



## NEWSLETTER ON RIGHT TO PRESUMPTION OF INNOCENCE “UNIFORM FOR PRISONERS”

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

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Since 2009, the Cambodian Center for Human Rights (“CCHR”) has conducted trial monitoring of criminal trials at Cambodian courts to assess their adherence to both international and Cambodian fair trial standards and has been monitoring hearings in the Phnom Penh Court of Appeal specifically from March 2013, as well as the three other regional appeal courts: Battambang, Tboung Khmum and Preah Sihanouk Courts of Appeal. Monitoring at these three regional appeal courts has been carried out since 2022 until present. The newsletter focuses mainly on the right to be presumed innocent and in particular, how the convict uniform has been used for defendants during the hearing.

### Article 38 of the Constitution of the Kingdom of Cambodia

*“Any accused shall be presumed to be innocent until they are finally convicted by the court.”*

### Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)

*“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”*

### The right to be presumed innocent as a fundamental right

Both international and domestic law recognize the presumption of innocence as a fundamental right. Adherence to this principle is not only a necessary condition for guaranteeing the right to a fair trial, but also a fundamental tool for inspiring trust in the rule of law. Article 11(1) of the Universal Declaration of Human Rights (“UDHR”) guarantees the right to be presumed innocent until proven guilty. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a party and which, like the UDHR, is incorporated into domestic law by the Constitution, provides that *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”* Article 38 of the Constitution of the Kingdom of Cambodia provides that *“Any accused shall be presumed to be innocent until they are finally convicted by the court.”*

### The right to be presumed innocent in practice and prison uniforms

When a defendant attends a hearing in the uniform of a convicted person,<sup>1</sup> the implication is that the defendant is a guilty criminal, which risks affecting (consciously or subconsciously), the judgment of the presiding judge or judges, the manner in which proceedings are conducted, and ultimately the outcome of the case. The Human Rights Committee have found that even *“the requirement that pre-trial detainees and convicts must wear jackets indicating their place of detention constitutes degrading treatment”* and that the requirement to wear such jackets during trial may infringe on the presumption of innocence.<sup>2</sup>

Rule 115 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), adopted by the General Assembly in 2015, states that *“An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.”* While this document is not legally binding on Cambodia or other UN Member States, it represents an internationally recognized best practice for the treatment of prisoners. In the Extraordinary Chambers in the Courts of

<sup>1</sup> In this newsletter, a “convicted person” refers to a person who has been found guilty by the court and whose conviction has become final following the exhaustion of all possible appeals. “Defendant” refers to any person facing criminal charges who has not been finally convicted.

<sup>2</sup> UNHRC ‘Concluding observations of the Committee on the initial report of Benin,’ November 2004 UN Doc CCPR/C/82/BEN), para. 21.

Cambodia (“ECCC”), defendants are permitted to wear their own clothes at all stages of the process.

In Cambodia, the uniform to be worn by prisoners is set out in Prison Procedure No. 5 (4.1), ‘Prisoner Uniforms and Cell Equipment’ of the 2003 Prison Procedure of the Ministry of Interior: “Admitting officers are to ensure that when a convicted person is admitted to prison, he/she is provided with the following uniform items and cell equipment: two blue cotton shirts with a white stripe around the collar; two pairs of blue cotton trousers with a white stripe down each outside leg.” In 2013 a [Prakas](#) was issued which dictated that persons who have not been convicted, or whose convictions are not yet final but who are detained by the authorities, will wear a dark orange uniform. While the provision of different uniforms for convicted persons and those whose convictions are not yet final is positive, in order to ensure that the right to be presumed innocent is fully respected *all* defendants whose convictions are not yet final should be able to wear their own clothes to court. That defendants whose conviction is not yet final appear before the court in convict uniforms is contrary to the Constitution, the 2013 [Prakas](#), and Prison Procedure No.5. It is also inconsistent with international human rights law, which guarantees the right to the presumption of innocence, and international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules).

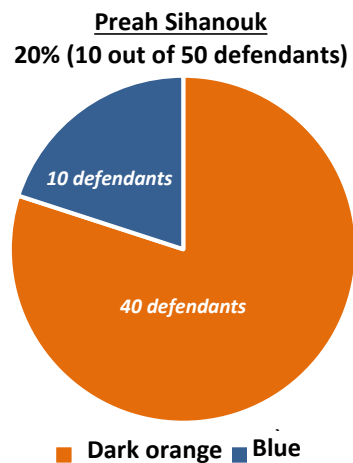
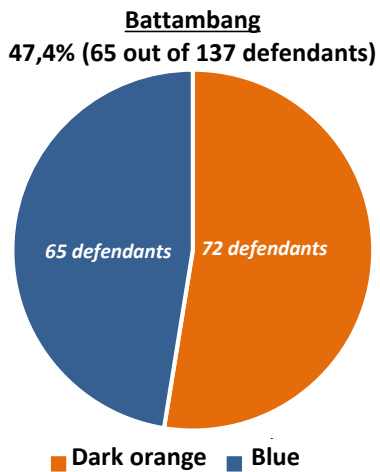
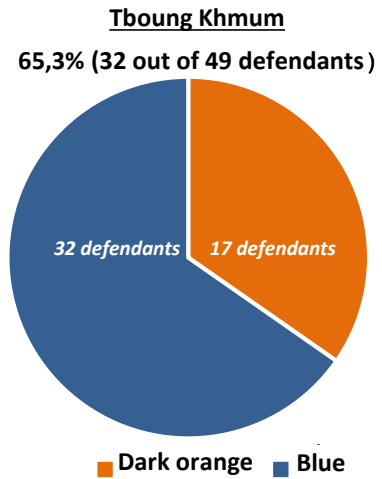
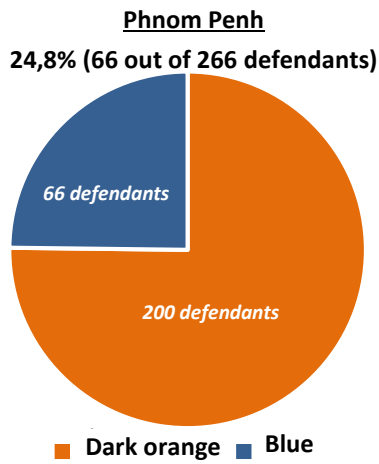
#### Overview of criminal cases monitored by CCHR in 2022

Name of Courts of Appel	Phnom Penh	Battambang	Preah Sihanouk	Tboung Khmum	Total
# of cases	257	143	59	62	521
# of felony offense	129	51	19	18	217
# of misdemeanour offense	124	90	38	42	294
# of petty crime offense	4	2	2	2	10
# of defendants	352	199	87	86	724
# of child in conflict with law (Juvenile)	6	15	5	0	26
# of women defendants	50	28	11	13	102

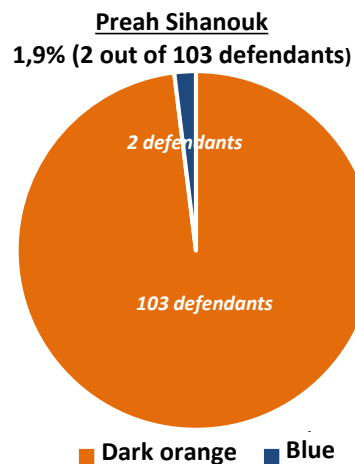
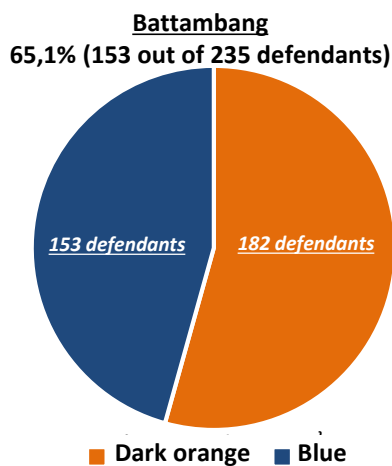
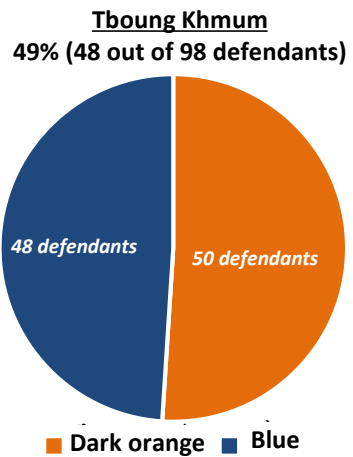
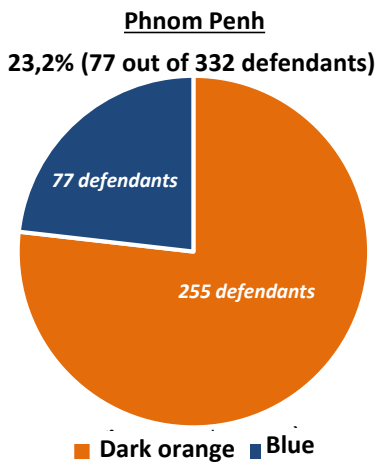
#### Overview of criminal cases monitored by CCHR in 2023

Name of Courts of Appel	Phnom Penh	Battambang	Preah Sihanouk	Tboung Khmum	Total
# of cases	336	241	75	120	772
# of felony offense	145	80	32	36	293
# of misdemeanour offense	186	157	42	82	467
# of petty crime offense	5	4	1	2	12
# of defendants	460	346	136	176	1118
# of child in conflict with law (Juvenile)	7	17	2	0	26
# of women defendants	69	64	15	33	181

**Defendants who were present at trial with the convict uniform at respective Courts of Appeal in 2022**

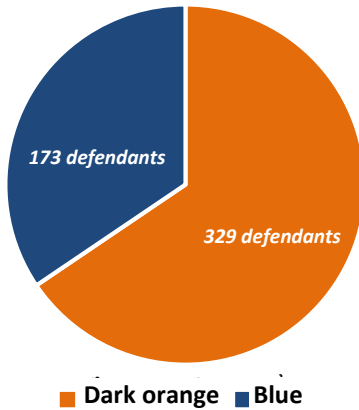


**Defendants who were present at trial with the convict uniform at respective Courts of Appeal in 2023**

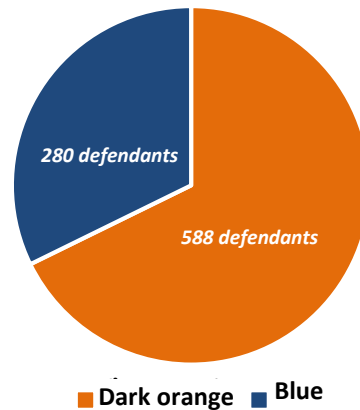


Defendants who were present at trials with convict uniform at the Courts of Appeal in number

All four Courts of Appeal in 2022  
34,5% (173 out of 502 defendants)

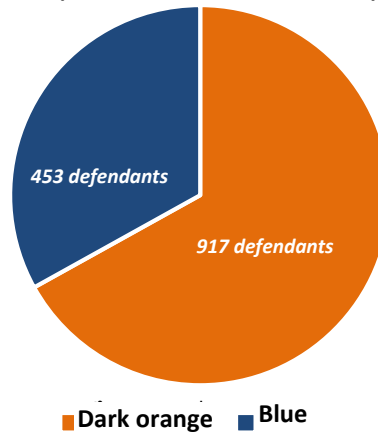


All four Courts of Appeal in 2023  
36,5% (280 out of 768 defendants)



Defendants who were present at trials with convict uniform at the Courts of Appeal in 2022-2023

All four Courts of Appeal  
35,7% (453 out of 1270 defendants)



**Conclusion and Recommendations**

Every defendant has the right to be presumed innocent until proven guilty according to the law. Therefore, CCHR recommends that:

- The Ministry of Interior should follow the international best practices, as implemented by the ECCC, which allow defendants to wear their own clothing to court at all stages of the criminal process.
- The Ministry of Justice and Ministry of Interior shall issue and disseminate clear guidelines that defendants who are subject to criminal proceedings must be allowed to appear in the court wearing civil clothes.
- The Ministry of Interior should ensure that the provisions of the 2013 Prakas is adhered to.