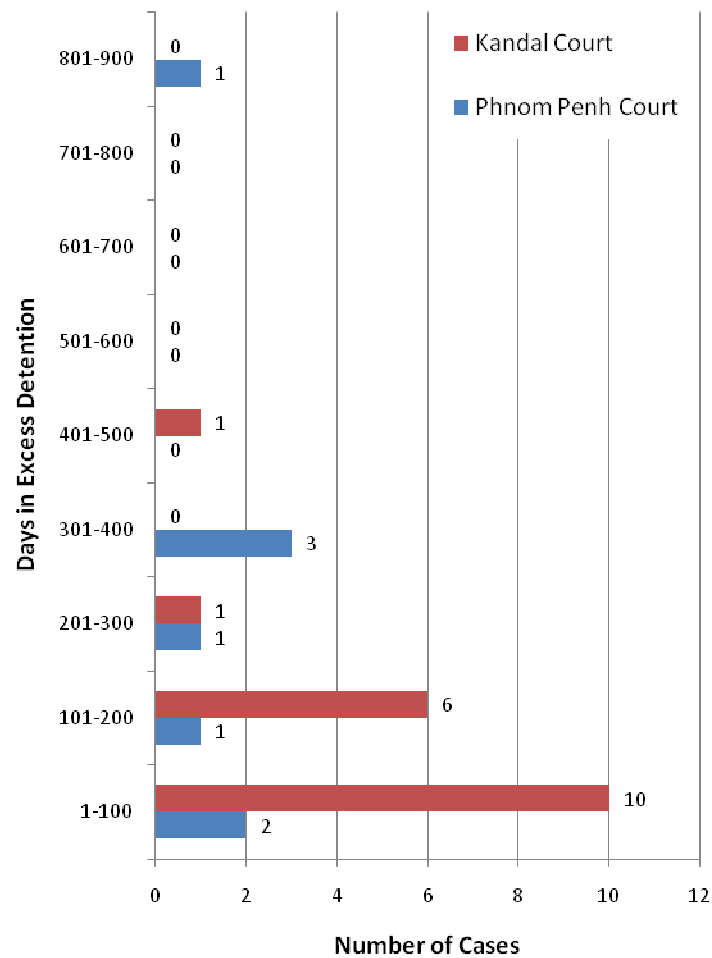
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The Right to be Tried without Undue Delay

The maximum periods for pre-trial detention are contained in Articles 208 and 209 of the CCPC; Article 249 of the CCPC permits an extension of the maximum PTD limit for an additional four months. Including the additional four month extension, the statutory maximum PTD for a felony is 22 months (or 682 days). The maximum for a misdemeanor is 10 months (or 310 days). Article 249 of the CCPC provides that if a charged person is not brought to trial within the statutory time for pre-trial detention, then the "charged person shall be automatically released."

Excess Pre-trial Detention

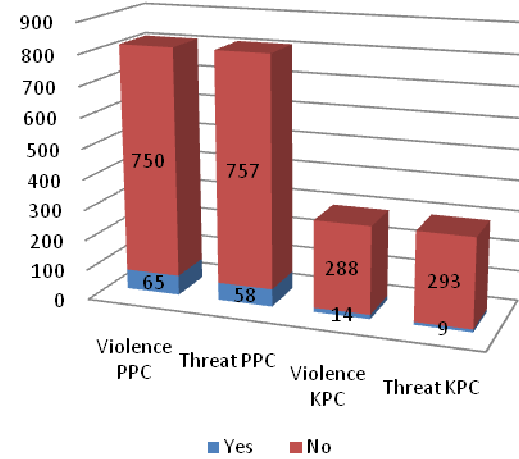


In 2010, trial monitors recorded 26 instances of excessive PTD; 18 of which were observed at the Kandal Court and 8 of which were observed at the Phnom Penh Court. Eighteen of these cases involved misdemeanor offenses. This included one case at the Phnom Penh Court where an accused spent 1,158 days in PTD; exceeding the statutory limit for PTD for a misdemeanor offence by 848 days.

The Right Not to be Compelled to Confess Guilt

The right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman or degrading treatment or punishment. It includes that no direct or indirect physical or psychological pressure amounting to severe pain or suffering should be inflicted on an accused by the investigating or judicial authorities in order to secure a confession of guilt.

Alleged Coercion where Confession



The data collected by CCHR and enumerated in the above chart and following paragraphs is based on allegations made by an accused at trial of police using violence and/or psychological coercion – such as threats – to gain a confession. As such this data is speculative and is not intended to indicate conclusive evidence of improper conduct.

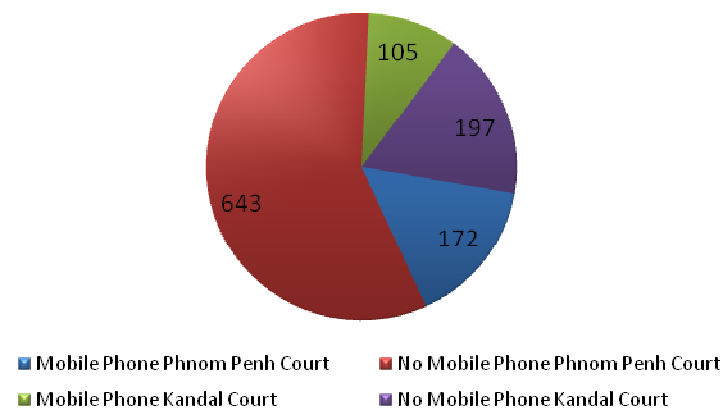
In a small but significant number of trials trial monitors observed allegations made by an accused of violence and threats being used to elicit a confession. At the Phnom Penh Court allegations of violence were made by the accused in 65 (8%) of the 815 trials monitored. At Kandal Court allegations that violence was used in extracting a confession were voiced in 14 (5%) of the 302 trials monitored.

Allegations of threats being made to elicit a confession were observed at 58 (7%) trials at the Phnom Penh Court and 9 trials (3%) at the Kandal Court.

The Use of Mobile Phones

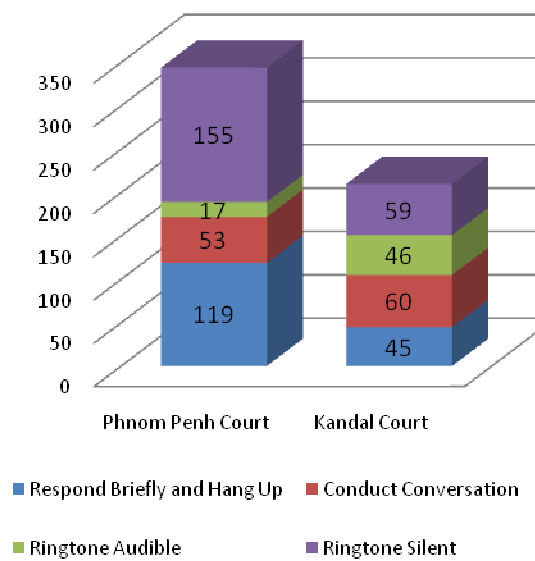
Throughout 2010, CCHR observed the use of a mobile phones by judges during trial at both the Kandal and Phnom Penh Courts. Such usage raises concerns in relation to whether that judge is paying sufficient attention to the arguments of the parties and the evidence presented.

Mobile Phone Use in 2010



In 2010, mobile phones were used in 172 (21%) of the 815 trials monitored at Phnom Penh Court and 105 (35%) of the 302 trials monitored at the Kandal Court.

Mobile Phone Use - Responses



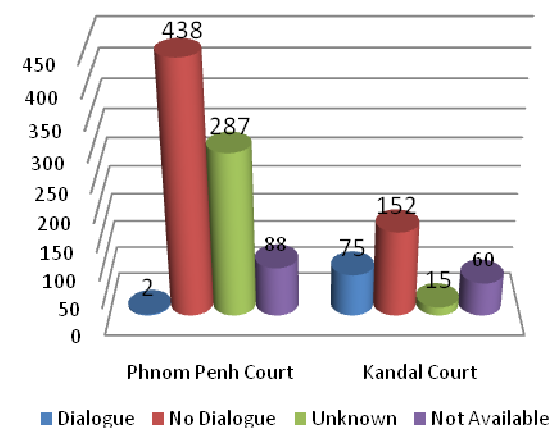
In the 172 trials in which a judge used a mobile phone during court at Phnom Penh, the judge answered the phone briefly and hung up in 119 cases. The judge conducted a conversation on 53 occasions. The ringtone was audible on 17 occasions and was silent in 155 of the trials monitored.

At the Kandal Court judges were observed answering the phone briefly then hanging up in 45 of the 105 trials where mobile phone use was observed. In 60 trials the judge conducted a conversation; the ringtone was audible in 46 trials and was on silent in 59 of the trials monitored.

The Right to be Tried by an Independent and Impartial Tribunal

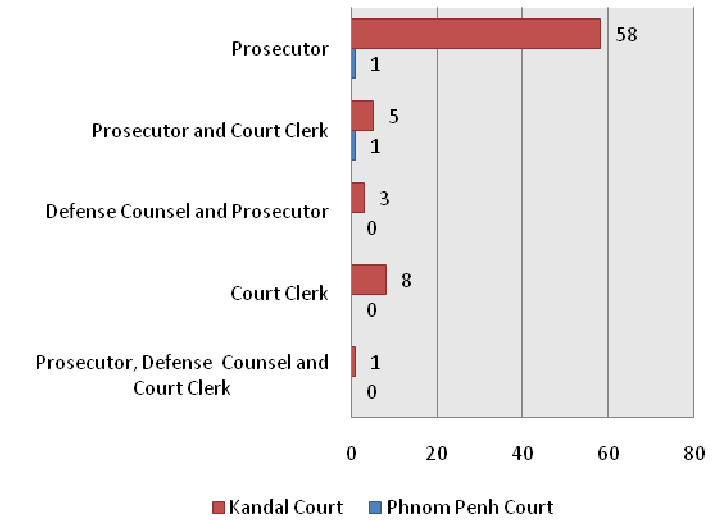
The fairness of any judicial system relies on the independence and impartiality of the arbitrary body. Article 337 of the CCPC prohibits any party from interacting with the judge after the judge has entered the deliberation room; this includes an express prohibition preventing the prosecutor and court clerk from participating in the deliberation. Where a prosecutor, another lawyer or any other party is seen to enter the judge's deliberation room after the end of a hearing a potential for outside influence on the verdict has been created and the judge's impartiality is immediately called into question. CCHR's findings are not evidence of interference during deliberation, they simply indicate the potential for such a breach to occur.

Dialogue During Deliberation



In 2010, trial monitors observed 75 trials involving dialogue during deliberation at the Kandal Court and 2 instances at the Phnom Penh Court. Information is unknown in 15 Kandal Court cases and 287 Phnom Penh Court cases. In 152 trials at Kandal Court and 438 trials at Phnom Penh Court the provisions of the CCPC were followed and no dialogue was observed by trial monitors after the judge had retired to deliberate. Data is not available for 60 trials at the Kandal Court and 88 trials at the Phnom Penh Court.

Dialogue During Deliberation by Party



In 2010, trial monitors observed the prosecutor engaging in dialogue with the judge at the Kandal Court on 58 occasions and once in a trial at the Phnom Penh Court. In addition the Prosecutor and Court Clerk were seen talking with the judge once at the Phnom Penh Court and 5 times at the Kandal Court. The Defense Counsel and Prosecutor were seen in communication with the judge during deliberation on 3 occasions at the Kandal Court. The Court Clerk engaged in dialogue with the judge on 8 occasions during deliberation at the Kandal Court. The Prosecutor, Court Clerk and Defense Counsel were observed engaging the judge during deliberation on one occasion at the Kandal Court.

CONTACT:

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

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CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout the Kingdom of Cambodia.