



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
Cambodian Center for Human Rights

**FOURTH BI-ANNUAL REPORT**  

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**FAIR TRIAL RIGHTS 2009-2011**

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កម្មវិធីសិទ្ធិ និង យុត្តិធម៌ ( ប្រមូល )



## ABOUT THE CAMBODIAN CENTER FOR HUMAN RIGHTS

This report on ‘Fair Trial Rights in Cambodia’ 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, 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](http://www.cchrcambodia.org).

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Kingdom of Cambodia

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## DEFINITIONS

“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
“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”	This CCHR Fair Trial Rights in Cambodian Bi-annual Report
“Fourth Reporting Period”	The reporting period for the Fourth Bi-annual Report of January 1 to June 30, 2011
“ICCPR”	International Covenant on Civil and Political Rights
“Kandal Court”	Kandal Provincial Court of First Instance
“MOJ”	Ministry of Justice
“NGO”	Non-governmental Organization
“ODIHR”	Office for Democratic Institutions and 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
“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
“Strategy”	Legal and Judicial Reform Strategy
“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

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This bi-annual report on fair trial rights in Cambodia (the “Report”) is an output of the Cambodian Trial Monitoring Project (the “Project”), implemented by the Cambodian Center for Human Rights (“CCHR”). It presents and analyzes data collected from the monitoring of 398 trials involving 688 accused at Phnom Penh Capital City Court of First Instance (the “Phnom Penh Court”) and Kandal Provincial Court of First Instance (the “Kandal Court”) between January 1 and June 30, 2011 (the “Fourth Reporting Period”). This is the fourth bi-annual report from 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*

Trial Monitors from CCHR attend criminal trials at the Phnom Penh and Kandal Courts on a daily basis, using 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.

To date, CCHR has issued three bi-annual reports. Following publication of each bi-annual report, Project staff seek meetings with representatives of the monitored courts 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 these dialogue meetings is to promote the implementation of the recommendations set out in the bi-annual reports.

The data in this Report is compared to the data collected in the first reporting period between August 10 and December 31, 2009 (the “First Reporting Period”) the second reporting period between January 1 and June 30, 2010 (the “Second Reporting Period”) and the third reporting period between July 1 and December 31, 2010 (the “Third Reporting Period”) for the purposes of identifying trends in adherence to fair trial rights at the two monitored courts. Dialogue with stakeholders following the release of the previous bi-annual reports indicated a positive and constructive attitude from most institutions and a willingness to consider the recommendations made.

## *Data Summary*

Judges at the Phnom Penh and Kandal Court generally appear to be doing a good job of adhering to fair trial standards with a number of positive achievements noted. There continued to be a reduction in the number of trials in which defense lawyers raised the issue of adequate time and facilities as a cause for concern. The data also indicates a positive handling of evidence and witnesses by the Courts. There was an increase in adherence to the right to a public hearing with details of almost half of all trials monitored being made available on public notice boards.

There were also notable improvements in the impartiality, independence, and professionalism of the judiciary. There was nothing in any of the cases monitored to show that judges had an interest in the case before them beyond their usual role. Furthermore, there was a reduction in the number of instances involving indications that the judge spoke to a party during deliberation, with this being noted in only 5% of all trials monitored. This is an improvement from previous reporting periods. However, the suggestion that there was any dialogue between the judge and a party during deliberation remains a cause for concern as any entry by a clerk or other party into a deliberation room, regardless of the motivation, brings into question the independence and impartiality of the judge. There was a small drop in the percentage of trials in which judges used mobile phones while presiding over a trial, from 22% in the Third Reporting Period to 18% in the Fourth Reporting Period. In 40% of those cases, the judge was noted to have conducted a conversation. This is an increase since the Third Reporting Period. While the majority of conversations were brief – with the judges in 60% of the cases answering briefly and hanging up - this conduct trivializes proceedings. The answering of phones during trials disrupts the hearing and raises questions about the extent to which the judge is engaged and listening to the trial.

Despite some improvements in adherence to fair trial rights compared to previous reporting periods, there remained a number of concerns. Accused persons continue to appear in court in prison uniforms and allegations of police misconduct were recorded, including the use of threats, violence, and torture to extract confessions. The percentage of cases in which there were indications that either threats or the use of physical violence/ torture were utilized to coerce the accused into confessing dropped to 3% and 6%, respectively, of all trials monitored. The police must never use threats or violence against a suspect or an accused. It is important that judges, in accordance with the Constitution and the CCPC, exercise extreme caution when considering any confession that is alleged to have been tendered because of improper coercion.

The overall rate of pre-trial detention remains high, particularly of those charged with misdemeanors. There was a slight increase in the number of trials where pre-trial detention was recorded, from 80% of trials monitored in the Third Reporting Period to 83% in the Fourth Reporting Period, though this is still less than the First Reporting Period (88%). Looking at individual accused, 64% of accused were held in pre-trial detention. The number of misdemeanor accused held in pre-trial detention increased from 46% in the Third Reporting Period to 57.4% in the Fourth Reporting Period. It is fundamental that judges exercise caution when applying the law so that pre-trial detention is used only in the limited circumstances provided for, and that the cases in which it is used are the exception rather than the rule.

Regarding the right to legal representation, Trial Monitors recorded that in 60% of trials there was legal representation. When looking at each individual accused, the data found that over half of the 688 accused in the trials monitored, 381 individuals – or 55% – were represented by a lawyer. This is a drop from the Third Reporting Period where of the 1,029 accused monitored, 633 – or 62% of the individuals accused – were represented by a lawyer. Trial Monitors recorded that in 100% of felony trials there was legal representation. However, when looking at individual accused tried for felonies, only 90% of accused were represented. Representation levels for individual accused charged with misdemeanors continues to be low, with 32% of individual accused charged with misdemeanors having legal representation. While there is no legal requirement

for those charged with misdemeanor offenses to have legal representation, unless they are minors, the fact that just over a quarter of those accused has legal representation raises concerns about equality of arms.

Concerning juvenile justice, there were improvements in the measures employed to protect the privacy of juvenile accused. However, there continues to be a high rate of pre-trial detention among juvenile accused. Trial monitors also observed that the juvenile justice system continues to impose custodial sentences on juveniles rather than non-custodial sentences in spite of the terms of Article 39 of the Penal Code, which creates a statutory presumption against imprisonment of juveniles.

### ***Conclusion***

The data from the 398 trials monitored during the Fourth Reporting Period, involving 688 individual accused, showed a number of areas where improvements had been made to adherence to fair trial rights. There were vast improvements in public notice of hearings. There were very few instances in which judges made statements that showed a lack of understanding of the presumption of innocence; the handling of evidence and witnesses by the court remained a positive area, with fair opportunities for presentation and examination afforded to both sides. However, concerns remain in relation to high levels of pre-trial detention and low levels of representation for those charged with misdemeanors. Judges continue to use mobile phones in court.

The recommendations in this Report are addressed to a number of different bodies and institutions, highlighting the interconnectedness 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”), 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

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The right to a fair trial is a universally recognized human right, enshrined at the highest level of international law in both the Universal Declaration of Human Rights (the “UDHR”)<sup>1</sup> and the International Covenant on Civil and Political Rights (the “ICCPR”).<sup>2</sup> Fair trial rights are guaranteed in the Constitution of the Kingdom of Cambodia (the “Constitution”)<sup>3</sup> and through various individual provisions of domestic law.<sup>4</sup> The right to a fair trial is made up of a number of more specific individual rights, including pre-trial rights, which when recognized and provided for, together ensure that a person charged with a criminal offense is treated fairly while the state determines his/her guilt or innocence.

## THE LEGAL FRAMEWORK

Under international law, the UDHR and the ICCPR guarantee that individuals charged with a criminal offense are entitled to a fair and public hearing by an independent and impartial tribunal<sup>5</sup> and have the right to be presumed innocent until proven guilty according to law.<sup>6</sup> The UDHR and ICCPR are incorporated into the Cambodian legal system. Article 31 of the Constitution states that Cambodia “*shall recognize and respect human rights as stipulated in the [...] covenants and conventions related to human rights.*” This 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 must consider.<sup>7</sup>

The right to a fair trial is also provided for in the domestic law of Cambodia; Article 31 of the Constitution guarantees “*Every Khmer citizen shall be equal before the law;*” whereas Article 128 provides that “*the Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.*” Other national laws elaborate on these guarantees. Cambodia’s criminal procedure was codified in 2007 with the introduction of the Code of Criminal Procedure of the Kingdom of Cambodia (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 offences, as well as the rights of victims and those charged with a criminal offense. In 2009, the Penal Code of the Kingdom of Cambodia (the “Penal Code”) was promulgated, 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 Penal Code came into effect on December 10, 2010 in Phnom Penh and December 20, 2010 in the rest of Cambodia. As such, the Fourth Reporting Period was the first opportunity for CCHR to monitor the application of the Penal Code by the courts.

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

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

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

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

<sup>5</sup>UDHR, Article 10; ICCPR, Article 14(1).

<sup>6</sup>UDHR, Article 11(1); ICCPR, Article 14(2).

<sup>7</sup>Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, dated July 10, 2007.

## THE POLICY CONTEXT

The Royal Government of Cambodia (the “RGC”) has recognized the importance of legal and judicial reform as fundamental to Cambodia’s growth, equity, and efficiency.<sup>8</sup> Legal and judicial reform in Cambodia is guided by the Legal and Judicial Reform Strategy (“Strategy”) approved by the Council of Ministers of the RGC on June 20, 2003.<sup>9</sup> The 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 rule of law.<sup>10</sup> The Strategy sets out seven objectives, which form the basis of the Legal and Judicial Reform Action Plan, approved in 2005.<sup>11</sup>

CCHR’s Trial Monitoring Project (the “Project”) has been an independent and impartial monitor of criminal trials in Cambodia for two years. In this role as an independent and impartial monitor, 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 fourth bi-annual Report on Fair Trial Rights in Cambodia produced by the Project. Before the Report was finalized, a draft was sent to the respective Presidents of the Phnom Penh Capital City Court (the “Phnom Penh Court”) and the Kandal Provincial Court (the “Kandal Court”) to provide an opportunity to the monitored courts to give feedback, comments and additional recommendations.

The first bi-annual report was released on July 14, 2010 (the “First Bi-annual Report”), the second bi-annual report was released on March 22, 2011 (the “Second Bi-annual Report”) and the third bi-annual report was released on January 04 2012 (the “Third Bi-annual Report”).

Section 2 of the Report sets out the methodology followed when collecting data and preparing this Report. In Section 3, ‘Data and Explanation’, the data collected between January 1 and June 30, 2011 (the “Fourth Reporting Period”) is presented and analyzed alongside the data collected between August 10 and December 31, 2009 (the “First Reporting Period”), January 1 and June 30, 2010 (the “Second Reporting Period”) and July 1 and December 31, 2010 (the “Third Reporting Period”) for the purpose of identifying trends in adherence to fair trial rights. Section 4, ‘Conclusions and Recommendations’ offers recommendations in concerning issues relating to the fair trial rights identified.

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> *Ibid.* p 3.

<sup>11</sup> 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.

## 2. METHODOLOGY

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The Project is implemented by CCHR as part of its Policy and Advocacy work. The Project is implemented and the Report written following the methodology set out in this chapter. It is hoped that this methodology can be shared and discussed with other organizations seeking to monitor trials in Cambodia, to enable increased collaboration in this field and facilitate constructive dialogue between all stakeholders seeking to improve respect for fair trial rights in Cambodia.

### TIME FRAME AND LOCATION

The Report presents and analyzes data from 398 criminal trials involving 688 individual accused monitored at the Phnom Penh Court and the Kandal Court during the Fourth Reporting Period (January 1, 2011 – June 30, 2011). 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 that of other first instance courts in Cambodia. The 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.

### FOCUS OF THE TRIAL MONITORING

The monitoring of trials focuses on certain fair trial rights. 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.<sup>12</sup> 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 facilities 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;

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<sup>12</sup>For example: International Commission of Jurists, *ICJ's 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); Richard Blue and Robert Underwood, *Evaluation of the Program on Rights and Justice ("PRAJ"): Final Report* (Washington DC: United States Agency for International Development (USAID), January 2008; and NGO Working Group, *Parallel Report on Cambodia 2009* (Phnom Penh: NGO Working Group, April 2009).

- Right against self-incrimination
- Prohibition against retroactive application of penal legislation (being tried for an offense that was not an offense at the time it was committed); 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 CCHR Trial Monitors (Appendix I). This checklist is tailor-made for the Project and includes approximately 70 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 individual accused, the latter being an addition in the Third Reporting Period. The data provided in the charts in Section 3 shows adherence to fair trial rights at trials as a whole, in order to allow comparisons to be drawn from the previous reporting periods. Consequently, for a question such as, “Was there legal representation?”, where more than one accused appeared in the same trial, the Trial Monitors answered “No” only if none of the accused had legal representation. From the Third Reporting Period on, Trial Monitors answered this question for the trial as a whole, to allow for comparison with previous reporting periods, as well as monitoring if each individual accused had legal representation. This data is set out in the analysis and explanation that accompanies the data in Section 3.

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 comprehensive understanding of each question and 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 monitoring<sup>13</sup> 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

The Project team is currently comprised of three experienced Trial Monitors with legal qualifications, expertise, and understanding. Both national and international legal consultants support the Trial Monitoring Team. As noted above, the Trial Monitors are bound by the Code of Conduct. Before the monitoring of trials began, the Trial Monitors participate in a thorough practical and theoretical training program that includes training on:

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<sup>13</sup> 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).

- 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 an intimate 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, two Trial Monitors are assigned to Phnom Penh Court and one is assigned to Kandal Court, enabling the Trial Monitors to become familiar with the court to which they are assigned and to build relationships with judges and court staff. CCHR monitored 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, with the exception of 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").<sup>14</sup>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 developments as well as areas of concern that arise at trial. The data is based on the answers the Trial Monitors give to the questions in the Checklist. Data is presented in bi-annual reports and compared to data collected during previous reporting periods to identify trends in the practices of the courts. Each bi-annual report contains an in-depth analysis of a sub-set of the fair trial rights monitored. The purpose of this analysis is to enable CCHR to identify strengths and weaknesses in the practices of the courts and develop corresponding recommendations to the courts and other justice sector stakeholders for ways in which recognition and provision for fair trial rights in criminal trials can be improved.

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<sup>14</sup>The Database is to be made available online for public access on the CCHR website: [www.cchrcambodia.org](http://www.cchrcambodia.org).

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.

Following the publication the Third Bi-annual Report, CCHR conducted dialogue with fourteen judiciary stakeholders, as follows:

- Phnom Penh Court
- Kandal Court
- Council for Legal and Judicial Reform
- Appeal Court
- Cambodian Defenders Project
- Legal Aid of Cambodia
- Lawyers Without Borders
- Bar Association
- Royal Academy of Judicial Professions
- The Prisons Department Ministry of Interior
- The Second Education Center, Prey Sar Prison “Mor 2”
- Battambang Province Court
- Banteay Meanchey Province Court
- Ratanakiri Province Court

The outcome of these dialogues, and the dialogues following the publication of the First and Second Bi-annual Reports, have been used in this Report to help explain trends in the data and to inform the recommendations. CCHR is appreciative of the positive and constructive discussions with stakeholders to date and the spirit of cooperation and partnership with which stakeholders have generally approached the Project.

### 3. DATA AND EVALUATION

During the Fourth Reporting Period, the Trial Monitors monitored 398 trials in total at the Phnom Penh and Kandal Courts, involving 688 accused. 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 from the Fourth Reporting Period is presented alongside the data from the First, Second and Third Reporting Periods for the purpose of comparison and analyzing trends in the practices of the Courts. The data included in the tables relates to trials as a whole. Where Trial Monitors monitored fair trial rights in respect of each individual accused, this data is set out separately in this section.

FIGURE 1: TRIALS MONITORED

Phnom Penh Court								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Number of Trials	142		376		439		308	
Felony	84	59	190	51	223	51	117	38
Misdemeanor	58	41	186	49	216	49	191	62
Kandal Court								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Number of Trials	57		156		146		90	
Felony	21	37	55	35	52	36	36	40
Misdemeanor	36	63	101	65	94	64	54	60

Figure 1 above shows the number and location of criminal trials monitored by the Trial Monitors during the Fourth 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 and/or a period of imprisonment for a period less than or equal to six days.<sup>15</sup>

<sup>15</sup>Article 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.<sup>16</sup> 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.<sup>17</sup>

FIGURE 2: RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public notice board outside the courtroom?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N°	%	N°	N°	%	%	N°	%
Yes	5	3	0	0	234	40	195	49
No	194	97	532	100	351	60	203	51
2(b) Were members of the public obstructed from entering or dismissed from the courtroom?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	1	0.3
No	199	100	532	100	585	100	397	99.7

The data for question 2(a) indicates an improvement in public notification of hearings at the Courts, with nearly half of all trials monitored in the Fourth Reporting Period having posted public notices giving details of the time and location of hearings. Trial Monitors recorded no instances of notices of hearings being posted at Kandal Court. President of Kandal Provincial Court gave two reasons to explain the absence of a public notice. First, the information regarding the hearing was communicated to the accused and relevant parties through the warrant already. Second, there was no requirement by law to post the public notice. In contrast, it was the practice of

<sup>16</sup>Article 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.

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



Phnom Penh Court over the last two reporting periods that was solely accountable for the improvements recorded.

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 and Kandal Courts are, for the most part, adhering to the legal requirements to conduct hearings openly and publicly. For the first time since monitoring began, Trial Monitors did record one instance where a member of the public was dismissed from the courtroom. The member of the public in question was the relative of the accused and was dismissed from the courtroom as her mobile phone was ringing loudly despite her receiving warnings to switch it off. In addition, she was answering the judge's questions instead of letting the accused do so. Given that the member of the public was essentially interfering with proceedings, her ejection by the judge was, in fact, important for preserving the integrity of the trial.

## 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**

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	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	176	88	446	98	465	80	329	83
No	7	4	8	1.5	114	19	66	16
I/U	16	8	2	0.5	6	1	3	1

Concerning the prevalence of pre-trial detention, the data for question 13(d) shows that the overall percentage of cases in which the accused was held in pre-trial detention has increased slightly from 80% during the Third Reporting Period to 83% during the Fourth Reporting Period (though this is a decrease from the First and Second Reporting Periods). When looking at individual accused, 64% of those tried were held in pre-trial detention, the same as monitored in the Third Reporting Period. The level of pre-trial detention used for those charged with misdemeanors remains high. While data from the Third Reporting Period showed that 46% of cases involving pre-trial detention concerned an accused charged with a misdemeanor, this increased to 57.4% in the Fourth Reporting Period. In comparison, 42.6% of those charged with a felony were held in pre-trial detention. The data indicates that there is much more to be done with regard to the judiciary recognizing the legitimate justifications for pre-trial detention and statutory limits to its duration.

During dialogue with CCHR, the Phnom Penh Court noted that pre-trial detention was necessary for security.<sup>18</sup> The judges that CCHR met also noted that pre-trial detention is decreasing owing to the fact that the country has good security and people know the law, thus there is less detention than before. CCHR conducted the same dialogue with the president of Kandal Province Court; he acknowledged that pre-trial detention was a serious issue but stated that the Kandal Province Court did not have the capacity to replace pre-trial detention with judicial supervision. While there have been reporting periods where there has been a small decrease in the percentage of pre-trial detentions monitored, the overall rate of pre-trial detention of accused remains high, particularly regarding individuals charged with misdemeanors. It is fundamental that judges apply the law with caution so that pre-trial detention is used only in limited circumstances provided for by law, and that these should be exceptional cases. Article 205 of the CCPC sets out a limited number of justifications for ordering pre-trial detention. However, these should always be measured against the alternatives to pre-trial detention that are provided for, such as the imposition of certain restrictions upon the accused under judicial supervision, as set out in Article 223 of the CCPC. Alternatives under judicial supervision are less intrusive than pre-trial detention and can be equally effective in ensuring the outcomes which pre-trial detention seeks to achieve, such as guaranteeing the presence of the defendant at the court, preventing the commission of further offenses and preventing interference with witnesses.

There were a number of trials monitored in which the pre-trial detention preceding the hearing exceeded statutory limits. Figure 4 below sets out the details of the four trials monitored, involving five accused, during the Fourth Reporting Period in which the period of detention exceeded statutory limits.

<sup>18</sup> Dialogue with Judge Ke Sakhorn, Judge Koa Vandy, Judge Chaing Sinath and Prosecutor Hing Bunthea, Phnom Penh Court, March 30, 2011.

FIGURE 4: PRE-TRIAL DETENTION EXCEEDING STATUTORY LIMITS

4 <sup>th</sup> Reporting Period							
N°	Court and date monitored	Maximum days of legal pre-trial detention <sup>19</sup>	Days in Pre-Trial Detention	Days in excess of pre-trial detention	Category of Charge	Legislation accused charged under	Length of eventual sentence
1	KD/12-01-2011	310	404	94	Mis	Battery with injury/UNT AC Law	17 months
2	KD/17-02-2011	310	350	40	Mis	Theft/UNT AC Law	13 months
3	PP/21-03-2011	310	342	32	Mis	Theft/UNT AC Law	18 months
4	KD/29-06-2011	310	323	13	Mis	Illegal use of drugs	6 months

For the purposes of Figure 4, pre-trial detention is deemed to start on the day of detention and end on the day of the trial or the day of the verdict, should the verdict be delivered later.

The excessive – and illegal – pre-trial detention of five 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, it is a violation of 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 particular concern is that in all four of the excessive pre-trial detention cases monitored the accused was charged with a misdemeanor, 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 dialogue with the Phnom Penh Court after the release of the Second Bi-annual Report, judges noted that the court is very careful to examine one to two times a month the status of those held in pre-trial detention to ensure that statutory limits are not exceeded. It was noted that excessive pre-trial detention was largely because prisons forget to update the data on their system.<sup>20</sup> If this is the case, fundamental changes need to take place in the case-management systems operated by the prisons to ensure that accused are not unduly deprived of their liberty.

<sup>19</sup> The statutory limits on legal pre-trial detention in Figure 4 were calculated according to Articles 208 and 209 of the CCPC, which sets out the maximum legal duration of pre-trial detention for both felonies and misdemeanors. Article 249 of the CCPC provides for an additional four months of detention in anticipation of a trial following the closing of an investigation. This additional period has also been taken into account in the figures set out in the field titled “*Maximum days of legal pre-trial detention*” above. The maximum period of pre-trial detention for a felony is 22 months (or 682 days). The maximum for a misdemeanor is 10 months (or 310 days).

<sup>20</sup> Dialogue with Judge Ke Sakhorn, Judge Koa Vandy, Judge Chaing Sinath and Prosecutor Hing Bunthea, Phnom Penh Court, March 30, 2011.

From the monitoring activities undertaken, there is a potential correlation with the number of people held in pre-trial detention accused of a misdemeanor and the lack of legal representation. As shown in Figure 8 in this Chapter, accused were only represented by a lawyer in 33% of misdemeanor cases. During discussions with the Phnom Penh Court following the release of the Second Bi-annual Report, Prosecutor Heng Bunchea acknowledged that the lack of lawyers affects detention procedures. This sentiment was similarly echoed during dialogue with Judge Hok Vannthina of Kandal Court.<sup>21</sup> 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. Of the individuals held in excessive pre-trial detention during the Fourth Reporting Period, only one had a lawyer. Beside the issues regarding pre-trial detention, CCHR is also concerned with delays to the cases being heard in court. During the consultation period for the fourth bi annual report, the vice president of Phnom Penh Court stated that in cases which require the presence of the relevant parties (an authority or the victims) such as in drug offenses, rape cases, or human trafficking, the absence of the relevant parties could delay the trial. The absence of a lawyer could also cause delay. However it needs to be noted that it was not the intention of the judges to delay the hearing, because delays would create many problems such as the need to order parties to appear at court and to re-notify the relevant parties should there be a schedule change. This delay is also likely to have an adverse impact upon the schedules of other cases that are due to take place in the same court.

## 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 offence with which they are being charged.

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<sup>21</sup> Dialogue with Judge Hok Vannthina, Kandal Court, April 28, 2011.

FIGURE 5: RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

3(a) Did the Judge announce the case to be heard?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	196	98	493	93	556	95	385	97
No	3	2	39	7	29	5	13	3
3(b) Did the Judge state the charge?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	198	99	503	95	545	93	385	97
No	1	1	29	5	40	7	13	3
3(c) Did the Judge state the relevant law?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	169	85	313	59	299	51	277	70
No	30	15	219	41	286	49	121	30
3(d) Did the Judge state the date of alleged crime?								
Data	Data not collated during this reporting period		Data not collated during this reporting period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes					417	71	325	82
No					168	29	73	18
3(e) Did the Judge state the place of alleged crime?								
Data	Data not collated during this reporting period		Data not collated during this reporting period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes					394	67	315	79
No					191	33	83	21

3(f) Did the Judge state the parties involved?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	196	98	443	83	512	88	360	90
No	3	2	89	17	73	12	38	10
3(g) If required, was an interpreter provided?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	18	3	23	4	10	3
No	0	0	1	1	1	0.2	0	0
N/A	199	100	513	96	561	95.8	388	97
3(h) If required, were provisions made for disabilities?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	2	1	1	0.3
No	1	1	3	1	0	0	0	0
N/A	198	99	529	99	583	99	397	99.7

The judge announced the case to be heard and the charge(s) facing the accused in 97% of trials monitored during the Fourth Reporting Period, representing a slight improvement from the Second and Third Reporting Periods, and edging closer to 100% adherence to this fair trial right. In the Second and Third Reporting Periods, there were significant decreases in the percentage of trials in which the judge stated the relevant law – 59% and 51%, respectively. However, Trial Monitors observed a notable improvement in the Fourth Reporting Period, with the judge stating the relevant law in 70% of the trials monitored.

## 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 accused of a number of basic rights. Whether or not a judge sufficiently informs an accused 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.

As Figure 6 below shows, judges either informed or informed and explained to the accused their basic rights in a largely higher percentage of trials than in other reporting periods. In 56% of trials monitored, the judge was observed informing the accused of his/her right to legal representation or self-defense, an increase from the First (54%) and Third Reporting Periods (47%), though still lower than in the Second Reporting Period (67%). It is important for judges to be reminded of an individual's right to be informed and to have those rights explained, particularly in relation to the rights to legal representation and self-representation as part of the equality of arms and to allow the accused to prepare a defense. In the absence of a lawyer capable of informing them of their rights, individual accused are reliant upon judges to ensure that they have an understanding of his/her basic rights. Without such information or explanation, accused are vulnerable to violations of his/her basic rights and the integrity of the trial at hand is jeopardized.

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-defense?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
I	108	54	354	67	276	47	223	56
I&E	75	38	51	9	138	24	81	20
Neither	12	6	73	14	104	18	58	15
N/A	4	2	54	10	67	11	36	9
4(b) Did the Judge inform (I) and explain (E) to the accused his/her right not to answer?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
I	74	37	80	15	55	9	105	26
I&E	38	19	11	2	29	5	13	3
Neither	83	42	387	73	434	75	244	62
N/A	4	2	54	10	67	11	36	9

**4(c) Did the Judge inform (I) and explain (E) to the accused his/her right to change the judge?**

Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N°	%	N°	%	N°	%	N°	%
I	121	61	281	53	189	32	117	29
I&E	63	32	39	7	149	26	77	19
Neither	11	5	158	30	180	31	168	43
N/A	4	2	54	10	67	11	36	9

**4(d) Did the Judge inform (I) and explain (E) to the accused his/her right to have the last word?**

Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N°	%	N°	%	N°	%	N°	%
I	121	61	337	63	298	51	275	69
I&E	67	34	40	8	111	19	23	6
Neither	7	3	101	19	109	19	64	16
N/A	4	2	54	10	67	11	36	9

**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 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 with counsel.



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	Data not collated during this reporting period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
			N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes			8	1.5	15	3	5	1
No			524	98.5	570	97	393	99
15(b) Was the issue of adequate time and facilities for preparation raised by the defense?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	60	30	8	2	3	0.01	2	0.6
No	139	70	524	98	582	99.5	396	99.4

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. In 1% of trials monitored, it appeared that the defense lawyer had been appointed on the day of the trial and therefore, may have had inadequate time and facilities to prepare a defense.

## RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

### 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 foreign and intimidating to those accused of an offense. To enable a fair trial it is vital to ensure that the accused has the opportunity to employ an expert advocate with the ability to explain the charges against him/her and 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 AND TO BE PRESENT AT TRIAL

<b>16(b) Was the accused represented by a lawyer?</b>									
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period		
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	
Yes	135	68	312	59	392	67	238	60	
No	64	32	220	41	193	33	160	40	
<b>In Felony Trials: 7(a) Was the accused represented by a lawyer?</b>									
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period		
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	
Yes	100	95	238	97	275	100	153	100	
No	5	5	7	3	0	0	0	0	
<b>In Misdemeanor Trials: 7(a) Was the accused represented by a lawyer?</b>									
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period		
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	
Yes	35	37	74	26	117	38	85	35	
No	59	63	213	74	193	62	160	65	

Regarding the right to legal representation, Trial Monitors recorded that in just 60% of trials, the accused had legal representation. When looking at each individual accused, the data found that just over half of the 688 accused monitored, 381 – or 55% – were represented by a lawyer. This is a drop from the Third Reporting Period whereof the 1,029 individual accused monitored, 633 – or 62% – were represented by a lawyer. Trial Monitors recorded that in 100% of felony trials, at least one of the accused was represented by a lawyer. However, when looking at individual accused tried with felonies, only 90% of accused were represented. Representation levels for individual accused charged with misdemeanors continues to be low, with 32% of individual accused charged with misdemeanors having legal representation. While there is no legal requirement for those charged with misdemeanor offenses to have legal representation, unless they are minors, the fact that about a third of those accused has legal representation raises questions about the equality of arms.

During dialogue with judicial stakeholders following the publication of the Second Bi-annual Report the general consensus was that issues relating to the lack of legal representation came down to a human resource problem. A general lack of lawyers, it was argued, meant that those accused that are required by law to have lawyers do not, and those that need lawyers to protect his/her rights and interests remain vulnerable to the complexities of the legal process. This lack of legal representation, it was argued, leads to delays in hearings, which can be a cause for pre-trial detention exceeding statutory limits. It was also argued that there was a long process involved in requesting legal aid lawyers, which at times resulted in lawyers being appointed at the very last minute. As a result, lawyers and legal aid organizations argued that they were often absent from hearings because they do not

have sufficient advance notice that they were required at court.<sup>22</sup> Similarly, during dialogue with members of the judiciary, it was relayed that some lawyers informed the court of their absence on the day of the trial, making the court unable to find a replacement lawyer. The Courts, Bar Association and Legal Aid NGOs must work together to ensure effective and equal access to lawyers for all persons so that those accused of offences have an expert advocate to explain the charges against him/her and defend his/her interests in court.

## PRESUMPTION OF INNOCENCE

### Source 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 influenced the judge to presume guilt.

FIGURE 9: PRESUMPTION OF INNOCENCE

17(a) Did the accused appear in prison uniform?								
Data	Data not collated during this reporting period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
			N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes			318	60	331	57	243	61
No			160	30	187	32	119	30
N/A			54	10	67	11	36	9
17(b) Was the accused handcuffed throughout the trial?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	1	0.2	1	0.3
No	195	98	478	90	517	88.8	361	90.7
N/A	4	2	54	10	67	11	36	9

<sup>22</sup> Dialogue with the Cambodian Defenders Project and Legal Aid Cambodia in 2010.

**17(c) Were statements made by the Judge about the guilt of the accused prior to the delivery of verdict?**

Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	20	10	5	1	1	0.1	2	1
No	179	90	527	99	584	99.9	396	99

The data for question 17(a) indicates a slight increase in the overall percentage of trials in which defendants appeared before the court in prison uniform. Accused appeared before the court in prison uniforms in more than half of the trials monitored during the Fourth Reporting Period. When looking at the data of individual accused, of the 688 individual accused monitored- 329 or 48% - appeared in prison uniform. Forcing an accused to attend a hearing in prison attire is prejudicial and it implies guilt. This risks affecting, either consciously or subconsciously, the manner in which proceedings are conducted, the conduct of the judges, and ultimately, the outcome of the case.

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.” When discussing the issue of prison uniforms with the courts, the courts noted that security was the main reason why the accused attended trial in prison uniforms. It was argued that the recommendations provided in the Second Bi-annual Report, that the accused should be allowed to wear their own clothes (which reflects the Ministry of Interior Proclamation on the issue), might aid an accused in a potential bid to escape. When questioned by CCHR, the president of Kandal Provincial Court stated that accused wearing prisoner uniform shall be presumed innocent until proven guilty; however, for the purpose of security he felt it is best to have an accused present in the court in uniform rather than in plain clothes. While the issue of security is a legitimate concern for the State, it cannot be a blanket explanation for a failure to respect the rights of the accused. A number of judicial stakeholders that CCHR met with did support a mechanism for different colored uniforms for those in pre-trial detentions – currently all prisoners in Cambodia, whether convicted or in pre-trial detention, wear blue uniforms – or a mechanism through which an accused can wear his/her own clothes at trial. It was noted that the issue of prison uniforms was ultimately the responsibility of the Ministry of Interior. While the Ministry of Interior might hold ultimate responsibility regarding the implementation of policy changes on the wearing of prison uniforms at hearings, the judiciary can voice their opinion and advocate for necessary processes to be put in place to enhance the presumption of innocence of accused that appear before the courts.

The data for question 17(b) indicates that there was one instance in the Fourth Reporting Period in which an accused appeared before the court in handcuffs. The accused in question had confessed to pre-meditated murder and was handcuffed throughout the trial and guarded very carefully by police officers. Even where the accused has confessed, the accused is still owed the full set of fair trial rights, which should be respected.

In relation to question 17(c), there were two cases where the judge was observed to have made a statement about their guilt or innocence prior to delivering the verdict. In one case, which took place at Phnom Penh Court, three accused were charged with robbery according to Articles 353 and 357 of the Penal Code. It was alleged that the accused procured a motorbike taxi to bring them to Prey Speo pagoda – the place of the crime. When arriving, one accused passed a hammer to another accused and fought the motorbike taxi driver, took his

motorbike and escaped. The judge was heard to say to one accused, “*Because you are a thief, that is why you ride motorbikes with thieves.*” Cases of a judge being observed making a statement about the guilt or innocence of the accused prior to delivery of the verdict represent less than 1% of the cases monitored, a decline from 10% from the First Reporting Period. While any such statements are extremely concerning and their potential effect on an individual case significant, the decrease in instances of such statements is another positive development.

## 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 resolutely fundamental. The UN Human Rights Committee has stated that it is “*an absolute right that may suffer no exception.*”<sup>23</sup> 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	Data not collated for this reporting period	Data not collated for this reporting period	3rd Reporting Period		4 <sup>th</sup> Reporting Period	
			N°	%	N°	%
Yes			0	0	0	0
No			585	100	398	100

<sup>23</sup>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 Rio v. Peru* (CCPR/C/46/D/263/1987), October 28, 1992, para. 5.2.

**9(b) Was there anything to suggest that any party spoke to the Judge during deliberation?**

Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	32	16	34	6	43	7.5	19	5
No	167	84	498	94	92	15.5	106	26.5
N/A					187	32	10	2.5
I/U					263	45	263	66

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

Concerning deliberation, in 19 of the 125 trials where there was deliberation – or 5% of all trials - there were indications that the judge spoke to a party during deliberation. This is an improvement from previous reporting periods; however, it remains a cause for concern. Of the 19 cases, Trial Monitors recorded six instances in which it appeared that the judge spoke to the prosecutor, six instances in which it appeared that the judge spoke to the prosecutor and a court official, five instances in which the judge appeared to speak to a court official, and two instances in which the judge appeared to speak to the prosecutor and the defense lawyer. During dialogue, it has been argued that court clerks, for example, may need to enter the deliberation room in order to give the judge his or her papers.<sup>24</sup> While this may be the case, any entry by a clerk or other party into a deliberation room, regardless of their motivation, brings into question the independence and impartiality of the judge.

During the First Reporting Period, another issue of concern noted by Trial Monitors was the frequency with which judges, lawyers and court staff – such as the court clerks – answered mobile phones during the proceedings. After observing this trend, the Trial Monitors began monitoring the use of mobile phones by judges during court proceedings from November 1, 2009. 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.

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<sup>24</sup> Dialogue with staff from the Phnom Penh Court on July 29, 2010.

FIGURE 11: JUDGES' USE OF MOBILE PHONES

8(e) Did the judge answer a mobile telephone during the hearing?									
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period		
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	
Yes	17	28	151	28	126	22	73	18	
No	43	72	381	72	459	78	325	82	
If yes, how did the judge respond?									
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period		
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	
Answer briefly and hung up	11	65	82	54	82	65	44	60	
Conducted a conversation	6	35	69	46	44	34	29	40	

There was a small drop in the percentage of trials in which judges used mobile phones while presiding over a trial, from 22% in the Third Reporting Period to 18% in the Fourth Reporting Period. In 40% of cases, the judge was noted to have conducted a conversation, an increase from the Third Reporting Period. While the majority of conversations were brief – with the judges in 60% of the cases answering briefly and hanging up - this conduct trivializes proceedings. The answering of phones during trials disrupts the hearing and raises questions about the extent to which the judge is engaged and listening to the trial.

During dialogue with judicial stakeholders, it was noted that there is no law with regard to the answering of phones by judges and/or prosecutors.<sup>25</sup> It was argued by some that judges and prosecutors are very busy with other work and that judicial police may need to contact them in relation to another case, and therefore the answering of phones does not express partiality in relation to a case. The deputy prosecutor of the Phnom Penh Court said that it is difficult for the judges to stop answering phone calls due to the fact that they take responsibility for more than one case at any one time. However, in the future they would be briefer on the phone and terminate the call quickly. While it may be that the majority of phone calls relate to the work of the judge in an investigatory capacity, access to justice in one case should not be compromised in order to expedite proceedings in another. The answering of phone calls may influence public perceptions of the court, giving observers the impression that judges are open to influence from external parties during proceedings. Messages for judges could easily be collected by other court staff while judges are in court and responded to at the conclusion of the trial. The Ministry of Justice should issue a directive on this, clarifying the position with regard to use of mobile phones.

<sup>25</sup> Dialogue with Judge Seng Sivutha, Appeal Court, April 20, 2011; and dialogue with H.E. Soung Leang Hay, Vice General Secretary of the Council for Legal and Judicial Reform, April 5, 2011.

## 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.<sup>26</sup>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).

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<sup>26</sup>Article 334 of the CCPC.



FIGURE 12: EVIDENCE

6(a) Was evidence presented?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	153	77	512	96	569	97	394	99
No	46	13	20	4	16	3	4	1

  

7(a) Was there anything to suggest that any party was not given the opportunity to present evidence?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	3	2	3	1	0	0	0	0
No	196	98	529	99	585	100	398	100

The data for question 6(a) indicates an incremental increase in the number of trials monitored where evidence was presented, edging close to 100% of trials monitored. There were no cases in which it appeared that a party was denied the opportunity to present evidence.

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.<sup>27</sup>The accused has the right to call and examine witnesses on his/her behalf under the same conditions as witnesses against him/her.<sup>28</sup>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.<sup>29</sup>These safeguards aim to avoid witnesses adapting or doctoring testimony to suit developments in the proceedings or because of pressure from others.

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<sup>27</sup> Article 14(3)(e) of the ICCPR; Article 298, 324 and 326 of the CCPC.

<sup>28</sup>Article 14(3)(e) of the ICCPR.

<sup>29</sup> Article 322 of the CCPC.

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	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	4	2	1	0.18	2	0.4	0	0
No	195	98	531	99.82	583	99.6	398	100
7(b) Was there anything to suggest that any party was not given the opportunity to examine witnesses?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	3	0.56	0	0	0	0
No	58	29	79	14.44	119	20	91	23
N/A	141	71	450	85	466	80	307	77
5(b) Were the witnesses present in the courtroom before they were questioned?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	10	5	28	5	22	4	22	5
No	48	24	54	10	97	16	72	18
N/A	141	71	450	85	466	80	307	77

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

## RIGHT TO FULL DISCLOSURE OF EVIDENCE

### Sources 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.”<sup>30</sup>
- **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.”
- **Articles 129, 145, 149, 170, 259 and 428** of the CCPC.

The right to full disclosure of evidence means that the defense has the right to have access to all documents and to be made aware of all evidence relevant to the trial. The fundamental document is the case file prepared by the investigating judge containing the indictment that is sent to the trial court president for the fixing of a date for trial, all of the evidence gathered and the conclusions made by the investigating judge.

FIGURE 14: RIGHT TO FULL DISCLOSURE OF EVIDENCE

7(c) Was there anything to suggest that the same evidence was not available to both sides?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	3	2	4	1	0	0	0	0
No	196	98	528	99	585	100	398	100

## 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.”

<sup>30</sup> The Human Rights Committee in its General Comment No. 32 has indicated that the “right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.” Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32) August 23, 2007 Available at: <http://www.unhcr.org/refworld/category.LEGAL.,GENERAL.,478b2b2f2.0.html>

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 an admission of guilt.

FIGURE 15: RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	6	3	28	5	39	7	12	3
No	193	97	504	95	546	93	386	97

  

14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	10	5	35	7	44	8	23	6
No	189	95	497	93	541	92	375	94

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 includes 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.

The percentage of cases where there were indications that threats were made to coerce the accused into confessing or where violence or torture were used dropped to 3% and 6%, respectively, of all trials monitored from 7% and 8% in the Third Reporting Period. When discussing the data in relation to previous reporting periods with the judges at the courts monitored, many said it is generally found that accused will make such an accusation when the police are not in the courtroom, but on proper examination it transpires that the alleged threats or violence were in fact, not made or used. Some judges noted that if a threat is made, or if the police commit violence, the accused should file a complaint to the investigation chamber to oppose the evidence. While the police must refrain from using violence, it is important that the courts, particularly the prosecutor, give directions to this end to the police and remind them that they will face legal consequences for the use of force to coerce a confession. It is equally important that judges exercise extreme caution when considering any confession that is alleged to have been tendered because of improper coercion in accordance with the Constitution and the CCPC. 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 RETROACTIVE APPLICATION OF CRIMINAL LAW

### Sources in Cambodian and International law

- **Article 15 of the ICCPR:** “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”
- **Article 3 of the Penal Code:** “Only the act constituting an offence that is provided in the criminal provisions in force gives rise to criminal punishment. Only the penalty that is provided in the criminal provisions in force when an offence is committed may be imposed.”
- **Article 10 of the Penal Code:** “The new provisions which provide for less severe sentences are immediately applicable. However, the final sentences are carried out regardless of the severity of the imposed sentences. The new provisions which provide for more severe sentences can be applicable only to the acts committed after the effective date of these provisions.”

A fundamental principle of criminal law is that no one can be found guilty of a criminal offence for an act or omission that did not constitute a criminal offence at the time the alleged action or omission took place. Similarly, a heavier penalty may not be imposed than the one that was applicable at the time when the criminal offence was committed.

FIGURE 16: PROHIBITION AGAINST RETROACTIVE APPLICATION OF PENAL LEGISLATION

18(a) Was there anything to suggest that the accused has been tried for this crime previously?						
Data	Data not collated during this reporting period	Data not collated during this reporting period	3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
			N°	%	N°	%
Yes			1	0.1	1	0.2
No			1028	99.9	687	99.8

21(f) Was the sentence within the range of penalties applicable at the time the offense was committed?						
Data	Data not collated during this reporting period	Data not collated during this reporting period	3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
			N°	%	N°	%
Yes			166	60.1	299	43
No			0	0	97	14
N/A			110	39.9	40	6
I/U					252	37

In relation to question 18(a) and 21(f), the data was collected in respect to individual accused, not trials.

Of the trials monitored, there was one case of double jeopardy. The accused was charged with theft under Article 43 of the UNTAC law. In the hearing at the Phnom Penh Court, he told the judge that he had been sentenced for the crime on August 25, 2010. The accused was ultimately found not guilty.

Question 21(f) was added to the Checklist in October 2010 and was included as a result of the Penal Code coming into force which states that new provisions which provide for less severe sentences are immediately applicable, whereas new provisions which provide for more severe sentencing will only be applicable to acts committed after the legislation comes into force<sup>31</sup>. Thus, in regard to 97 (14%) accused monitored the sentence was not within the range of penalties applicable at the time of the offense. This was a result of the courts duly applying the provisions of the Penal Code, such as the provisions in relation to less severe sentences. “N/A” for this question includes the case of 40 accused where the verdict was not guilty or the case was re-investigated. “I/U” is in relation to where the verdict is unknown.

## 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. The ICCPR and the Convention on the Rights of the Child (the “CRC”) set out specific provisions for the treatment of juveniles in criminal justice proceedings and are supported by a number of international rules and guidelines. 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 17: TRIALS INVOLVING A JUVENILE ACCUSED

Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Number of Trials	26		46		48		24	
Felony	16	62	33	72	30	62	12	50
Misdemeanor	10	48	13	28	18	38	12	50

In the Fourth Reporting Period, 24 of the 398 trials monitored involved juvenile accused – 6% of the total trials monitored. In total, 53 individual juveniles were monitored over the course of the Fourth Reporting Period. The age of criminal responsibility in Cambodia is 18 years. Persons below 14 years of age when a criminal offense was allegedly committed cannot be prosecuted or tried by the courts. Despite the age of criminal responsibility being set at 18, juveniles between 14 and 18 years of age remain subject to the criminal law and in certain circumstances criminal penalties may be imposed on minors found to have committed an offense. In these

<sup>31</sup> See Articles 9 and 10 of the Penal Code 2009.

circumstances, minors 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. Persons aged 18 years and older are tried as adults.

## JUVENILES – PRIVACY

- **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 18: JUVENILES – PRIVACY

2(a) Was notice of the hearing posted on a public board?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	21	44	8	33
No	26	100	46	100	27	56	16	67
2(b) Were members of the public obstructed from entering or dismissed from the courtroom?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	0	0	1	4
No	26	100	46	100	48	100	23	96
24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	0	0	2	8
No	26	100	46	100	48	100	22	92



The data for question 2(b) of the juvenile checklist indicates that the monitored courts have restricted entry to one trial involving juveniles. The circumstances surrounding this restriction were mentioned earlier in this chapter, and were due to a family member being disruptive in the courtroom and answering questions for the juvenile. There were two instances where protection measures were adopted. One case, which took place at Phnom Penh Court, involved a 15-year-old juvenile charged with Aggravating Circumstances in Connection With Victims under Article 241 of the Penal Code. On January 19 2011, the victim, a 5-year-old girl, went to the accused's house to watch TV. The accused kissed her and told her to take off her skirt before raping her. In the trial, a screen was used to protect the privacy of the juvenile accused as he was afraid of the people at the hearing. Furthermore, the accused was said to have mental problems according to the accused's father and lawyer, and thus needed extra protection.

While it is commendable that there were instances where the rights of juvenile accused and juvenile victims were protected, the data from monitoring has shown that these instances are low. The courts need to give more consideration to protect the privacy of juveniles. Speaking to representatives from the monitored courts all stated that the trial council considers the issue of a closed trial for juveniles very carefully. It was noted that the practice of both the courts was to provide closed hearings in cases of rape. Dialogue with the courts seemed to suggest that protection issues were addressed more frequently in cases involving juvenile victims, particularly in rape cases, rather than in all cases involving juveniles, including juvenile accused. The courts should recognize that protecting the privacy of juveniles should not just be extended to juvenile victims but also to juvenile 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.”*

Even more so than with cases involving adult accused, international standards particularly discourage the pre-trial detention of juveniles. In most cases, the best interests of the child are protected by not separating them from their parents.<sup>32</sup> Detention of children, including after arrest and prior to trial, should be avoided whenever

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<sup>32</sup> Article 9 of the Convention on the Rights of the Child (CRC).

possible and used as a measure of last resort for the shortest appropriate period.<sup>33</sup> 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.<sup>34</sup>

**FIGURE 19: JUVENILES – PRE-TRIAL DETENTION**

23 Was there pre-trial detention?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	17	65	44	96	42	87.5	17	71
No	7	27	1	2	5	10.5	7	29
N/A	0	0	0	0	0	0		
I/U	2	8	1	2	1	2		
23(b) If held in pre-trial detention, was there anything to suggest that the accused was not separated from adults?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%	N <sup>o</sup>	%
Yes	0	0	0	0	0	0	0	0
No	18	69	44	96	43	90	17	71
N/A	8	31	2	4	5	10	7	29

92% of trials involving juvenile accused monitored had pre-trial detention. When looking at individual juvenile accused, 53 or 77% were held in pre-trial detention. This is higher than the rate for adults, which was 64%. It was argued by representatives of the Phnom Penh Court that CCHR met with to discuss the Second Bi-annual Report that juveniles were usually held in pre-trial detention when the police and the courts were verifying their age. However, this cannot be justified as a reason for keeping juveniles in pre-trial detention. There are limited circumstances in which it is justifiable for a juvenile to be placed in pre-trial detention and the assumption against pre-trial detention for juveniles sits higher than it does for adults. The courts must do more to ensure that other steps are taken to address concerns they may have with regard to verifying the age of the juvenile accused.

<sup>33</sup> 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.

<sup>34</sup> 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.

## JUVENILES – SENTENCING

- **Article 39 of the Penal Code:** “The minors who committed an offence are subject to the measures of surveillance, education, protection and assistance. However, the court may pronounce a criminal conviction against a minor of 14 (fourteen) years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.”
- **Article 40 of the Penal Code:** “The educational measures, the surveillance measures, the protection measures and the assistance measures are the following:
  1. handing-over of the minor to his/her parents; his/her guardian; to a person who has a guardianship role or to another person who is trustworthy.
  2. committing the minor to a social service agency charged with handling of minors;
  3. handing-over of the minor to a private organization that has the qualification to receive them;
  4. committing the minor to a specialized hospital or institution;
  5. placement of 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.<sup>35</sup> 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.<sup>36</sup>

FIGURE 20: JUVENILES – SENTENCING

25(b) Was there anything to suggest that the Judge considered imposed a non-custodial sentence before imposing a custodial sentence?								
Data	1 <sup>st</sup> Reporting Period		2 <sup>nd</sup> Reporting Period		3 <sup>rd</sup> Reporting Period		4 <sup>th</sup> Reporting Period	
	N°	%	N°	%	N°	%	N°	%
Yes	0	0	0	0	0	0	0	0
No	20	77	46	100	32	67	15	62
N/A	6	23	0	0	16	33	9	38

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. The fact that Trial Monitors are continuing to observe this tendency towards custodial sentences is disconcerting given that Article 39 of the Penal Code creates a statutory presumption against conviction and imprisonment of juveniles. From the dialogue with judicial stakeholders, it is clear that the judiciary lacks the mechanisms to implement the alternative measures that are provided for by the law. While the United Nations Children’s Fund (“UNICEF”) has worked with the Ministry of Justice to promote the rights of juveniles through advocacy workshops on alternative sentencing, resources are limited for juveniles and adults alike.<sup>37</sup>

<sup>35</sup> Article 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.

<sup>36</sup> Article 37(b) of the CRC.

<sup>37</sup> Meeting with Project staff and UNICEF on April 22, 2011.

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. 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

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The data from the 398 trials monitored in the Fourth Reporting Period continues to show incremental improvements in adherence to fair trial rights. There continues 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. 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 increasing adherence to fair trial rights.

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

### RECOMMENDATIONS TO ADDRESS DELAY AND PRE-TRIAL DETENTION

- The **Royal Academy of Judicial Professions (“RAJP”)** should ensure that training is provided to future judges on the pre-trial detention provisions of the CCPC and on 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.
- **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 nationwide detention database 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 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 for hearing.
- Lack of legal representation can contribute to excessive pre-trial detention with accused getting ‘lost’ in the system. Funding of legal aid organizations should be increased to ensure that those wanting and needing legal

representation could access it. **The Bar Association of the Kingdom of Cambodia** (the “Bar Association”), in line with its statutory responsibility to provide legal aid, should work with lawyers and law firms to encourage the pro bono provision of legal aid services as a means of making up the deficit of legal aid lawyers, particularly for those held in excessive detention.

## 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:

- 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.
- In light of the delay often experienced with respect to courts filing applications for lawyers, **the MOJ** should work with the Courts in developing a policy for the filing of applications for legal representation. Such policy should ensure that Bar Association and legal aid NGOs are informed at the earliest possible time of the need for a lawyer.
- **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 **MOJ** should issue a directive to provide that where legal representation is mandatory, as in felony cases and cases involving minors, lawyers should be appointed from the start of criminal proceedings, thereby avoiding appointment of lawyers at the last minute and ensuring adequate time for the preparation of a defense.
- **The Bar Association** should create educational materials to help the public understand how to access legal aid assistance through the Bar Association legal aid fund and legal aid NGOs.
- **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 and funding for an annual audit of the Bar Association’s legal aid fund.
- **The CLJR** should work with legal aid stakeholders to implement the recommendations in its 2006 report, *Legal Aid in Cambodia: Practices, Perceptions and Needs*, including the development of a central coordinating body to fund and develop a national infrastructure for legal aid.
- **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 council and village authorities.

#### 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 and ensuring that at **detention facilities** prisoners who are required to appear before a court are given the opportunity to wear their own clothes. Prior to an appearance in court, all defendants should be provided with the clothing worn when placed in pre-trial detention or, if these have been lost or discarded, detainees should be given a reasonable opportunity to seek the delivery of alternative clothing from family or friends.

#### RECOMMENDATIONS WITH REGARDS THE RIGHT NOT TO BE COMPELLED TO CONFESS

- **The Ministry of Interior** should continue providing training to national police (including judicial police) and prison officers about acceptable non-coercive interrogation techniques and the absolute prohibition on torture and other cruel, inhuman, or degrading treatment or punishment.
- **The RGC** should expedite progress towards establishing a National Preventive Mechanism to investigate complaints, including allegations of torture against police, prison officers, and other law enforcement personnel, to monitor detention facilities, and to make recommendations to the government. The National Preventive Mechanism should be established in accordance with Articles 17 and 18 of the Optional Protocol of the Convention Against Torture, which require an institution or mechanism independent of the government.
- **The RGC and prosecutors** should ensure that all allegations of improper conduct must be promptly and impartially investigated. Acts of torture should result in prosecution of those responsible and suspension from duties pending the outcome of the investigation.

#### 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 of the delinquent judge or prosecutor, including 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 phones during trials. Similarly, judges and prosecutors should refrain from answering the phone. 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 Royal Academy for Judicial Professions, Royal School of Judges and Prosecutors, Bar Association of the Kingdom of Cambodia 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.
- **The MOJ and Ministry of Education, Youth and Sport** should 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.
- **The RGC and MOJ** should expedite the adoption of the juvenile justice law to provide for greater clarification on 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 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.
- In line with the international law and principles, the relevant departments of the RGC should ensure that the judiciary implements the following practices when juvenile accused are involved in proceedings:
  - Close the court to the public
  - Alternative arrangements for giving evidence, such as screens
  - Allowing a video-taped statement of the child's evidence
- **Judges** should ensure that the imprisonment of juveniles is a last resort and instead utilize the new 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, Ministry of Justice and Ministry of Education, Youth and Sport** to provide support and rehabilitation services for youth who have infringed the criminal law, providing realistic and viable alternatives to criminal prosecution and imprisonment.

Cambodian Center for Human Rights

2012

Phnom Penh



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**DATABASE**

Cambodian Centre for Human Rights, available at

[www.cchrcambodia.org](http://www.cchrcambodia.org).

## 7. APPENDICES

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### 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 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup>				<input type="checkbox"/> Other Please specify:
1(e) Clerk:					
1(f) Number of Accused <sup>38</sup>	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:	

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<sup>38</sup>If 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	<input type="checkbox"/> No
Details:		

### 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 <i>was not</i> 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:						
	<p>Comment:</p>						
<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</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>						



evidence presented was inadmissible?

If yes, please explain:

## 7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

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

## 8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE

8(a) Was there anything to suggest that the Judge had an interest in the case beyond their usual judicial role?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the nature of the perceived interest? <input type="checkbox"/> Family <input type="checkbox"/> Political <input type="checkbox"/> Financial <input type="checkbox"/> Other What suggests that such an interest exists? Please explain:
8(b) Did the Judge behave in an intimidating manner towards a party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
8(c) Did the Judge used impolite word toward any party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
8(d) Did the judge leave the court room during the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain reason: <input type="checkbox"/> I/U

8 (e) Did the Judge answer a mobile telephone during the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, did they: <input type="checkbox"/> Respond briefly and hang up <input type="checkbox"/> conduct a conversation If yes, was the ring tone: <input type="checkbox"/> Audible <input type="checkbox"/> On silent
---	--

**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: <sup>39</sup> Relevant law: Relevant article of the law:					

\_\_\_\_\_

<sup>39</sup> If human trafficking please see Annex II: Human Trafficking Trial

**PRE-TRIAL RIGHTS**

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

<b>Accused</b>	<b>Accused 1</b>	<b>Accused 2</b>	<b>Accused 3</b>	<b>Accused 4</b>	<b>Accused 5</b>
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**

<b>Accused</b>	<b>Accused 1</b>	<b>Accused 2</b>	<b>Accused 3</b>	<b>Accused 4</b>	<b>Accused 5</b>
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	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes

suggest the accused was interrogated without a lawyer present?	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<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**

<b>Accused</b>	<b>Accused 1</b>	<b>Accused 2</b>	<b>Accused 3</b>	<b>Accused 4</b>	<b>Accused 5</b>
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:

#### 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:	Details:	Details:	Details:	Details:	Details:
Pre-trial detention taken into account?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<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"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes

	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<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:

## APPENDIXII: 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 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 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 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:	

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**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	Art 14(1)	X	X	X	Art 10	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		X	X	X		X	X	X
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 was <i>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 was <i>not</i> given the opportunity to 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	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, 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										X	Principle 3.1 and 5
	8(c)	Did the judge use impolite word toward any party?	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	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		
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	

			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
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	

			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 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	

			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
Presumption of innocence continued	17(b)	Was the accused handcuffed throughout the trial?	X			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	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	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	
	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	

		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
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 prerequisites<sup>40</sup>

#### General Duties

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##### *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

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##### *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;<sup>41</sup>
- 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

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##### *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;
- Which binding international laws and treaties, if any, pertain to the case;

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<sup>40</sup> This section will be provided as an additional document and will apply for all trials to be monitored

<sup>41</sup> Attach copy of notification/agreement with relevant court



- 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.