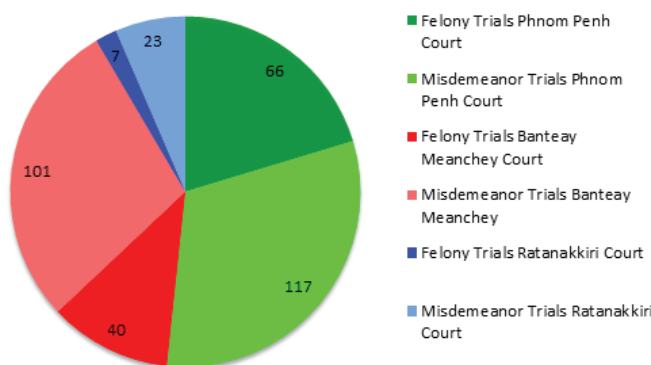


## Key Statistics in 2012

This leaflet illustrates important statistical information gathered by the Cambodian Center for Human Rights' ("CCHR") Trial Monitoring Project from January to June 2012.

## Trials Monitored in 2012

Trials Monitored January – June 2012

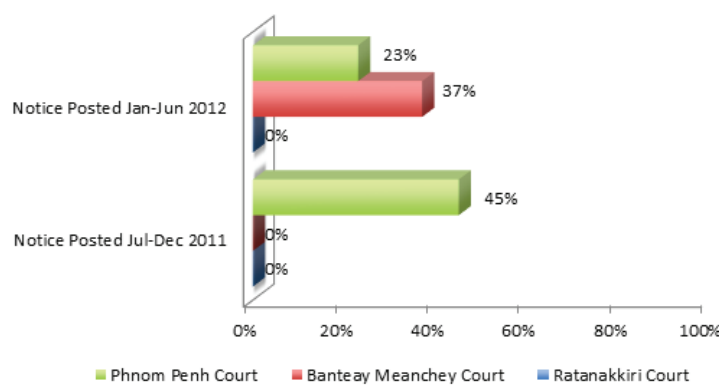


From January to June 2012, CCHR monitored 354 trials. 183 trials were recorded at the Phnom Penh Court of First Instance ("Phnom Penh Court"), 141 trials at the Banteay Meanchey Provincial Court of First Instance ("Banteay Meanchey Court") and 30 at the Ratanakkiri Provincial Court of First Instance ("Ratanakkiri Court"). Of these trials, 66 felony trials and 117 misdemeanor trials were recorded at the Phnom Penh Court, whilst 40 felonies and 101 misdemeanors were monitored at the Banteay Meanchey Court. The number of trials monitored at Ratanakkiri Court was lower than anticipated due to a significantly lower volume of cases; i.e. 7 felony and 23 misdemeanor trials.

## The Right to a Public Hearing

Everyone has the right to have their guilt or innocence determined in public trial, except in certain exceptional circumstances.

Notice of Hearing Posted Publicly in 2012

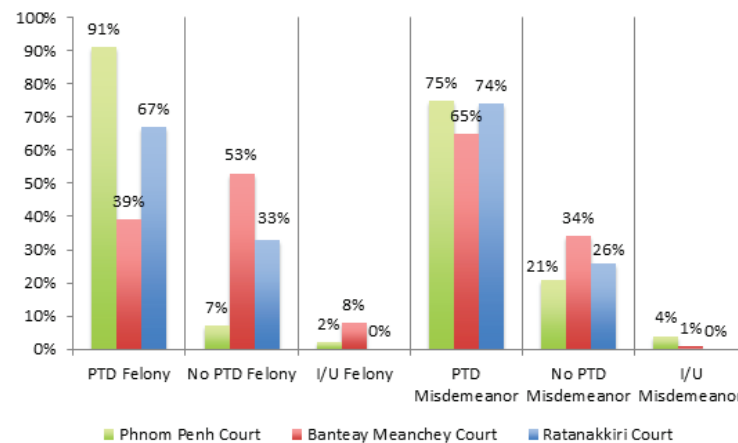


In the second half of 2011, notices of hearings were not posted at any of the trials monitored at Banteay Meanchey and Ratanakkiri Courts. In the first half of 2012, there was a slight progress with public notices displayed in 37% of the trials monitored at Banteay Meanchey Court. However, this trend was not followed at Ratanakkiri Court where no notice of hearings was posted whatsoever. The displaying of notifications on public notice boards has significantly decreased at Phnom Penh Court from 45% to 23% in 2012.

## The Right to Liberty and to Be Tried Without Undue Delay

Article 203 of the Cambodian Criminal Procedure Code ("CCPC") creates a statutory presumption against pre-trial detention ("PTD"), stating: "In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section." In the period monitored, PTD remained the norm rather than the exception.

Pre-trial Detention 2012

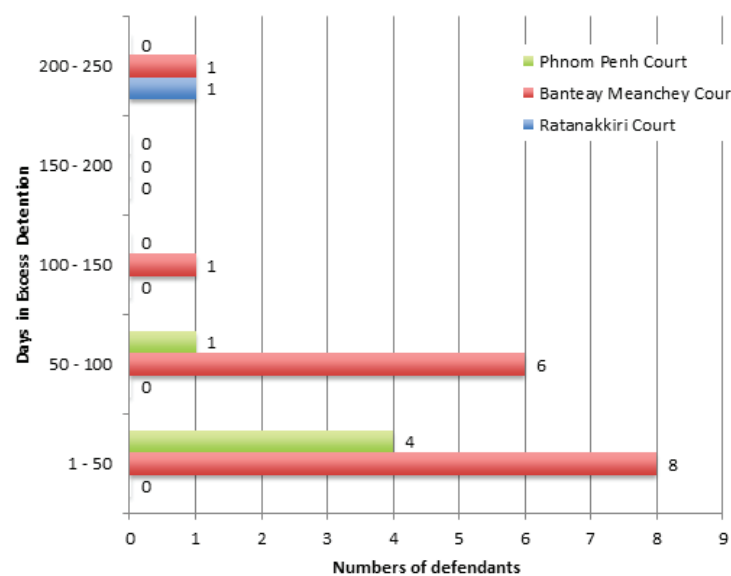


Banteay Meanchey Court has significantly lower levels of PTD compared to Phnom Penh Court or Ratanakkiri Court. The level of PTD at Banteay Meanchey Court represents a slight improvement from 61% of the cases monitored in July-December 2011 to 58% in 2012. However, levels of PTD at Phnom Penh Court and Ratanakkiri Court have risen since the previous reporting period, from 76% and 70% respectively to 82% and 72%.

## Excess Pre-trial Detention

The maximum periods for PTD are contained in Articles 208 and 209 of the CCPC. Article 249 of the CCPC permits an extension of the maximum PTD limit for an additional four months. Including the additional four-month extension, the statutory maximum PTD for a felony is 22 months (or 682 days). The maximum for a misdemeanor is 10 months (or 310 days). Article 249 of the CCPC provides that if a charged person is not brought to trial within the statutory time for PTD, "the charged person shall be automatically released."

Excess in Pre-trial Detention in 2012

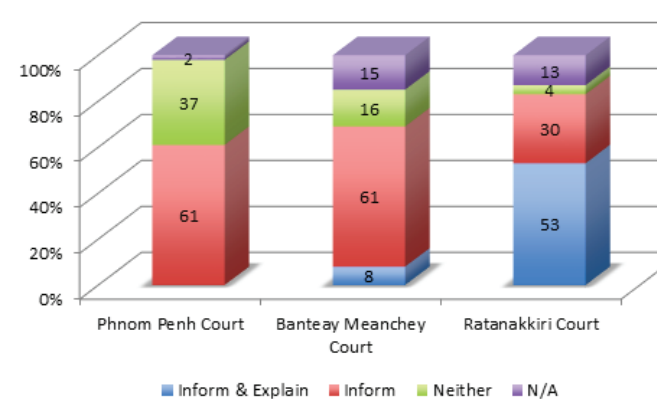


Between January and July 2012, trial monitors recorded 16 instances of excessive and unlawful PTD involving 22 defendants. 11 of these cases were observed at Banteay Meanchey Court. All except one of these instances involved allegations of misdemeanors. The longest period of PTD was in a case at Ratanakkiri Court, where an accused spent 551 days in PTD, exceeding the statutory limit for a misdemeanor offense by 241 days. The eventual sentence imposed in that case was one-year imprisonment.

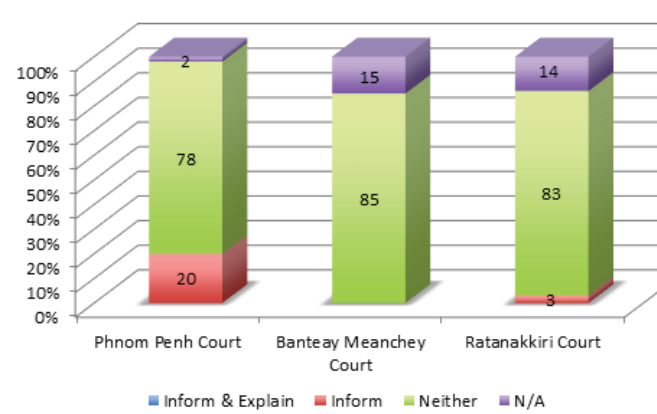
## Explanation of Rights

An individual can only exercise his legal rights if he is fully informed of them. The data collected shows that judges are giving full explanations of rights to the accused in only a small number of cases. In relation to the right to be legally represented, at the Phnom Penh Court no explanation was given to the accused. Not a single judge in any of the trials monitored at any court explained to the accused his right to remain silent.

Explanation of the Right to Legal Representation



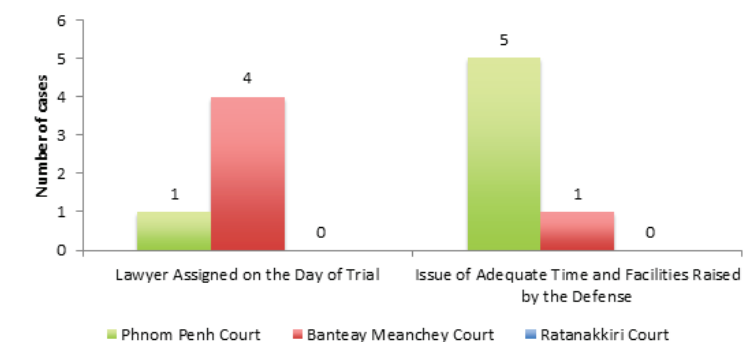
Explanation of the Right to Remain Silent



## The Right to Adequate Time and Facilities to Prepare a Defense

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense to those charges. In the overwhelming majority of cases, a lack of time and/or facilities to prepare a defense is not an issue. In Phnom Penh Court, there was only one report of the defense lawyer being instructed on the day of trial and only four such cases in Banteay Meanchey Court. It had been indicated in five instances at Phnom Penh Court that the defense counsel did not have adequate time and facilities to prepare his defense. Such concern was notified only once at Banteay Meanchey Court.

Right to Adequate Time and Facilities to Prepare a Defense

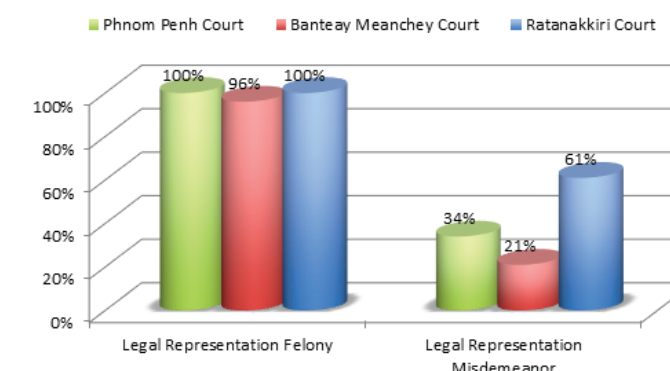


## The Right to Legal Representation and to Be Present at Trial

Legal procedures can be complex and confusing to those accused of an offense. To ensure a fair trial, it is vital that individuals have the opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against them and their rights, guide them through the trial process and represent their interest in court. Legal representation for felonies is mandatory under Article 301 of the CCPC.

Of the 719 accused monitored at all three courts, 381 – or 53% - of accused were represented by a lawyer. The legal representation rate has not increased since the last period monitored, with just over half of all accused recorded being tried with legal representation.

Legal Representation by Felony/Misdemeanor



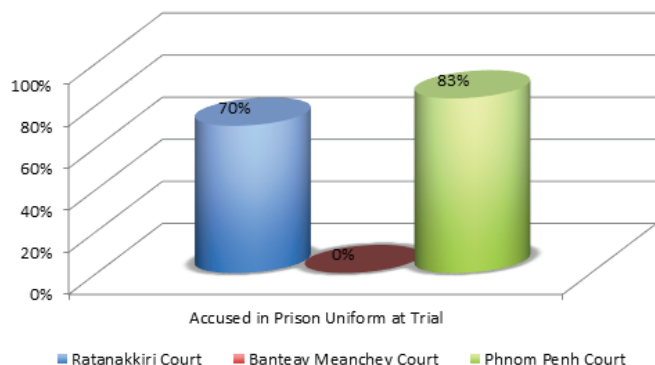
Trial monitors observed very high levels of representation in felony trials with a score of 100% in both Ratanakkiri and Phnom Penh Courts and 96% in Banteay Meanchey Court. However, levels of legal representation remain low in misdemeanor cases with only 29% of legal representation in all cases monitored. Both Banteay Meanchey and Ratanakkiri Courts have seen a worrying decline from 27% and 77% respectively in the second half of 2011 to 21% and 61% in the first half of 2012.

In relation to the right to be present at trial, the majority of accused persons were present.

## Presumption of Innocence

The presumption of innocence is a fundamental and universally recognized fair trial right. This presumption reflects the principle that the burden of proof lies with the prosecuting body, not the accused, so that the court must be satisfied that the evidence presented has proved the accused's guilt beyond reasonable doubt. When accused appear in prison uniform during trial, the presumption of innocence is undermined as their appearance suggest guilt.

### Appearance in Prison Uniform at Trial



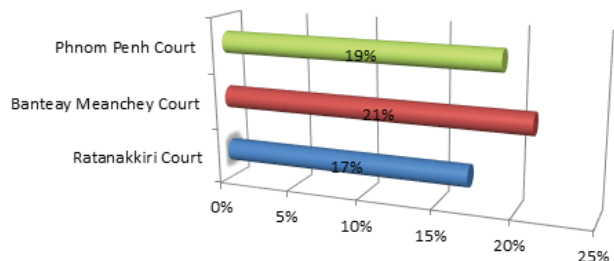
The practice of accused appearing before the court in full prison uniform has been partially eradicated at Banteay Meanchey Court, compared to 31% of accused attending trial in full prison clothing during the end of 2011. However, in both the Phnom Penh and Ratanakkiri Courts, in most cases defendants appear in full prison uniform.

### The Right to Be Tried by an Independent and Impartial Tribunal

The fairness of any judicial system relies on the independence and impartiality of the arbitrary body. A court must not be affected and influenced by outside sources and judges should convey an image of professionalism at all times.

The issue of judges answering mobile telephones continues to plague the monitored courts and affect the image of Cambodia's courts in the eyes of both national and international observers. Such usage raises concerns in relation to whether the judge is paying sufficient attention to the arguments of the parties and the evidence presented and whether outside sources are attempting to influence the outcome of the trial.

### Mobile Phone Use in 2012



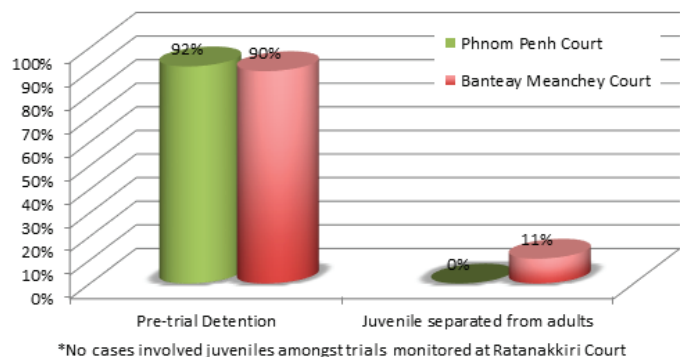
In 2012, while there has been a decline in the use of mobile phones at the Phnom Penh Court (from 32% at the end of 2011 to 19% in 2012), there has been an increase in the percentage of cases at both Banteay Meanchey and Ratanakkiri Courts. Mobile phones were used in 21% of the trials monitored at Banteay Meanchey Court and 17% at Ratanakkiri Court.

There has been an increase in the percentage of cases where the judge actually conducts a conversation on the telephone during a trial, as opposed to answering briefly and hanging up.

### Trials Involving Juveniles

Juveniles who are accused of having committed a criminal offense are entitled to all fair trial rights that apply to adults, as well as additional protections in recognition of their age, maturity and intellectual development. When a trial involves a juvenile, it is legitimate to restrict those who attend the trial and to impose reporting restrictions in order to protect the privacy of the juvenile and avoid stigmatization. In all monitored trials at any court, no measures were taken to protect the juvenile's privacy during the hearing.

### Juvenile Pre-trial Detention



Levels of PTD remain unacceptably high in cases involving juveniles. At Phnom Penh Court, PTD was used in 92% of juvenile cases and in 90% of juvenile trials at Banteay Meanchey Court. This suggests that juveniles are even more likely to be put in PTD than adults. In the hearings monitored at Phnom Penh Court, there was nothing suggesting that the juveniles had been separated from adults. However, at Banteay Meanchey Court, it had been indicated that 11% of the juveniles were separated from adults when held in PTD.

### Judge Consideration to Impose a Non-custodial Sentence to a Juvenile



Out of all of the juveniles convicted of a criminal offense since 2010, each and every one received an immediate custodial sentence. There was only one case in the first part of 2012 where a judge considered not imposing a custodial sentence. In that case, the juvenile received a sentence of six months in jail and three years of probation.

### Recommendations:

- The Royal Government of Cambodia should draft a new legislation in relation to the use of pre-trial detention, bail and judicial supervision and a Juvenile Justice Law to offer guidance to judges on the use of pre-trial detention and sentencing practices in cases involving juvenile defendants.
- A standard form explaining defendants' rights should be drafted and read out by the court clerk at the beginning of the trial.
- The Bar Association of the Kingdom of Cambodia should implement a legal aid scheme whereby junior lawyers would assist senior lawyers in preparing defendants' cases.

### Reference:

- CCHR 6th Bi-annual Report on Fair Trial Rights, December 2013

### CONTACT

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This data and all TMP's publications are available at [tmp.sithi.org](http://tmp.sithi.org)

## Cambodian Center for Human Rights

### Trial Monitoring Project

## Key Trial Monitoring Statistics: January to June 2012



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