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Cambodian Center for Human Rights

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**EAST • WEST
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Program on Rights and Justice (PRAJ)

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ABOUT THE CAMBODIAN CENTER FOR HUMAN RIGHTS

This report on 'Fair Trial Rights in Cambodia' (the "Report") is an output of the Cambodian Trial Monitoring Project implemented by the Cambodian Center for Human Rights ("CCHR"). CCHR's vision is of a non-violent Kingdom of Cambodia ("Cambodia"), in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia's development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR's logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia's claim for freedom. To realize its vision, CCHR works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia. For more information, please visit www.cchrcambodia.org.

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DEFINITIONS

“BanteayMeanchey Court”	BanteayMeanchey Provincial Court of First Instance
“Bar Association”	The Bar Association of the Kingdom of Cambodia
“Cambodia”	Kingdom of Cambodia
“CAT”	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
“CCHR”	Cambodian Center for Human Rights
“CCPC”	Code of Criminal Procedure of the Kingdom of Cambodia
“Checklist”	The checklist used by CCHR trial monitors to record trial data when monitoring trials
“Checklist Guidance”	Comprehensive guidance notes to help CCHR Trial Monitors understand each question in the Checklist
“CLJR”	The Royal Government of Cambodia’s Council for Legal and Judicial Reform
“Code of Conduct”	A document outlining the obligations of non-interference, objectivity and confidentiality to which CCHR Trial Monitors are bound
“Constitution”	The Constitution of the Kingdom of Cambodia
“CRC”	Convention on the Rights of the Child
“Database”	The database in which CCHR trial monitors store trial data recorded on checklists
“EWMI”	East West ManagementInstitute
“Fifth Bi-annual Report”	This CCHR Fair Trial Rights in Cambodia Bi-annual Report
“Fifth Reporting Period”	The reporting period for the Fifth Bi-annual Report of July 1 to December 31, 2011
“First Bi-annual Report”	CCHR Fair Trial Rights in Cambodia First Bi-Annual Report, July 2010
“First Reporting Period”	The reporting period for the First Bi-Annual Report of August 10 to December 31, 2009

“Fourth Bi-annual Report”	CCHR Fair Trial Rights in Cambodia Fourth Bi-Annual Report, March 2012
“Fourth Reporting Period”	The reporting period for the Fourth Bi-Annual Report of January 1 to June 30, 2011
“Fifth Bi-Annual Report”	CCHR Fair Trial Rights in Cambodia Fifth Bi-Annual Report, November 2012
“Fifth Reporting Period”	The reporting period for the Fifth Bi-Annual Report of August 1 to December 31, 2011
“ICCPR”	International Covenant on Civil and Political Rights
“Kandal Court”	Kandal Provincial Court of First Instance
“LAC”	Legal Aid Cambodia
“LJR Strategy”	Legal and Judicial Reform Strategy
“MOJ”	Ministry of Justice
“MOU”	Memorandum of Understanding
“NGO”	Non-Governmental Organization
“ODIHR”	Office for Democratic Institutions and Human Rights
“OHCHR”	United Nations Office of the High Commissioner for Human Rights
“OPCAT”	The Optional Protocol to the Convention Against Torture
“OSCE”	Organization for Security and Co-operation in Europe
“Penal Code”	The Penal Code of the Kingdom of Cambodia, 2009
“Phnom Penh Court”	Phnom Penh Capital City Court of First Instance
“PRAJ”	Program on Rights and Justice
“Project”	Cambodian Trial Monitoring Project
“RAJP”	Royal Academy of Judicial Professions
“Ratanakiri Court”	Ratanakiri Provincial Court of First Instance
“Report”	This Bi-annual report on ‘Fair Trial Rights in Cambodia’
“RGC”	Royal Government of Cambodia

“Second Bi-annual Report”	CCHR Fair Trial Rights in Cambodia Second Bi-Annual Report, March 2011
“Second Reporting Period”	The reporting period for the Second Bi-annual Report of January 1 to June 30, 2010
“Third Bi-annual Report”	CCHR Fair Trial Rights in Cambodia Third Bi-annual Report, January 2012
“Third Reporting Period”	The reporting period for the Report of July 1 to December 31, 2010
“Trial Monitors”	CCHR trial monitors
“UDHR”	Universal Declaration of Human Rights
“UN”	United Nations
“UNTAC”	United Nations Transitional Authority in Cambodia
“UNTAC Law”	Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992
“USAID”	United States Agency for International Development

EXECUTIVE SUMMARY

This Bi-Annual Report on fair trial rights in Cambodia (the “Report”) is a result of the work of the Cambodian Trial Monitoring Project (the “Project”), that was implemented by CCHR. It presents and analyzes data collected from 463 trials involving 915 accused which were monitored at Phnom Penh Capital City Court of First Instance (the “Phnom Penh Court”), BanteayMeanchey Provincial Court of First Instance (the “BanteayMeanchey Court”), Ratanakiri Provincial Court of First Instance (the “Ratanakiri Court”) and Kandal Provincial Court of First Instance (the “Kandal Court”) between July 1 and December 31, 2011 (the “Fifth Reporting Period”). This is the fifth bi-annual report produced by the Project.

Legal Framework

The Constitution of the Kingdom of Cambodia (the “Constitution”) guarantees the independence of the judiciary as well as the right to be presumed innocent until proven guilty. The Code of Criminal Procedure of the Kingdom of Cambodia (the “CCPC”) sets out procedures for the investigation and hearing of criminal offences and includes provisions setting out the rights of accused persons. The Penal Code of the Kingdom of Cambodia (the “Penal Code”), which was promulgated in 2009 and came into full force and effect in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing. Cambodia is also bound by the international agreements to which it is a party. The Universal Declaration of Human Rights (the “UDHR”) and the International Covenant on Civil and Political Rights (the “ICCPR”) both guarantee the right to a fair and public hearing by an independent and impartial tribunal.

Methodology

During the Fifth Reporting Period, CCHR Trial Monitors (the “Trial Monitors”) from CCHR attended criminal trials at the Phnom Penh, BanteayMeanchey, and Ratanakiri Courts on a daily basis and used a trial monitoring checklist comprised of approximately 70 questions as a tool to measure adherence to fair trial rights at each trial and in respect of each individual accused. The Fifth Reporting Period was the inaugural period for monitoring at the BanteayMeanchey and Ratanakiri Courts. Monitoring at the BanteayMeanchey and Ratanakiri Courts began on August 22, 2011. From July 1, 2001 up until and including September 30, 2011, Trial Monitors also attended and monitored criminal trials at the Kandal Court on a daily basis. However, monitoring at the Kandal Court stopped on October 1, 2011 due to funding restrictions.

To date, CCHR has issued four bi-annual reports. Following the publication of each bi-annual report, Project staff seek dialogue meetings with representatives of the courts which were monitored, as well as with other justice sector organizations, bodies and institutions to which recommendations are addressed. The dialogue meetings serve as a basis for an exchange of ideas and provide insight into the challenges faced by those working to strengthen the justice system. The purpose of the dialogue meetings is to promote the implementation of the recommendations set out in the bi-annual reports.

This Report compares that data collected at the Phnom Penh, BanteayMeanchey, Ratanakiri and Kandal Courts respectively. When reviewing the data it is important to bear in mind that the data collected at Kandal Court is only in relation to the first three months of the Fifth Reporting Period and therefore no conclusions can be drawn in respect of current practices at Kandal Court. Data collected for BanteayMeanchey and Ratanakiri Courts is only in relation to the final four months of the Fifth Reporting Period. For the purposes of identifying issues in adherence to fair trial rights however, the data for all of the courts are presented together to draw comparisons and identify trends. This Report provides the Trial Monitoring Team with its first opportunity to examine adherence to fair trial rights across courts in different geographical and socio-economic areas in Cambodia to identify and analyze fair trial issues.

Data Summary

Judges at the Phnom Penh, BanteayMeanchey, Ratanakiri and Kandal Courts generally appear to be making efforts to uphold fair trial standards and a number of positive achievements were noted. The data indicates a positive handling of evidence and witnesses by the courts. In terms of the right to a public hearing, Phnom Penh Court was found to have notice of hearings in almost half of all trials monitored, with public notices of hearings being non-existent in the other courts during the Fifth Reporting Period. With regards to understanding the nature of the charge, Ratanakiri Court in particular was found to generally do very well at stating the nature of the charge, the relevant law under which the accused was charged, the date and place of the alleged crime and the parties involved. In relation to the presumption of innocence Kandal Court had only 5% of accused appearing before the court in prison uniform compared to 31% in BanteayMeanchey, 67% in Ratanakiri and 75% in Phnom Penh.

However there are a number of areas of concern. In relation to the right to liberty and to be tried without undue delay, data recorded shows the prevalence of pre-trial detention resulting from the arrest of the accused and indicates that pre-trial detention is prevalent in all of the courts monitored. Of the 915 accused monitored in the Fifth Reporting Period, 70% were held in pre-trial detention. In Phnom Penh, of the 361 accused held in pre-trial detention, 40% were charged with felony offenses, with 60% in pre-trial detention with misdemeanor offenses; in BanteayMeanchey, of the 170 accused held in pre-trial detention, 22% were charged with felony related offenses, and 78% with misdemeanors; in Ratanakiri, of the 42 accused held in pre-trial detention, 76% percent were charged with felony related offenses and 24% were charged with misdemeanor related offenses; and in Kandal, of the 74 accused held in pre-trial detention, 66% were charged with felony related offenses and 34% with misdemeanor related offenses. Bearing in mind that the law sets out very specific and limited exceptions where pre-trial detention may be warranted, the levels of pre-trial detention, particularly in relation to misdemeanor offenses, at all the courts is a matter of concern. Excessive – and illegal – pre-trial detention was recorded in relation to nine accused, six of whom were charged with misdemeanor offenses. As recorded in previous CCHR Trial Monitoring Reports, there is a potential correlation with the number of people held in pre-trial detention accused of misdemeanors and lack of legal representation. It is widely acknowledged that the lack of lawyers affects detention procedures and the data collected by Trial Monitors suggests that the

absence of a lawyer may make it easier to lose track of how long someone has been held in pre-trial detention.

Levels of pre-trial detention also remain high among juveniles accused. In total of the 38 juvenile accused monitored, 36 – or 95% – were held in pre-trial detention with all juveniles in BanteayMeanchey, Ratanakiri and Kandal Courts were placed in pre-trial detention. The high-rate of pre-trial detention of juveniles is particularly concerning especially when compared to pre-trial detention rates for adults which was 70% in the Fifth Reporting Period. Of the 22 individual juvenile accused charged with misdemeanors, all but two, who stood before Phnom Penh Court, were held in pre-trial detention. All 16 individual juveniles who were charged with felony related offenses were held in pre-trial detention. In the cases of pre-trial detention of juveniles, it is difficult to establish whether juveniles have been properly separated from adults and without having access to the prisons and detention centers there is no evidence to suggest whether this is or is not the case. Much like with the case of the adult accused monitored, Trial Monitors did not observe any evidence to suggest that alternative measure to pre-trial detention were considered.

In relation to the right to legal representation, Trial Monitors recorded that of the 915 accused monitored at all four courts, 516 – or 56% – of the accused had legal representation. With just over half of all accused monitored having legal representation, the figure raises the question about the extent to which the right to a defense is being protected and the extent to which authorities are taking the measures to ensure that the right to legal representation is not only being respected but also facilitated through the maintenance of relationships with legal aid lawyers and the keeping of legal aid directories at police stations and courts.

In relation to felony trials, where by law it is mandatory for the accused to have legal representation, overall only 90% of accused charged with felony offenses had legal representation. When the data is broken down between the various courts, it is positive to note that in Ratanakiri all felony trials monitored saw the accused have legal representation. In contrast, in BanteayMeanchey the rate of legal representation of accused charged with felony offenses was 84%, whereas in Phnom Penh it was 92% and in Kandal 79%.

Judges were found to use mobile phones while presiding over a trial in all of the courts monitored. Trial Monitors have observed that in 32% of trials in Phnom Penh, 20% of trials in Kandal, 18% of trials in BanteayMeanchey and 9% of trials in Ratanakiri the judge answered his or her telephone during the hearing, which is concerning. However, while the conversations were invariably brief – with judges in BanteayMeanchey and Ratanakiri answering briefly and hanging up in 60% and 100% of cases respectively, there were more instances on Phnom Penh and BanteayMeanchey courts where judges had longer conversations. In Phnom Penh in 68% of cases the judge was noted to have conducted a conversation and in BanteayMeanchey this figure was 40%. The answering of phones during a hearing raises questions about the independence and impartiality of the judiciary, and may influence public perception of the court by raising concerns that the judges are open to influence from external parties during proceedings.

While it may be the case that the majority of phone calls relate to work in relation to other cases, access to justice in one case should not be compromised in order to expedite proceedings in another.

Conclusion

The recommendations in this Report are addressed to a number of different bodies and institutions, highlighting the interconnected nature of the justice system. Though monitoring of trials takes place in the courtroom, improved adherence to many of the rights analyzed in this Report will require the cooperation, support, and leadership of a number of actors including the Royal Government of Cambodia (the “RGC”), the Ministry of Justice, law enforcement agencies, prison authorities, non-governmental organizations (“NGOs”) and others involved in legal and judicial reform. Pre-trial detention and legal representation, as shown in this Report, are two areas where greater cooperation could improve adherence to fair trial rights. It is hoped that the data and recommendations set out in this Report will help facilitate increased respect for fair trial rights and support those working to ensure that the justice system in Cambodia is fair and equal for all.

1. INTRODUCTION

The right to a fair trial is an essential and universally recognized human right, enshrined at the highest level of international law in both the UDHR¹ and the ICCPR². Fair trial rights are guaranteed in the Constitution³, and through various individual provisions of domestic laws.⁴

The right to a fair trial is a composite of a number of individual rights which encompass the entire legal process from the initial arrest of a suspect through to the completion of the final appeal. When recognized and provided for, fair trial rights ensure that a person charged with a criminal offense is treated fairly while the state determines their guilt or innocence. Fair trials are essential for the protection of the rights of the accused and the victim but also to ensure the proper administration of justice.

THE JUDICIAL SYSTEM AND LEGAL FRAMEWORK IN CAMBODIA

Cambodia has a civil law system with trials conducted on an inquisitorial basis. The judiciary is made up of 23 Municipal and Provincial Courts of First Instance, a Military Court, Court of Appeal and Supreme Court. In 2003, the RGC and the United Nations (“UN”) came to an agreement to create the Extraordinary Chambers in the Courts of Cambodia to prosecute those with the greatest responsibilities for the atrocities committed by the Khmer Rouge. The court is a Cambodian court with international monetary assistance and foreign personnel to help meet international standards of justice, and is intended to be “*a model court for Cambodia, serving to contribute to the overall process of legal and judicial reform.*”⁵

In accordance with Article 31 of the Constitution, which states that Cambodia “*shall recognize and respect human rights as stipulated in the [...] covenants and conventions related to human right.*”, the Cambodian legal system is committed to respecting and recognizing major human rights instruments, including the UDHR. This recognition was confirmed by a decision of the Constitutional Council dated July 10, 2007, which held that “*international conventions that Cambodia has recognized*” form part of the law, which trial judges should consider.⁶ Furthermore, Cambodia is bound by the ICCPR, which was formally ratified by Cambodia in 1992. These instruments guarantee that individuals charged with a criminal offense are entitled to a fair and public hearing by an independent and impartial tribunal⁷ and have the right to be presumed innocent until proven guilty

¹ United Nations General Assembly, *Universal Declaration of Human Rights*, December 10, 1948, Article 10.

² United Nations General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966, Article 14.

³ Article 31 of the Constitution guarantees fair trial rights through the incorporation of the UDHR and other international covenants and conventions, which include the ICCPR. Article 38 and 128 of the Constitution also guarantee various fair trial rights.

⁴ The Code of Criminal Procedure of the Kingdom of Cambodia sets out a number of procedural rights that ensure a fair trial. For example, Article 300 states that the accused may be assisted by a lawyer of his/her own choosing.

⁵ Speech by His Excellency Sean Visoth, Director of the Office of Administration of the ECCC, “The Cambodian Approach: Finding the Truth and Reconciliation in Cambodia through the ECCC”, International Conference: Dealing with a Past Holocaust and National Reconciliation: Learning from Experience, August 28-9, 2006, Phnom Penh, Cambodia, available at:

http://www.eccc.gov.kh/sites/default/files/media/Finding_the_Truth_and_Reconciliation.pdf.

⁶ Constitutional Council of the Kingdom of Cambodia, Decision No.092/003/2007, dated July 10, 2007.

⁷ UDHR, Article 10; ICCPR, Article 14(1).

according to the law.⁸The Constitution provides a number of guarantees that together form the basic framework for fair trial rights in Cambodia. Article 31 guarantees “*Every Khmer citizen shall be equal before the law.*” Article 38 sets out the rights of Khmer citizens: “*Any case of doubt shall be resolved in favor of the accused. The accused shall be considered innocent until the court has finally judged on the case. Every citizen shall enjoy the right to defense through judicial recourse.*” Article 128 guarantees the independence of the judiciary and that the judiciary shall “*guarantee and uphold impartiality and protect the rights and freedoms of the citizens.*”

Cambodia’s criminal procedure was codified in 2007 with the introduction of the CCPC, which replaced sections of the Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (the “UNTAC Law”). The CCPC sets out in detail the legal procedures for investigating and prosecuting criminal offenses, as well as the rights of the victims and those charged with a criminal offense. In 2009 the Penal Code was promulgated. The Penal Code is a comprehensive law setting out classes of offenses, principles of criminal responsibility, principles of sentencing, the territorial jurisdiction of the courts and an extensive array of new criminal offenses. The general provisions contained in Book 1 of the Penal Code came into effect on December 10, 2009. The remaining provisions of the Penal Code were largely put into effect on December 10, 2010 in Phnom Penh and December 20, 2010 in the rest of Cambodia.

THE POLICY CONTEXT

At a policy level, the establishment of a properly functioning judiciary remains the cornerstone of the RGC’s platform for legal and judicial reform, with the RGC recognizing the importance of legal and judicial reform as fundamental to the growth, equity and efficiency of Cambodia.⁹ In his September 2010 report on Cambodia, the Special Rapporteur on the situation of human rights in Cambodia, Professor Surya Subedi, noted that the universal periodic review process Cambodia underwent by the United Nations Human Rights Council in 2009 showed “*the willingness of the Government to further improve the human rights situation and strengthen the independence of the judiciary...[and] demonstrated the public commitment of the Government to pursue its efforts to build a functioning system of the rule of law guided by international human rights norms.*”¹⁰

Legal and judicial reform in Cambodia is guided by the RGC’s Legal and Judicial Reform Strategy (the “LJR Strategy”) approved by the Council of Ministers of the RGC on June 20, 2003.¹¹ Amongst other things, the goal of the LJR Strategy is “*the establishment of a credible and stable legal and judicial sector*”. The LJR Strategy identifies four guiding principles from the provisions of the Constitution to guide such reform – the rights of individuals, liberal democracy, the separation of powers and the

⁸ UDHR, Article 11(1); ICCPR, Article 14(2).

⁹ Hun Sen, *Address on Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase II*, First Cabinet Meeting of the Fourth Legislature of the National Assembly, Office of the Council of Ministers, Phnom Penh, September 26, 2008.

¹⁰ Report of the Special Rapporteur on the situation of human rights in Cambodia, September 16, 2010, (A/HRC/15/46), p. 5.

¹¹ Council for Legal and Judicial Reform, *Legal and Judicial Reform Strategy*, adopted by the RGC at the Plenary Session on June 20, 2003.

rule of law.¹² The LJR Strategy sets out seven strategic objectives, which form the basis of the Legal and Judicial Reform Action Plan, approved in 2005.¹³

The CCHR Trial Monitoring Project (the “Project”) has been an independent and impartial monitor of criminal trials in Cambodia since August 2009. In this role, the purpose of the Project is to collect data that can be analyzed to identify strengths and weaknesses in the justice system. By drawing attention to the areas in the trial process that require the greatest attention and making practical recommendations to the relevant justice sector institutions, CCHR supports efforts to strengthen and reform the justice system for the benefit of all citizens.

PURPOSE, AUDIENCE AND SCOPE OF THE REPORT

This is the fifth bi-annual report on Fair Trial Rights in Cambodia produced by the Project. The information presented in this Report serves as a reference from which to implement reform, and the data and recommendations will be shared with the intended audience of the Report – the Cambodian judiciary and other justice sector stakeholders – for discussion. Before the Report was finalized, a draft was sent to the respective Presidents of the Phnom Penh Court, the Banteay Meanchey Court, the Ratanakiri Court and the Kandal Court to provide an opportunity to the monitored courts to give feedback, comments and additional recommendations. As monitoring has expanded since the last report to include two new courts, Banteay Meanchey and Ratanakiri Courts, this Report represents the first opportunity to conduct an analysis of courts across a range of geographical locations in Cambodia to identify issues and trends in relation to adherence to fair trial rights by the Cambodian courts.

The structure of the Report is as follows: Section 2 sets out the methodology followed when collecting data and preparing the Report. In Section 3, ‘Data and Findings’, the data collected at the four courts between July 1 and December 31, 2011 (the “Fifth Reporting Period”) is presented and analyzed for the purposes of identifying trends in adherence to fair trial rights. Section 4, ‘Conclusion and Recommendations’ makes recommendations in relation to the findings made in Section 3.

¹² Ibid p14

¹³ Council for Legal and Judicial Reform, *Plan of Action for Implementing the Legal and Judicial Reform Strategy*, adopted by the RGC at the Plenary Session on April 29, 2005.

2. METHODOLOGY

TIME FRAME AND LOCATION

The Report presents and analyzes data from 463 criminal trials involving 915 individual accused monitored at the Phnom Penh Court, the BanteayMeanchey Court, the Ratanakiri Court and the Kandal Court during the Fifth Reporting Period. The monitoring of the Phnom Penh Court began on August 10, 2009. The Phnom Penh Court was selected for the purposes of the Project because as the court of the capital city and the largest and most populated urban area in Cambodia, its activities are more wide-ranging, its conduct is more widely reported and its influence is greater than those of other first instance courts in Cambodia. When monitoring of the Phnom Penh Court began in August 2009, the Project also began monitoring criminal trials at Kandal Court. Kandal Court was selected for its proximity to Phnom Penh, the large number of judges presiding there and the availability of three courtrooms for trial monitoring. Unfortunately due to budget restrictions in the Fifth Reporting Period, the Project stopped monitoring at Kandal Court on October 1, 2011. Data collected from July 1 to September 30, 2011 at the Kandal Court is however included in this Report for the purposes of comparing and identifying trends in the practices of the four respective courts.

Monitoring at BanteayMeanchey Court and Ratanakiri Court began on August 22, 2011 in order to diversify the geographical focus of monitoring and to compare trends and practices across courts in different socio-economic locations. BanteayMeanchey court was selected for its geographical location and relatively large number of criminal trials, owing to the fact that it is situated in close proximity to an interational border and therefore deals with a significant number of drug and trafficking cases in comparisonto other courts. Ratanakiri Court was also selected because its geographical location and isolation, which allows for the examination of differences in the practices, if any, of courts located a long way from the capital.

FOCUS OF THE TRIAL MONITORING

The monitoring of trials focuses on certain fair trial rights due to their applicability in the Cambodian context. In order to determine which rights would be considered, CCHR relied on external resources such as reports and studies on fair trial rights in Cambodia and on the Cambodian judicial system. Neither positive nor negative inferences should be made from the omission of other fair trial rights within this Report.

The following rights were selected for monitoring purposes:

- Right to a public hearing;
- Right to be tried without undue delay;
- Right to understand the nature of the charge;
- Right to an explanation of rights owed to the accused;
- Right to adequate time and facilitates to prepare a defense;
- Right to legal representation and to be present at trial;

- Right to the presumption of innocence;
- Right to be tried by an independent and impartial tribunal;
- Evidence rights (including the right to call and examine witnesses);
- Right to full disclosure of evidence for the preparation of the defense;
- Right against self-incrimination and the right not to confess guilt as a result of coercion or inducement;
- Prohibition against double jeopardy (being tried for the same offense twice); and
- Rights of Juveniles.

INFRASTRUCTURE

In order to effectively and efficiently record relevant trial data, CCHR designed a trial-monitoring checklist (the “Checklist”) for use in court by Trial Monitors (Appendix I). This checklist is tailor-made for the Project and includes 78 questions, the answers to which indicate whether fair trial rights have been adhered to. Most questions have four possible answers: yes (“Y”), no (“N”) and either not applicable (“N/A”) or information unknown (“I/U”). CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles (Appendix II). Through the Checklist, Trial Monitors monitor adherence to fair trial rights throughout the trial as a whole and monitor fair trial rights of individuals accused. The data provided in the charts in Section 3 shows adherence to fair trial rights as they relate to individuals accused, unless stated otherwise.

With consideration of the brevity of the Checklist, CCHR compiled comprehensive guidance notes (the “Checklist Guidance”) (Appendix II) to ensure uniform interpretation of each Checklist question and understanding of the legal basis and purpose of each question. This Checklist Guidance is vital for ensuring the comprehensive understanding of each question and it serves to ensure consistency among Trial Monitors, present and future. Another tool, which outlines the relevant national and international law underpinning each question in the Checklist – the Law Bank (Appendix III), is provided to the Trial Monitors to enable easy reference to the relevant international and national laws underpinning each of the fair trial rights monitored.

CCHR is committed to the international principles applicable to trial monitoring¹⁴ and has devised a code of conduct for its monitors, outlining the obligations of non-interference, objectivity and confidentiality to which its Trial Monitors are bound (the “Code of Conduct”) (Appendix IV).

PERSONNEL AND TRAINING

During the 5th Reporting Period, the Project team included three experienced Trial Monitors with legal qualifications, expertise, and understanding. Both national and international staff support the Trial Monitoring Team. As noted above, Trial Monitors must adhere to the Code of Conduct. Before

¹⁴ See: Amnesty International, *Amnesty International Fair Trial Manual* (London: Amnesty International Publications, 1998), AI Index POL 30/02/98; Jelena Pejic and Vanessa Lesnie, *What is a Fair Trial: A Basic Guide to Legal Standards and Practice* (New York: Lawyers Committee for Human Rights, 2000); Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR), *Trial Monitoring: A Reference Manual for Practitioners* (Poland: OSCE/ODIHR, 2008); Bárbara Oliveira and Linda Besharaty-Movaed, *International Commission of Jurists Trial Observation Manual* (Geneva: International Commission of Jurists, 2002).

they start monitoring trials, the Trial Monitors participate in a thorough practical and theoretical training program that includes training on:

- Trial monitoring and the use of the Checklist;
- The Code of Conduct and the importance of impartiality, non-interference, confidentiality and professionalism; and
- Fair trial standards in international and Cambodian law.

Trial Monitors spend most days in court monitoring criminal trials and have therefore acquired extensive knowledge of the criminal justice process as it is regularly applied in Cambodia. The Trial Monitors have developed positive and constructive relationships with staff at the courts monitored, supporting the Project's goal of working in partnership with the courts and other justice sector stakeholders to promote greater recognition of and provision for fair trial rights.

MONITORING PROCEDURE

For the purposes of the Project, one Trial Monitor is assigned Phnom Penh Court, BanteayMeanchey Court and Ratanakiri Court respectively. When criminal trials were monitored at Kandal Court, one Trial Monitor was assigned to that court. CCHR monitors trials based on court schedules in order to produce objective data and an arbitrary sample of trials. For each trial attended, data is recorded directly on the Checklist. The information sought is limited to the trial process itself and therefore no additional interviews or dialogue took place, except in relation to obtaining a schedule of trials and in efforts made to record verdicts that were handed down after the trial.

DATABASE

After each trial the data from the Checklist is entered into the CCHR Trial Monitoring Database (the "Database"). The Database reflects the questions within the Checklist and was constructed using Microsoft Visual Basic. In addition to storing the data extracted from the checklists, the Database is designed to analyze the stored data, for example, flagging pre-trial detention periods that exceed statutory limits. As the Project proceeds, the Database will be developed further. Over time, the Database will contain an extensive catalogue of data and become an invaluable resource for CCHR and other organizations working to promote fair trials in Cambodia.

ANALYSIS AND DIALOGUE

CCHR analyzes the trial data recorded in the database, and identifies positive practices as well as areas for concern arising at trial. The data is based on the answers the Trial Monitors have given to the questions in the Checklist. In previous bi-annual reports, data collected has been compared to data collected during previous reporting periods to identify developing trends in the practices of the courts. For the purposes of this Report, data collected is not compared with data collected during previous reporting periods. Rather, this Report provides a unique opportunity for CCHR to compare data amongst a cross-section of courts located across Cambodia in order to identify to what extent trends differ between different courts.

The purpose of the Project is to provide objective data to serve as a reference for improvements in court practices and broader legal and judicial reform. Final drafts of the bi-annual reports are sent to the Presidents of the courts monitored for comments and recommendations prior to final publication. Once published, CCHR distributes bi-annual reports to relevant stakeholders along with requests for meetings or presentations to provide further explanation of the data, analysis and recommendations. Project staff also request specific meetings with representatives of the courts monitored as well as other justice sector organizations, bodies and institutions to which recommendations are addressed. The meetings serve as a basis for an exchange of ideas and provide insight into the challenges faced by those working to strengthen the justice system. The purpose of dialogue meetings is to promote the implementation of the recommendations set out in the bi-annual reports or alternative measures that will address the concerns behind the recommendations.

3. DATA AND EVALUATION

This section sets out the ‘raw’ data recorded by the Trial Monitors on the Checklist according to each individual right during the monitoring of each trial and evaluates this data. The data collected from each of the courts is presented alongside each other for the purposes of comparison and analyzing trends in the practices of the Courts. The data included in the tables are in respect of each individual accused, except where otherwise indicated. As discussed in the methodology section above, only four months of data has been collected for BanteayMeanchey and Ratanakiri Courts in the Fifth Reporting Period, as monitoring did not commence until August 22, 2011. In relation to Kandal Court data was only collected from July 1 to September 31, 2011.

Figure 1: Trials Monitored

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Felony	120	46	30	27	7	20	14	25
Misdemeanor	140	54	81	72	28	80	42	75
Petty offense	0	0	1	1	0	0	0	0
Number of Trials	260	100	112	100	35	100	56	100

During the Fifth Reporting Period a total of 463 trials were monitored in Phnom Penh, BanteayMeanchey, Ratanakiri and Kandal Courts involving 915 individuals accused.

Figure 1 above shows the number and location of criminal trials monitored by the Trial Monitors during the Fifth Reporting Period, and the classification of the charge at each trial. Article 46 of the Penal Code defines a felony as any offense for which the minimum penalty is imprisonment for more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for a term of more than six days and less than or equal to five years. A petty offense is defined as any offense where the penalty is a fine or a period of imprisonment for a period less than or equal to six days.¹⁵

¹⁵Article 48 of the Penal Code.

RIGHT TO A PUBLIC HEARING

Source in Cambodian and International law

- **Article 14(1)** of the ICCPR: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”
- **Article 316** of the CCPC: “Trial hearings shall be conducted in public”

Everyone has the right to have his/her guilt or innocence determined in a public trial, except in certain exceptional circumstances.¹⁶ The right to a public hearing involves a number of elements: trials should generally be open to the public and conducted orally; information on the venue and date of the trial should be made available to the public; and there should be adequate facilities for public attendance.¹⁷

FIGURE 2: RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public notice board outside the courtroom?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	118	45	0	0	0	0	0	0
No	142	55	112	100	35	100	56	100
2(b) Were members of the public obstructed from entering or dismissed from the courtroom?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	1	1	0	0	0	0
No	260	100	111	99	35	100	56	100

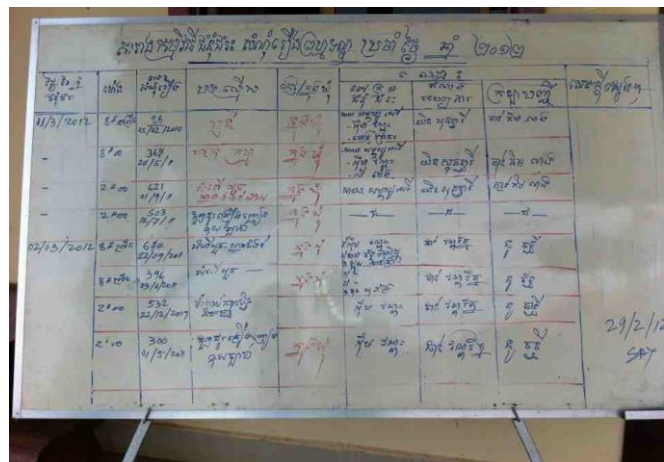
The data for question 2(a) shows that whilst in almost half of all trials monitored in Phnom Penh notice of the hearing was posted on a public notice board outside the courtroom, such practices have not been observed in BanteayMeanchey, Ratanakiri or Kandal Courts. It is worth noting that during the First and Second Reporting Period, when monitoring had only just begun at the Phnom

¹⁶Article 316 of the CCPC states that the court may order a complete or partial *in camera* hearing if it considers that a public hearing will cause significant damage to public order or morality, but a written explanation of such a decision must be included alongside the judgment on the merits of the case. Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial for reasons of “morals, public order (*ordre public*) or national security in a democratic society”, where publicity would prejudice the interests of justice or where the interest of the private lives of the parties so requires.

¹⁷United Nations Human Rights Committee, Communication No. 215/1986, *Van Meurs v. The Netherlands*, para. 6.2. Cited in supra Note 12.

Penh Court, compliance with question 2(a) was low, with public notice of the hearing only being given in 3% of all trials monitored in the First Reporting Period, and in no trials in the Second Reporting Period. Over time, and following consultation with officials at the Phnom Penh Court, compliance has improved. In Kandal Court public notice of trials has consistently been an issue since monitoring began in 2009 up until monitoring stopped at the end of September 2011. It is hoped that the courts take heed of the example of the Phnom Penh Court and implement simple notice boards with a schedule of cases. In fact, following the end of the Fifth Reporting Period, the Trial Monitor at the BanteayMeanchey Court reported that on March 1, 2012 a schedule of hearings for March 1 and March 2 were posted next to the main door to the building where it could be seen by everyone. The Court President noted to the Trial Monitor that the court only had capacity to write a two-day schedule at this time but were considering posting a weekly schedule. Judges at Ratanakiri Court have expressed eagerness to display public notices of trials at the court and, during the dialogue meeting at Ratanakiri Court in September 2012, it was confirmed that the only reason that

notices are not displayed is because the court does not have a noticeboard.¹⁸The problem in this regard is therefore one of resources, not of willingness on the part of the judges or court staff, although it would be possible to display notices of hearings without a noticeboard as simply printing and displaying the schedules would suffice. It was encouraging that during the September 2012 dialogue meeting at BanteayMeanchey Court, the Court Vice-President agreed that additional information should be included on the public notices, beyond a simple notification



Whiteboard with court schedule erected in the entrance of Banteay Meanchey Court in March 2012

of the trials, in order to keep the public fully informed, and agreed to raise this issue with other court staff¹⁹; he also suggested that individual notices regarding each hearing could be prepared, giving detailed information, rather than simply writing a notice about the hearing on a noticeboard.

Regarding question 2(b), the data for this question must be read with the caveat that once inside the courtroom for the commencement of the trial, the Trial Monitors' ability to observe obstruction of the public is limited. It is encouraging that the Phnom Penh, BanteayMeanchey, Ratanakiri and Kandal Courts are, for the most part, adhering to the legal requirements to conduct hearings openly and publicly. There was one instance at BanteayMeanchey Court where members of the public were prevented from entering the courtroom. This was in relation to a rape case involving a juvenile. In order to respect the reputation and dignity of the victim, the judge requested that the case be heard behind closed doors.

¹⁸ CCHR dialogue with Judge Luch Loa, resident Judge at Ratanakiri Court, 11 September 2012.

¹⁹ CCHR dialogue with Vice-President of BanteayMeanchey Court, Judge IthSomphouse, 13 September 2012.

RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY

Sources in Cambodian and international law

- **Article 38 of the Constitution:** *“The prosecution, arrest or detention of any person shall not be done except in accordance with the law.”*
- **Article 14(3)(c) of the ICCPR:** *“In the determination of any criminal charge against him, everyone shall be entitled to...be tried without undue delay”*
- **Article 9(3) of the ICCPR:** *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”*
- **Article 203 of the CCPC:** *“In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section.”*
- **Article 205 of the CCPC:** *“Provisional detention may be ordered when it is necessary to:*
 1. *stop the offense or prevent the offense from happening again;*
 2. *prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices;*
 3. *preserve evidence or exhibits;*
 4. *guarantee the presence of the charged person during the proceedings against him;*
 5. *protect the security of the charged person;*
 6. *preserve public order from any trouble caused by the offense.*
- **Articles 208-214 of the CCPC: Legal limits of provisional detention**

Adults accused of felony offenses can be provisionally detained for a period of 6 months. This period can be extended a maximum of two occasions for 6 months at a time only by order and with proper reasons (Article 208 CCPC).

Adults accused of misdemeanor offenses may be provisionally detained for a period of 4 months. This period may be extended only once, for a further 2 months only by order and with proper reasons (Article 209 CCPC).

Juveniles accused of felony offenses may be provisionally detained for a period not exceeding 4 months where the accused is aged under 16 years old or 6 months where they are aged 16-18 years old (Article 213 CCPC).

Juveniles accused of misdemeanor offences may be provisionally detained for a period not exceeding 2 months where the accused is aged under 16 years or 4 months where they are aged 16-18 years old (Article 214 CCPC).

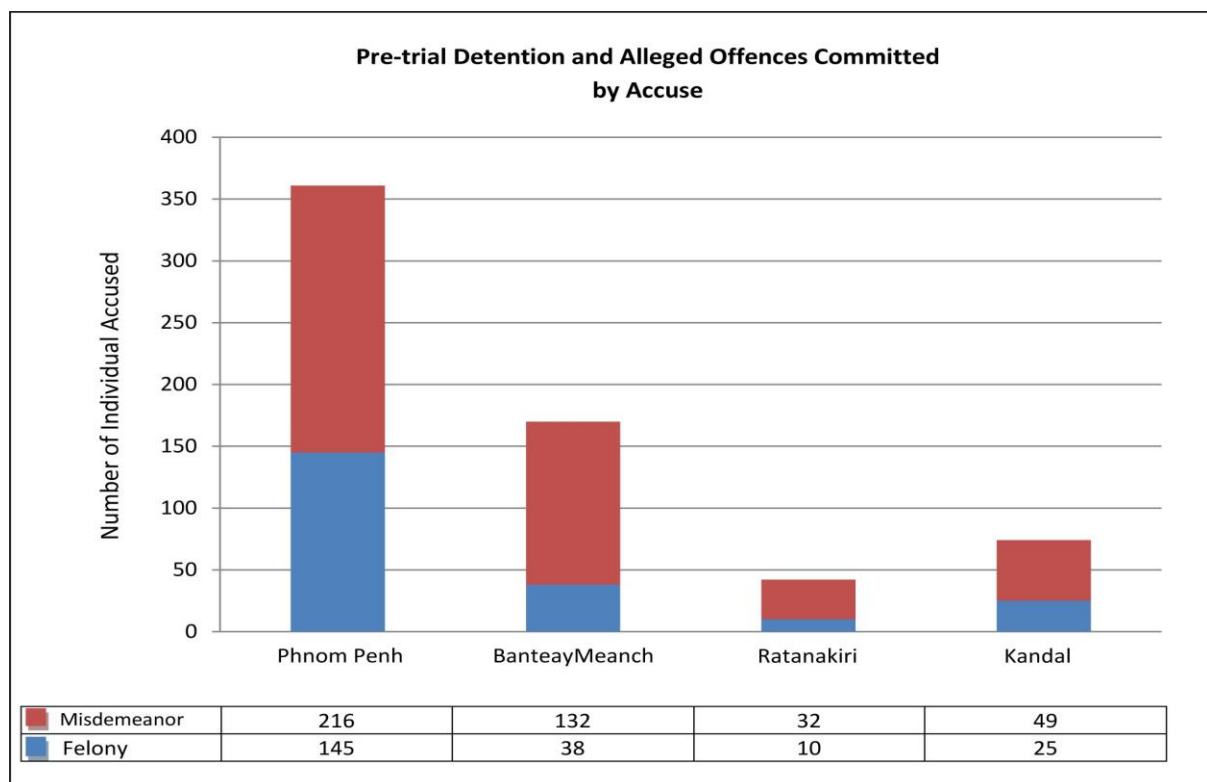
Detention can be extended beyond these provisional periods by a further 4 months from the date that the closing order is issued; if the accused is not called to appear before the trial court within these four months he/ she must be automatically released (Article 249 CCPC). There is statutory provision to extend this four month period.

The presumption against pre-trial detention is an element of the fundamental right to be presumed innocent until proven guilty according to law.

FIGURE 3: PRE-TRIAL DETENTION

13(d) Was there pre-trial detention?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	361	76	170	61	42	70	74	73
No	106	22	79	29	18	30	28	27
I/U	9	2	28	10	0	0	0	0

Question 13(d) records the prevalence of pre-trial detention resulting from the arrest of the accused and indicates that pre-trial detention is prevalent in all the courts monitored. When analyzing the data in relation to all of the accused monitored during the Fifth Reporting Period – 915 accused in total – the rate of pre-trial detention was 70%. When the data is broken down into pre-trial detention and offenses committed by the accused monitored, the following is observed:



Given the presumption against pre-trial detention, the data collected is concerning. In Phnom Penh, of the 361 accused held in pre-trial detention, 40% were charged with felony offenses, with a 60% in pre-trial detention with misdemeanor offenses; in BanteayMeanchey, of the 170 accused held in pre-trial detention, 22% were charged with felony related offenses, and 78% with misdemeanors; in Ratanakiri, of the 42 accused held in pre-trial detention, 24 percent were charged with felony related offenses and 76% were charged with misdemeanor related offenses; and in Kandal, of the 74 accused held in pre-trial detention, 34% were charged with felony related offenses and 66% with

misdemeanor related offenses. At the Phnom Penh Court, pre-trial detention of accused charged with misdemeanors was recorded as being higher than pre-trial detention of those charged with felony related offenses. Bearing in mind that the law sets out very specific and limited exceptions where pre-trial detention may be warranted, the levels of pre-trial detention, particularly in relation to misdemeanor offenses, at all the courts is a matter of concern. During dialogue with the Phnom Penh Court in 2011²⁰ it was mentioned that pre-trial detention is necessary to ensure that an accused appears at the court for trial. However, pre-trial detention is not the only option available to ensure that accused appear before the court and to safeguard the administration of justice. Judicial supervision is also available as a measure to ensure that the accused does not pervert the course of justice. Pursuant to the CCPC, judicial supervision has the effect of subjecting the charged person to restrictions to his or her liberty, such as not being able to leave the country, not being able to go to certain places and not to receive or meet certain people.²¹ Judicial supervision, therefore, can be used as an effective and less intrusive measure than pre-trial detention in ensuring the presence of the defendant in court. However, when looking at data collected by Trial Monitors at the four courts, judicial supervision was only used in relation to 118 – 13% – of individual accused monitored. In relation to those charged with felony related offenses, judicial supervision was recorded in 18% of all cases, whereas judicial supervision was only utilized in 5% of misdemeanor related cases. Judges must give more consideration to the use of judicial supervisions as a less intrusive measure than pre-trial detention. Greater effort must be placed on ensuring that pre-trial detention is only used as an exceptional measure, as prescribed by law and in accordance with human rights obligations and principles. Reducing the number of people and the time spent in pre-trial detention has the potential ancillary effect of easing the problem of overcrowding in prisons, which is a major concern in Cambodia.²²

When discussing the high levels of pre-trial detention during the dialogue meeting at Ratanakiri Court, Trial Monitors were informed that judges felt uneasy about imposing judicial supervision as an alternative to pre-trial detention because many people who were the subject of criminal proceedings had come from other provinces to find work in the jurisdiction and without strong ties to the local community or a long term address, judges felt that there was a high risk that they would fail to attend court for trial. In the case of juvenile accused, judges felt that pre-trial detention was justified for repeat offenders and expressed the fear that if repeat offenders were released pending trial, they might be at risk of reprisals within the local community²³; if such reasons are being used to justify the imposition of pre-trial detention, there must be real evidence that this is the case and any such evidence should be referred to when the reasons to detain the accused person are announced.

There were a number of trials monitored in which pre-trial detention preceding the hearing exceeded the statutory limits. Figure 4 below sets out the information of the 22 accused who were held beyond the statutory limits. For the purposes of Figure 4, pre-trial detention is deemed to start on the day of detention, or arrest if the day of detention is unknown and there is something to suggest that the accused is detained until the trial day (i.e. he or she shows up to the hearing in prison uniform), and end on the day of the trial or the day of the verdict, should the verdict be

²⁰CCHR dialogue with Judge KeSakhan, Judge Koa Uandy, Judge ChaingSinath and Prosecutor HingBuntea, Phnom Penh Court, 30 March 2011.

²¹ See Articles 223 – 229 of the CCPC.

²² See LICADHO, *Beyond Capacity 2011: Cambodia's Exploding Prison Population*, available at: <http://www.licadho-cambodia.org/overcrowding2011/>.

²³CCHR dialogue with Judge Luch Loa, Resident Judge at Ratanakiri Court, 11 September 2012.

delivered later. One of the reasons for this delay, cited by a resident judge at Ratanakiri Court, was the fact that hearings may be postponed when judicial police officers are unable to locate the relevant individuals in order to execute a warrant; this is a particular problem in the Ratanakiri area, due to the comparatively large number of indigenous people who may not have fixed addresses and frequently travel into the forest areas to work, living peripatetically.²⁴ Due to this issue, along with the large geographical area covered by Ratanakiri Court and the rural nature of the area, delays in proceedings may be more difficult to avoid in this jurisdiction.

During CCHR’s dialogue meeting at Kandal Court, the President of the Court stated that he was willing to investigate any cases where it was suggested that the statutory limitations on pre-trial detention had been exceeded, in order to determine why this may have happened and to prevent it from happening in the future.²⁵ During the dialogue meeting with BanteayMeanchey Court, the Vice-President expressed the view that pre-trial detention was necessary to ensure the attendance of the accused at court, and accepted that judicial supervision was rarely used due to concerns that the accused person would abscond.²⁶ Any concerns of absconding must be reviewed on an individual basis and balanced carefully against the right to liberty; courts must not use a blanket approach to the imposition of pre-trial detention and each case must be decided on its merits. The Vice-President also acknowledged that there was a lack of resources available to properly oversee judicial supervision. Additional resources need to be put in place so that those on judicial supervision can be properly monitored; without the assurance that those subject to restrictions are being monitored, it is inevitable that judges will be reluctant to release accused persons because they have no assurance that conditions of supervision are being adhered to. In Phnom Penh Court, judges also cited the accused persons’ lack of permanent address and the absence of sufficient resources to monitor judicial supervision as the reason for the continued prevalence of pre-trial detention.²⁷ It was of some concern that members of the judiciary at Phnom Penh Court stated that another reason to impose pre-trial detention was the fact that the judicial police would be unhappy if the court freed an accused person whom the police had worked hard to detain; the court must make the decision on release or detention by applying the law – both domestic and international – objectively and independently, without taking into account the views or wishes of any other party.²⁸

FIGURE 4: PRE-TRIAL DETENTION EXCEEDING STATUTORY LIMITS

Nº	Checklists	Charge	Arrest	Detention	Trial - Verdict	Statutory period	Excessive days
1	PP/11-10-2011-09:47	Felony: Robbery	N/A	20-11-2009	25-10-2011	682	22
2	PP/27-10-2011 – 15:12	Misdemeanor: BreachofTrust	28-10-2009	27-03-2011		310	205
3	KD/14-09-2011-	Misdemeanor:		22-10-	14-09-	310	17

²⁴CCHR dialogue with Judge Luch Loa, Resident Judge at Ratanakiri Court, 11 September 2012.

²⁵CCHR dialogue meeting with President of Kandal Court, Judge Hern Vanvibol, 28 September 2012.

²⁶CCHR dialogue with Vice-President of BanteayMeanchey Court, Judge Ith Somphouse, 13 September 2012.

²⁷CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

²⁸CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

	09:40	Theft		2010	2011		
4	KD/12-09-2011-09:52	Misdemeanor: Theft		03-11-2010	12-09-2011	310	3
5	KD/06-09-2011-10:27	Misdemeanor: Theft		20-10-2010	06-09-2011	310	11
6	KD/04-07-2011-09:55	Misdemeanor: Theft		22-07-2010	04-07-2011	130	37
7	KD/17-08-2011-08:40	Misdemeanor: Battery with injury		16-11-2010	17-11-2011	310	56
8	BM/09-09-2011-10:20	Felony: Robbery		24-10-2009	12-09-2011	682	6
9	BM/16-09-2011-08:40	Felony: Premeditated Murder		27-07-2009	23-09-2011	682	108

The excessive – and illegal – pre-trial detention of nine accused is a clear violation of Article 9(3) of the ICCPR, which requires those charged with an offense to be tried without undue delay. Furthermore, some of these cases (where the accused is not brought to trial within four months of the closing order being issued) may also contravene Article 249 of the CCPC, which 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.”* Of the nine cases of excessive pre-trial detention, six involved misdemeanor charges, a trend that has continued since monitoring began in 2009. During the First Reporting Period, of the eight recorded occasions in which pre-trial detention exceeded statutory limits, seven involved misdemeanor charges. During the Second Reporting Period, of the 18 cases of excessive pre-trial detention recorded, 13 involved misdemeanor charges. During the Third Reporting Period, five of the eight cases of excessive pre-trial detention were in relation to misdemeanor charges. During the Fourth Reporting Period, of the four cases of excessive pre-trial detention, all involved misdemeanor charges. Judges at both BanteayMeanchey and Kandal Courts agreed to investigate instances where CCHR has stated there to be excessive pre-trial detention, if CCHR could provide them with further details; this willingness to collaborate and investigate such cases was most encouraging.

As recorded in previous CCHR Trial Monitoring Reports, there is a potential correlation between the number of people held in pre-trial detention accused of misdemeanors and the lack of legal representation. As shown in Figure 8 of this Report, lawyers represented only 33% of those involved in misdemeanor cases. It is widely acknowledged that the lack of lawyers affects detention procedures, and the data collected by the Trial Monitors suggests that the absence of a lawyer may make it easier to lose track of how long someone has been held in pre-trial detention. In relation to those held in excessive pre-trial detention in the Fifth Reporting Period, none of the accused charged with misdemeanor offenses had legal representation.

RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Source in Cambodian and International law

- **Article 14(3)(a)** of the ICCPR: The accused is entitled “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”
- **Article 14(3)(f)** of the ICCPR: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ...To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”
- **Article 322** of the CCPC: “The court clerk shall call the names of the accused, civil parties, civil defendants, victims, witnesses and experts and verify the identity of those persons.”
- **Article 325** of the CCPC: “The presiding Judge shall inform the accused of the charges he is accused of.”
- **Article 330** of the CCPC: “If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
- **Article 331** of the CCPC: “When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person cannot read or is illiterate, the presiding judge shall call on an interpreter/translator for him under the conditions stated in Article 330 ... The presiding judge may call on any person who is able to communicate with the deaf and mute person.”

Accused persons have the right to be in a position to understand the nature of the offense with which they are being charged.

FIGURE 5: RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

3(a) Did the Judge state the charge?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	252	97	105	94	35	100	28	86
No	8	3	7	6	0	0	8	14
3(b) Did the Judge state the relevant law?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	150	58	82	73	33	94	25	45
No	110	42	30	27	2	6	31	55

3(c) Did the Judge state the date of alleged crime?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	190	73	88	79	35	100	36	64
No	70	27	24	21	0	0	20	36

3(d) Did the Judge state the place of alleged crime?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	180	69	88	79	35	100	33	59
No	80	31	24	21	0	0	23	41

3(e) Did the Judge state the parties involved?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	229	88	104	93	35	100	50	89
No	31	12	8	7	0	0	6	11

3(f) If required, was an interpreter provided?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	7	3	2	2	1	3	0	0
No	0	0	0	0	0	0	0	0
N/A	253	97	110	98	34	97	56	100

3(g) If required, were provisions made for disabilities?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	0	0	1	1	0	0	0	0
N/A	260	100	111	99	35	100	56	100

With regards to understanding the nature of the charge, Ratanakiri Court in particular was found to generally do very well at stating the nature of the charge, the relevant law under which the accused was charged, the date and location of the alleged crime and the parties involved. Both Phnom Penh and BanteayMeanchey Court have some work to do in ensuring that details such as the alleged date and place of the crime, and the parties involved, are explained to the accused. This is important to ensure that the accused fully understands the nature of the charges and can make informed decisions with regards to his or her defense.

Members of the judiciary at Phnom Penh Court stated that the CCPC does not require judges to explain the relevant law or give details of the specific Article to the accused.²⁹ Both domestic and international law is clear on this issue; Article 325 of the CCPC states that *'the presiding judge shall inform the accused of the charges that he is accused of'* and Article 14(3)(a) of the ICCPR states that the accused must be informed 'in detail' of the charges that he or she faces. As an absolute minimum, this explanation must include the relevant law if the accused is to have any opportunity of preparing a proper defense.

In BanteayMeanchey Court, the Trial Monitor noted one occasion where the court failed to accommodate for a disability. The accused was charged with theft under Article 353 of the Penal Code for stealing a bike, which he allegedly sold for money to buy drugs and alcohol. The statement written by the investigating judge noted that the accused could read and write. However, the accused used sign language to state that this was not true and he informed the court that he was dumb and deaf. Despite the claims of the accused, the court provided no sign language interpreter.

EXPLANATION OF RIGHTS

Source in Cambodian and International law

- **Article 14(3)(a)** of the **ICCPR**: The accused is entitled *"to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."*
- **Article 325 of the CCPC**: *"The presiding Judge shall inform the accused of the charges he is accused of."*

In order to exercise one's rights, one must know that they exist. CCHR monitors whether judges inform defendant of a number of basic rights. Whether or not a judge sufficiently informs a defendant of basic rights is a particular issue concerning those individuals charged with a misdemeanor who may appear before a court without a lawyer capable of informing them of their basic rights at trial. Certain rights may require an explanation, particularly where they are legalistic in nature. The trial monitoring data therefore distinguishes between informing the accused of a right and providing an explanation of a right.

²⁹CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

As Figure 6 below shows, the level to which the judge either informed or both informed and explained certain rights to an accused varied dramatically. In relation to being informed of his or her right to legal representation or to represent oneself, in over half of the trials monitored in Phnom Penh and BanteayMeanchey Courts – 57% and 52% respectively – the judge was observed informing the accused of his/her right to legal representation or self-defense. In Ratanakiri this only happened in 40% of the trials monitored. However, when it came to judges informing and explaining the right to legal representation or self-representation, judges at all the courts were observed to be failing to inform and explain these rights to defendants. It is important for judges to be reminded of an individual’s right to be informed and to have their rights explained, particularly in relation to the rights to legal representation and self-representation as it relates to the issue of equality of arms and to allowing the accused a real opportunity to prepare his/her defense. The failure of judges to inform and explain the right to legal representation or self-representation to an accused may contribute to an accused person making the decision not to request legal representation, and the number of accused securing legal representation has been found to be particularly low (see Figure 8 below). Furthermore, in the absence of a lawyer to inform them of their rights, individuals accused of offenses are reliant on judges to ensure that they have an understanding of their basic rights. Without such information or explanation, accused are vulnerable to violations of their basic rights and the integrity of the trial at hand is put into doubt.

FIGURE 6: EXPLANATION OF RIGHTS

4(a) Did the Judge inform (I) and explain (E) to the accused his/her right to legal representation or to self-representation?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
I	148	57	58	52	14	40	26	47
I&E	5	2	15	13	12	34	15	27
Neither	91	35	23	21	3	9	12	21
N/A	16	6	16	14	6	17	3	5
4(b) Did the Judge inform (I) and explain (E) to the accused his/her right not to answer?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
I	67	26	8	7	0	0	7	13
I&E	6	2	5	4	0	0	1	2
Neither	171	66	83	75	29	83	45	80
N/A	16	6	16	14	6	17	3	5

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

Sources in Cambodian and International law

- **Article 14(3)(b)** of the ICCPR: *“In the determination of any criminal charge against him, everyone shall be entitled to: have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”*
- **Article 98** of the CCPC: *“After a period of twenty-four hours, from the beginning of police custody has expired, the detainee may request to speak to a lawyer...”*
- **Article 319** of the CCPC: *“Before the hearing, the lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk. The lawyer or the secretary of the lawyer may be authorized by the court president to copy documents in the case file at their own cost, under the supervision of the court clerk.”*

An individual facing a criminal charge must be provided with adequate time and facilities to answer the charge against him/her. What constitutes ‘adequate’ time will depend on – among other things – the nature of the charge and the complexity of the case. The facilities owed to an accused under this right include access to documents and other evidence, which the accused requires to prepare his/her case, as well as the opportunity to engage and communicate his/ her lawyer. It was encouraging to note that while the Vice-President of BanteayMeanchey Court stated that there was no explicit provision in domestic law for a defense lawyer to be appointed before the day of trial, he acknowledged that it is nevertheless important that the lawyer is appointed in advance, in order to ensure that the rights of the accused are properly protected and that there is sufficient time to prepare for the trial.³⁰

FIGURE 7: RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

15(a) Was there anything to suggest that the defense lawyer was assigned on the day of the trial?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	3	1	0	0	0	0
No	476	100	274	99	60	100	102	100
15(b) Was the issue of adequate time and facilities for preparation raised by the defense?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	476	100	277	100	60	100	102	100

³⁰CCHR dialogue with Vice-President of BanteayMeanchey Court, Judge IthSomphouse, 13 September 2012.

Question 15(a) indicates whether there was anything said by the judge, court clerk, or lawyers to suggest that the defense lawyer had been assigned to the case on the day of the trial. Whilst there was nothing in the cases monitored in Phnom Penh and Ratanakiri to indicate that the defense lawyer had been assigned to the case on the day of the trial, in three cases or 1% of trials monitored in Banteay Meanchey, it appeared that the defense lawyer had been appointed on the day of the trial. All three of these cases involved felony offenses, where, pursuant to the CCPC, it is mandatory for the accused to have legal representation. Given the serious nature of these charges and the fact that the lawyer was appointed on the day of trial, a clear inference can be drawn that there is a strong possibility that the defense was not afforded adequate time to prepare, regardless of whether this was raised explicitly in court.

Case Study – Lawyer Assigned on the Day of the Trial

Court: Banteay Meanchey

Date Monitored: October 5, 2011

The accused was charged with rape under Article 239 of the Penal Code. The accused and the victim were a couple that often had disagreements about the victim working at a nightclub in Poipet City. One night the accused became angry that that victim had gone to the night club to work against his wishes. They had a heated argument that ended in him raping her.

At the trial it was noted that the lawyer who had been assigned to represent the accused was too busy to represent him, so another lawyer was assigned to him on the day of the trial.

RIGHT TO LEGAL REPRESENTATION

Sources in Cambodian and International law

- **Article 38** of the **Constitution**: *“Every citizen shall enjoy the right to defense through judicial recourse.”*
- **Article 14(3)(d)** of the **ICCPR**: *“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.”*
- **Article 300** of the **CCPC**: *“The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”*
- **Article 301** of the **CCPC**: *“The assistance of a lawyer is compulsory if (1) The case involves a felony; or (2) The accused is a minor.”*

Legal procedures and the workings of the court can be complex and daunting to those accused of an offense. To enable a fair trial it is vital to ensure that the accused person has the opportunity to

employ an expert advocate with the ability to explain the charges against them and their his/her rights, guide him/her through the trial process, and represent and defend his/her interests in court.

FIGURE 8: RIGHT TO LEGAL REPRESENTATION

16(b) Was the accused represented by a lawyer?									
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court		
	N°	%	N°	%	N°	%	N°	%	
Yes	310	65	113	41	50	83	43	42	
No	166	35	164	59	10	17	59	58	
In Felony Trials: 7(a) Was the accused represented by a lawyer?									
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court		
	N°	%	N°	%	N°	%	N°	%	
Yes	239	92	56	84	16	100	26	79	
No	21	8	11	16	0	0	7	21	
In Misdemeanor Trials: 7(a) Was the accused represented by a lawyer?									
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court		
	N°	%	N°	%	N°	%	N°	%	
Yes	71	33	57	27	34	77	17	25	
No	145	67	151	73	10	23	52	75	

With regards to the right to legal representation, Trial Monitors recorded that of the 915 accused monitored at all four courts, 516 – or 56% – of accused were represented by a lawyer. With just over half of all accused monitored being tried with legal representation, the figure raises the question about the extent to which the right to a defense is being protected and the extent to which authorities are taking measures to ensure that the right to legal representation is not only being respected but also facilitated through the maintenance of relationships with legal aid lawyers and the keeping of legal aid directories at police stations, and with the Courts, as recommended in previous Trial Monitoring Bi-Annual Reports.

In relation to felony trials, where by law it is mandatory for the accused to have legal representation, overall only 90% of accused charged with felony offenses had legal representation. When the data is broken down between the various courts, it is positive to note that in Ratanakiri all felony trials monitored saw the accused have legal representation. In contrast, in BanteayMeanchey the rate of legal representation of accused charged with felony offenses was 84%, whereas in Phnom Penh it

was 92% and in Kandal 79%. Whilst the level of legal representation in relation to those accused charged with felony cases is much higher than those charged with misdemeanors – where legal representation across the courts monitored was 33% – which reflects on the fact that such legal representation is prescribed by law, much more still needs to be done to that the rate of legal representation for individuals facing felony charges reaches the 100% required by law in all of the courts.

The lack of legal representation generally points to continued shortfalls in resources that are undermining the fairness of trials. Availability of legal representation is fundamental to consider when analyzing the data from the three courts. For example, when examining the data from Ratanakiri Court in more detail, it is important to consider that there are fewer trials taking place at the court in comparison to both Phnom Penh and Banteay Meanchey, which perhaps allows for lawyers to be more readily available to defend accused. From the observations of the Trial Monitor based in Ratanakiri there are two legal aid lawyers available to represent accused, one from International Bridge to Justice and the other from North-East Law Office. The presence of these lawyers, albeit in a court where judicial traffic is slower than courts in bigger cities and in the capital, helps in ensuring that defendants – whether charged with felony or misdemeanor cases – have adequate legal representation. While free legal representation is provided by legal aid organizations in relation to both the Banteay Meanchey and Phnom Penh Courts, the number of trials taking place perhaps indicates that the level of representation is not enough to deal with the caseloads.

The outcome of dialogue with the Bar Association and Legal Aid organizations in April 2012 showed common concerns with regards to financial restrictions that impede legal aid in Cambodia. During the meeting with the Bar Association it was explained that they receive 200,000,000 riels (US \$50,000) per year from the RGC to fund legal aid. This covers the work of eight lawyers across the country, including their administrative costs, travel to the court and actual legal representation.³¹ Legal Aid Cambodia (“LAC”) mentioned that the Bar Association had sent letters to its members requesting help in representing poor people. However, as the Bar Association was only able to cover the costs of copying the case-file, many lawyers found that their financial situation made them unable to act on a pro-bono basis.³² During the dialogue meeting at Phnom Penh Court in September 2012, members of the judiciary did not accept that there were any instances of accused persons not being represented in felony cases, maintaining that 100% of accused persons in felony cases were represented, despite the evidence presented by CCHR’s Trial Monitors.³³ Judges suggested that defense advocates may have forgotten to make closing submissions for their clients in cases where the accused persons were not present, for example in cases where the lawyer was representing more than one accused and one client was present when the other was not.

³¹ Interview with the Bar Association, April 3, 2012.

³² Interview with Ong Sileth from Legal Aid Cambodia, April 5, 2012.

³³ CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

PRESUMPTION OF INNOCENCE

Sources in Cambodian and international law

- **Article 38** of the **Constitution**: “The accused shall be considered innocent until the court has judged finally on the case.”
- **Article 14(2)** of the **ICCPR**: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

The presumption of innocence is a fundamental fair trial right that is recognized universally. The data in Figure 9 below indicates whether the accused may have been treated as guilty prior to the verdict and/or where indicators were observed by the Trial Monitors, which may have undermined the presumption of innocence.

FIGURE 9: PRESUMPTION OF INNOCENCE

17(a) Did the accused appear in prison uniform?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	355	75	86	31	40	67	5	5
No	40	8	107	39	9	15	69	68
N/A	81	17	84	30	11	18	28	27
17(b) Was the accused handcuffed throughout the trial?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	1	0.2	0	0	0	0	0	0
No	394	82.8	193	70	49	82	74	73
N/A	81	17	84	30	11	18	28	27
17(c) Were statements made by the Judge about the guilt of the accused prior to the delivery of verdict?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	4	1	0	0	0	0
No	476	100	273	99	60	100	102	100

17(d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	388	82	192	69	49	82	74	73
N/A	88	18	85	31	11	18	28	27

Case Study: Statement about Guilt of the Accused Prior to Delivery of Verdict

Court: Banteay Meanchey

Date: September 19, 2011

The accused was charged under Article 11 of the Law on the Suppression of Human Trafficking and Sexual Exploitation for the unlawful removal and cross border transfer of the victim. The accused was a 32-year-old female who worked in Thailand but visited her home in Poipet province frequently. The accused was stopped on her way to Thailand with a car full of girls, allegedly with the intention to take the girls to work in Thailand. The accused claimed that the girls were her relatives and they had asked to go to Thailand to work.

During the trial the Judge was noted as saying that the accused was kept in pre-trial detention so that she could realize and accept her fault, and offer to “correct” herself for her crimes.

Article 4(5)(f) of Proclamation 217 on Administration of Prisons by the Ministry of Interior on March 13, 1998 provides, “Prisoners who are required to appear before the court shall be given the opportunity to wear their own clothes provided that the clothing is clean and suitable.” The data for question 17(a) however indicates that the percentage of trials in which defendants appeared before the court in prison uniform is high, with 75% of all accused at Phnom Penh Court appearing before the court in prison uniform, 67% of all accused in Ratanakiri Court and 31% of accused in BanteayMeanchey Court. In relation to this data it is important to note that the Trial Monitor in BanteayMeanchey observed that in the majority of instances accused held in pre-trial detention were given an opportunity to change their shirt prior to appearing before the BanteayMeanchey Court. It is unclear whether this happened at the prison or at the court itself. While the accused were given an opportunity to change their top, it appeared that they were usually still wearing the bottom half of their prison uniform. The data from BanteayMeanchey therefore on first appearance is slightly misleading with regards to the prison uniforms, for even though defendants are given an opportunity to wear their own shirt, the bottom half of their attire clearly indicates that they were held in pre-trial detention. When a defendant is forced to attend a hearing in complete or partial

prison attire, the implication that the accused is guilty risks affecting, consciously or subconsciously, the manner in which proceedings are conducted, the conduct of the judges, and ultimately, the outcome of the case.

Interestingly, for the three months in which criminal trials in Kandal Court were monitored, only 5% of accused appeared before the court in prison uniforms. Following discussions with the President of the Kandal Court, CCHR is aware that facilities are made available at the court to allow accused to change into civilian clothes. While there may be, in some cases, concerns that allowing accused to change clothes may increase the risk that accused will escape prior to a hearing, such concerns about security for some accused cannot be allowed to result in a blanket explanation for the failure to respect the rights of the accused in general.

During CCHR's dialogue meeting with a resident judge at Ratanakiri Court, the judge explained that judges acknowledged that accused persons should be given the opportunity to wear civilian clothes when appearing before the court. He confirmed that the responsibility for ensuring that the necessary provisions were put in place rested with the Ministry of Interior and, ultimately, the Department of Prisons; it is encouraging to note that judges agree that accused persons should appear before the court and CCHR acknowledge that this issue may sometimes be out of the judges' hands and further dialogue with the Department of Prisons is required on this issue.³⁴ At both BanteayMeanchey Court and Phnom Penh Court, the Vice-President expressed similar views, confirming that the attire of accused persons is generally the responsibility of the prison in which they are being detained and the provision to wear full civilian clothes needs to be facilitated at prison, before the accused is transferred to court. The Vice-President of BanteayMeanchey Court also added that some accused persons may already be serving sentences for other offenses and may, in some circumstances, pose an escape risk.³⁵ However such concerns still need to be weighed up against the right to be presumed innocent: if judges are aware that the reason that accused persons are wearing prison uniform is because they have already been convicted of an offense, then this inadvertently introduces evidence of 'bad character' which could have a prejudicial impact on proceedings.

The data for question 17(b) indicates that there was one instance in the Fifth Reporting Period in which an accused appeared before the court in handcuffs. The incident took place at the Phnom Penh Court. The explanation provided by the court for the accused appearing with handcuffs throughout the trial was that he was already serving a life sentence for an earlier conviction and the handcuffs were deemed to be necessary as a security measure to prevent any attempt to escape.

In relation to question 17(c), there were four cases, all of which occurred at BanteayMeanchey Court, where statements were made by the judge about the guilt of the accused prior to the delivery of the verdict.

³⁴CCHR dialogue with Judge Luch Loa, Resident Judge at Ratanakiri Court.

³⁵CCHR dialogue with Vice-President of BanteayMeanchey Court, Judge IthSomphouse, 13 September 2012.

INDEPENDENCE, IMPARTIALITY AND PROFESSIONALISM OF THE JUDGE

Sources in Cambodian and International law

- **Article 128** of the **Constitution**: “The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”
- **Article 132** of the **Constitution**: “The King shall be the guarantor of the independence of the judiciary. The Supreme Council of Magistracy shall assist the King in this matter.”
- **Article 14(1)** of the **ICCPR**: “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The right to be tried by an independent and impartial tribunal is considered absolutely fundamental. The UN Human Rights Committee has stated that it is “*an absolute right that may suffer no exception.*”³⁶ The data in Figure 10 below indicates whether anything at the trials monitored could be perceived as calling into question the impartiality of the judge.

FIGURE 10: INDEPENDENCE AND IMPARTIALITY OF THE JUDGE

8(a) Was there anything to suggest that the judge had an interest in the case beyond their usual judicial role?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	260	100	112	100	35	100	56	100
8(b) Did the judge behave in an intimidating manner towards a party?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	260	100	112	100	35	100	56	100
8(c) Did the judge make discriminatory comments about any party?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	260	100	112	100	35	100	56	100

³⁶Human Rights Committee, Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 263/1987; *M. Gonzalez del Rio v. Peru* (CCPR/C/46/D/263/1987), October 28, 1992, para. 5.2.

8(d) Did the judge leave the court room during the trial?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	26	10	5	4	1	3	4	7
No	234	90	107	96	34	97	52	93

9(a) Was there a deliberation?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	48	18	1	0.5	28	80	31	55
No	0	0	14	12.5	0	0	3	5
I/U	212	82	97	87	7	20	22	40

9(b) In cases where there was a deliberation, was there anything to suggest that any party had an opportunity to speak to the Judge during the deliberation?*

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	13	28	0	0	1	3	6	22
No	34	72	0	0	27	77	21	78

If yes, which party?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Prosecutor	3	23	0	0	1	100	1	16.5
Court clerk	7	54	0	0	0	0	2	34
Prosecutor and Court Clerk	3	23	0	0	0	0	1	16.5
Prosecutor, Court Clerk and Civil Party	0	0	0	0	0	0	1	16.5
Prosecutor	0	0						

and Defense			0	0	0	0	1	16.5
Defense	0	0	0	0	0	0	0	0
Civil Party	0	0	0	0	0	0	0	0

There was nothing to suggest in any of the trials monitored that the judge(s) had an interest beyond his/her/their usual role.

The discrepancy in the number of cases in which there was a deliberation referred to in Section 9a of the above table and the total number of cases referred to in section 9b of the table is due to a small number of cases where a deliberation took place, but the trial monitor was not able to say whether any party had contact with the judge during the deliberation, either due to the layout of the court or because the judge did not use the deliberation room. In BanteayMeanchey Court, there is no deliberation room and the deliberation therefore took place away from the courtroom where the trial monitor could not observe. There was one instance in Phnom Penh Court and seven instances in Kandal Court where the judge did not use the deliberation or the courtroom for deliberation and the trial monitor was therefore unable to answer question 9b.

Deliberation is an important consideration when evaluating the independence and impartiality of judges as it shows the extent to which the facts of the case and the application of the law are duly considered. Having this deliberation first of all take place and second take place without interference or discussions with vested parties is fundamental in terms of the both the quality of justice that is being dispensed, and independence and impartiality. When it comes to monitoring, as per the methodology set out in Chapter 2, CCHR Trial Monitors monitor on a random basis every day, and thus if a case has been heard but the deliberation does not take place on the same day as the trial, it may not be possible for the Trial Monitor to be present, although every effort is made to attend any deliberations and verdicts that are adjourned. This difficulty arises from the fact that the Trial Monitor may be monitoring another trial when the deliberation for a previous case takes place, or that the deliberation is delayed and does not take place on the scheduled date. In such an instance, Trial Monitors denote "I/U" on the Checklist. There was deliberation in 108 of the 463 trials monitored. Ratanakiri saw the highest levels of deliberation on the day of the trial, with deliberation being recorded in 80% of trials monitored, compared to 55%, 18% and 0.5% at Kandal Court, Phnom Penh Court and BanteayMeanchey Court respectively. The discrepancy in data can perhaps be explained by the fact that the Ratanakiri Court is a small provincial court with much fewer trials than Kandal, Phnom Penh and BanteayMeanchey. It is thus capable of hearing a case and deliberating on the same day. The small number of trials that take place also has made it easier for the Trial Monitor to monitor both the case and the deliberation.

When it comes to whether there was anything to suggest that any party spoke to the judge during deliberation, there were 13 instances recorded in Phnom Penh Court, six in Kandal Court and one in Ratanakiri Court. Of these 20 cases, in five cases it appeared that the judge spoke to the prosecutor and in eight cases that the judge spoken to the Court clerk. In three cases the judge was seen talking

to both the prosecutor and the court clerk and in one case the prosecutor and the defense lawyer. In previous dialogue with judges at the Phnom Penh Court it was argued that the court clerk for example might need to enter the deliberation room in order to give the judge his or her papers. Article 337 of the CCPC provides that the prosecutor and court clerk are “*not authorized to participate in the deliberation*”. While the data collected is limited to observations of parties entering the judges’ deliberation rooms, and does not go to the fact of deliberation itself, any entry by a clerk, prosecutor or other party into a deliberation room, regardless of their motivations, brings into question the independence and impartiality of the judge, and the potential for outside influence on the verdict.

A common observance by Trial Monitors since monitoring began in 2009 has been the frequency with which judges, lawyers and court staff – such as the court clerks – answered mobile telephones during the proceedings. Such conduct raises concerns as to whether a judge who is answering or speaking on a phone is paying sufficient attention to the arguments of the parties and the evidence being presented. Such conduct further suggests – even if it is not the case – that the judge is open to influence by outside parties.

FIGURE 11: JUDGES’ USE OF MOBILE PHONES

8(e) Did the judge answer a mobile telephone during the hearing?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	84	32	20	18	3	9	11	20
No	176	68	92	82	32	91	45	80
If yes, how did the judge respond?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Answer briefly and hung up	27	32	12	60	3	100	10	91
Conducted a conversation	57	68	8	40	0	0	1	9
On silent	73	87	14	70	2	67	5	45
Audible	11	13	6	30	1	33	6	55

As the most basic of fair trial rights standards, judges and court staff should not be answering their mobile phones during any proceedings. As such, the fact that Trial Monitors have observed that in 32% of trials in Phnom Penh, 20% of trials in Kandal, 18% of trials in BanteayMeanchey and 9% of trials in Ratanakiri the judge answered his or her telephone during the hearing is concerning. It has previously been argued by some courts that the answering of mobile phones in court was unavoidable as judges hearing one case are also acting as investigating judges in other cases and thus should remain accessible should they need to be contacted by the judicial police to grant approval for investigatory action. However, while the conversations were invariably brief – with judges in BanteayMeanchey and Ratanakiri answering briefly and hanging up in 60% and 100% of cases respectively, in Phnom Penh in 68% of cases the judge was noted to have conducted a conversation. In BanteayMeanchey this was 40%. The answering of phones during a hearing raises questions about the independence and impartiality of the judiciary, and may influence public perception of the court by raising concerns that the judges are open to influence from external parties during proceedings. While it may be the case that the majority of phone calls relate to work in relation to other cases, access to justice in one case should not be compromised in order to expedite proceedings in another. Furthermore, the use of mobile telephones by judges during trials conveys a very poor professional image and does nothing to improve the public perception of the integrity and professionalism of the judiciary.

The instances of judges using telephones in Ratanakiri was comparatively low, although of course this practice must be eradicated altogether; a resident judge at Ratanakiri Court agreed that judges should not be using telephones during hearing as this diverts attention away from the matter at hand.³⁷ Whilst the Vice-President of BanteayMeanchey Court suggested that judges' use of mobile telephones during trials was "inevitable and...hard to prohibit", claiming that the trial procedure was not interrupted by judges taking telephone calls, he did confirm that he would make efforts to try and reduce this practice. Similarly, judges at Phnom Penh Court stated that judges' use of mobile telephones is unavoidable, because they need to take calls relating to other ongoing cases, and has no negative impact on the proceedings; judges stated that CCHR's concern over this issue was 'excessive' and that CCHR should remove the question pertaining to the use of mobile telephones in court because it was unnecessary.³⁸

CCHR maintains that the use of mobile telephones during trials by judges is an absolutely fundamental issue that is easily avoidable. The use of telephones in court can – and must – be prohibited.

³⁷CCHR dialogue with Judge Luch Loa, Resident Judge at Ratanakiri Court, 11 September 2012.

³⁸CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

EVIDENCE RIGHTS (INCLUDING THE RIGHT TO CALL AND EXAMINE WITNESSES)

Sources in Cambodian and International law

- **Article 14(3)(e)** of the ICCPR: “Everyone shall be entitled... to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”
- **Article 153 of the CCPC:** “The investigating judge may question any person whose response is deemed useful to the revelation of the truth....The investigating judge may also arrange a confrontation between the charged person...and witnesses.”
- **Article 298 of the CCPC:** “At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”
- **Article 324 of the CCPC:** “At the commencement of the trial hearing, each party may request the court to hear witnesses who are present in the court room but who were not properly summonsed to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses and instruct them to retreat to the waiting room.”
- **Article 326 of the CCPC:** “[t]he presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful The Royal Prosecutor, the lawyers and all the parties may be authorized to ask questions. All questions shall be asked with the authorization of the presiding judge. Except for questions asked by the Royal Prosecutor and the lawyers, all questions shall be asked through the presiding judge. In case of objection to a question, the presiding judge decides whether the question should be asked.”

As the court is required to make its decision based on evidence alone, all parties must have equal opportunity to present evidence in support of their case.³⁹ Evidence is usually provided in one or more of three ways, by: (1) witness testimony (such as a statement from a person who saw what happened); (2) presentation of documents (such as a land title certificate in a case arising from a land dispute); and/or (3) physical evidence (such as a bloodied weapon).

FIGURE 12: EVIDENCE

6(a) Was evidence presented?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	257	99	109	97	35	100	56	100
No	3	1	3	3	0	0	0	100

³⁹Article 334 of the CCPC.

7(a) Was there anything to suggest that any party was *not given* the opportunity to present evidence?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	260	100	112	100	35	100	56	100

Related to the principle of equality of arms is the right of each party to the proceedings to call witnesses in support of their case and to examine witnesses called by the other parties to the proceedings.⁴⁰ The accused has the right to call and examine witnesses on his/her behalf under the same conditions as witnesses against him/her.⁴¹ The right should not be read as an unqualified right to force witnesses' attendance or as a right to call an indeterminate number of witnesses. Article 322 of the CCPC indicates that witnesses should retreat to a waiting room until they are called upon to testify and should not be able to see or hear anything taking place in the courtroom prior to giving testimony. While in the waiting room, witnesses are not allowed to communicate with one another.⁴² These safeguards aim to avoid witnesses adapting or doctoring testimony to suit developments in the proceedings or because of pressure from others. All of the courts monitored during the Fifth Reporting Period have witness waiting rooms, although Trial Monitors reported that the room at Phnom Penh Court is rarely used; rather than waiting in the witness room, witnesses at Phnom Penh Court are usually seated in the corridor outside the courtroom before they give evidence. It should be noted that neither Banteay Meanchey or Ratanakiri Courts have a designated witness room, provisions should still be made to isolate witnesses before they give evidence.

FIGURE 13: RIGHT TO CALL AND EXAMINE WITNESSES

5(a) Was there anything to suggest that any party was *not given* the opportunity to call witnesses?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	260	100	112	100	35	100	56	100

7(b) Was there anything to suggest that any party was *not given* the opportunity to examine witnesses?

Data	Phnom Penh Court	B.Meanchey Court	Ratanakiri Court	Kandal Court
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⁴⁰ Article 14(3)(e) of the ICCPR ; Article 298, 324 and 326 of the CCPC.

⁴¹ Article 14(3)(e) of the ICCPR.

⁴² Article 322 of the CCPC.

	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	52	20	21	28	26	74	11	20
N/A	208	80	81	72	9	26	45	80

There were no cases in the Fifth Reporting Period in which there was an indication that one of the parties was not given the opportunity to summon witnesses – a very positive development. In relation to question 7(b), in all the trials monitored, parties were given the opportunity to examine witnesses.

RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

Sources in Cambodian and International law

- **Article 38** of the **Constitution**: *“The law guarantees there shall be no physical abuse against any individual . . . The prosecution, arrest, or detention of any person shall not be done except in accordance with the law . . . Confession obtained by physical (or) mental force shall not be admissible as evidence of guilt... Any case of doubt, it shall be resolved in favor of the accused. The accused shall be considered innocent until the court has judged finally on the case. Every citizen shall enjoy the right to defense through judicial recourse.”*
- **Article 14(3)(g)** of the **ICCPR**: *“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... Not be compelled to testify against himself or 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 implies that no direct or indirect physical or psychological pressure should be inflicted on the accused by the investigating or judicial authorities in order to secure a confession of guilt.

FIGURE 14: RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

14(a) Was there anything to suggest that the accused confessed to the offense prior to the hearing?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	53	11	135	49	45	75	45	44
No	423	89	142	51	15	25	57	56
14(b) Was there anything to suggest that the accused was interrogated without a lawyer present?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%

Yes	5	1	3	1	6	10	3	3
No	471	99	274	99	54	90	99	97

14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	12	2.5	11	4	0	0	1	1
No	41	8.6	124	45	45	75	44	43
N/A	423	88.9	142	51	15	25	57	56

14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	9	2	5	2	0	0	4	4
No	44	9	130	47	45	75	41	40
N/A	423	89	142	51	15	25	57	56

For the purposes of question 14(c), coercion is defined as improper psychological pressure such as threats, while question 14(d) is used to monitor whether there is anything to indicate that the accused has been pressured to confess to a crime through the application of violence or torture. Examples of indications noted by the Trial Monitors that the accused has been pressured to confess through violence or torture include specific allegations of improper treatment from the accused and observable signs of physical abuse. It should be noted that the data in this question is speculative as it is impossible for Trial Monitors to conclusively determine whether allegations made by an accused in court are genuine or whether observable signs of physical abuse were sustained during questioning or pre-trial detention. For the purposes of questions 14(c) and 14(d), "N/A" is used when there was nothing to suggest that the accused confessed to the offense prior to the hearing.

In relation to 278 of the 915 accused monitored in all four of the Courts, or 30% of all accused, there was evidence to suggest that the accused confessed to the offense prior to the hearing. These confessions were much more common in Ratanakiri, where in relation to 75% of the accused monitored there was evidence to suggest that the accused confessed to the offense prior to the hearing. Of the trials in which there was evidence to suggest that the accused confessed prior to the hearing, there were indications that the confession may have resulted from threats or psychological pressures in relation to 24 of the accused monitored, and indications that the confession may have

resulted from violence or torture in relation to 18 of the accused monitored. When considering any confession that is alleged to have resulted from improper coercion, it is important that judges exercise extreme caution. Where it is found that a declaration has been made under physical or mental duress, judges must not afford it any evidential value in accordance with Article 321 of the CCPC.

PROHIBITION AGAINST DOUBLE JEOPARDY

Sources in Cambodian and International law

- **Article 14(7) of the ICCPR:** “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”
- **Article 23 of the Penal Code:** “No one may be prosecuted for the same conduct for which he or she has already been finally tried abroad and who, in the event of conviction establishes that he or she has already served the penalty or that the penalty has been extinguished by statute of limitation.”
- **Article 12 of the CCPC:** “In applying the principle of *res judicata*, any person who has been finally acquitted by a court judgment cannot be prosecuted once again for the same act, even if such act is subject to different legal qualification.”

Double jeopardy – or the principle of *res judicata* (literally translated as “already judged”) – refers to the right of a person to be protected from being tried for the same crime or action more than once. It provides that the final judgment of a court, be it either the acquittal or the conviction of the accused, shall act as a bar to any further prosecution for the act. There are a number of benefits to this principle, both to the individual accused and the society as a whole, including the prevention of wasting legal resources where decisions have already been made.

FIGURE 15: PROHIBITION AGAINST DOUBLE JEOPARDY

18(a) Was there anything to suggest that the accused has been tried for this crime previously?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	1	0.3	0	0	0	0	0	0
No	475	99.7	277	100	60	100	102	0

Of the trials monitored, there was one case of alleged double jeopardy at the Phnom Penh Court. The accused was charged with theft with aggravating circumstances in (use of violence) under Articles 353 and 357 of the Penal Code. It was alleged that he committed the crime on January 11, 2007 when he ambushed the victim behind the Technology Institute in Phnom Penh robbing the victim of jewelry and money. He was sentenced to four years’ imprisonment. During the trial the accused claimed that he had already been convicted of the same offense when he was 17 years old, however, the verdict and any other information about this suggestion was not made available.

TRIALS INVOLVING JUVENILES

Juveniles who are accused of having committed a criminal offense are entitled to all the fair trial rights that apply to adults, as well as additional protections in recognition of their age, maturity, and intellectual development. In the absence of any separate juvenile law in Cambodia, the fair trial standards required in juvenile cases have been derived from international law. The ICCPR and the Convention on the Rights of the Child (the “CRC”), both ratified by Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings and are supported by a number of international rules and guidelines. The Ratification of these instruments and consequent incorporation into Cambodian law was confirmed by the Constitutional Council in 2007.⁴³ Furthermore, Articles 31 and 48 of the Constitution explicitly recognize the CRC and guarantee that the State shall protect the rights of children, while the statutory framework also makes provision for differentiated treatment of juveniles in a number of important areas.

FIGURE 16: TRIALS INVOLVING A JUVENILE ACCUSED

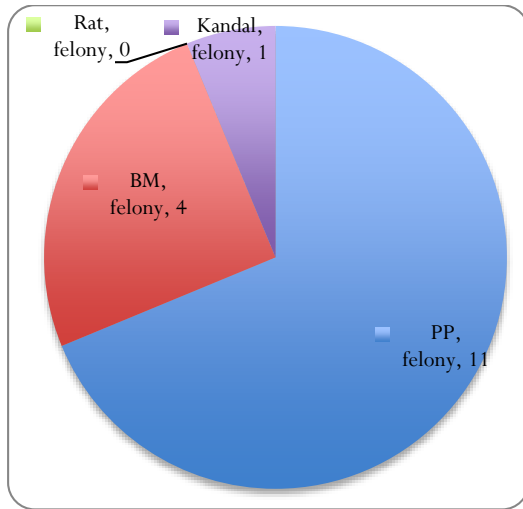
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Felony	10	48	3	50	0	0	1	33
Misdemeanor	11	52	3	50	3	100	2	64
Number of trials	21	100	6	100	3	100	3	100

In the Fifth Reporting Period, 33 of the 463 trials monitored involved juvenile accused – 7% of the total trials monitored. Article 38 of the Penal Code states that the legal age of criminal responsibility in Cambodia is 18 years of age. Persons below 14 years of age when a criminal offense was allegedly committed cannot be prosecuted or tried by the courts. Juveniles between 14 and 18 years of age remain subject to the criminal law and are entitled to all the fair trial rights that apply to adults, as well as additional protection in recognition of their age, maturity, and intellectual development.

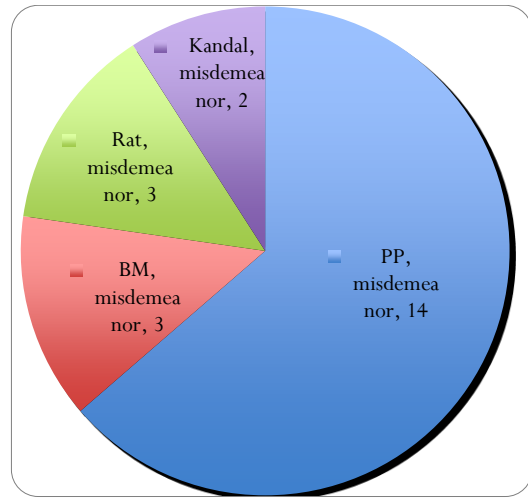
In total, 38 individual juveniles were monitored over the course of the Fifth Reporting Period. Of the 38 individual juveniles monitored, over half, 58%, faced misdemeanor charges, with 42% facing felony related charges. The breakdown of individual juvenile accused and the offenses under which they were charged in relation to each of the courts monitored is as follows:

⁴³ Constitutional Council of the Kingdom of Cambodia, Decision No.092/003/2007, dated July 10, 2007.

Juvenile Accused Charged with Felony Offenses



Juvenile Accused Charged with Misdemeanor Offenses



JUVENILES – PRIVACY

Sources in International law

- **Article 14(1)** of the **ICCPR**: *“The Press and the public may be excluded from all or part of a trial...when the interests of the private lives of the parties so requires...but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”*
- **Article 40(2) (vii)** of the **CRC**: *“States Parties shall, in particular, ensure that ... [a child has] his or her privacy fully respected at all stages of the proceedings.”*

Criminal trials involving adults should generally be held in public in order to provide for the right to a public hearing. However, when a trial involves a juvenile it is legitimate to restrict those who attend the trial in order to protect the privacy of the juvenile and avoid stigmatization.

FIGURE 17: JUVENILES – PRIVACY

24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	23	92	7	100	3	100	3	100
N/A	2	8	0	0	0	0	0	0

The data for question 24(a) shows that there were no instances where any measures were taken to protect the privacy of the accused juvenile during the hearing. The courts need to give more consideration to protect the privacy of juveniles. Representatives from the monitored courts all stated that a trial bench always considers the issue of a closed trial for juveniles very carefully. It was noted that the practice of all courts was to provide closed hearings in cases of rape. Dialogue with the courts seemed to suggest that protection was considered more frequently in matters involving juvenile victims, particularly in rape cases, rather than juvenile accused as a whole. The courts should recognize that protecting the privacy of juveniles should not just be extended to juvenile victims but also to accused, and must give more due consideration to the types of cases conducted behind closed doors.

JUVENILES – PRE-TRIAL DETENTION

Sources in Cambodian and international law

- **Article 100** of the **CCPC**: “When a detained person is a minor, the judicial police officer shall notify by all means the parents, the legal representative or any person who is responsible for that minor.”
- **Article 212** of the **CCPC**: “A minor under 14 years old may not be temporarily detained. The investigating judge can decide to send the minor temporarily to his guardians or, if there are no guardians, to a Provisional Education and Care Center until the competent judge has made his decision on this issue.
- **Article 213** of the **CCPC**: “For a minor of 14 years to 18 years involved in a felony, provisional detention shall be as follows:
 1. provisional detention may not exceed four months if the minor is under 16 years old;
 2. provisional detention may not exceed six months if the minor is 16 to 18 years old.”
- **Article 214** of the **CCPC**: “For a minor of 14 to 18 years old involved in a misdemeanor, provisional detention shall be as follows:
 1. provisional detention may not exceed two months if the minor is under 16 years old;
 2. provisional detention may not exceed four months if the minor is from 16 to 18 years old.

The duration of provisional detention in items 1 and 2 of this Article shall not exceed half of the minimum period of sentence set by law for the minor.”

When it comes to pre-trial detention, international standards strongly discourage such practices in relation to juveniles, even more so than with cases involving adult accused. In most cases, the best interests of the child are protected by not separating them from their parents.⁴⁴ Detention of children, including after arrest and prior to trial, should be avoided whenever possible and used as a measure of absolute last resort and for the shortest appropriate period.⁴⁵ Both Cambodian law and international law specifically provide that in the exceptional cases in which juveniles are detained in pre-trial detention, they should be separated from adults.⁴⁶

FIGURE 18: JUVENILES – PRE-TRIAL DETENTION

23 Was there pre-trial detention?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	23	92	7	100	3	100	3	100
No	2	8	0	0	0	0	0	0

⁴⁴Article 9 of the Convention on the Rights of the Child (CRC).

⁴⁵ Article 37(b) of the CRC; Articles 96 and 212 of the CCPC. Article 212 of the CCPC prohibits the detention of minors under 14, with Articles 213-214 setting out the maximum provisional detention times applicable for minors between 14 – 18 years of age who have committed a felony or misdemeanor.

Article 166 of the Penal Code provides for the segregation of minors detained in prison: “The jailed minors are detained in the special quarters, separated from the adults.” See also Article 37(c) of the CRC and Rule 13.4 of the United Nations Minimum Rules for Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 on November 29, 1985.

23(b) If held in pre-trial detention, was there anything to suggest that the accused was not separated from adults?

Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	23	92	7	100	3	100	3	100
N/A	2	8	0	0	0	0	0	0

In total, of the 38 juvenile accused monitored, 36 – or 95% – were held in pre-trial detention. All juveniles in BanteayMeanchey, Ratanakiri and Kandal Courts were placed in pre-trial detention. The high-rate of pre-trial detention of juveniles is particularly concerning especially when compared to the pre-trial detention rate for adults, which was 70% in the Fifth Reporting Period. The high level of pre-trial detention of juveniles across all four courts suggests that pre-trial detention is not being used in the very specific and limited circumstances as prescribed by Cambodian and international law, but rather that it has become a default position for dealing with juvenile accused. Furthermore, in line with the general trend that has been observed with regards to adults in pre-trial detention, the rate of pre-trial detention for those juveniles charged with misdemeanors is high. Of the 22 individual juvenile accused charged with misdemeanors, all but two, who stood before Phnom Penh Court, were held in pre-trial detention. All 16 individual juveniles who were charged with felony related offenses were held in pre-trial detention. In the cases of pre-trial detention of juveniles, there was nothing to suggest that the juveniles had been separated from adults. As with the case of the adult accused monitored, Trial Monitors did not observe any evidence to suggest that alternative measures to pre-trial detention were being considered.

The data in relation to juveniles and pre-trial detention shows a common trend between all four of the courts – that of a justice system that does not fully implement a distinct juvenile justice system specifically geared towards considering fair trial rights as they relate specifically to children. This is perhaps indicative of a lack of social and structural resources and support to allow for alternatives to be put in place to help facilitate the presumption that juveniles should not be detained pending trial. The draft juvenile justice law, formulated several years ago but still not passed, should contain specific provisions that prescribe that the pre-trial detention of a juvenile accused should be a measure of last resort. It is hoped this law will provide a juvenile justice framework which the Cambodian courts can work with that will ensure the rights of children. However, in order for such a law to be effective, appropriate processes and procedures need to be in place that actually give judges other options rather than detaining juveniles in pre-trial detention.

The President of Kandal Court reassured CCHR’s trial monitors during the September 2012 dialogue meeting that judges at Kandal always ensured that each case decision on pre-trial detention was considered carefully, taking into account factors such as the nature and seriousness of the alleged

offense and the strength of the evidence against the accused.⁴⁷ The Vice-President of BanteayMeanchey Court explained to CCHR trial monitors that some of the main reasons for imposing pre-trial detention in cases involving juvenile accused are the seriousness of the offence and the fact that the accused person may not have a fixed address, as well as the fact that there are insufficient resources to monitor judicial supervision.⁴⁸ Members of the judiciary at Phnom Penh Court cited instances of accused persons lying about their age and committing further offences as reasons behind the high levels of pre-trial detention in cases involving juveniles.⁴⁹ It is crucial that judges make decisions on pre-trial detention in accordance with the provisions of Article 205 of the CCPC, which does not include the seriousness of the alleged offence. As is the case with adult accused, there is a clear need for the provision of adequate resources to make judicial supervision a realistic and workable alternative to pre-trial detention.

⁴⁷CCHR dialogue with President of Kandal Court, Judge HernVanvibol, 28 September 2012.

⁴⁸CCHR dialogue with Vice-President of BanteayMeanchey Court, Judge IthSomphouse, 13 September 2012.

⁴⁹CCHR dialogue with Vice-President, Resident Judges, Vice-Prosecutor and Administrative Officer of Phnom Penh Court, 17 September 2012.

JUVENILES – SENTENCING

Sources in Cambodian Law

- **Article 39 of the Penal Code:** “Minors who committed offences shall be subject to supervision, education, and protection. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
- **Article 40 of the Penal Code:** “Supervisory, educational, protective and assistance measures shall include:
 1. Returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy.
 2. committing the minor to a social service agency which cares for minors;
 3. committing the minor to a private organization that is qualified to receive minors;
 4. committing the minor to a specialized hospital or institution;
 5. placing the minor under judicial protection.

The best interests of the child are to be a primary consideration when ordering or imposing penalties on juveniles found to have infringed the criminal law.⁵⁰ Imprisonment of juveniles found to have infringed the criminal law is to be considered a measure of last resort to be employed only in exceptional cases.⁵¹

FIGURE 19: JUVENILES – SENTENCING

25(b) Was there anything to suggest that the Judge considered imposing a non-custodial sentence before imposing a custodial sentence?								
Data	Phnom Penh Court		B.Meanchey Court		Ratanakiri Court		Kandal Court	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	11	44	5	72	3	100	2	67
N/A	2	8	1	14	0	0	1	33
I/U	12	48	1	14	0	0	0	0

Trial Monitors observed no instances in which there was anything to suggest that the judge considered imposing a non-custodial sentence before imposing a custodial one. Of the 21 cases in which sentencing was observed, almost all of the cases saw the juvenile accused sentenced to a custodial sentence, with only one non-guilty verdict being recorded.

⁵⁰Article 2(1) of the CRC. See also, Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, paras 10 and 71.

⁵¹ Article 37(b) of the CRC.

There is a robust legislative framework in Cambodia, which provides for differentiated treatment of juveniles. The data collected may indicate a lack of social and judicial resources and structures to support the court in implementing legislation. Youth Rehabilitation Centers for example are under-utilized due to lack of funds and support for juvenile justice programs. Alternative provisions such as judicial supervision and community service require adequate procedures and resources. This requires a cooperative approach, with government working in partnership with donors, NGOs and private organizations, to ensure the development of an effective juvenile justice process that focuses on ensuring that young persons who break the law receive adequate support to become constructive members of society.

4. CONCLUSION AND RECOMMENDATIONS

The data from the 463 trials monitored in the Fifth Reporting Period continues to show incremental improvements in adherence to fair trial rights. There continue to be improvements in the right to a public hearing. There were very few instances in which judges made statements showing their lack of understanding of the presumption of innocence and the handling of evidence and witnesses by the court remained an area of positive development, with fair opportunities for presentation and examination afforded to both sides. However, major concerns remain in relation to high levels of pre-trial detention – though CCHR has seen a small drop in its use. Concerns remain regarding the low levels of legal representation afforded to those charged with misdemeanors. CCHR has seen a drop in legal representation of those charged with felonies, which is concerning given that the law makes it mandatory for such representation.

Following analysis of the data collected, CCHR has identified a number of areas where judicial reform and changes in practice may contribute to the increased adherence to fair trial rights.

CCHR's recommendations for addressing the shortcomings observed in the Fifth Reporting Period are set out below:

RECOMMENDATIONS TO ADDRESS DELAY AND PRE-TRIAL DETENTION

- The **Ministry of Interior** and the Ministry of Justice (“**MOJ**”) should consider reviewing and modifying laws to prohibit pre-trial detention in relation to certain minor offenses. Additional legislation that would impose sanctions on those who failed to attend trial when pre-trial detention was not imposed should also balance any concerns that judges have; it would also give reassurance to judges that they can release accused persons pending trial and act as deterrent from absconding.
- The **MOJ** together with the **Royal Academy of Judicial Professions (“RAJP”)** should issue guidelines on the pre-trial detention provisions of the CCPC and the practical meaning of the six justifications for pre-trial detention: to stop the offense or prevent it from occurring again; to prevent harassment of witnesses or victims or collusion with accomplices; to preserve evidence or exhibits; to guarantee the presence of the charged person during proceedings against them; to protect the security of the charged person; and/or to preserve public order from any trouble caused by the offense. Such guidelines should be accompanied by ongoing professional development training of judges by the **MOJ** in co-operation with the **RAJP** and the **Bar Association of the Kingdom of Cambodia (“Bar Association”)** on pre-trial detention provisions and the use of judicial supervision as an alternative to detention.
- The **MOJ** should commission a review of best practices for the use of non-custodial measures and successful models that have helped reduce the number of people held in pre-trial detention.
- The **MOJ, Ministry of Interior** and the **Ministry of Social Affairs** should together establish a system to apply alternative mechanisms, such as judicial supervision, and provide adequate

funding and resources to facilitate the monitoring of judicial supervision, so that it can be used as a realistic and viable alternative to pre-trial detention.

- **The Investigating Chamber, President of the Court of Appeal** (see Articles 283 and 285 of the CCPC) and the **Inspector-General of the MOJ** should inspect investigating judges where it is apparent that they have knowingly or recklessly ignored pre-trial detention limits. The Disciplinary Committee of the Supreme Council of Magistracy should use this as the basis for investigating and disciplining such investigating judges.
- **The MOJ** should establish a database at each court, like the database that has been set up in relation to the Phnom Penh Court, to monitor pre-trial detention and ensure that it does not exceed statutory limits. The database should ensure that the date of pre-trial detention for each accused is recorded, that the last legal day of detention is highlighted, that there is systematic review of all detentions and that excessive detention is automatically flagged. Once the last legal day of detention has been reached, the charged person must be automatically released unless a closing order has been issued (in which case the investigating judge can order detention until trial provided that it is no longer than four months away) as per Article 249 of the CCPC. Any nationwide detention database system should also include a means of informing legal aid organizations and others of the accused held in pre-trial detention so that legal representation can be provided.
- Cases where the accused has remained in pre-trial detention for a period approaching the legal limit must receive priority when trial listings are being scheduled.

RECOMMENDATIONS CONCERNING LEGAL REPRESENTATION

CCHR acknowledges that problems in this area may relate to resource shortcomings rather than capacity or competency. Nevertheless, given the importance of this right in ensuring an accused receives a fair trial:

- The number of defense lawyers, including legal aid defense lawyers, should be expanded, and unjustified barriers to entry for individuals who wish to be admitted to the Bar Association be removed. **The Courts, the Bar Association and legal aid NGOs** must work together to ensure that representation is available to as many defendants as possible and with as little delay as possible.
- **The RGC** must recognize the importance of legal aid in guaranteeing fair trial rights. The RGC should develop a national policy on legal aid, including a funding strategy for legal aid, a funding strategy for education around legal aid, and funding for an annual audit of the Bar Association's legal aid fund.
- **The Bar Association** should create educational materials and promote programs to inform the public about their rights and duties under the law, including the important role of lawyers in protecting their fundamental rights and freedoms. These educational materials and programs

should include information to help the public understand how to access legal aid assistance through the Bar Association legal aid fund and legal aid NGOs.

- **The MOJ** should work with international donors to launch an education and awareness campaign to create greater knowledge about the meaning and availability of legal aid. The campaign should adopt a strategy capable of delivering information to the local level, for example, through providing training and information to commune councils and village authorities.
- **The MOJ** and the **Courts** should ensure that in cases involving felony, the defendant is provided with assistance from a lawyer as provided for by law. There must not be any exceptions to this rule and, if necessary, hearings must be delayed for a short time to allow the accused to instruct a lawyer.
- Articles 145, 254, 304, 319, 391 and 428 of the CCPC should be amended to ensure that, in the absence of legal representation, all accused have the opportunity to view relevant parts of their case file to assist them in answering the charge(s) against them and preparing a defense.
- At every stage of the criminal process, the competent authorities, being the police, prosecutor, investigating judge and trial judge, should take measures to ensure that, where necessary, the right of an accused to legal representation is respected and facilitated, including:
 - Keeping directories of legal aid lawyers at police stations, prosecutors' offices, and Courts.
 - If not already in place, establish working relationships with the Bar Association and with legal aid NGOs in order to provide free legal representation to those accused who cannot afford it.
 - During the investigating stage and at trial, informing the accused of his/her right to legal representation.
- The CCPC should be amended to guarantee detainees the right to have prompt access to a lawyer from the very outset, including during police questioning, throughout the investigative phase and the whole trial, and during appeals.

RECOMMENDATIONS CONCERNING THE PRESUMPTION OF INNOCENCE

- **The Ministry of Interior** should issue a directive in relation to Article 4(5) (F) of the Proclamation 217 on the Administration of Prisoners, making it clear that detainees must come before the court in their own clothing. **The Ministry of Interior** together with individual courts should ensure that at either the detention facilities or in a separate room in the court, like in Kandal Court, defendants can change into clothing worn when placed in pre-trial detention or, if these have been lost or discarded, detainees given a reasonable opportunity to seek the delivery of alternative clothing from family or friends.

- The practice of simply changing the shirt of a defendant so that he/she does not appear to be completely in prison uniform is not enough to allay concerns with regards to the presumption of innocence. Accused should be given an opportunity prior to entering the court room to change into their own clothing.

RECOMMENDATIONS CONCERNING INDEPENDENCE, IMPARTIALITY, AND PROFESSIONALISM OF THE JUDGE

- **The MOJ** or other appropriate authority, such as the President of the Supreme Court, should issue a written instruction to trial judges and to prosecutors to remind them of Article 337 of the CCPC prohibition on trial judges speaking with any person during their deliberations, including court clerks, prosecutors, and lawyers. The violation of this instruction should be grounds for reporting judges or prosecutors, including reporting by the Inspector General of the MOJ, to the Disciplinary Committee of the Supreme Council of Magistracy and for disciplinary action to be taken.
- **The MOJ** should issue an order requesting that all Court Presidents ensure the following:
 - The internal rules of each court must include a ban on the use of all telephones inside the courtroom by all persons.
 - The court clerk must then read the relevant provisions of the internal rules prior to the commencement of each trial.
 - Court officials – including judges, prosecutors, and lawyers – must set an example. Presiding judges should enforce order in the court, as required under Article 318 of the CCPC, by ejecting from the court those found using telephones during trials. Similarly, judges and prosecutors should refrain from answering telephones. Court clerks should be instructed to take messages for judges who are sitting in court.

RECOMMENDATIONS RELATING TO CASES INVOLVING JUVENILES

- **The MOJ** should collaborate with the **RAJP**, Royal School of Judges and Prosecutors, Bar Association and external organizations to provide training to judges and lawyers on the provisions of the Penal Code affecting juveniles, particularly the presumption against criminal conviction and imprisonment in Article 39 and the non-custodial alternatives to imprisonment.
- **UNICEF** should provide financial and strategic support to **the MOJ** and **the Ministry of Social Affairs, Veterans and Youth Rehabilitation** to develop processes and programs that provide alternative responses to youth offending and allow Prosecutors and Investigating Judges to divert juvenile offenders away from the formal criminal justice system. This support should include **the Ministry of Social Affairs, Veterans and Youth Rehabilitation** creating centers for educating and training children and youth.
- **The RGC and MOJ** should expedite the adoption of the juvenile justice law to provide for greater clarification and protection of the fair trial rights of juvenile accused.

- **Investigating Judges** should ensure that the provisions of national and international law, which create a strong presumption against the pre-trial detention of juveniles, are adhered to. Pre-trial detention should only take place in exceptional circumstances, as a measure of last resort and for the shortest appropriate period. A separate juvenile database or color-coded filing system for cases involving juveniles should be established to remind judges of the differentiation of treatment between adults and juveniles.
- **Courts** should be closed to the general public and reporting restrictions should be imposed in order to protect the privacy of juvenile accused.
- **Judges** should ensure that the imprisonment of juveniles is a last resort and instead utilize the sentencing provisions of the Penal Code by imposing non-custodial sentences such as community service, probationary suspended sentences and the surveillance, education, protection and assistance measures applicable under Article 39 of the Penal Code (and set out in Article 40).
- **NGOs and private organizations** should seek to collaborate with the **Courts, MoJ and Ministry of Education, Youth and Sport** to provide support and rehabilitation services for youths who have infringed the criminal law, providing realistic and viable alternatives to criminal prosecution and imprisonment and also providing diversionary measures as an alternative to prosecution where appropriate.

The Cambodian Center for Human Rights (CCHR)

[●] November 2012

Phnom Penh, Cambodia

5. BIBLIOGRAPHY

INTERNATIONAL LAW

International Treaties and Agreements

Council of Europe, *The European Convention on Human Rights*, November 4, 1950.

United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984.

United Nations General Assembly, *Convention on the Rights of the Child*, November 20, 1989.

United Nations General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966.

United Nations General Assembly, *Optional Protocol to the Convention against Torture (OPCAT)*, Subcommittee on Prevention of Torture, February 2007.

United Nations General Assembly, *Universal Declaration of Human Rights*, December 10, 1948.

Other International Instruments

United Nations, *Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26 to September 6, 1985, Endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

United Nations, *Basic Principles on the Role of Lawyers*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, September 7, 1990.

Principles relating to the Status of National Institutions (the Paris Principles), 1993.

United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners*, August 30, 1955.

United Nations General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*, Adopted by General Assembly resolution 45/112 on December 14, 1990.

United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, December 14, 1990.

United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, November 29, 1985.

CAMBODIAN LAW

Legislation

Code of Criminal Procedure of the Kingdom of Cambodia (2007)

Constitution of the Kingdom of Cambodia (1993, as amended)

Law on the Bar Association of the Kingdom of Cambodia (1995)

Penal Code of the Kingdom of Cambodia (2009)

Proclamation 217 of the Administration of Prisoners (March 13, 1998)

Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period (1992)

Policy

Council for Legal and Judicial Reform, *Legal and Judicial Reform Strategy*, Adopted by the Royal Government of Cambodia at the Plenary Session on June 20, 2003.

Council for Legal and Judicial Reform, *Plan of Action for Implementing the Legal and Judicial Reform Strategy*, Adopted by the Royal Government of Cambodia at the Plenary Session on April 29, 2005.

CASE LAW

International

European Court of Human Rights, *Foucher v France*, No. 22209/93, ECHR1997-II. Available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%0922209/93&sessionid=72026732&skin=hudoc-en>

Human Rights Committee, *Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights Thirty-ninth session concerning Communication No. 215/1986 G. A. van Meurs v The Netherlands, Decision Dated July 23, 1990 (CCPR/C/39/D/215/1986)*. Available at:

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/9e281a27532d5fe5c1256ab2004838b1?Opendocument>

Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 263/1987: M. Gonzalez del Río v. Peru*, Decision dated October 28, 1992 (CCPR/C/46/D/263/1987). Available at:

<http://www.unhchr.ch/tbs/doc.nsf/0/3977b6d1e738710c80256730004f6aaf?Opendocument>

Human Rights Committee, *Admissibility: Communication No. 594/1992: Phillip v. Trinidad and Tobago*, Decision dated March 15, 1996 (CCPR/C/56/D/594/1992). Available at: http://www.bayefsky.com/pdf/124_trinidad594.pdf

Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, August 23, 2007 (CCPR/C/GC/32). Available at: <http://www.unhcr.org/refworld/type,GENERAL,,,478b2b2f2,0.html>

Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 913/2000: Chan v. Guyana*, Decision dated January 23, 2006 (CCPR/C/85/D/913/2000). Available at: <http://www.unhchr.ch/tbs/doc.nsf/0/b69fa1d51ad367c6c12571060050284e?Opendocument>

Cambodia

Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, Dated July 10, 2007.

REPORTS

Blue, Richard and Underwood, Robert, *Evaluation of the Program on Rights and Justice ("PRAJ"): Final Report*, Washington DC: United States Agency for International Development (USAID), January 2008. Available at:

http://www.usaid.gov/kh/democracy_and_governance/documents/Cambodia_HR-ROL_Evaluation_Final_Report.pdf

Cambodian Human Rights and Development Association (ADHOC), Cambodian Defenders Project (CDP), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), *Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia – Presented to the UN Committee Against Torture (CAT) Prior to Cambodia's Second Periodic Report at 45th session of CAT Held in Geneva From 1 to 19 November 2010*, October 2010.

Committee Against Torture, *Consideration of reports submitted by State parties under Article 19 of the Convention: CAMBODIA*, October 29, 2009 (CAT/C/KHM/2). Available at <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-KHM-2.pdf>

Committee against Torture, *Consideration of reports submitted by State Parties under article 19 of the Convention: CAMBODIA*, February 2, 2010 (CAT/C/KHM/Q/2). Available at: <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-KHM-2.pdf>

Committee on the Rights of the Child, *General Comment No.10 (2007): Children's rights in juvenile justice*. April 25, 2007 (CRC/C/GC/10). Available at:

<http://www.unhchr.ch/tbs/doc.nsf/0/b0ebdbcd1e49d11dc1257306004f1864?Opendocument>

Council for Legal and Judicial Reform, *Legal Aid in Cambodia: Practices, Perceptions and Needs*, Phnom Penh: Council for Legal and Judicial Reform, December 2006. Available at:

<http://www.ewmi-praj.org/download/legalaid/Legal%20Aid%20in%20Cambodia%20study%20report.pdf>

International Commission of Jurists, *Comments on the Initial Report of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights*, Geneva: International Commission of Jurists, April 2009. Available at:

http://www.icj.org/IMG/Cambodia_CESCR_Oral_SubmissionFINAL-30-04-09.pdf

NGO Working Group, *Parallel Report on Cambodia 2009*, Phnom Penh: NGO Working Group, April 2009. Available at:

http://www2.ohchr.org/english/bodies/cescr/docs/ngos/NGO_WG_Cambodia_CESCR42.pdf

Special Rapporteur for Human Rights in Cambodia, *Report on the situation of human rights in Cambodia*, Professor Surya Subedi, September 16, 2010, A/HRC/15/26. Available at:

http://cambodia.ohchr.org/WebDOCs/DocReports/3-SG-RA-Reports/A_HRC_CMB16092010E.pdf

United States Department of State Bureau of Democracy, Human Rights, and Labor, *2010 Human Rights Report: Cambodia*, April 2011. Available at:

<http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154381.htm>

UNICEF, *Starting over: A young man leaves prison and re-makes his life in a barbershop*, 2010. Available at:

http://www.unicef.org/cambodia/12633_13061.html

NEWSPAPER ARTICLES

Phorn Bopha, *Lawyer Shortage Adds to Long Pretrial Detention, Official Says*, The Cambodia Daily, March 23, 2010.

FAIR TRIAL MANUALS

Amnesty International, *Amnesty International Fair Trial Manual*, London: Amnesty International Publications, 1998, AI Index POL 30/02/98. Available at:

<http://www.amnesty.org/en/library/asset/POL30/002/1998/en/81bf7626-d9b1-11dd-af2b-b1f6023af0c5/pol300021998en.pdf>

Oliveira, Bárbara and Besharaty-Movaed, Linda. *International Commission of Jurists Trial Observation Manual*, Geneva: International Commission of Jurists, 2002. Available at:

http://www.jsmp.minihub.org/Reports/otherresources/Trial_Observation_Manual.pdf

Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR), *Trial Monitoring: A Reference Manual for Practitioners*, Poland: OSCE/ODIHR, 2008. Available at:

http://www.osce.org/publications/odihr/2008/04/30849_1119_en.pdf

Pejic, Jelena and Lesnie, Vanessa, *What is a Fair Trial? A Basic Guide to Legal Standards and Practice*, New York: Lawyers Committee for Human Rights, 2000. Available at:

http://www.humanrightsfirst.org/pubs/descriptions/fair_trial.pdf

SPEECHES

Hun Sen, *Address on Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase II*, First Cabinet Meeting of the Fourth Legislature of the National Assembly, Office of the Council of Ministers, Phnom Penh, September 26, 2008.

OTHER

Adler, Daniel. 'Access to Legal Information in Cambodia: Initial Steps, Future Possibilities', *2005 (2-3)*, *The Journal of Information, Law and Technology (JILT)*. Available at http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005_2-3/adler/#P86_17813

Bar Association of the Kingdom of Cambodia, *Internal Regulations of the Bar Association of the Kingdom of Cambodia*. Available at:

http://www.bigpond.com.kh/Council_of_Jurists/Judicial/jud008g.htm

Cambodian Center for Human Rights, *The Duch Trial: A Good Example for the Cambodian Courts*, Press Release, July 26, 2010. Available at:

www.cchrcambodia.org

International Criminal Court, *Rules of Evidence and Procedure*, Adopted by the Assembly of States Parties First session New York, September 3-10, 2002, Official Records ICC-ASP/1/3.

Available at:

http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf

DATABASE

Cambodian Centre for Human Rights, available at

www.cchrcambodia.org.

7. APPENDICES

APPENDIX I: TRIAL MONITORING CHECKLIST

General Trial Information

1. OVERVIEW					
1(a) Date of Trial:	Start Time:				
1(b) Monitors:					
1(c) Court:	<input type="checkbox"/> PPC	<input type="checkbox"/> KPC	<input type="checkbox"/> SRC	<input type="checkbox"/> BBC	<input type="checkbox"/> Other Please _____ specify:
1(d) Judge:	1 st 2 nd 3 rd	<input type="checkbox"/> Other Please specify:			
1(e) Clerk:					
1(f) Number of Accused ⁵²	Total:				
	Adult:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	
	Juvenile:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	
	Legal Person Representative:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	
1(g) Number of Victims	Total:				
	Adult:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	
	Juvenile:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	
	Legal Person Representative:	Male:	Present:	Absent:	
		Female:	Present:	Absent:	

⁵²If more than one accused, please see Annex I

TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public board outside the courtroom?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes Details:	<input type="checkbox"/> No

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

3(a) Did the Judge announce the case to be heard?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3(b) Did the Judge state the charge?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3(c) Did the Judge state the relevant law?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3(d) Did the Judge state the date of the alleged crime?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3 (e) Did the Judge state the place of the alleged crime?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3(f) Did the Judge state the parties involved?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
3(g) If required, was an interpreter provided?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
3(h) If required, were provisions made for those with disabilities	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
If yes, what disability was provided for?	<input type="checkbox"/> Hearing	<input type="checkbox"/> Sight	<input type="checkbox"/> Other
	Comment:		

4. EXPLANATION OF RIGHTS N/A

4(a) Did the Judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
4(b) Did the Judge inform (I) and explain (E) to the accused their right not to answer or answer?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
4(c) Did the Judge inform (I) and explain (E) to the accused their right to change the judge?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
4(d) Did the Judge inform (I) and explain (E) to the accused their right to have the last word?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>

5. RIGHT TO CALL AND EXAMINE WITNESSES

<p>5(a) Was there anything to suggest that any party was not given the opportunity to call witnesses?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party</p> <p>Comment:</p>
<p>5 (b) Were the witnesses present in the courtroom before they were questioned?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>

PLEASE GIVE A BRIEF EXPLANATION OF THE FACTS OF THE CASE:

6. PRESENTATION OF EVIDENCE:

<p>6(a) Was evidence/witness presented?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, by which party and what type of evidence was presented?</p>						
	Party/ type	P		D		CP	
	Witnesses:	P:	A:	P:	A:	P:	A:
	Physical Object:						
	Documentary:						
	Confession:						
	Comment:						
<p>6(b) Was there anything to suggest that testimony presented by a witness constituted hearsay?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please explain:</p>						
<p>6(c) Did the judge rule that any of the evidence presented was inadmissible?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, please explain:</p>						

7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

<p>7(a) Was there anything to suggest that any party was not given the opportunity to present evidence?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party</p> <p>Comment:</p>
<p>7 (b) Was there anything to suggest that any party was not given the opportunity to question witnesses?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party</p> <p>Comment:</p>
<p>7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party did not have the evidence?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party</p> <p>Comment:</p>
<p>7(d) Was the defense given chance to have the last word?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If no, comment:</p>

8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE

<p>8(a) Was there anything to suggest that the Judge had an interest in the case beyond their usual judicial role?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, what is the nature of the perceived interest?</p> <p><input type="checkbox"/> Family <input type="checkbox"/> Political <input type="checkbox"/> Financial <input type="checkbox"/> Other</p> <p>What suggests that such an interest exists?</p> <p>Please explain:</p>
<p>8(b) Did the Judge behave in an intimidating manner towards a party?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please explain:</p>
<p>8(c) Did the Judge used impolite word toward any party?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please explain:</p>
<p>8(d) Did the judge leave the court room during the trial?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, please explain reason: <input type="checkbox"/> I/U</p>
<p>8 (e) Did the Judge answer a mobile telephone during the trial?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, did they:</p> <p><input type="checkbox"/> Respond briefly and hang up <input type="checkbox"/> conduct a conversation up</p> <p>If yes, was the ring tone: <input type="checkbox"/> On silent</p> <p><input type="checkbox"/> Audible</p>

9. DELIBERATION

Finish time:

9(a) Was there a deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Next day <input type="checkbox"/> I/U If yes, how long: If no, comment:
9 (b) Was there anything to suggest that any party spoke to the judge during deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U If yes, which party? <input type="checkbox"/> Prosecution <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Court Official

10. VERDICT

10(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, was the date that the verdict would be delivered announced during the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
10(b) Date of verdict:	<input type="checkbox"/> N/A _____
10(c) How many judge while the verdict was delivered?	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 5 <input type="checkbox"/> 9
10(d) Was the verdict announced in public?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, please comment:
10(e) Did the judge inform (I) and explain (E) the procedure and terms of opposition motion?	<input type="checkbox"/> Inform <input type="checkbox"/> Inform and explain <input type="checkbox"/> Neither informed nor explained <input type="checkbox"/> N/A
10(f) Did the judge inform (I) and explain (E) the procedure and terms of appeal?	<input type="checkbox"/> Inform <input type="checkbox"/> Inform and explain <input type="checkbox"/> Neither informed nor explained <input type="checkbox"/> N/A

TOTAL TIME OF HEARING:

SPECIAL NOTE:

Individual Accused Information

11. CRIMINAL RESPONSIBILITY

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
11(a) Was the accused a juvenile at the time the offense was committed? (Please complete annex 1 for each juvenile accused)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

12. LEGAL BASIS OF CHARGES

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
12(a) Criminal proceedings were conducted through?	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U
12(b) Charge against accused	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense
Offense: ⁵³ Relevant law: Relevant article of the law:					

⁵³ If human trafficking please see Annex II: Human Trafficking Trial

PRE-TRIAL RIGHTS

13. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
13(a) Date of alleged offence:	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
13(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A
13 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
13 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
If Yes, what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
What date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U

14. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
14(a) Was there anything to suggest that the accused confessed to the offence prior to the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

14(b) Was there anything to suggest the accused was interrogated without a lawyer present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

15. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
15(a) Was there anything to suggest that the lawyer of the accused was assigned on the day of the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
15(b) Was the issue of adequate time and facilities for preparation raised by the defense?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

TRIAL RIGHTS

16. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
16 (a) Was the accused present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
16 (b) Was the accused represented by a lawyer	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
16(c) Did any of the lawyers represent more than one accused?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, was there a conflict between the interests of two or more of the accused represented by the same lawyer	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

17. PRESUMPTION OF INNOCENCE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
17(a) Did the accused appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
17(b) Was the accused handcuffed throughout the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
17(c) Were any statements made by the judge about the guilt of the accused prior to the delivery of the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details:	Details:	Details:	Details:	Details:	Details:

17 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, please explain:	Details:	Details:	Details:	Details:	Details:
17 (e) Did the judge say anything to suggest that s/he was placing the burden of proof on the accused?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Details:	Details:	Details:	Details:	Details:

18. PROHIBITION AGAINST DOUBLE JEOPARDY					
Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
18(a) Was there anything to suggest that the accused had been tried and sentenced for this offense previously?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Details:	Details:	Details:	Details:	Details:

19. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION					
Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
19(a) Was there anything to suggest that the charged offense was not an offense at the time it was allegedly committed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If yes, please explain:	Details:	Details:	Details:	Details:	Details:
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20. VERDICT

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
20(a) Was the accused in provisional detention prior to the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
20(b) Verdict:	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
20(c) Did the judge refer to the article of the law under which the accused had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
20(d) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the accused confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

21. SENTENCE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
21(a) Was the accused sentenced to imprisonment?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Length:	Details:	Details:	Details:	Details:	Details:
Prison:	Details:	Details:	Details:	Details:	Details:

Probation: Pre-trial detention taken into account?	Details: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Details: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Details: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Details: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Details: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A
21(b) Was the accused ordered to pay a fine?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:	Details:	Details:	Details:	Details:	Details:
21(c) Was the accused ordered to pay compensation?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:	Details:	Details:	Details:	Details:	Details:
21(d) Was there any other alternative sentence?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Details:	Details:	Details:	Details:	Details:
21(e) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details:	Details:	Details:	Details:	Details:	Details:
21(f) Was the sentence within the range of penalties applicable at the time the offense was committed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If no, please provide further details:	Details:	Details:	Details:	Details:	Details:
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APPENDIX II: JUVENILE ACCUSED

22. AGE			
22(a) Age at the time of the offense	<input type="checkbox"/> <14	<input type="checkbox"/> 14 – 15	<input type="checkbox"/> 16 – 17
22(b) If under the age of 14 at the time of the offense did the judge immediately acquit the accused?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

23. PRE-TRIAL DETENTION <input type="checkbox"/> N/A			
23(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14	<input type="checkbox"/> 14 – 15	<input type="checkbox"/> 16 – 17
23 (b) Was there anything to suggest that the accused was not separated from adults?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Comment:

24. TRIAL <input type="checkbox"/> N/A	
24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No Details:
24 (b) Did the judge give the accused juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No

25. SENTENCE <input type="checkbox"/> N/A			
25(a) Did the judge cite Article 38 or 39 of the Penal Code when sentencing the accused?	<input type="checkbox"/> Article 38	<input type="checkbox"/> Article 39	<input type="checkbox"/> Both <input type="checkbox"/> Neither
Was there anything to suggest that the Judge considered imposing a non-prison sentence?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Comment:

APPENDIX III: LAW BANK

		Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments	
Right to a public hearing	2(a)	Was notice of the hearing posed on a public board outside the courtroom?	X	X	X	X		X	X	X			Good Practice	Internal Rules of Court - need to check
	2(b)	Were members of the public or media prevented from entering or dismissed from the courtroom?	Art 316	Art 23	Art 129	X	Art 14(1)	X	X	X	X	Art 10	X	Also Criminal Prosecution Code 93 (art 128) and Art 4 draft law on organization and functioning of the court
Right to understand nature of the charge	3(a)	Did the judge announce the case to be heard?	X	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X
	3 (b)	Did the judge state the charge?	Art 325	X	X	X	14(3)(a)	X	X	X	X	X	X	X
	3(c)	Did the judge state the relevant law?	X	X	X	X	X	X	X	X	X	X	Good Practice	X
	3(d)	Did the judge state the date of the alleged crime?	Art 325	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X
	3(e)	Did the judge state the place of the alleged crime?	Art 325	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments	
	3(f)	Did the judge state the parties involved?	Art 322	X	X	X	X	X	X	X	X	X	X	X	
	3(g)	If required, was an interpreter provided?	Art 330	X	X	X	Art 14(3)(f)	X	X	X	Principle 5	X	X	BUT 330 wording is "may provide" NOT "should provide"	
	3(h)	If required, were provisions made for those with disabilities?	Art 331	X	X	7	X	X	X	X		X	X	X	
Explanation of Rights	4(a)	Did the judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	Art 301	Art 1(2) Competent, Art 1(3), Art 24(3) Right not to self-incriminate	Art 128 (states Judge should respect rights), Art 129 competent	Art 128 (Competent)	Art 14(3)(d)	X	Art 1, 5	X	X	X	Good Practice		
	4(b)	Did the Judge inform (I) and explain (E) to the accused their right not to answer or to answer?	Art 321				X	X	X	X	X	X	X	Good Practice	
	4(c)	Did the Judge inform (I) and explain (E) to the accused their right to change the judge.	X				X	X	X	X	X	X	X	Good Practice	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	4(d)	Did the Judge inform (I) and explain (E) to the accused their right to have the last word?	Art 335				X	X	X	X	X	X	Good Practice	
Right to call and examine witnesses	5(a)	Was there anything to suggest that any party <i>was not</i> given the opportunity to call witnesses?	Art 298	Article 24(4), 24(5)	X	X	14(3)(e)	X	X	X	X	X	X	
	5(b)	Were the witnesses present in the courtroom before they were questioned?	Art 324	X	X	X	X	X	X	X	X	X	X	
Presentation of evidence	6(a)	Was evidence/witness presented?	Art 321 and 324	Art 24	X	X	X	X	X	X	X	X	X	
	6(b)	Was there anything to suggest testimony presented by a witness constituted hearsay?	Art 321 and 324	X	X	X	X	X	X	X	X	X	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	6(c)	Did the judge rule that any of the evidence presented was inadmissible?	Art 321	X	Art 38	X	X	X	X	X	X	X	X	
Right to full disclosure/Equality of arms	7(a)	Was there anything to suggest that any party <i>was not</i> given the opportunity to present evidence?	Art 321 and 334	Article 24(4)	X	X	Art 14(3)(e)	X	X	X	X	X	X	
	7(b)	Was there anything to suggest that any part <i>was not</i> given the opportunity question witnesses?	Art 326	Art 24(1)	X	X		X	X	X	X	X	X	
	7(c)	was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?	Art 319	X	X	X		X	X	X	X	X	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	7(d)	Was the defense given chance to have the last word?	Art 335	Art 1(2) Competent, Art 1(3),	Art 128, Art 129	Art 29 (Competent)	X	X	X	X	X	X	Good Practice	
Independence, Impartiality and Conduct of the judge	8(a)	Was there anything to suggest that judge had an interest in the case beyond their usual judicial role?	Art 5556 and 557	Art 1	Art 128, Art 129, 132	Art 2,3,8,11, 12, 14, 17, 20	Art 14(1)	Art 1-7	See all	X	Principle 1 & 2.5.3	Art 10	X	Art 3 draft Law on Statute of Judges
	8(b)	Did the judge behave in an intimidating manner towards a party?	X						Art 8	X	X		Principle 3.1 and 5	X
	8(c)	Did the judge use impolite word toward any party?	X	X	X	X	X	X	X	Principles 3 and 5	X	X		
	8(d)	Did the judge leave the courtroom during the trial?	X	X	X	X	X	X	X	Principles 1,2,3, 6.1, 5.2	X	X		
	8(e)	Did the judge answer a mobile telephone during the trial?	X	X	X	X	X	X	X	X	X	X	X	
Deliberation	9(a)	Was there a deliberation?	Art 337	X	X	X	X	X	X	X	X	X	X	
	9(b)	Was there anything to suggest that any party spoke to the judge during deliberation?	Art 337	Art 1	Art 128, 129, 132	Art 9	Art 14(1)	Art 1-7	X	X	Principle 1 & 2.4	Art 10	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Verdict	10(a)	Was a verdict delivered on the day of the hearing?	Art 357, 359, 347	Art 26(2)	X	X	X	X	X	X	X	X	X	Old law gives 15 day limit between trial and verdict - need article and name of law. Law on Criminal Procedure 1993 Art 128
	10(b)	Date of verdict?	Art 347	X	X	X	X	X	X	X	X	X	X	
	10(c)	How many judge while the verdict was delivered?	X	X	X	X	X	X	X	X	X	X	X	
	10(d)	Was the verdict announced in public?	Art 359	Art 26(2)	X	X	X	X	X	X	X	X	X	
	10(e)	Did the judge inform (I) and explain (E) the procedure and terms of opposition motion?	Art 375, 376, 382	X	X	X	X	X	X	X	X	X	X	X
10(f)	Did the judge inform (I) and explain (E) the procedure and terms of appeal?	X												

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Criminal Responsibility	11(a)	Was the accused a juvenile at the time the offense was committed?	Art 38	Art68(2)	X	X	Art 14(4)	X	X	X	X	X	X	See also Article 1 of the United Nations Convention on the Rights of the Child
Legal Basis of Charges	12(a)	Criminal proceedings were conducted through?	Art 43-47; 122; 252	X	X	X	X	X	X	X	X	X	X	
	12(b)	Charge against accused?	Art 46-48	X	X	X	X	X	X	X	X	X	X	
Right to Liberty and to be tried without undue delay	13(a)	Date of alleged offense?	X	X	X	X	X	X	X	X	X	X	X	
	13(b)	Date of arrest?	X	X	X	X	X	X	X	X	X	X	X	
	13(c)	Was there judicial supervision?	Art 220-230	X	X	X	X	X	X	X	X	X	X	
	13(d)	Was there provisional detention?	Art 203-218	Art 14	Art 38	X	Art 9	X	X	X	X	Art 9	X	

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Rights during interrogation	14(a)	Was there anything to suggest that the accused confessed to the offense prior to the hearing?	X	X	X	X	X	X	X	X	X	X	X	
	14(b)	Was there anything to suggest that the accused was interrogated without a lawyer present?	Art 145	X	X	X	X	X	X	X	X	X	X	
	14(c)	Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?	Art 321	Art 12(1), 24(3)	Art 38	X	Art 14(3)(g)	X	X	3, 15	X	X	X	
	14(d)	Was there anything to suggest that violence or torture were used to coerce the accused into confessing the alleged crime?				X	X	X	X	All	X	Art 5	X	

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Right to lawyer and to adequate time and facilities to prepare a defense	15(a)	Was there anything to suggest that the lawyer of the accused was assigned on the day of the trial?	X	X	X	X	Art 14(3)(b)	X	X	X	X	X	X	
	15(b)	Was the issue of adequate time and facilities for preparation raised by the defense?	Art 319, 149	Art 17(2), 21(2)	Art 38	X	Art 14(3)(b)	X	Art 8	X	X	X	X	
Right to be present and to legal representation	16(a)	Was the accused present?	Art 300	X	X	X	14(3)(d)	X	X	X	X	X	X	
	16(b)	Was the accused represented by a lawyer?	Art 300, 301	Art 10	Art 38	X	Art 14(3)(d)	X	Art 1, 5, 7	X	X	X	X	
	16(c)	Did any of the lawyers represent more than one accused?	X	X	X	X	X	X	X	X	X	X	X	
Presumption of innocence	17(a)	Did the accused appear before the court in prison uniform?	X	Art 25	Art 38	X	Art14(2)	X	X	X	X	Art 11(1)	Good Practice	

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Presumption of innocence continued	17(b)	Was the accused handcuffed throughout the trial?	X			X	X	X	X					
	17(c)	Were any statements made by the judge about the guilt of the accused prior to the delivery of the verdict?			Art 2,7,8,9							X		
	17(d)	Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused?	Art 321	Art 1	Art 128,129, 132	X	Art 14(1)	Art 1-7	X	X	X	Art 10	X	
	17(e)	Did the judge say anything to suggest that s/he was placing the burden of proof on the accused?	X	X	Art 38	X	Art 14(2)	X	X	X	X	X	X	
Prohibition against double jeopardy	18(a)	Was there anything to suggest that the accused had been tried and sentenced for this offense previously?	Art 12	X	X	X	Art 14(7)	X	X	X	X	X		

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Prohibition against retroactive application of legislation	19(a)	Was there anything to suggest that the charged offense was not an offense at the time it was allegedly committed?	X	X	X	X	Art 15	X	X	X	X	Art 11(2)	X	
	20(a)	Was the accused in provisional detention prior to the verdict?	Art 203-218	Art 14	Art 38	X	Art 9	X	X	X	X	Art 9	X	
Verdict	20(b)	Verdict?	Art 357	X	X	X	X	X	X	X	X	X	X	
	20(c)	Did the judge refer to the article of the law under which the accused had been charged?	Art 357	Art 26	X	X	X	X	X	X	X	X	X	
	20(d)	Did the judge refer to the evidence presented?	Art 357	X	X	X	X	X	X	X	X	X	X	
	20(e)	If the accused confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence?	Art 321	Art 26	Art 38	X	X	X	X	X	X	X	X	

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Sentence	21(a)	Was the accused sentenced to imprisonment?	Art 43,44,51	X	X	X	X	X	X	X	X	X	
	21(b)	Was the accused ordered to pay a fine?	Art 43	X	X	X	X	X	X	X	X	X	
	21(c)	Was the accused ordered to pay compensation?	Art 355, 14	X	X	X	X	X	X	X	X	X	
	21(d)	Was there any other alternative sentence?	Art 39,40,53, 55,72,76, 104,117	X	X	X	X	X	X	X	X	X	
	21(e)	Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial?	Art 321	X	X	X	X	X	X	X	X	X	
	21(f)	Was the sentence within the range of penalties applicable at the time the offense was committed?	X	X	X	X	X	X	X	X	X	X	See individual sentencing provisions for each offense

APPENDIX IV: TRIAL MONITORS CODE OF CONDUCT

Preparation and prerequisites⁵⁴

General Duties

Confidentiality

- The monitoring project respects full confidentiality with respect to the release of non-public information.
- Monitors must have a comprehensive understanding of the confidentiality principles in relation to trial monitoring with respect to information obtained at court, as well as operational and organizational information relevant to CCHR.

Prior to Implementation of the Trial Monitoring Project

Preliminary assessments

Trial Monitors must have a thorough understanding of the following prior to court attendance as a Monitor:

- The judicial mechanisms in Cambodia;
- Court hierarchy and corresponding jurisdictions;
- Level of cooperation and/or involvement that is expected from a) Judge; b) Prosecutor C) Defense Counsel and e) Government.

Notification

- The decisions as to who will receive formal and/or informal notification of the Trial Monitoring must be made prior to monitoring the trials and be approved by the Project Coordinator in line with the project objectives;
- If the CCHR notifies the Court of the trial monitoring it must be in accordance with general practices;⁵⁵
- Monitors must record who has been informed and/or consulted prior to, and/or during, the trial. This includes the details and form of the notification;
- Whether a Memorandum of Understanding (“MOU”) has been signed between CCHR and the Ministry of Justice.

Prior to Each trial to be monitored

Preliminary Assessments

The following information is collected prior to each trial, or, where unable to do so, it is noted and the research is conducted after or during the trial:

- Whether there are relevant reports on similar trials in Cambodia;

⁵⁴ This section will be provided as an additional document and will apply for all trials to be monitored

⁵⁵ Attach copy of notification/agreement with relevant court

- Which binding international laws and treaties, if any, pertain to the case;
- What are the domestic laws, substantive and procedural, relevant to the case;
- The relevant Constitutional provisions.

Notification

- Trial Monitors must document in detail any dialogue with a) government; b) Defense Counsel; c) Prosecutor; d) Judge; e) Court Clerk or f) any other relevant party.

Access

- The Trial Monitors must register with the court prior to monitoring and, if a request for documents or access was made, Trial Monitors must keep copies of all official documentation.

During the Trial

General

- Arrive in court ahead of time to allow sufficient time to gain access to the court, locate the courtroom, and find a seat. This should be described in the Report form.
- Monitors must be prepared and able to clearly articulate the legal basis, purposes, and objectives of the program to all court officials and legal actors.

Identification

- Carry the monitor-identification badge at all times, and produce it if requested by court officials.
- If there are concerns about access, carry acknowledgement for local officials of trial monitoring project.

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.
- Wear appropriate clothing.
- Arrive promptly at court.
- Maintain a respectful approach during all interactions with court officials and actors.
- Visibly make extensive notes during hearings based on the CCHR checklist, irrespective of whether the trial is being recorded.

- Monitors must be familiar with and fully understand the checklist and guidelines for trial monitoring.
- Ensure the safety and confidentiality of notes.
- Get a neutral party to give introduction to court (only if staying the entire time) to increase visibility.

Impartiality and non-interference

- Occupy a convenient seat in a courtroom that allows you to observe, hear and follow all aspects of a hearing.
- Do not sit next to either the defense or prosecution.
- Never ask legal actors their opinions on a case or offer advice.
- Avoid interfering during the course of a hearing.
- Never interrupt a trial proceeding or speak with legal actors or participants during the trial.
- Never intervene in a trial or attempt to influence the outcome of trial proceedings in any way.
- At no time express any bias or preference in relation to the parties in a case.
- Do not express any views on the course of a trial either inside or outside a courtroom. When asked specific questions, respond by explaining the role of the monitor and the code of impartiality.
- Trial Monitors should make no public statements.
- Where possible, Trial Monitors should take note of related newspaper articles referring to the trial and be aware of practical observations for future trial monitors.