



TRIAL MONITORING & THE PROMOTION OF FAIR TRIALS:

Deliberation: Justice must not only be done, but must be seen to be done

A Monthly Newsletter on Fair Trial Rights

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Article 337 of the Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), places two obligations on the court. First, that the courts should not have any interaction with external influences during their deliberation. This means that upon entering the deliberation room no-one may consort with the judges in any way until a verdict has been delivered. Second, the court when imposing a sentence must deliberate – the court must consider and reflect upon all the facts and arguments of Counsel before it passes judgment.

Article 337 of the Code of Criminal Procedure of the Kingdom of Cambodia:

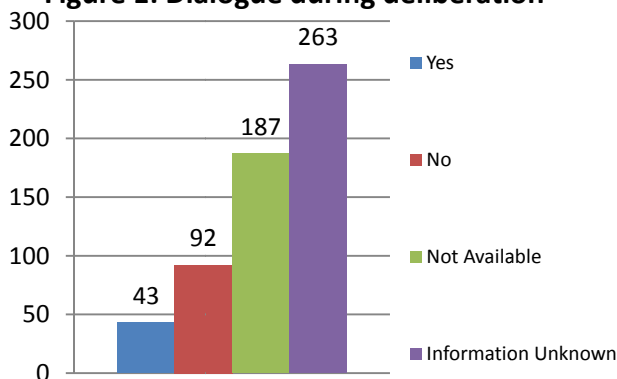
“The court shall retreat to deliberate in a deliberation room to reach its verdict. No further request may be submitted to the court; no further argument may be raised. The Royal Prosecutor and the court clerk are not authorized to participate in the deliberation.”

where incidents fell from 16% to 6%. Unfortunately, CCHR has observed an increase in contact with any party during deliberation from July to December 2010, with instances rising to 7.5% of all trials monitored.

Figure 1 indicates that during the second half of 2010 there were 43 cases where a judge had contact with another party during deliberation.

Contact During Deliberation

Figure 1: Dialogue during deliberation

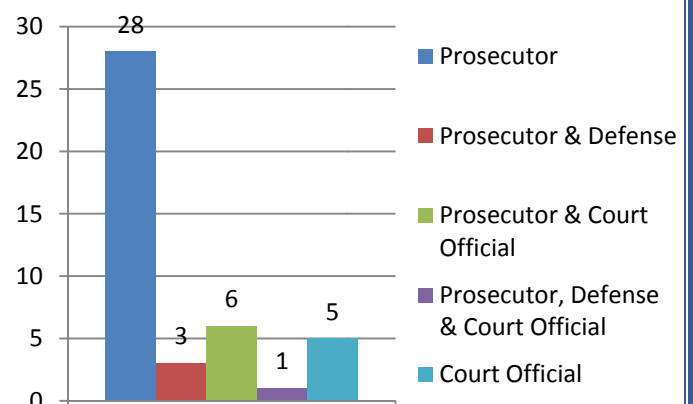


Dialogue & Deliberation: July - December 2010

One of the most frequent occurrences observed at trial in a study conducted by the Cambodian Center for Human Rights (“CCHR”) as part of its trial monitoring project at the Kandal Provincial Court and the Phnom Penh Capital Court of First Instance was that of instances suggesting that a party had spoken to a judge during deliberation and prior to the judge reaching a verdict. This occurred in 16% of all the cases monitored between August and December 2009. CCHR observed a decline of such occurrences from January to June 2010,

Figure 2 divides the occasions where there was contact with the judge during deliberation into the categories of who was seen entering the deliberation room. It shows that on 10 occasions the prosecutor and another party were seen entering the deliberation room. It also provides that on a further 28 occasions it was the prosecutor alone who was seen to enter the deliberation room. On 5 occasions a court official was seen entering the deliberation room.

Figure 2: Dialogue during deliberation 2



Who had dialogue during deliberation: July 2010 - December 2010

Where a prosecutor, another lawyer or any other party is seen to enter the Judge's deliberation room immediately after the end of a hearing, the Judge's impartiality is immediately called into question. Such instances can be taken as an indication of the potential for outside influence on the verdict. During dialogue based on recommendations from the First Bi-Annual Report produced by CCHR, judges at the Phnom Penh court noted that it was sometimes necessary for court clerks to bring documents to deliberation rooms and therefore speak with judges during deliberation.

However, Article 337 of the CCPC expressly bars the royal prosecutor and the court clerk from participating in the deliberation. Any entry by a clerk into the deliberation room, regardless of whether his motivation is simply to bring in documents to the judge, brings into question the independence and impartiality of the judge. A judge must ensure that his or her conduct at all times maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Inadequate Deliberation

The law provides that the court when imposing a sentence must deliberate, consider the facts and arguments before passing judgment. Deliberation again is key in instilling public confidence in the judiciary, which is fundamental to the maintenance of judicial independence. CCHR trial monitors, however, observed a number of instances between July 2010 and December 2010 where a sentence was imposed upon an accused with either minimal or no deliberation. Observations include:

- A 3 month prison sentence for theft of a car battery. The verdict was reached after a deliberation of 10 minutes. In this time the Prosecutor was seen to enter the deliberation room.

- An 11 month prison sentence for theft. This verdict was reached without deliberation from the judge. Before the sentence was passed the judge was seen whispering with the prosecutor.
- A 10 year prison sentence was delivered to a 63 year old man accused of attempted rape. Deliberation only lasted 5 minutes. In this time both the prosecutor and the court clerk were seen conversing with the judge.

The lack of deliberation enumerated in the above cases raises questions as to the *ratio decidendi*, or rationale, used by the judges in reaching their verdict. An accused has a right to a judgment that is well reasoned, applies the relevant law and reflects standards of international law accepted by the Royal Government of Cambodia. Failing to deliberate or providing minimal deliberation raises questions as to how a judge has reached his or her decision. This could perceptibly result in the public questioning the impartiality of the court. Justice must not merely be done, but must also be seen to be done.

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