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Cambodian Center for Human Rights

A SERIES ON FAIR TRIAL RIGHTS AND RULE OF LAW:

The right not to be compelled to confess guilt

www.cchrcambodia.org

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“This International Day in Support of Victims of Torture the Cambodian Center for Human Rights (“CCHR”) supports victims of torture and condemns the practice of torture. Torture is a heinous crime and is especially repugnant when utilized by law enforcement personnel to extract confessions of guilt from those accused of a crime. Allegations of violence or coercion leveled at police erode the public’s trust in police and the wider justice system as a whole. Any evidence obtained by such means must be deemed inadmissible by the courts. Perpetrators of torture must be brought to justice after an investigation by an independent preventative mechanism.”

~ Ou Virak, President of CCHR

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.

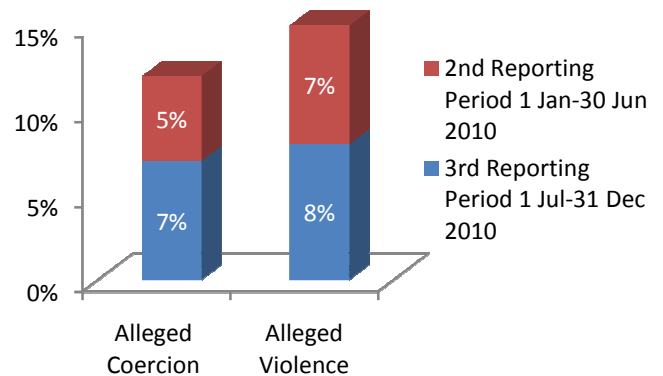
CCHR’s Findings

It should be noted that the data collected by CCHR in the following paragraphs is based on allegations made by 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.

The Chart ‘Allegations of violence or coercion to extract a confession’ indicates that between January 1st to June 30th, 2010 (Second Reporting Period) and July 1st to D-

ecember 31st, 2010 (Third Reporting Period) trial monitors recorded allegations by accused that police coerced them into confessing in 5% and 7% of trials respectively. Coercion for this purpose is defined as improper psychological pressure such as threats. The chart also indicates that allegations of the police using violence to extract a confession were made by accused in 7% of trials observed in the Second Reporting Period and 8% of trials observed in the Third Reporting Period.

Allegations of violence or coercion to extract a confession



Whilst this data is not conclusive evidence that improper conduct has taken place, CCHR is concerned that allegations of coercion and violence have increased over these two reporting periods and recommends that the Royal Government of Cambodia (“RGC”) expedite progress towards establishing an independent National Preventive Mechanism (“NPM”) for the national prevention of torture which regularly examines the treatment of persons detained and makes recommendations to relevant authorities with the aim of preventing torture and other cruel, inhuman or degrading treatment. Pursuant to the Optional Protocol to the Convention Against Torture an NPM should have been established within one year of Cambodia ratifying the Optional Protocol; Cambodia ratified the Optional Protocol on March 30th, 2007.



Forced Confessions and the Law

The right not to be compelled to confess guilt is fundamental to the right to be free from torture and other forms of cruel inhuman or degrading treatment or punishment, as enshrined in three core international human rights instruments – the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights and the Convention against Torture. Article 31 of the Cambodian Constitution incorporates the provisions of these international instruments into Cambodian law. Article 38 of the Constitution states that “[t]he law guarantees there shall be no physical abuse against any individual [...] Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law. Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.”

The Penal Code provides a legal basis for prosecutions of improper conduct by law enforcement personnel by explicitly outlawing the use of violence and coercion. Article 213 of the Penal Code increases the penalty for such violence when committed by a government official, either civilian or military, in carrying out their functions or during the performance of their functions.

Article 321 of the Cambodian Criminal Procedure Code (“CCPC”) prohibits the courts from giving any evidentiary value to evidence that has been obtained as a result of physical or mental duress. Where other evidence is available the trial judge should consider ruling the contested evidence or confession inadmissible and consider only the other evidence. Where there is no corroborating evidence to support the confession that has been withdrawn and is alleged to have resulted from improper duress, the trial judge should reject the evidence and order a further investigation under Article 339 of the CCPC or order an acquittal.

Case Studies

The following cases, observed in 2010, represent trials where a confession was presented as evidence and where the accused has alleged misconduct by law enforcement personnel:

- A 16 year old, found guilty of robbery under Article 6 of the Law on Aggravating Circumstances of Felonies, alleged that police beat him until he agreed to say his age was 19. The juvenile was sentenced to 4 years imprisonment. The judge relied on the confession obtained by police in delivering this verdict.
- An accused found guilty of rape under Article 5 of the law on the Aggravating Circumstances of Felonies and sentenced to 10 years imprisonment alleged that police beat him with an electric baton.
- Three accused were found guilty of drug trafficking under Article 33 of the Law on the Control of Drugs. One of the accused alleged that police used electric shocks in obtaining his confession. The judge threatened the accused with a defamation charge if he persisted with allegations of police misconduct. Two of the accused were sentenced to 8 years imprisonment and fined 10 million Riel; the other was sentenced to 6 years imprisonment and fined 8 million Riel.

Allegations of police misconduct including threats and the use of violence and torture affect a small but significant number of trials. The courts must uphold the provisions of the CCPC and the Constitution and reject any evidence obtained through violence and/or coercion as having no evidentiary value, noting such decisions in the written reasons and oral judgment of the case. The courts should also refer to the prosecutor for investigation all cases where the court finds evidence of coercion or violence, by law enforcement personnel.

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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.

