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កម្ពុជាសម្រាប់សិទ្ធិមនុស្ស
Cambodian Center for Human Rights

A SERIES ON FAIR TRIAL RIGHTS AND THE RULE OF LAW:

The Right to Legal Representation
www.cchrcambodia.org

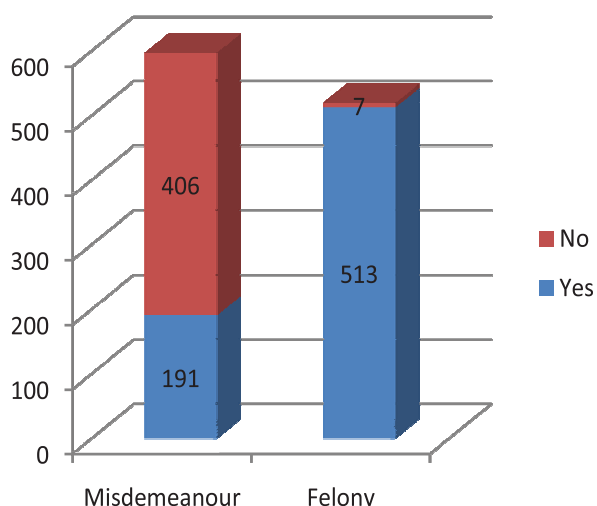
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The right to legal representation is fundamental to ensuring a fair trial and is enshrined under the Constitution of Cambodia by virtue of its incorporation of the International Covenant on Civil and Political Rights (the “ICCPR”), as well as under domestic law. This right means that all those accused of an offense have a right to be present at their trial and to defend themselves, either in person or through legal representation of their choosing. Under Cambodian law the assistance of a lawyer is compulsory in cases involving a felony or where the accused is a minor.

Cambodian Center for Human Rights (CCHR) Findings

The graph below “Legal Representation at Trial” shows data collected by Trial Monitors for the period 1 January 2010 to 31 December 2010.

“Legal Representation at Trial”



The data shows that of the 1117 trials monitored at Phnom Penh Capital Court of First Instance and Kandal Provincial Court of First Instance, the accused was without legal representation in 37% of trials. When examining misdemeanor cases, the data recorded showed that the accused was without legal representation in 68% of trials monitored.

Article 38 Constitution of Cambodia-

“Every citizen shall enjoy the right to defence through judicial recourse.”

Article 301 Code of Criminal Procedure-

“The assistance of a lawyer is compulsory if:

- 1. The case involves a felony;*
- 2. The accused is a minor.*

If the accused has not selected a lawyer, a lawyer shall be appointed upon the initiative of the court president in accordance with the provisions of the Law on the Bar.”

It is promising that in felony cases, where legal representation is mandatory, 99% of trial where the defendant received legal representation in accordance with the provisions of the law. While there is no legal requirement for those charged with misdemeanor offenses to have legal representation, unless they are minors, the fact that such a large proportion of misdemeanor cases are being tried in the absence of legal representation raises questions about equality of arms.

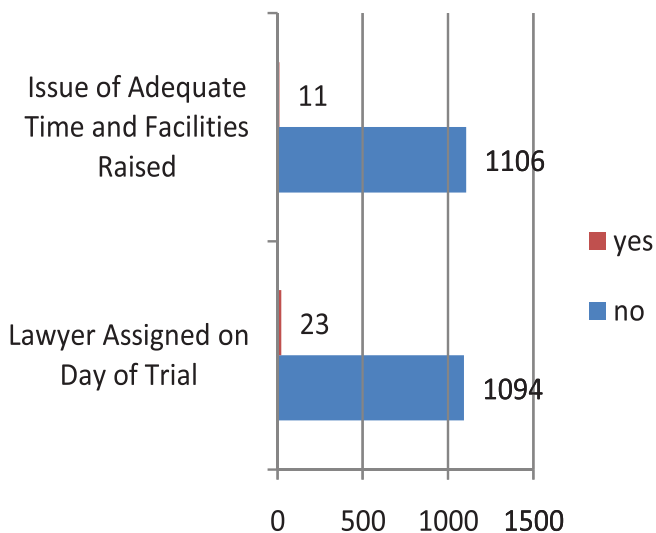
Whilst the overall rate of guilty verdicts in the trials monitored is worryingly high, with guilty verdicts delivered in 80% of cases in which verdict information was available, access to legal representation gives the accused an opportunity to employ an expert advocate to guide him or her through the trial process and represent and defend their interests. This has the added benefit of promoting equality of arms and the fairness of the trial as a whole.

The Rights to an Adequate Defence

When legal representation is provided, findings suggest that it is sometimes arranged at the last minute, depriving the accused of adequate time to prepare a defence.

As the below graph demonstrates, the number of cases in which a lawyer was assigned at short notice is low, at 2% of trials monitored. The percentage of cases in which issues of adequate time and facilities to prepare a defense were raised was also low, at 0.09% of trials monitored. However, an unacceptable number of such cases nevertheless occur and threaten the right of the accused to an adequate defense.

Adequate Time and Facilities for Defense



Legal Aid in Cambodia

The lack of legal representation points to continued shortfalls in resources that are undermining the fairness of these trials. Under Article 29 of the Law on the Bar, the Bar Association of the Kingdom of Cambodia (the “Bar Association”) has a statutory duty to fund lawyers to defend poor people. The Royal Government of Cambodia (“RGC”) makes contributions to this fund. Free legal representation is also provided by non-governmental organizations (“NGOs”) such as Legal Aid Cambodia, International Bridges to Justice, the Cambodian Defenders Project and Legal Services for Children and Women, but these services are limited.

A report by Cambodian Human Rights Action Committee has observed that most legal aid lawyers work on criminal cases, with only a few focussing on other thematic issues, such as land rights. At present there are only an estimated 119 legal aid lawyers practising in Cambodia. This shortage directly impacts upon the vulnerable and marginalised and serves to elucidate the inherent problems facing legal representation.

During dialogue with judicial stakeholders following the publication of the First Bi-annual Fair Trials in Cambodia Report in July 2010, it was noted that there is a general lack of lawyers to ensure all accused have legal representation. It was also noted 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 did not have sufficient advance notice that they were required at court. Equally, 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. Where the accused is detained, delays caused by the absence of legal representation can increase the time of pre-trial detention, and may even contribute to the accused being detained in excess of the statutory time limit. The RGC, courts, the Bar Association and legal aid NGOs must work together to ensure effective and equal access to lawyers for all accused persons.

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CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout the Kingdom of Cambodia.