

## TRIAL MONITORING & THE PROMOTION OF FAIR TRIALS

A Monthly Newsletter on Fair Trial Rights  
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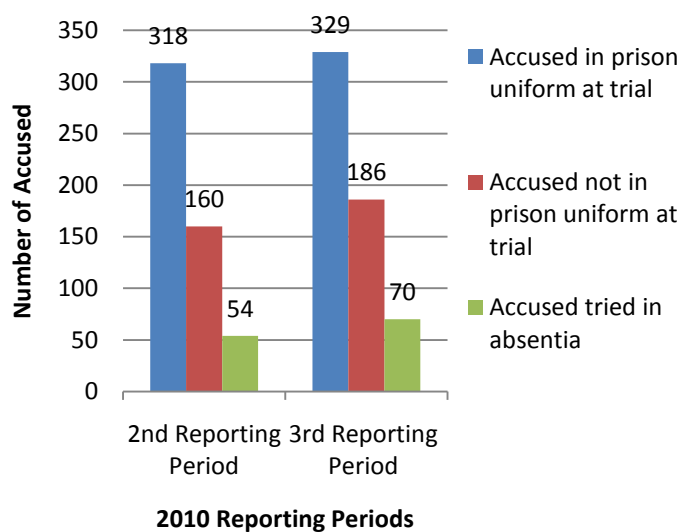
### Fair trial analysis: Prison uniforms and fair trial rights

**Article 4(5)(F) of Proclamation 217 on the administration of Prisons by the Ministry of Interior on March 13 1998:**

*“Prisoners 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.”*

The presumption of innocence is a fundamental right in criminal law that must be present in all cases where an individual is tried for a criminal offence. The presumption of innocence requires that defendants appear before the court in neutral civilian 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 prison attire, the implication that the defendant is a guilty criminal risks affecting, consciously or unconsciously, the judgment of the presiding judge or judges, the manner in which proceedings are conducted and, ultimately, the outcome of the case.

#### Accused at trial in prison uniform in Kandal and Phnom Penh Courts.



Above: An accused in the blue prison uniform of Cambodia

#### Cambodian Center for Human Rights (“CCHR”) Findings

The chart, ‘Accused at trial in prison uniform in Kandal and Phnom Penh Courts’, represents the findings of the CCHR’s trial monitoring project in relation to the number of accused appearing before the Kandal and Phnom Penh courts in prison uniform from January 1 to December 31 2010. The chart draws attention to the fact that in almost half of all trials monitored by CCHR, accused appeared before the court in prison uniform. This may be prejudicial to the interests of those defendants due to the guilty connotations often associated with the wearing of prison uniforms. The chart also indicates that over the first reporting period (January 1 to June 30 2010) and the second reporting period (July 1 to December 31 2010) there has been a slight increase in the overall number of trials in which defendants appeared before the courts in prison uniform.

Trial Monitors have also noted a correlation between those held in pre-trial detention and the wearing of uniforms. This suggests that those in pre-trial detention are more susceptible to situations affecting their presumption of innocence. In addition it shows that Article 4 (5)(F) of the Proclamation 217 of the Ministry of the Interior on the administration of prisons is not being followed .

## International rules

The United Nations Standard Minimum Rules for the Treatment of Prisoners 1955 at Rule 88 (I) states that “[a]n untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.” It further provides that “if [an accused] wears prison dress, it shall be different from that supplied to convicted prisoners.” Rule 3 stipulates that “whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.”

In Cambodia the uniform for all prisoners, whether convicted or in pre-trial detention, is blue. This is contrary to the requirements of Rule 88 of the United Nations standard minimum rules as outlined above. Accordingly the Royal Government of Cambodia should ensure that it meets the minimum standards expected of it at an international level. If accused do not have access to appropriate civilian clothing, the prison, and in consequence, the State, must so provide.

### **Comparison: Europe and its rules in relation to wearing a prison uniform to trial**

The 2006 European Parliament recommendation of the Committee of Ministers to Member states on the European Prison Rules provides the standards for treatment of detainees expected to be shown by Member States of the European Union. Rule 20.4 provides that “[p]risoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.” Attending ones trial, out of necessity, would be a permitted venture outside of prison. This by implication provides an accused the right to wear civilian clothes to trial.

The provisions of Rule 97.1 further establish untried prisoners rights not to wear a prison uniform by stating “untried prisoners shall be allowed to wear their own clothing if it is suitable for wearing in prison.” Rule 97.2 indicates that if untried prisoners do not have suitable civilian clothing they are to be provided with clothing that is in no way the same as that worn by sentenced prisoners. This is clearly an attempt to uphold the premise of the presumption of innocence and to avoid tarring those awaiting trial with the same brush as those already convicted. Whilst these recommendations are not legally binding on Member States of the EU, they do represent the standards expected in Europe.

## Model Courts in Cambodia

The performance of Kandal Model Court and the Extraordinary Chambers to the Courts of Cambodia (“ECCC”) prove that it is possible to implement the requirements of the Prakas of the Ministry of Interior. The CCHR would like to take this opportunity to compliment both the Kandal Provincial court and the ECCC for the excellent adherence they have shown in assuring that accused do not wear prison uniform to trial.

In 2010, out of 302 trials monitored at the Kandal court, there were only 5 instances where an accused was tried in prison uniform and 25 trials were conducted *in absentia*.

The ECCC, in the trial of Kaing Guek Eav, better known as Duch, has shown that it will uphold the standards of treatment expected for those held in detention under both Cambodian and international law. Duch, who was prosecuted for numerous crimes that included crimes against humanity, consistently wore civilian clothing to trial.

As model courts to Cambodia both Kandal Court and the ECCC are representative of the standard to which all other Cambodian courts are required to perform. Cambodian Courts should ensure that all prisoners who are required to appear before them shall be given the opportunity to wear their own clothes in accordance with Article 4 (5)(F) of the Proclamation on the Administration of Prisons.

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