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Cambodian Center for Human Rights

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Fair Trial Rights in Cambodia
Monitoring at the Court of Appeal
Annual Report (1 November 2017-31 October 2018)



Cambodian Center for Human Rights (CCHR)

This report on “Fair Trial Rights in Cambodia” (the “Report”) is a publication of the Fair Trial Rights Project, implemented by the Cambodian Center for Human Rights (“CCHR”). CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – in particular civil and political rights – in the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent 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.

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Acronyms

BAKC	The Bar Association of the Kingdom of Cambodia
Cambodia	Kingdom of Cambodia
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
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
Court of Appeal	The Phnom Penh Court of Appeal 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
ECHR	European Court of Human Rights
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
N/A	Non-Applicable
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Criminal Code	The Criminal Code of the Kingdom of Cambodia
Project	CCHR Trial Monitoring Project
Reporting Period	1 November 2017 and 31 October 2018
RGC	Royal Government of Cambodia
Trial Monitor	CCHR trial monitor
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children’s Emergency Fund
UNSRSHRC	United Nations Special Rapporteur on the Situation of Human Rights in Cambodia
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

Executive Summary

The judicial system in the Kingdom of Cambodia, and particularly the administration of justice, has been a well-discussed topic in 2018. Criticisms of the system include the lack of independence of the judiciary, misuse of the judiciary for political purposes, including to target human rights defenders, prison overcrowding, lack of insufficient access to legal representation, impunity, lack of equal treatment before the law, excessive pre-trial detention, lack of gender-sensitivity and challenges regarding access to justice. As a result, confidence in the judicial system is limited, and rule of law weakened.

The Royal Government of Cambodia (“RGC”) appears to have heard some of these criticisms, and 2018 witnessed a number of improvements in terms of the judicial system in Cambodia. Efforts made included, amongst others, the adoption of a legal aid policy, announcements that regional appeals courts will be created, and measures to tackle prisons overcrowding. Last but not least, the rendering of the Appeal Judgement at the Extraordinary Chambers in the Courts of Cambodia against Nuon Chea and Khieu Samphan represented a milestone in the promotion of accountability and transparency.

Between 1 November 2017 and 31 October 2018 (the “Reporting Period”), CCHR’s Fair Trial Rights Project (the “Project”) monitored and collected data about 213 criminal trials at the Court of Appeal (the “Court”) in order to assess the Court’s adherence to fair trial rights as set out in international and Cambodian law. This Report presents and analyzes the data collected during the Reporting Period, and, in doing so, aims to contribute to transparency, accountability and positive change in Cambodia.

The Report is structured as follows:

Introduction: Provides a brief overview of relevant fair trial rights, before setting out the scope, methodology and purpose of this Report.

Overview: Outlines the data underlying the report, such as the amount of cases monitored and the number of defendants involved.

Fair Trial Rights Upheld: Identifies which fair trial rights are being respected at the Court of Appeal, through an analysis of the data collected during CCHR’s monitoring, while also outlining key trends in terms of adherence to international fair trial rights standards by the Court of Appeal, comparing the data collected since July 2014. Each right is discussed in a separate sub-section, which also sets out the applicable domestic and international legal provisions, and explains the meaning of the specific right.

Fair Trial Rights Not Fully Respected: Outlines those fair trial rights which are not sufficiently being respected at the Court of Appeal, presenting key data gathered during CCHR’s monitoring. The evolution of the protection accorded to these rights since July 2014 is also discussed. Each right is discussed in a separate sub-section, which also sets out the applicable domestic and international legal provisions, and explains the meaning of the specific right.

Conclusions and Recommendations: Contains recommendations addressed to various bodies of the judiciary and institutions, including the Royal Government of Cambodia (“RGC”), the Ministry of Justice (“MoJ”), law enforcement authorities, prison authorities, as well as non-governmental organizations (“NGOs”) in relation to the Report’s findings.

The Report finds that a number of key fair trial rights were guaranteed before the Court of Appeal – including the right to have adequate time and facilities to prepare one’s defense and the right to a public judgment. In addition, the Court of Appeal consistently upheld the protections against double jeopardy and against non-retroactivity. Notably, 2017/2018 showed a significant improvement in the enforcement of the protection against self-incrimination (the right not to be compelled to confess guilt) in the cases monitored by CCHR.

Fair Trial Rights Protected by the Court of Appeal

- Right to adequate time and facilities to prepare a defense
- Right to not be compelled to confess guilt
- Right to a public judgment
- Prohibition against retroactive application of criminal law
- Protection against double jeopardy

Regrettably, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The fundamental right to a public hearing is not fully respected, as none of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom, precluding people from being informed about the hearing. Further, the right to understand the nature and cause of the charges is, unlike in 2016/2017, considered not to be fully respected, since the percentage of cases where the defendants were informed of the nature and cause of the charges decreased from 86% to 69% when compared to last year’s monitoring. The right to have legal representation, as enshrined in international human rights law, was not always respected. However, it should be noted that under domestic law, provided the defendant is not a juvenile, the state is not required to ensure or provide legal assistance to defendants in misdemeanor cases. As such, about 25% of the defendants in misdemeanor cases monitored by CCHR were not represented by a lawyer. The domestic law is in direct contradiction with international human rights standards which do not premise the right to representation on the type of offense. Defendants have a right to legal representation in all instances.

Further, in 34 out of the 213 cases monitored by CCHR, the judges failed to inform the accused about her/his right to legal representation, a concerning trend. Similarly, the presumption of innocence is not fully respected, with judges failing to inform defendants about their right to remain silent in 72% of cases. Moreover, 26% of defendants appeared in the same prison uniform as convicts. Much like in previous years, the lack of respect for the right to a clear and reasoned judgement remains problematic. In virtually all monitored cases where a judgment was rendered, the judges failed to cite in detail the legal provisions and evidence upon which they relied to reach their verdict. Instead, they only stated that the Court of First Instance’s judgment was upheld or overturned, without explaining why. Last but not least, the rights of juvenile defendants, who are entitled to special protection under international human rights law and Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy.

Fair Trial Rights Not Fully Respected at the Court of Appeal

- Right to a public hearing
- Right to understand the nature and cause of the charges

- Right to legal representation and to be present at trial

- Right to presumption of innocence

- Evidentiary rights

- Right to a reasoned judgment

- Rights of juveniles

The Report compares this year’s data with that of 2014/2015 and 2016/2017, in order to identify trends and analyze the evolution of fair trial rights in the Kingdom.¹ While the majority of the findings are similar, two points emerge: first, the right to understand the nature and cause of the charges, which CCHR found was better protected in 2014/2015 (85%) and 2016/2017 (86%), has been moved to the “not fully respected” section of this report since the percentage of cases where the defendants were informed of all relevant charges against them fell to 69% in 2017/2018. While this could be due to a number of factors, including the number or type of cases monitored by CCHR, this remains a considerably worrisome finding, as the right to know the charges against you is one of the most fundamental fair trial rights. Second, and more positively, protection of the right not to confess guilt (protection against self-incrimination), which was listed as “not fully respected” in 2014/2015 and 2016/2017, significantly improved in 2017/2018; cases where confessions were obtained free of any form of coercion increased to 95% (as opposed to 88% in 2016/2017). However, the fact that 21 individuals alleged that their confession had been obtained under coercive circumstances, including through threats and violence committed by judicial police, remains highly problematic. Such cases must be immediately and thoroughly investigated by the competent authorities.

Furthermore, key fair trial rights have been consistently upheld by the Appeals Court since 2014; those include the right to have adequate time and facilities to prepare a defense, the right to a public judgment, the non-retroactive application of the law and the prohibition against double jeopardy. Regrettably, an equal number of rights have not been fully respected since 2014, such as the right to a public hearing, evidentiary rights, the right to a reasoned judgment and the rights of juveniles. This creates significant cause for concern, particularly given the fact that these issues have been brought to the attention of the authorities on multiple occasions.

The Report ends with key thematic recommendations for the Court of Appeal to address the shortcomings identified in the Report and improve respect for fair trial rights throughout Cambodia. Key recommendations include:

- Following the best practices of the ECCC and training judges on fair trial rights;
 - Developing a form listing all information which a judge must give to a defendant;
 - Posting daily schedules of hearings on the information boards outside the courtroom;
 - Allowing defendants to appear in court wearing civilian clothing;
 - Investigating allegations that a confession was not given freely;
 - Developing clear guidelines regarding the presentation and evaluation of evidence;
 - Ensuring that judgments rendered include the relevant law and key evidence on which they rely;
- and

¹ CCHR’s Fair Trial Rights monitoring Project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for this period.

- Strengthening and speeding up the implement the Law on Juvenile Justice, particularly regarding privacy and alternatives to detention.

CCHR hopes that the data, analysis and recommendations set out in this Report will assist the RGC's efforts to improve the judicial system and respect for fair trial rights, and support those working to ensure that the judicial system in Cambodia is fair and equal for all.

1. Introduction

1.1. The Right to a Fair Trial

The right to a fair trial forms an important component of the rule of law and the proper administration of justice. It is a fundamentally and universally recognized right, enshrined in international law by the United Nations Universal Declaration on Human Rights (“UDHR”) and the United Nations International Covenant on Civil and Political Rights (“ICCPR”). Fair trial rights are also guaranteed by the Constitution of the Kingdom of Cambodia (“Constitution”), and through various individual provisions of domestic laws, particularly the Code of Criminal Procedure.

1.1.1. The right to a fair trial under international law

The right to a fair trial is an essential part of any criminal justice system. It entitles each and every person charged with a criminal offense to be treated fairly and equally, while the state determines their guilt or innocence. When implemented correctly, it protects the rights of the accused and the victim, and ensures the proper administration of justice. The right to a fair trial is comprised of a number of different individual rights and encompasses the entire legal process, from the initial arrest of the suspect, through to the completion of the final appeal.

The UDHR² and the ICCPR³ both guarantee the right to a fair and public hearing by an independent and impartial tribunal. The ICCPR further develops the concept of a fair trial, which includes, but is not limited to, the following rights and principles: the rights to a public hearing,⁴ the presumption of innocence,⁵ the right to be tried without undue delay,⁶ the right to understand the nature and cause of the charge,⁷ the right to adequate time and facilities to prepare a defense,⁸ the right to legal representation,⁹ the protection against self-incrimination (not to confess guilt as a result of coercion or inducement),¹⁰ and the right to appeal to a higher court on grounds of fact and law.¹¹

Article 10 of the UDHR

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution incorporates international human rights obligations into Cambodian domestic law.¹² Further, international

² Universal Declaration of Human Rights (“UDHR”), United Nations General Assembly, 10 Dec 1948, Art. 10, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

³ International Covenant on Civil and Political Rights (“ICCPR”), United Nations General Assembly, 16 Dec. 1966, Art. 14 (1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴ ICCPR, Art. 14 (1).

⁵ ICCPR, Art. 14 (2).

⁶ ICCPR, Art. 14 (3) (c).

⁷ ICCPR, Art. 14 (3) (a).

⁸ ICCPR, Art. 14 (3) (b).

⁹ ICCPR, Art. 14 (3) (d).

¹⁰ ICCPR, Art. 14 (3) (g).

¹¹ ICCPR, Art. 14 (5).

¹² Constitution, Art. 31: ‘The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights, http://www.sithi.org/temp.php?url=law_detail.php&lg=&id=222. The updated version of the Constitution, as last amended in February 2018, is not yet available online.

human rights norms, including provisions of the ICCPR, are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.¹³

1.1.2. The right to a fair trial under Cambodian law

The right to a fair trial is protected in Cambodia, through general and specific provisions set out in a number of instruments. The Constitution provides the basic framework for fair trials. Article 38 of the Constitution establishes the rights of Khmer citizens and protects the right to a fair trial by guaranteeing that:

- 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;
- Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited; and persons who commit, participate or conspire in such acts shall be punished according to the law;
- Confessions obtained through physical or mental force shall not be admitted as evidence of guilt;
- Any reasonable doubt that arises shall be resolved in favor of the accused;
- The accused shall be considered innocent until the court has finally decided on the case; and
- Every citizen shall enjoy the right to defense through judicial recourse.

Furthermore, Articles 51, 128, 130, 132 of the Constitution also provide for the separation of powers and for an independent judiciary, as guaranteed by the King.

The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), adopted in 2007,¹⁴ establishes in detail how suspects should be treated. It sets out the roles and responsibilities of judges, prosecutors and defense counsel; from the initiation of an investigation to the time of arrest and throughout the entire criminal process until the final appeal. The Criminal Code of the Kingdom of Cambodia (“Criminal Code”), which was promulgated in 2009 and came into force in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing.¹⁵

Additionally, the three fundamental laws pertaining to judiciary, namely the Law on the Organization of the Court,¹⁶ Law on the Statute of Judges and Prosecutors,¹⁷ and the Law on the Organization and Function of the Supreme Council of Magistracy,¹⁸ adopted in 2014, aim to ensure the independence of the judiciary power, and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws, which were drafted without any prior publication or consultation with civil society, the public or other stakeholders, have been criticized for weakening the separation of powers and the independence of the judiciary. They effectively give the executive direct control over the judiciary by increasing the level of influence of the Ministry of Justice (“MoJ”) over judges and prosecutors, through its involvement over judicial budgets, appointments, promotions, tenure and removal.¹⁹

¹³ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 Jul 2007, p. 2, http://www.ccc.gov.kh/detail_info_en.php?txtID=453.

¹⁴ The CCPC replaced sections of the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (“UNTAC Law”). It can be found at http://sithi.org/temp.php?url=law_detail.php&id=190.

¹⁵ The Criminal Code can be found at http://sithi.org/temp.php?url=law_detail.php&id=154.

¹⁶ The Law on the Organization of the Court is available at <http://www.arbitrationcouncil.org/uploads/433e3-01.-law-on-the-org-of-the-courts-english.pdf>.

¹⁷ The Law on the Statute of Judges and Prosecutors is available at <http://www.arbitrationcouncil.org/uploads/58448-02.-law-on-the-status-judges-english.pdf>

¹⁸ The Law on the Organization and Function of the Supreme Council of Magistracy is available at <http://www.arbitrationcouncil.org/uploads/f173c-03.-law-on-scm-english.pdf>.

¹⁹ ‘Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia, Access to Justice in Cambodia’, JST7 - Joint Submission 7, CCHR, Destination Justice and ADHOC, 12 Jul 2018, Section 2,

Finally, the Law on Juvenile Justice, adopted in July 2016 and which came into force in January 2017,²⁰ sets out the norms and procedures in dealing with minors who commit criminal offences.²¹ The law needs to be strictly applied in order to safeguard the rights and best interests of the minor.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).²² It identifies four guiding principles, emanating from the Constitution, to guide legal and judicial reform: the rights of individuals, the principle of liberal democracy, the separation of powers, and the rule of law. The Strategy also sets out seven strategic objectives,²³ which formed the basis of a Legal and Judicial Reform in a National Strategic Development Plan for 2014-2018.²⁴ The first of these objectives was the improvement of the protection of fundamental rights and freedoms. Furthermore, in May 2017, the Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice initiated a 100 Days Campaign aimed to assess the performance and efficiency of courts.²⁵ The campaign aimed to update strategies and reform the justice system to make it more reliable, precise and applicable, and to improve the image of the courts as well as the trust and confidence of the public. As of September 2017, the first phase of the process was completed, and the preliminary results showed three main challenges: planning and strategy, human and financial resources, and communications between courts and the public.²⁶ The second phase started in September 2017; since then, no further update on the process has been made publicly available.²⁷

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx>. (“Access to Justice UPR Submissions of 12 July 2018”); see also ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’, CCHR, May 2014, [https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf); ‘Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20status%20of%20J%20and%20P.%20ENG%20May%202014%20final.pdf>; ‘Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20SCM%20Draft%20law,%20ENG%20May%202014%20final.pdf>; ‘Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards’, OHCHR Cambodia, May 2014, <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20org%20of%20courts,%20ENG%20May%202014%20final.pdf>.

²⁰ Law on Juvenile Justice, <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf>.

²¹ See also UNICEF, Q&A on the newly adopted Juvenile Justice Law in Cambodia, 19 Sep 2016, <http://unicefcambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html>.

²² See ‘Government’s Policy Performance’, Cambodian Rehabilitation and Development Board (“CRBD”) and Council for the Development of Cambodia (“CDC”), 2004, para. 16, http://www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.html.

²³ The objectives are: 1) Improvement of the protection of fundamental rights and freedoms; 2) Modernization of the legislative framework; 3) Provision of better access to legal and judicial information; 4) Enhancement of the quality of legal processes and related services; 5) Strengthening of judicial services, i.e. judicial power and prosecutorial services; 6) Introduction of alternative dispute resolution mechanisms; 7) Strengthening of legal and judicial sector institutions to fulfill their mandates. See ‘Government’s Policy Performance’, Cambodian Rehabilitation and Development Board (“CRBD”) and Council for the Development of Cambodia (“CDC”), 2004, paras 15-24, http://www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm.

²⁴ Council for Legal and Judicial Reform, Plan of Action for Implementing the Legal and Judicial Reform Strategy, adopted by the RGC at the Plenary Session on 29 April 2005; see also RGC, National Strategic Development Plan 2014-2018, pp. 9-12, paras 2.11 to 2.23, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_364549.pdf (translation). The original version is available at http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf.

²⁵ Notification on 100 Days Campaign to Assess the Performance and Efficiency of Courts, dated on 12 May 2017, issued by The Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice, <https://www.facebook.com/334873460054405/photos/a.336969683178116/654031978138550/?type=3&theater> (only available in Khmer); ‘Ministry to undertake its own study of courts’, *The Phnom Penh Post*, 15 May 2017, <https://www.phnompenhpost.com/national/ministry-undertake-its-own-study-courts>.

²⁶ ‘Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies’, Vayo Fm, 9 Sep 2017, <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>.

²⁷ ‘Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies’, Vayo Fm, 9 Sep 2017, <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>.

Throughout 2018, the public authorities made a number of announcements which, if/when implemented, could lead to noticeable improvements of the situation of those facing justice in the Kingdom:

- The creation of a training institute for lawyers, judges and prosecutors, in collaboration with a Chinese university,²⁸ and yearly training for judges and prosecutors on technical skills, professional ethics and international human rights law.²⁹
- The building of a new detention center for inmates below 18 years of age, in Kandal province. The center, which should be ready in 2019, would be the first of its kind in the country.³⁰
- The development of a nationwide legal aid policy, to provide legal representation to marginalized groups in rural areas of Cambodia.³¹
- An increase in the BAKC's yearly funding to 300,000 USD, which would allow it to provide lawyers to poor defendants in around 3,000 cases.³²
- The creation of "lawyer rooms" to be included in all courtrooms throughout the country, wherein those without the financial means can consult with a lawyer free of charge.³³
- The establishment of three regional appeal courts in Battambang, Tbong Khmum and Preah Sihanouk provinces, to be finished in late 2019,³⁴ the plan to build four more,³⁵ and plans to fully train and deploy Court of Appeal judges to regional courts of appeal.³⁶
- The creation of a working group to deal with the issue of overcrowding in Cambodian prisons.³⁷
- The adoption of a separate budget of 500 million Riels (app. 123,511 USD) for "legal services for women",³⁸ and the announcement of a government-backed team of 50 lawyers to provide free-of-charge services for women workers involved in legal disputes.³⁹

²⁸ 'University plans training for top legal officers', *Khmer Times*, 25 May 2018,

<https://www.khmertimeskh.com/50493617/university-plans-training-for-top-legal-officers/>.

²⁹ 'National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cambodia', UN Doc. A/HR/WG.6/32/KHM/1, Royal Government of Cambodia, para. 19, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement> ("RGC Report for the 3rd Cycle of the UPR").

³⁰ 'First youth detention center planned', *Khmer Times*, 27 Jun 2018, <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/>.

³¹ 'Legal policy on marginalized groups finished by gov't, EU', *The Phnom Penh Post*, 3 Sep 2018,

<https://www.phnompenhpost.com/national/legal-policy-marginalised-groups-finished-govt-eu>; 'End of mission statement', United Nations Special Rapporteur on the situation of human rights in Cambodia ("UNSRSHRC"), 8 Nov 2018, p. 4, para. 2, https://cambodia.ohchr.org/sites/default/files/presstatementsource/181108%20ENG_END%20OF%20MISSION%20STATEMENT.pdf ("8 November 2018 UNSRSHRC End of Mission Statement"); 'Report of the Special Rapporteur on the situation of human rights in Cambodia', UNSRSHRC, 15 Aug 2018, para. 79, http://cambodia.ohchr.org/sites/default/files/Annual-reports/Annual%20Report%202018%20of%20SR%20-%20A_HRC_39_73_EN.pdf ("15 August 2018 UNSRSHRC Report").

³² 'No more lawyer shortage', *The Phnom Penh Post*, 18 Oct 2018, <https://www.phnompenhpost.com/national/no-more-lawyer-shortage>; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2.

³³ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21', Royal Government of Cambodia, 15 Nov 2018, para. 18B, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement> ("RGC Report for the 3rd Cycle of the UPR").

³⁴ 'Three new appeals courts are scheduled to be completed in 2019', *Construction Property*, 6 Jul 2018, <https://www.construction-property.com/khread-news-1240/> (Khmer only); see also RGC Report for the 3rd Cycle of the UPR, paras 18C, 40; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2.

³⁵ 'Three new appeals courts are scheduled to be completed in 2019', *Construction Property*, 6 Jul 2018, <https://www.construction-property.com/khread-news-1240/> (Khmer only).

³⁶ 15 August 2018 UNSRSHRC Report, para. 81.

³⁷ 'Taskforce set to address overcrowding prisons', *The Phnom Penh Post*, 30 Nov 2018, <https://www.phnompenhpost.com/national/taskforce-set-address-overcrowding-prisons>.

³⁸ RGC Report for the 3rd Cycle of the UPR, para. 17; 'Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State', 11 Sep 2018, p. 25, para. 4, <http://cambodia.ohchr.org/sites/default/files/Annual-reports/Addendum%20to%20the%20Annual%20Report%20of%20SR%202018.pdf>; 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21', OHCHR, 15 Nov 2018, para. 17, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement>.

³⁹ 'Cambodia's Hun Sen promises legal aid for 'vulnerable women'', *Voice of America*, 2 Mar 2019, <https://www.voacambodia.com/a/cambodia-legal-aid-women-garment-industry/4809828.html>; 'Cambodian Premier Urges

- The study of the possibility to insert the United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (“the Bangkok Rules”).⁴⁰
- The preparation of a draft law setting out minimum standards in connection to gender-based violence.⁴¹
- Reports that the Ministry of Justice planned to draft a law aiming at compensating those who have been wrongly imprisoned.⁴²

More generally, the RGC undertook to continue reforming the justice system, including by undertaking capacity building, improving independence and impartiality of the courts and the separation of powers, respect for individual rights, to “gain more trust from the public”.⁴³

However, a number of concerns remain over the judicial system and the administration of justice, such as:

- The extensive pre-trial detention, lack of use of bail and resulting overcrowding in Cambodian prisons.⁴⁴ As of 31 May 2018, there were 28,829 people in detention, of whom only 7,684 had received a final, confirmed conviction.⁴⁵ In July 2018, there were 30,444 detainees, 2,616 of which were women and 1,551 minors.⁴⁶
- Allegations of lack of independence and impartiality of the judiciary.⁴⁷
- Ongoing impunity.⁴⁸
- Limited access to legal aid, and particularly the lack of a comprehensive legal aid policy, the insufficiency of the legal aid budget and the limited number of legal aid lawyers and services.⁴⁹
- Limited access to courts in areas outside of Phnom Penh.⁵⁰
- The fact that access to justice remains a challenge for persons with disabilities, whether victims or alleged offenders.⁵¹
- The insufficient access to legal information such as laws, regulations and judicial decisions.⁵²
- The lack of protection of detained women and their children.⁵³

Workers to Seek Legal Aids from “Samdech Hun Sen Legal Team”, *Fresh News Asia*, 20 Feb 2019, <http://en.freshnewsasia.com/index.php/en/localnews/13056-2019-02-20-05-58-57.html>.

⁴⁰ RGC Report for the 3rd Cycle of the UPR, para. 42.

⁴¹ ដុំ ជោគជាតា, “សង្គមស៊ីវិលពិភាក្សាលើសេចក្តីប្រកាសច្បាប់ជួយទៅដល់ស្ត្រីនិងកុមារីរងគ្រោះដោយអំពើហិង្សា”មានសំឡេង(”, “[translation: Civil Society Discusses Draft Laws to Address Violent Women and Girls], Women’s Media Center of Cambodia, 13 Jun 2018, <https://wmc.org.kh/ngo-women/>, [only available in Khmer].

⁴² ‘Ministry plans law to compensate those wrongly imprisoned by courts’, *Khmer Times*, 30 Aug 2018, <https://www.khmertimeskh.com/50528036/ministry-plans-law-to-compensate-those-wrongly-imprisoned-by-courts/>.

⁴³ RGC Report for the 3rd Cycle of the UPR, para. 74.

⁴⁴ ‘Time for bail: ending needless mass detention in Cambodia’, *Licadho*, 1 Nov 2018, http://www.licadho-cambodia.org/collection/36/prisons_pre-trial_detention_cambodia; Access to Justice UPR Submissions of 12 July 2018, Section 5.1; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 3; 15 August 2018 UNSRSHRC Report, paras 13 (f), 46 ; ‘OHCHR Compilation on Cambodia’, OHCHR, 12 Nov 2018, para. 47, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/25/PDF/G1833725.pdf?OpenElement>.

⁴⁵ ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’, UNSRHR, UN Doc A/HRC/39/73, 15 Aug 2018, para. 46, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/249/54/PDF/G1824954.pdf?OpenElement>.

⁴⁶ RGC Report for the 3rd Cycle of the UPR, para. 40.

⁴⁷ Access to Justice UPR Submissions of 12 July 2018, Section 2.

⁴⁸ Access to Justice UPR Submissions of 12 July 2018, Section 2.3.

⁴⁹ Access to Justice UPR Submissions of 12 July 2018, Section 3.

⁵⁰ Access to Justice UPR Submissions of 12 July 2018, Section 4.3.

⁵¹ 15 August 2018 UNSRSHRC Report, para. 48.

⁵² Access to Justice UPR Submissions of 12 July 2018, Section 4.

⁵³ ‘The war on drugs’ youngest inmates’, *The Phnom Penh Post*, 27 Apr 2018, <https://www.phnompenhpost.com/national-post-depth/war-drugs-youngest-inmates>.

- The lack of women in the judiciary.⁵⁴
- The absence of specific procedures and measures for victims of gender-based violence, including domestic violence,⁵⁵ and the fact that perpetrators of sexual and gender-based violence often go unpunished.⁵⁶
- Lack of respect for the right to be tried without undue delay.⁵⁷
- Existing inconsistencies in the use and assessment of evidence in criminal cases.⁵⁸
- Lack of transparency regarding court-related fees⁵⁹ and the operations of the Ministry of Justice and judicial institutions.⁶⁰
- The insufficient implementation of the Law on Juvenile Justice.⁶¹
- A lack of sufficient protection for children who are victims or witnesses of crimes,⁶² of comprehensive social and child protection systems and of trained social workers across the country.⁶³

The RGC itself recognized that “the implementation of the competent authorities such as judges and prosecutors is generally based on national laws, both in the case proceeding and decision making without considering the substance of the international human rights laws.”⁶⁴

1.2. Purpose, Scope and Methodology

The purpose of the Project is to analyze collected data obtained through our daily monitoring of the Court of Appeal in order to identify strengths and weaknesses within the justice system. By drawing attention to areas within the trial process that require improvements, such as respecting fair trial rights, and making practical recommendations to relevant justice sector institutions, CCHR wishes to strengthen and reform the justice system for the benefit of all citizens.

Between August 2009 and January 2013, the Project monitored trials at the Phnom Penh, Kandal, Banteay Meanchey and Ratanakiri Courts of First Instances, and published six bi-annual reports on fair trial rights.⁶⁵ In January 2013 the Project ended its monitoring activities at the Courts of First Instances to focus on monitoring the Court of Appeal. The decision to monitor the Court of Appeal was made in order to assess the standards of fair trial rights being implemented by a higher court. The aim is to provide an analysis of the trends emerging within Cambodia’s Court of Appeal with regards to respect for fair trial rights, and to create a platform from which further recommendations can be made, and improvements implemented.

⁵⁴ Access to Justice UPR Submissions of 12 July 2018, Section 5.5, para. 47.

⁵⁵ Access to Justice UPR Submissions of 12 July 2018, Section 5.5, para. 48; 15 August 2018 UNSRSHRC Report, para. 14 (a).

⁵⁶ ‘Summary of Stakeholders’ submissions on Cambodia’, OHCHR, 7 Nov 2018, para. 39, https://www.upr-info.org/sites/default/files/document/cambodia/session_32_-_january_2019/e_1.pdf; 15 August 2018 UNSRSHRC Report, para. 49; ‘OHCHR Compilation on Cambodia’, OHCHR, 12 Nov 2018, para. 45, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/337/25/PDF/G1833725.pdf?OpenElement>.

⁵⁷ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 4; 15 August 2018 UNSRSHRC Report, para. 13 (g).

⁵⁸ 15 August 2018 UNSRSHRC Report, para. 80.

⁵⁹ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 6. The Ministry of Justice is finalizing the list of these fees, see 15 August 2018 UNSRSHRC Report, para. 13 (d).

⁶⁰ 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 6.

⁶¹ Access to Justice UPR Submissions of 12 July 2018, Section 5.6; 15 August 2018 UNSRSHRC Report, para. 27.

⁶² 15 August 2018 UNSRSHRC Report, para. 27.

⁶³ 15 August 2018 UNSRSHRC Report, para. 28.

⁶⁴ RGC Report for the 3rd Cycle of the UPR, para. 70.

⁶⁵ The six bi-annual reports on fair trial rights in Cambodia are available at <http://tmp.sithi.org/index.php?p=report&l=en#go>.

Figure 1: Overview of cases monitored by CCHR

	Overview of Monitored cases			
	2014/2015	2016/2017	2017/2018	Total
Number of cases	128	340	213	681
Number of individuals	161	558	315	1,034
Felonies	46	191	99	336
Misdemeanors	77	142	111	330
Petty offenses	5	7	3	15
Juveniles (individuals)	11	35	9	55
Women (individuals)	14	84	36	134

The Project focuses on a number of key fair trial rights. In order to determine which rights should be considered, CCHR relied on external resources such as reports and studies on fair trial rights in Cambodia and on the Cambodian judicial system. In addition, monitoring the Court of Appeal led CCHR to focus on certain components of fair trial rights that differ from the Courts of First Instances.

The following rights were selected:

- Right to a public hearing;
- Right to understand the nature and cause of the charge(s);
- 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 not be compelled to confess guilt;
- Evidentiary rights (including the right to call and examine witnesses);
- Right to a public judgment;
- Right to a reasoned judgment;
- Prohibition against retroactive application of penal legislation (being tried for an offense that was not an offense at the time it was committed);
- Prohibition against double jeopardy; and,
- Rights of juveniles.

CCHR’s Trial Monitors attended criminal trials at the Court of Appeal on a daily basis. To effectively and efficiently record relevant trial data, a specifically designed trial-monitoring checklist (the “Checklist”) was created and used.⁶⁶ This checklist was tailor-made for the Project and includes more than 70 questions, the answers to which indicate whether fair trial rights have been adhered to by the court.

⁶⁶ CCHR’s Appeal Hearing Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=96&l=en>.

In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Court of Appeal. CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes (“Checklist Guidance”)⁶⁷ to provide an understanding of the legal basis and purpose of each question, and ensure a uniform interpretation of each question. The Trial Monitors were also provided with a legal framework document which outlines the relevant national and international laws underpinning each question in the Checklist.

CCHR paid particular attention to the fact that the right to appeal⁶⁸ encompasses the right to be granted a full review. In other words, the review of an appeal must involve both the legal and material aspects of the person’s conviction and sentence⁶⁹; it must provide “for a full evaluation of evidence and the conduct of trial.”⁷⁰

Finally, CCHR is committed to the international principles applicable to trial monitoring⁷¹ and has devised a code of conduct (the “Code of Conduct”) for its Trial Monitors.⁷² The Code of Conduct outlines the obligations of non-interference, objectivity, and confidentiality by which the Trial Monitor is bound.

CCHR’s trial monitoring at the Court of Appeal did not target specific trials. The trials to be monitored were randomly selected, on the basis of the court’s schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitors observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself, no additional interviews or dialogues took place; except where the Trial Monitor made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but adjourned to a later date. After each trial the data gathered was entered into the CCHR Trial Monitoring Database (the “Database”).⁷³

CCHR analyzed the trial data recorded in the Database, and sought to identify positive practices as well as areas of concern arising at each trial. The ultimate purpose of the analysis was to identify the strengths and weaknesses of the Court of Appeal in so far as respect for fair trial rights was concerned, and to discuss these issues with the Court as well as other justice sector stakeholders in order to develop and implement ways to improve the protection of the right to a fair trial in Cambodian courts. As trial monitoring activities continue, the Database will be used to draw comparative analysis and to identify trends in the practice of the Court of Appeal, gauge improvements, and identify further recommendations.

Unlike the previous year where most of the cases monitored were felonies (56%), in 2017/2018 the majority of the cases monitored related to misdemeanor charges (52%). The total number of cases monitored has also decreased from 340 in 2016/2017 to 213 in 2017/2018; the present findings must therefore be viewed in this light.

⁶⁷ Guidance Notes for CCHR Appeal Court Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=97&l=en>.

⁶⁸ ICCPR, Art. 14 (5); CCPC, Art. 375.

⁶⁹ UN Human Rights Committee, Communication No. 701/1996, *Gómez v. Spain*, 6 Apr 1998, in UN doc. GAOR, A/55/40 (vol. II), p. 109, para. 11.1, <http://www.un.org/documents/ga/docs/55/a5540vol2.pdf>.

⁷⁰ UN Human Rights Committee, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia*, 6 Apr 1998, in UN doc. GAOR, A/53/40 (vol. II), p. 111, para. 18.11, <http://juris.ohchr.org/Search/Details/833>.

⁷¹ See ‘Fair Trial Manual’, Amnesty International, 1998, <https://www.amnesty.org/en/documents/POL30/002/1998/en/>; ‘What is a Fair Trial: A Basic Guide to Legal Standards and Practice’, Lawyers Committee for Human Rights, 2000,

https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf; ‘Trial Monitoring: A Reference Manual for Practitioners’, Organization for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights, 2008,

<http://bit.ly/2CVLX77>; ‘Trial Observation Monitoring’, International Commission of Jurists, 2002,

<https://www.osce.org/odihr/94216>.

⁷² CCHR Trial Monitoring Code of Conduct, <http://tmp.sithi.org/index.php?p=detail&id=60&l=en>.

⁷³ CCHR Trial Monitoring Database, http://tmp.sithi.org/data/advanced_search/search.php?appeal=1&l=en#go.

The final draft of this report was sent to the Court of Appeal in order to obtain their comments and suggestions, after which a meeting was held to discuss findings. Feedback from the Court of Appeal has been incorporated into the report.⁷⁴

Once published, CCHR will request specific meetings with representatives of the Court of Appeal and with other justice sector organizations, bodies and institutions to which recommendations will be addressed. These meetings will serve as a basis for an exchange of ideas, to provide insight into the challenges faced by those working to strengthen the justice system, and to promote the implementation of the recommendations set out in the Report.

⁷⁴ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

2. Overview

This section of the Report sets out the raw data recorded on the Checklist from the 213 trials monitored at the Court of Appeal between 1 November 2017 and 31 October 2018, which will be evaluated throughout the Report. It further compares the findings with that of CCHR's previous reports, outlining trends and highlighting areas where improvements were made, and others where a deterioration can be seen.

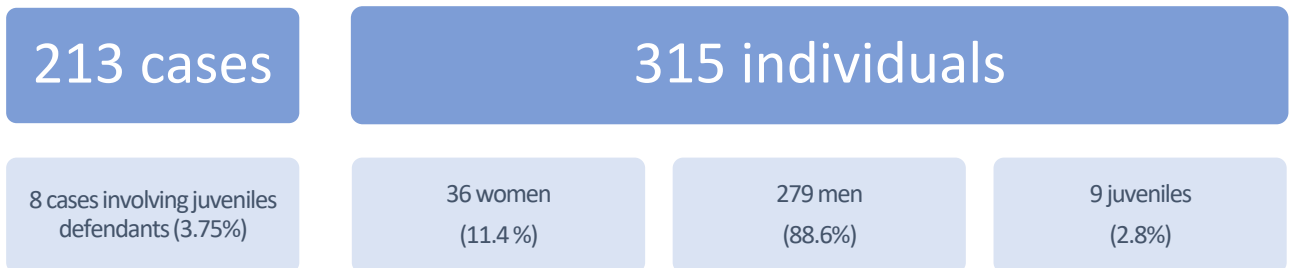


Figure 2: Appeal hearings monitored – felonies, misdemeanors and petty offenses

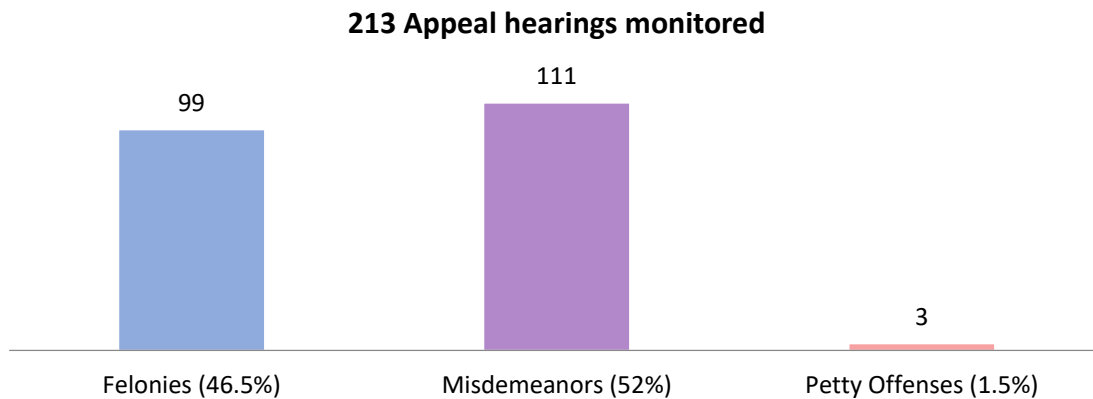
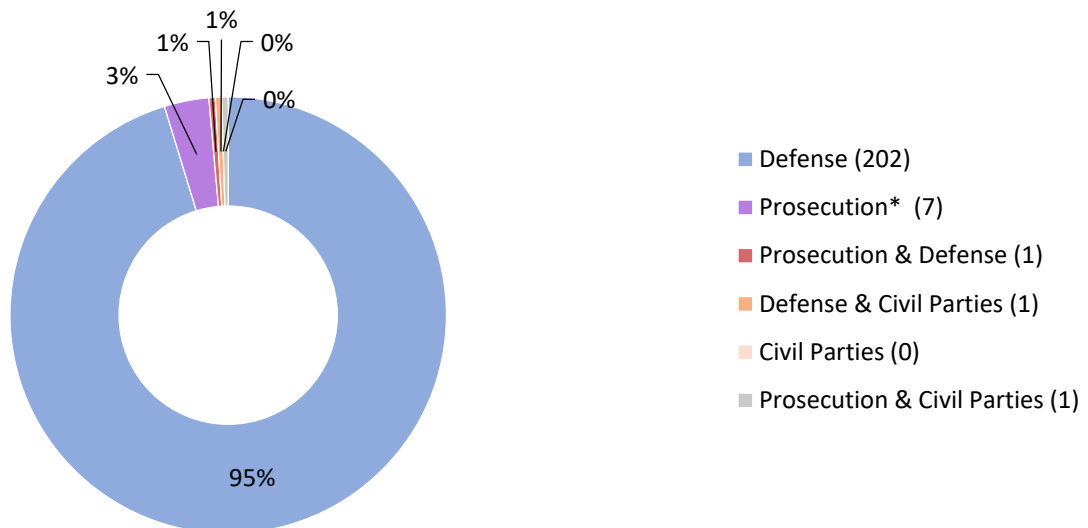


Figure 2 above shows the number of criminal trials monitored by the Trial Monitors during the Reporting Period, and separates the charges into three different classifications of offenses.

Article 46 of the Criminal Code defines a felony as any offense for which the maximum penalty is imprisonment of more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for more than six days and less than or equal to five years. According to Article 48, a petty offense is one for which the maximum sentence of imprisonment incurred is six days or less, or, punishable solely by a fine.⁷⁵

⁷⁵ Criminal Code, Art. 48.

Figure 3: Party bringing the appeal



*Prosecution from the Court of First Instance and the Court of Appeal.

Figure 3 above shows which party appealed the First Instance decision. A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance, the General Prosecutor attached to the Court of Appeal, the convicted person, and the civil party or civil defendant (both regarding the civil matter).⁷⁶ The Figure shows that the vast majority of appeals (95%) were filed by the defense.

The table below outlines, in the trials monitored by CCHR, the rights which were respected and those which were not fully complied with:

Fair Trial Rights Upheld	Fair Trial Rights Not Fully Respected
<ul style="list-style-type: none"> • Right to adequate time and facilities to prepare a defense • Right to not be compelled to confess guilt • Right to a public judgment • Prohibition against retroactive application of criminal law • Protection against double jeopardy 	<ul style="list-style-type: none"> • Right to a public hearing • Right to understand the nature and cause of the charges • Right to legal representation and to be present at trial • Right to presumption of innocence • Evidentiary rights • Right to a reasoned judgment • Rights of juveniles

The section below analyzes the implementation of the different relevant components of fair trial rights by the Court of Appeal during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights which are respected in the Court of Appeal, and then shed light on the practices that put fair trial rights at risk.

⁷⁶ CCPC, Art. 375.

3. Fair Trial Rights Upheld

While CCHR’s trial monitoring activities have identified practices that threaten and impede the right to a fair trial, as described above, CCHR was also hopeful to see that certain components of the right to a fair trial are well respected and upheld by the Court of Appeal.

Fair Trial Rights Protected by the Court of Appeal
• Right to adequate time and facilities to prepare a defense
• Right to not be compelled to confess guilt
• Right to a public judgment
• Prohibition against retroactive application of criminal law
• Protection against double jeopardy

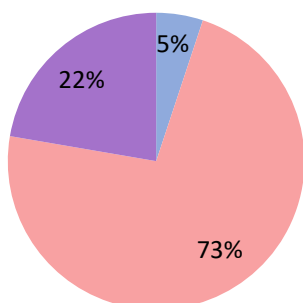
3.1. Right to adequate time and facilities to prepare a defense

Sources in Cambodian and International Law	
ICCPR Article 14(3)(b)	“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.”
CCPC Article 48	“[...] If the accused requests such time or if the court finds that the case may not be tried immediately, the trial shall be adjourned to another trial date [...]”
CCPC Article 98	“After a period of twenty-four hours from the beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person selected by the detainee [...] The selected person may enter into the custodial site and talk with the detained person for 30 minutes under conditions guaranteeing the confidentiality of the discussion. Following the discussion, the selected person may make a written note to be placed on the case file.”
CCPC Article 145	“When a charged person has a lawyer, the investigating judge shall summon the lawyer at least five days before the interrogation takes place. During that period, the lawyer may examine the case file [...]”
CCPC Article 259	“The General Prosecutor of the Court of Appeal and lawyers may examine the case file until the beginning of the hearing. The General Prosecutor of the Court of Appeal shall provide a written submission to the court clerk at least one day before the hearing date [...]”
CCPC Article 319	“Before the hearing, lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk [...]”
Law on Juvenile Justice Article 29	“Whenever the prosecutor decides to issue the initial charge, s/he shall promptly and directly notify the minor and, if appropriate, the minor’s designated representative or support person and minor’s lawyer of the initial charge in order to prepare the defense.”

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense to those charges. The length of time that is “adequate” will depend on the nature and complexity of the charges, the number of charges, and the nature of the evidence, amongst other factors.⁷⁷ The guiding principle is that the accused must be able to properly prepare his/her defense – that is, prepare to challenge the prosecution’s evidence, investigate, and present defense witnesses. The necessary facilities to prepare a defense includes access to case documents and evidence so that the accused is fully aware of the charges against him/her, and so that he/she is able to provide full instructions to his/her lawyer.⁷⁸ In addition, the right to adequate facilities includes the provision of facilities enabling confidential communications with counsel.⁷⁹ At the appeal stage this also means that the defendant should have access to a written first instance judgment and the transcripts of the trial, in order to prepare his/her case.

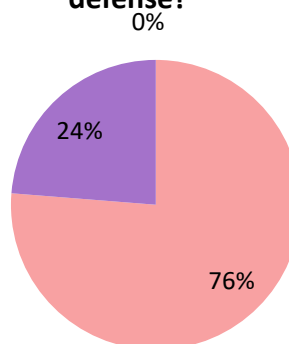
Figure 4: Right to adequate time and facilities to prepare a defense⁸⁰

Was there anything to suggest that the defendant’s lawyer was assigned on the day of the appeal?



■ Yes (16) ■ No (225) ■ N/A (74)

Was the issue of adequate time and facilities for preparation raised by the defense?



■ Yes (0) ■ No (241) ■ N/A (74)

While the monitoring of the appeal hearing did not provide CCHR with all the requisite information to assess whether or not the accused had sufficient time and adequate facilities to prepare their defense, from the information available to CCHR, it is very positive to note that the great majority of monitored cases indicated that the right was respected. CCHR monitored that only 5% of all defendants had their lawyers assigned to them on the day of the appeal, and that most had a lawyer earlier on. While this constitutes an increase compared to 2016/2017 where only 2% of the defendants were in this case, and while concrete measures should be taken so that no defendant has a lawyer assigned on the very day of their trial, CCHR still considers that this right is, overall, protected before the Court of Appeal. In addition, no defendant’s lawyer raised the issue of lack of adequate preparation. Overall, respect according to this right is stable compared to 2016/2017.

3.2. Right to not be compelled to confess guilt

Sources in Cambodian and International Law

⁷⁷ UN Human Rights Committee, General Comment 13: 1984, para. 9,

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 (“UN HRC General Comment 13”).

⁷⁸ UN HRC General Comment 13, para. 9.

⁷⁹ UN HRC General Comment 13, para. 9; UN HRC General Comment 32, para. 34.

⁸⁰ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored. N/A refers to cases in which defendant was not represented by a lawyer.

UDHR Article 5	“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
ICCPR Article 14(3)(g)	“In the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt.”
Constitution Article 38	“The law prohibits all physical abuse of any individual. The law protects the life, honor and dignity of citizens [...]”
CCPC Article 145	“[...] A charged person can be interrogated only in the presence of his lawyer. However, if the lawyer was properly summoned but does not show up on the specified date and time, the investigating judge can question the charged person without the presence of his lawyer. The absence of the lawyer shall be noted in the written record of the charged person’s interrogation [...]”
CCPC Article 321	“[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...]”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minors shall ensure the observance of the following principles: [...] Shall prohibit torture, corporal punishment, or other physical or mental treatments which is cruel, inhumane, or degrading to minors [...]”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right not to be forced to give testimony against him/herself [...]”

Article 14(3)(g) of the ICCPR guarantees the right “not to be compelled to testify against himself or to confess guilt”.⁸¹ This right is twofold: first, the suspect or accused must not be compelled or forced to provide evidence against himself/herself. When a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.⁸² In other words, the suspect/accused enjoys the unfettered right not to provide evidence that could be used against him/her.⁸³ Should a person refuse to testify against himself/herself, or to confess guilt, the circumstances in which judges draw any negative inference from this silence are restricted.⁸⁴ In the case of a juvenile, the law is more general: he/she must not be compelled to “give testimony”.⁸⁵ This right is also guaranteed under all Articles of the Convention

⁸¹ See also CRC, Art. 40(2)(b)(iv).

⁸² UN HRC General Comment 32, para. 41; see also UN Human Rights Committee, *Deolall v Guyana*, Communication 912/2000, UN Doc CCPR/C/82/D/912/2000, 2004, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, UN Doc CCPR/C/81/D/1033/200, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, UN Doc CCPR/C/94/D/1263–1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>.

⁸³ ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

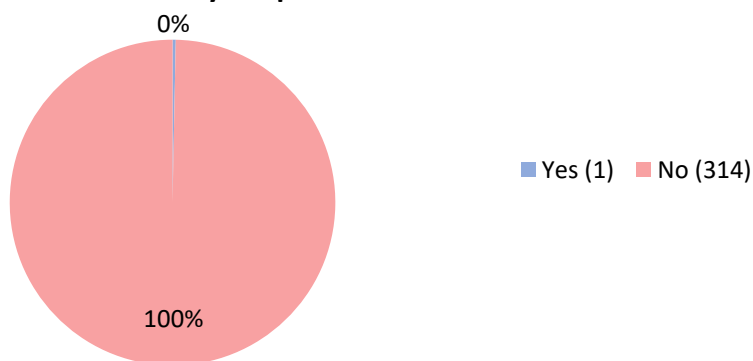
⁸⁴ European Court of Human Rights (“ECtHR”), *Condron v. the United Kingdom*, 2000, para. 56, <http://hudoc.echr.coe.int/eng?i=001-58798>; ECtHR, *Beckles v. the United Kingdom*, 2002, para. 58, <http://hudoc.echr.coe.int/eng?i=001-60672>.

⁸⁵ CRC, Art. 40(2)(b)(iv).

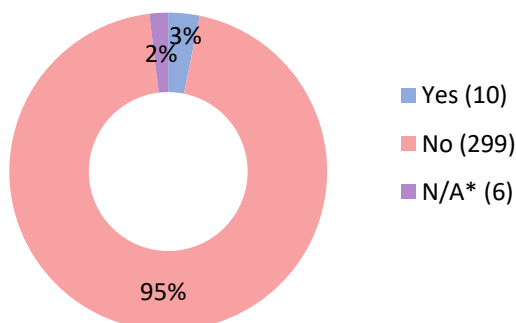
against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Article 15,⁸⁶ as the right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman, or degrading treatment or punishment.

Figure 5: The right not to be compelled to confess guilt⁸⁷

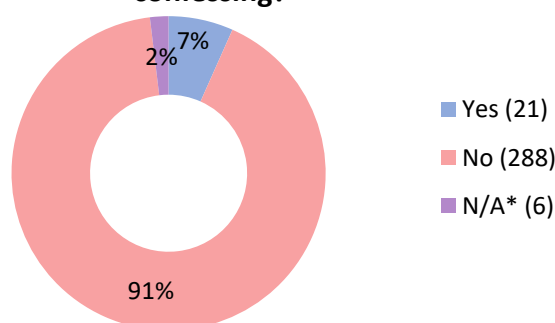
Was there anything to suggest that the defendant was interrogated without a lawyer's presence?



Was there anything to suggest that threats were made to coerce the defendant into confessing?



Was there anything to suggest that violence or torture were used to coerce the defendant into confessing?



* Neither the defendant nor his/her lawyer was present, there was therefore no one to raise the issue.

During the Reporting Period, only one of the 315 defendants insinuated that they had been interrogated without their lawyer being present. 10 individuals (3%) alleged that they were threatened into giving a confession, while 21 individuals (7%), some of whom also alleged that threats were made against them, further stated that violence or torture was used on them in order to obtain a confession to the alleged crimes during the investigations carried out by the judicial police. Overall, when compared with 2016/2017, the trend is positive since the cases where there was no coercion to make a confession increased from 88% to 95%. While this means that the right is considered to be upheld in the present report, the fact that allegations of threats or violence were still made means that immediate action is required to ensure that the giving of a confession is made with free, prior and informed consent, and without any coercion.

⁸⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), Art. 15: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."
<http://cambodia.ohchr.org/sites/default/files/Treaty/CAT-EN.pdf>.

⁸⁷ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

While the number of cases in which there were indications of coercion or torture during interrogations (either psychological or physical), are small in number, it is nevertheless a matter of serious concern. In the majority of cases where the defendant or defense lawyer raised concerns about the confession, the judges still upheld the guilty verdict. The Court of Appeal must investigate these claims thoroughly. If any claim of coercion is substantiated after an investigation, judges are under a legal obligation to rule the subsequent confessional evidence inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner. While this is an issue that should be dealt with during the investigation stage of proceedings, appeal judges must also remain vigilant and ensure that any claims of coercion that have not been dealt with during the pre-trial stages of the case, are thoroughly investigated before the trial is allowed to proceed any further.

3.3. Right to a public judgment

Sources in Cambodian and International Law	
ICCPR Article 14(1)	“[...] 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.”
CCPC Article 317	“In all cases, the court shall announce the judgment during a public session.”
Law on the Organization of the Court Article 7	“[...] In all cases, a judgment shall be announced publicly [...]”

The right to a public judgment is key to ensuring transparency and accountability. People must be able to see justice being delivered, furthermore, allowing the public to attend trials limits the judges’ abilities to act arbitrarily. It is also important in terms of access to legal information as it allows the public to know what type of behavior is, or is not, prohibited under the law.

The RGC National Strategic Plan for 2014-2018 aims to “introduc[e] court register data by information system” and “enhanc[e] access to judicial information, including on court decisions and proceedings, periodic administrative reports and administrative information regarding pending cases, including status and scheduling information”.⁸⁸ In practice however, while some efforts have been made, for instance to make court hearing schedules available, key information - in particular court decisions - remains largely unavailable. While the Constitutional Council regularly publishes its decisions,⁸⁹ those from other courts are largely impossible to access. This lack of access makes applying legal precedent impossible, and hinders lawyers from mounting effective legal defenses. Promisingly however, the Appeal Court has initiated a discussion with the United Nations Office of the High Commissioner for Human Rights (the “OHCHR”) in Cambodia on publishing

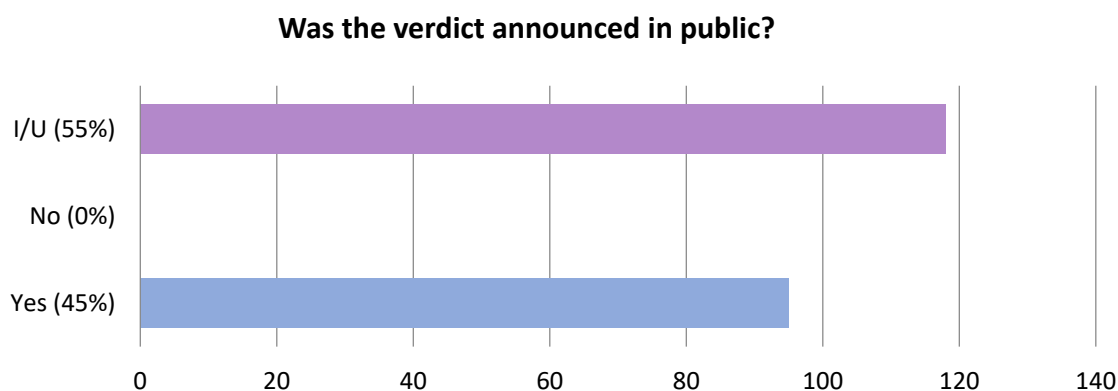
⁸⁸ ‘National Strategic Development Plan’, 2014-2018, RGC, para. 2.16, http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf.

⁸⁹ ‘Constitutional Council of Cambodia’, Website, <http://www.ccc.gov.kh>.

decisions.⁹⁰ Greater transparency of decisions would lead to more consistency, legal certainty, and a public perception of greater judicial independence.⁹¹

In March 2018 the UN Special Rapporteur on Human Rights in Cambodia met with senior court officials and noted that the Court of Appeal strengthened judicial reasoning and engaged in a discussion on publishing decisions,⁹² although no progress has yet been made on this side.⁹³

Figure 6: The right to a public judgment⁹⁴



In all the cases for which the information was available, the right to a public judgment was respected.

3.4. Prohibition against retroactive application of criminal law

Sources in Cambodian and International Law	
UDHR Article 11(2)	“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal 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 the penal offence was committed.”
ICCPR Article 15	“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.”

⁹⁰ 15 August 2018 UNSRSHRC Report, para. 81.

⁹¹ “Greater transparency in judicial decision-making should lead to greater legal certainty, more consistent decisions on evidence and the application of the law and thereby strengthen public perception in the independence of the judiciary.” In ‘End of mission statement’, UNSRSHRC, 14 Mar 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22819&LangID=E> (‘14 March 2018 UNSRSHRC End of Mission Statement’).

⁹² 15 August 2018 UNSRSHRC Report, para. 81.

⁹³ 15 August 2018 UNSRSHRC Report, para. 14 (d).

⁹⁴ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored. I/U refers to cases in which the information was not available, or cases are not followed up because the Trial Monitor is not present at the date of verdict delivery.

Criminal Code Article 3	“Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred.”
Criminal Code Article 10	“A new provision which prescribes a lighter penalty shall be applicable immediately. However, final judgments shall be enforced regardless of the severity of the relevant penalties. A new provision which prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force.”

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

Figure 7: Prohibition against retroactive application of criminal law

Data	Yes		No	
	Nº	%	Nº	%
Was the law under which the defendant is charged in force on the date the offense was allegedly committed?*	315	100	0	0

* This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

None of the trials monitored indicated that the law under which the defendant was charged was not in force on the date the offense was allegedly committed. CCHR’s findings therefore show that the protection against non-retroactivity of the law is protected. This trend is constant since 2014.

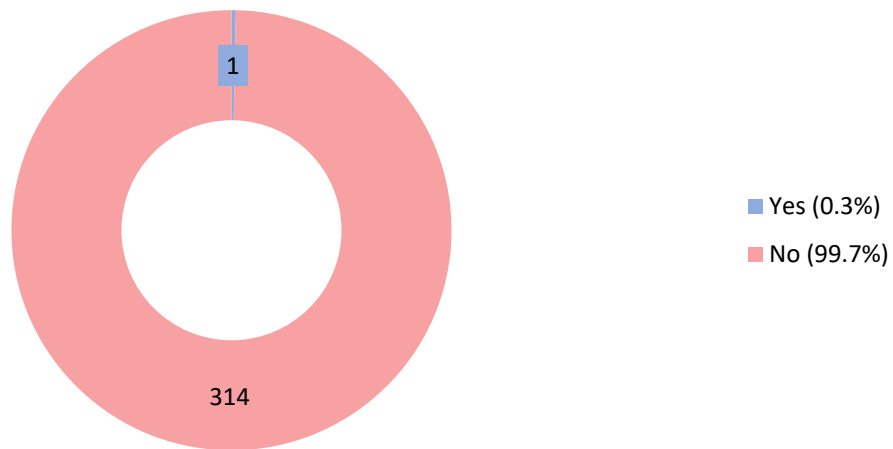
3.5. Protection against double jeopardy

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

Double jeopardy – or the principle of *res judicata* (literally translated as “already judged”) – refers to the right of a person not to be tried for the same crime or action more than once. It provides that the final judgment of a court, be it an acquittal or conviction, shall act as a bar to any further prosecution for the same act. There are a number of benefits of having this finality, both to the individual accused and the society as a whole, including legal certainty and avoidance of wasting of legal resources.

Figure 8: The protection against double jeopardy⁹⁵

Was there anything to suggest that the defendant had been tried and sentenced for this offense previously?



It is encouraging, although still concerning, to note that only one of the 315 defendants involved in the 213 cases monitored by CCHR had already been tried and sentenced for the same offense in the past according to the defense lawyer. The protection is therefore guaranteed. Notably, this trend is constant since 2014.

⁹⁵ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

4. Fair Trial Rights Not Fully Respected

A number of rights are not guaranteed and/or implemented in a fully satisfactory manner, and thus threaten individuals' right to a fair trial.

Fair Trial Rights Not Fully Respected at the Court of Appeal
• Right to a public hearing
• Right to understand the nature and cause of the charges
• Right to legal representation and to be present at trial
• Right to presumption of innocence
• Evidentiary rights
• Right to a reasoned judgment
• The rights of juveniles

4.1. Right to a public hearing

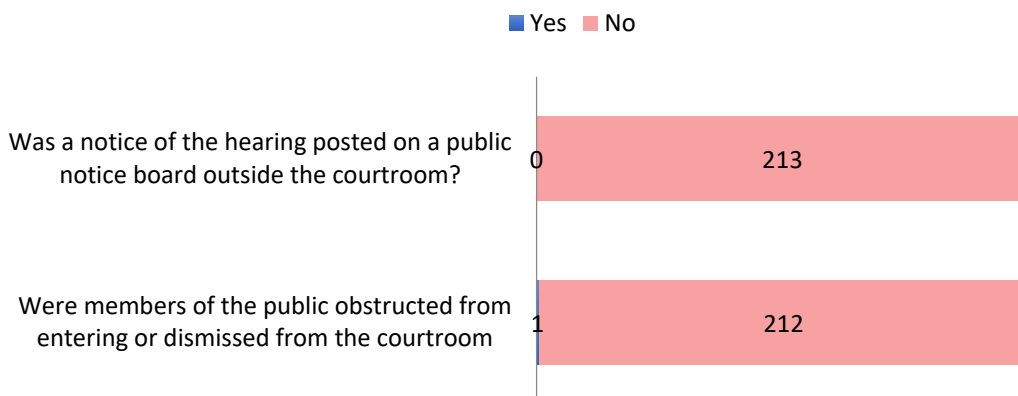
Sources in Cambodian and International Law	
ICCPR Article 14 (1)	"In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]"
CCPC Article 392	"The appeal hearing shall be conducted in public."
Law on the Organization of the Court Article 7	"The hearing shall be public."

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances, for example when the court considers that a public hearing will cause "*significant damage*" to public order or morality, or if there is a juvenile defendant.⁹⁶ 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

⁹⁶ CCPC, Article 316 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. Article 47 of Law on Juvenile Justice states that the cross-examination and pronouncement of judgment of juvenile case shall be conducted in closed court.

venue and date of the trial should be made available to the public; and there should be adequate facilities for public attendance.⁹⁷

Figure 9: The right to a public hearing



Hearing notices are one way of promoting public hearings by informing the public, who should be allowed access to the courtrooms in which trials are taking place. In one case, a member of the public was precluded from entering the courtroom: the brother of the defendant, who was a monk, was asked to leave the courtroom by the presiding judge, who said it was “not proper” for a monk to be present in a court room. Since 2014, the lack of notices about hearings has been a constant issue, and it is essential that concrete steps are taken to remedy this deficiency.

In April 2017, the Court of Appeal’s Deputy Presidents⁹⁸ recognized that there was a lack of hearing notices in relation to the Court’s schedule and informed CCHR that they would take action in order to improve the public’s access to hearings; however, during the Reporting Period, there were no updated public hearing notices posted outside the courtrooms. During the discussion between CCHR and the Court of Appeal about the right to a public hearing, the Court of Appeal raised the fact that they had been preparing to put measures in place to address this fact. They also mentioned that this right was only applicable to individuals’ party to the case. In this light, they claimed that posting the hearing schedule on the information board might violate individual rights and the right to the presumption of innocence. They also raised the concern that additional resources would be required to achieve this. Furthermore, they held that there was no legal requirement for the court to post the hearing schedule.⁹⁹ However, UN General Comment No 32 requires the courts to make available the time and venue of oral hearings to the public, and provide for adequate facilities for their attendance taking into account.¹⁰⁰

⁹⁷ UN General Comment No 32, ICCPR, para, 28 states that courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities. UN Human Rights Committee, *Van Meurs v. The Netherlands*, Communication No. 215/1986, UN Doc. CCPR/C/39/D/215/1986, 1990, para. 6.2, <http://juris.ohchr.org/Search/Details/311>.

⁹⁸ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

⁹⁹ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

¹⁰⁰ UN General Comment No 32, ICCPR, para, 28.

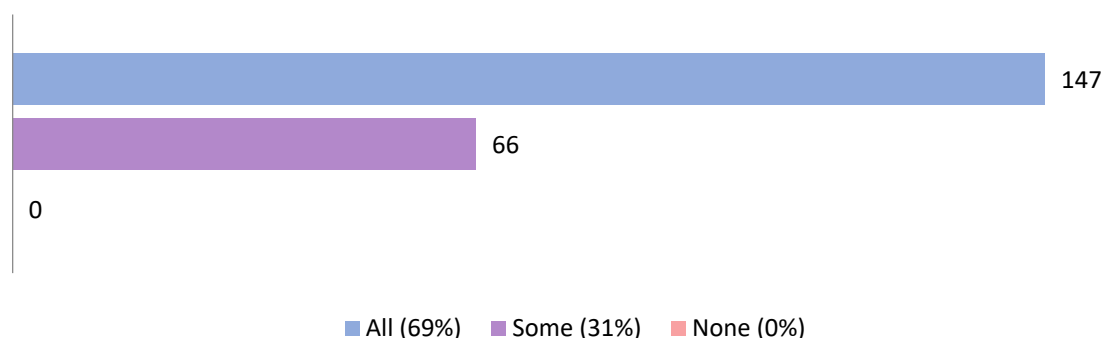
4.2. Right to understand the nature and cause of the charge(s)

Sources in Cambodian and International Law	
ICCPR Article 14(3)(a)	“In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”
ICCPR Article 14(3)(f)	“In the determination of any criminal charge against him, everyone shall be entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”
CCPC Article 322	“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.”
CCPC Article 325	“The presiding judge shall inform the accused of the charges he is accused of.”
CCPC Article 330	“If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
CCPC Article 331	“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.”
CCPC Article 396	“[T]he rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to refuse to answer questions with or without the presence of a lawyer [...] The right to be informed of the charge(s) [...]”
Law on Juvenile Justice Article 51	“At the commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights: The rights at trial as stipulated in Article 6 (procedural right of minor) of this law [...].”

Those accused of criminal offenses must be informed of the nature of the offense with which they have been charged. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive instructions to a lawyer, in cases where the accused person is legally represented. CCHR’s Trial Monitors collect data regarding the information conveyed to the accused person at the commencement of the trial. Although this information should have already been given to the accused person during the pre-trial/investigation procedure, it is nevertheless important for judges to remind the accused person of this information before the trial commences, and to make sure that the accused understands it. This is particularly important in cases whereby charges may have been changed or amended between the initial arrest/charge and the actual trial.

Figure 10: The right to understand the nature and cause of the charge(s) - Overview

Did the judge state all relevant charges against all defendants?



In the majority of cases (147 of 213, or 69%), the judges did inform the defendants of all relevant charges against them. When compared to 2016/2017, cases where the defendants were informed of all the charges against them significantly decreased, dropping from 86% to 69%. The fact that in almost one third of cases monitored by CCHR during the Reporting Period the defendants were not informed of the totality of the relevant charges against them constitutes a worrisome development. Therefore, CCHR decided to classify this right as being not fully respected.

Figure 11: The right to understand the nature and cause of the charge(s) - Details

Data	Yes		No		N/A ¹⁰¹	
	N ^o	%	N ^o	%	N ^o	%
Did the judge state the relevant law?	134	63%	79	37%	0	0%
Did the judge state the date of the offense?	202	94.8%	11	5.2%	0	0%
Did the judge state the place of the offense?	167	78.4%	46	21.6%	0	0%
Did the judge state the parties involved?	197	92.5%	16	7.5%	0	0%
If required, was an interpreter provided?	8	3.7%	0	0%	205	96.3%
If required, were provisions made for those with disabilities?	1	0.5%	0	0%	212	99.5%

The figure above shows that in the majority of cases, judges at the Court of Appeal re-stated the charges, facts, dates and information related to the charges. The right to understand the nature of the charge at the appeal stage of proceedings was therefore mostly respected. However, when compared with findings from the monitoring of 2016/2017, respect for this right drastically fell, particularly insofar as the notification about the relevant law, and the place of the offence were concerned, as outlined in the table below.

Figure 12: The right to understand the nature and cause of the charge(s) - Evolution

	2016/2017	2017/2018
Part of the cases where the judge stated the relevant law	96%	63%
Part of the cases where the judge stated the date of the offense	96%	94.8%
Part of the cases where the judge state the place of the offense	91%	78.4%
Part of the cases where the judge stated the parties involved	98%	92.5%

¹⁰¹ N/A refers to the Khmer defendant or defendant without disability.

During the Reporting Period, information not imparted by judges mostly related to the relevant law and the location of the offence. These constitute key details which must be provided to a defendant during a criminal trial. The Court of Appeal agreed that informing and explaining the accused of their rights was important and noted that the Court of First Instance has already done this task. They noted that the procedure at the Court of Appeal is different from the Court of First Instance and the Court of Appeal is not required to repeat this exercise.¹⁰² However, the CCPC states that the rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.¹⁰³

4.3. Right to legal representation and to be present at trial

Sources in Cambodian and International Law	
ICCPR Article 14(3)(d)	“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.”
Constitution Article 38	“Every citizen shall enjoy the right to defense through judicial recourse.”
CCPC Article 143	“When a charged person, who is a minor appears for the first time, he/she “shall always be assisted by a lawyer. If a charged person does not choose a lawyer, the court shall appoint a lawyer according to the Law on the Bar.”
CCPC Article 300	“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.”
CCPC Article 301	“The assistance of a lawyer is compulsory if (i) the case involves a felony; or (ii) the accused is a minor.”
CCPC Article 389	“An accused in detention shall be transferred without delay by the order of the General Prosecutor to the nearest prison or detention center to the seat of the Court of Appeal.”
Law on Prison Article 62	“Besides prisoners, any transfer of detained persons from one prison to another shall be notified to the Prosecutor of the transferring territorial jurisdiction to the Prosecutor of the receiving territorial jurisdiction or the competent General Prosecutor.” (CCHR’s translation)
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights: [...] [t]he right to be assisted by a lawyer [...]”

¹⁰² On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

¹⁰³ Article 396 of CCPC

<p>Law on Juvenile Justice</p> <p>Article 50</p>	<p>“The minor shall be assisted by a lawyer during trial [...]”</p>
<p>Law on Juvenile Justice</p> <p>Article 51</p>	<p>“At commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights:</p> <ul style="list-style-type: none"> • The rights at trial as stipulated in article 6 (procedural right of minor) of this law • The right to be present at trial • The right to be protected by the court from hostile or inappropriate cross-examination • The right to ask for recusal of the trial judge • The right to have the last word in the trial • The right to appeal.

Being charged with an offense can be a daunting experience and legal procedures can be complex and confusing. It is therefore vital that individuals have the opportunity to retain legal representation. Furthermore, if the accused cannot afford his or her own counsel, the relevant authorities should provide a lawyer free of charge, if the interests of justice so require.¹⁰⁴ The right to be represented by a lawyer ensures that the accused has an opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against him/her, explain his/her rights, guide him/her through the trial process and represent his/her interests in court. In Cambodia, it is compulsory for a person to be legally represented if he/she is accused of a felony offense or if he/she is a juvenile. While it is not mandatory to be legally represented if the accused committed a misdemeanor offense (unless he/she is a juvenile), individuals still have the option, if they so wish, to retain a lawyer. In such cases, the burden to retain a lawyer does not rest with the court. In addition, trials must be held in the presence of the accused,¹⁰⁵ as it permits the accused to hear and challenge the case against him/her, and to present a defense.

Regarding juveniles, the hearing should take place in the presence of “legal or other appropriate assistance” and – unless found not to be in the best interests of the child – his/her parents or legal guardians.¹⁰⁶ The right to be present in person is applicable to appeal proceedings, if they involve questions of both fact and law,¹⁰⁷ which is the case in Cambodia. While trials *in absentia* are not impermissible under international human rights law, they may be permitted only in exceptional circumstances and when it is in the interests of proper administration of justice. Cogent justification must be provided for them.¹⁰⁸ Further, the accused must have unequivocally waived his/her right to appear at trial.¹⁰⁹

¹⁰⁴ ICCPR, Art. 14(3)(d).

¹⁰⁵ ICCPR, Art. 14(3)(d).

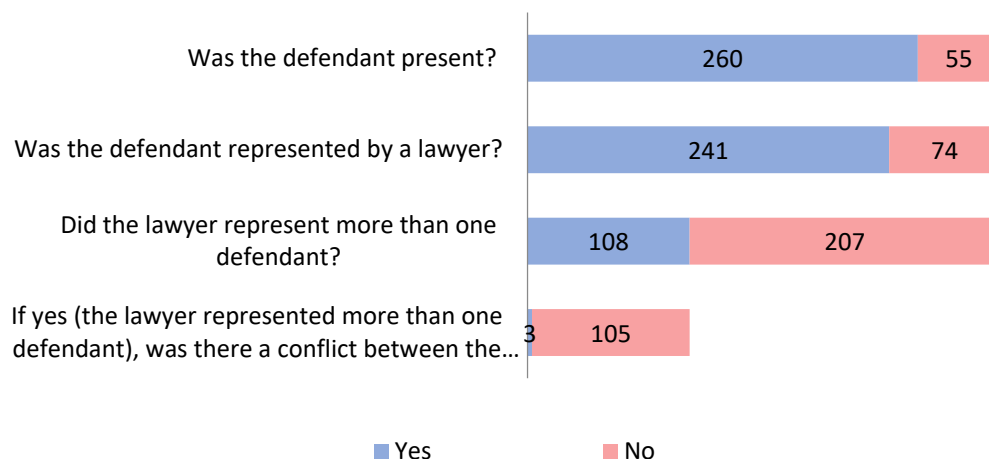
¹⁰⁶ CRC, Art. 40(2)(b)(iii).

¹⁰⁷ UN Human Rights Committee, *Karttunen v. Finland*, Communication 387/1989, UN Doc CCPR/C/46/D/387/1989, 1992, para. 7.3, <http://juris.ohchr.org/Search/Details/402>.

¹⁰⁸ UN Human Rights Committee, *Mbenge v. Zaire*, Communication 016/1977, UN Doc CCPR/C/18/D/16/1977, 1983, para. 14.1, <http://juris.ohchr.org/Search/Details/573>.

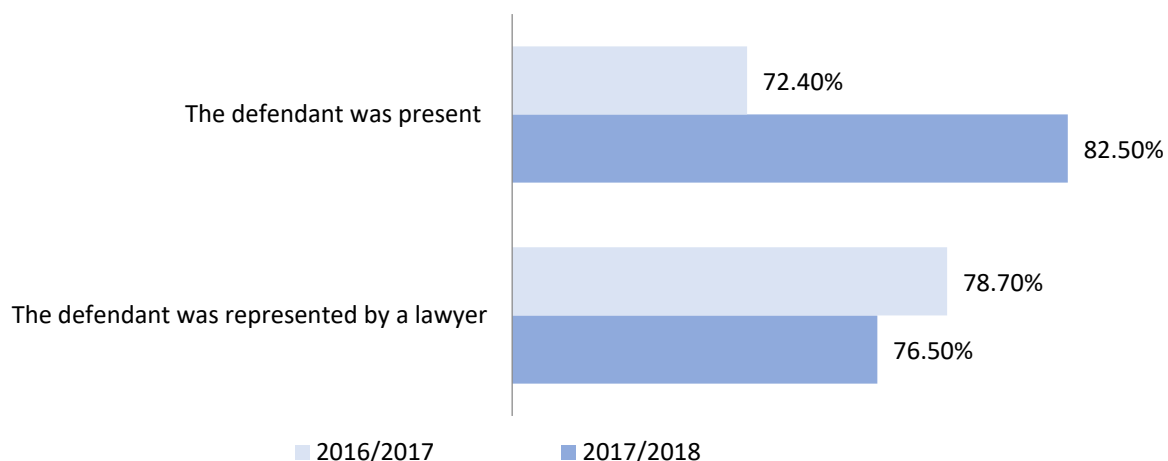
¹⁰⁹ UN HRC General Comment 32, para. 36.

Figure 13: The right to be present at trial and to legal representation¹¹⁰



The data between 2016/2017 and 2017/2018 differed significantly. While the percentage of defendants who were present during the hearing significantly increased, from 72.4% to 82.5%, but the number of defendants not represented by a lawyer for misdemeanor cases reduced from 78.7% to 76.5%. Under domestic law, judges may proceed with a hearing in which the defendant does not have legal representation in misdemeanor cases provided the defendant is not a juvenile. However, this is not a line with international human rights law which guarantees the right to legal representation for all types of offenses. Despite these changes, overall, the trend is positive. It remains concerning that only approximately three quarters of defendants were represented by a lawyer.

Figure 14: The right to be present at trial and to legal representation between 2016-2018



While the right to legal representation is protected in the majority of the cases (76.50%), in light of the fundamental character of the right to be tried in one’s presence and to have a lawyer, the fact that 23.50% of the defendants were not represented by a lawyer, and that 17.5% of the cases the defendant was not present is still cause for serious concern. In April 2017, the Court of Appeal’s Deputy Presidents¹¹¹ noted that

¹¹⁰ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

¹¹¹ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

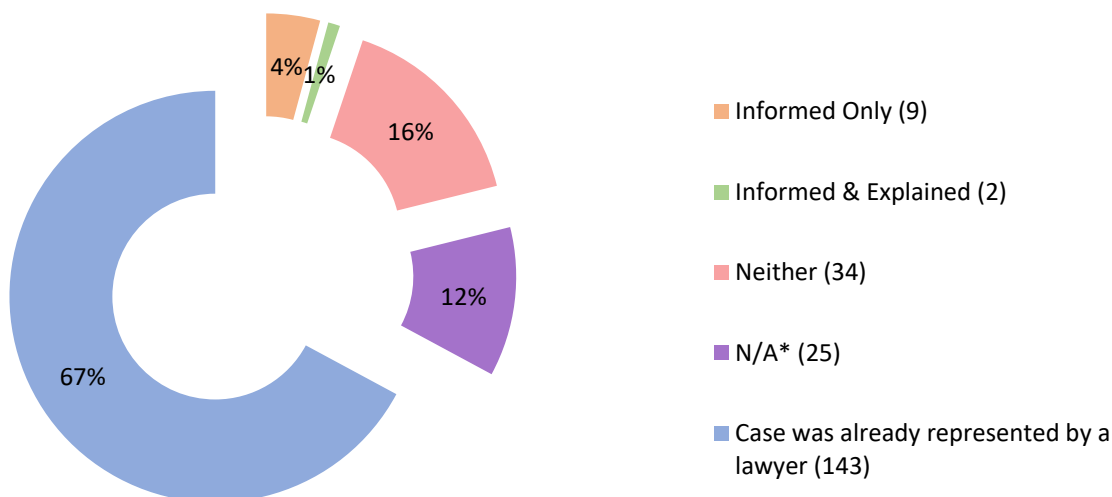
in most cases, the accused’s absence during hearings was due to the lack of transportation from the detention center to the Court, which falls under the responsibility of the prison authorities.

Further, the number of cases where a lawyer represented more than one accused decreased from 40% in 2016/2017 to 34.3% in 2017/2018. Situations where a lawyer represents multiple accused, while sometimes cost-effective, raise concerns for the individuals’ fair trial rights, for instance when one co-defendant’s defense or version of events is different, or contradictory, to that of another co-defendant. If the same lawyer represents all the defendants, putting forward one’s defense would negatively impact the other, who would then be precluded from having an effective defense and from being adequately represented by counsel. In such cases, a conflict of interest occurs. Each defendant should have a separate lawyer.¹¹²

In 2017/2018, CCHR’s trial monitor identified conflicts of interests in only 3% of the cases where a lawyer was representing several defendants, a decrease from 2016/2017 (4%). This represents a positive trend.

Figure 15: Explanation of rights

Did the judge inform (I) and explain (E) to the accused his/her right to legal representation or to defend himself/herself?



* Absence of defendant.

The fact that in 67% of the 213 cases monitored by CCHR the defendants had legal representation shows that individuals’ rights to access to a lawyer have mostly been protected, and demonstrates a slight increase since 2016/2017, when the rate was 64%. The Court of Appeal stated that they always comply with the procedure under domestic law. For instance, legal representation is always required for felony and juvenile cases during the hearings while in misdemeanor cases the accused does not require legal representation provided they are not minors.¹¹³ Furthermore, in 34 out of 213 cases (16%) the judges failed to inform and explain to the accused his/her right to legal representation or the right to represent himself. This constitutes a concerning increase from 2016/2017, when the percentage was 11%. As a result, this right remains not fully respected.

¹¹² Art. 19, see Guidance Notes for CCHR Appeal Court Monitoring Checklist, <http://tmp.sithi.org/index.php?p=detail&id=97&l=en>, p. 47.

¹¹³ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

In cases where defendants were not present at trial, the absence of the defendant was often due to logistical issues as well as communication problems between the judges and the correctional centers or places of detention. The fact that there is only one Court of Appeal for the entire country requires defendants incarcerated in correctional centers in the provinces to travel to the Court of Appeal for the day of their hearing. However, there were many occasions where transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers fail to keep the Court updated about the transfer of detained persons between correctional centers. These logistical problems could be easily addressed by not only the creation of another Court of Appeal, but also by improving the record keeping and communication between the Court and correctional centers. Such concerns would be reduced by the creation of the regional courts of appeal.¹¹⁴

4.4. Right to the presumption of innocence

Sources in Cambodian and International Law	
ICCPR Article 14(2)	“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”
Constitution Article 38	“The accused shall be considered innocent until the court has judged finally on the case.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minor shall ensure the observance of the following principles: [...] presumed innocent until proven guilty by the court.”

The presumption of innocence is a fundamental and universally recognized fair trial right which applies throughout the period of the criminal investigation and trial proceedings, up to and including the end of the final appeal.¹¹⁵ It means that one is presumed innocent until proven guilty by law and through a final ruling. The principle that the burden of proof lies with the prosecuting body, not the accused, stems from the presumption of innocence.

Even if the accused says nothing and presents no evidence, he/she must be acquitted if the prosecution fails to present evidence reaching the requisite burden of proof for a conviction; in other words, it is not for the accused to present evidence to prove that he or she is innocent.

More specifically, the presumption of innocence requires that:

- i. The court or tribunal must not predetermine the case before it;
- ii. Guilt beyond reasonable doubt must be proved by the prosecution;
- iii. The treatment of the accused should not be such as to indicate that he/she is guilty;
- iv. The media should avoid news coverage that undermines the presumption of innocence; and

¹¹⁴ RGC Report for the 3rd Cycle of the UPR, paras 18C, 40; 8 November 2018 UNSRSHRC End of Mission Statement, p. 4, para. 2; 15 August 2018 UNSRSHRC Report, para. 81.

¹¹⁵ ‘The Right to a Fair Trial (Part I), Chapter 6’, OHCHR, p. 219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>.

- v. Public authorities should also refrain from making public statements that would undermine this presumption.¹¹⁶

When the accused attends trial in a prison uniform,¹¹⁷ the presumption of innocence is undermined. This is particularly the case when the uniform makes no distinction between remand and convicted prisoners. When remand prisoners attend court in prison uniform, they are presented in the same way as prisoners who may have already been convicted. As no distinction is drawn between the two categories of prisoners, this practice has the potential to create speculation as to whether the individual accused is in fact already a convicted offender and, as such, may influence the judge's decision, but also the public's perception. Even when accused persons are serving sentences, the fact that they appear before the court in prison uniform is equally prejudicial. The issues of defendants appearing in court in prison uniform falls within the responsibility of the General Department of Prisons.

International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. The United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules"),¹¹⁸ adopted by the UN General Assembly in 2015 and which represent internationally recognized best practices for the treatment of prisoners, state 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." In the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), defendants are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction. Therefore, defendants should be allowed to appear in Court with their own clothing. At the very least, the prison uniform which they wear must be different from that of convicted prisoners. As a result of CCHR's advocacy, change has slowly been taking place in this regard, with more and more remand prisoners appearing in a uniform distinct (orange) from that of convicted prisoners (blue). Further, in a handful of cases, defendants were able to appear before the court in their own clothing.¹¹⁹

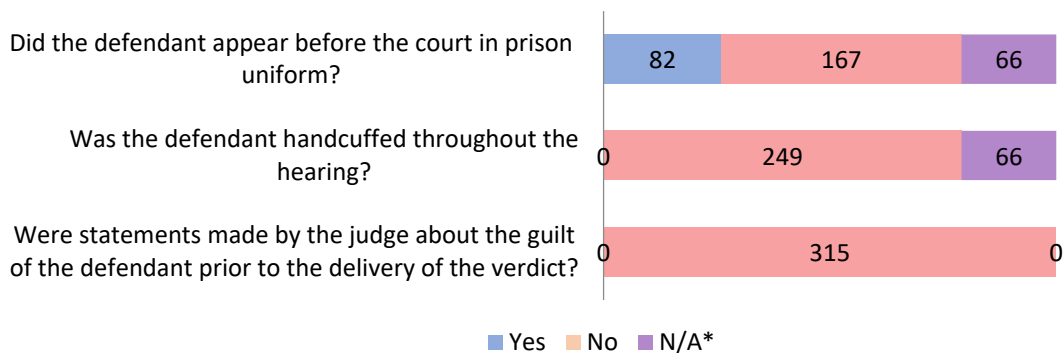
¹¹⁶ UN HRC General Comment 32, para. 30; ECtHR, *Barberá, Messegué and Jabardo v. Spain*, 1998, para. 77, <http://hudoc.echr.coe.int/eng?i=001-57429>.

¹¹⁷ This referred to the convicted person's blue uniform, which Ministry of Interior issued the Prakas that the blue uniform is for the convicted person whose conviction was final. See CCHR's Fair Trial Rights Newsletter, Prisoners Uniform and Presumption of Innocence, Jun 2017, https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf.

¹¹⁸ 'United Nations Standard Minimum Rules for the Treatment of Prisoners', Resolution 70/175, UN General Assembly, Annex, 17 Dec 2015, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹¹⁹ On 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of first instance was transported to the Court of Appeal for hearing his appeal against the decision civilian clothes. CNRP former president, Kem Sokha, also appeared in Court wearing his own clothing on 1 February 2018.

Figure 16: The presumption of innocence¹²⁰



* The defendant was either absent or s/he was not imprisoned.

The Figure above shows that 82 out of 315 defendants still appeared in court wearing the prison uniform for convicts at their hearings – representing 26% of the defendants whose cases were monitored by CCHR. This represents a drastic increase from 2016/2017, when only 9% of the defendants appeared in prison uniform; such a practice undermines the presumption of innocence. The presiding judge should allow the accused wearing convict uniforms to wear his/her civil uniform instead. This is particularly concerning given the high level of advocacy made on this matter, which led the Court of Appeal’s Deputy Presidents¹²¹ to state that they would discuss the issue with the Ministry of Interior as well as with the correctional centers in order to identify possibilities to allow defendants to wear their civil clothing during hearings.

Where defendants appear in the same uniform as prisoners serving their sentence, this significantly undermines the presumption of innocence. While the efforts made are encouraging, it is essential that the practice of allowing defendants to wear their own clothes while appearing in Court is generalized. To ensure consistency, the authorities should issue clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgment has not been issued must be allowed to appear in court wearing civilian clothes. During the meeting between the Court of Appeal and CCHR, the Court of Appeal mentioned that the right to the presumption of innocence does not relate to the question of the accused’s uniforms. Rather, it concerns the burden of proof – the obligation of the prosecution to prove their case. Where the defense is required to prove their innocence, rather than the prosecution required to prove their guilt, a violation of the presumption of innocence has occurred. The Court of Appeal emphasized that the uniform of accused is not responsibility of the Court of Appeal but rather that of the General Department of Prisons in the Ministry of Interior.¹²²

¹²⁰ This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

¹²¹ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

¹²² On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

4.5. Evidentiary rights

Sources in Cambodian and International Law	
ICCPR Article 14(3)(e)	<p>“In the determination of any criminal charge against him, 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.”</p>
CCPC Article 153	<p>“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.”</p>
CCPC Article 154	<p>“Before the interview, each witness shall swear in accordance with their religion or beliefs that he/she only speaks the truth. The formality of the oath shall be defined in the annex of this Code.”</p>
CCPC Article 298	<p>“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”</p>
CCPC Article 321	<p>“Unless otherwise required by a law, any evidence in criminal cases is freely admissible. The court shall have a free choice to determine the value of the evidence submitted to the court on the ground of its true belief. The decision of the court shall be based only on the evidence which it has in the file or which has been presented at the hearing. A confession shall be submitted to the court for consideration in the same manner as other evidence. Answers given under the physical or mental duress shall have no evidentiary value. Communications between the accused person and his/her lawyers is not admissible as evidence.”</p>
CCPC Article 324	<p>“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 summoned 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.”</p>
CCPC Article 326	<p>“[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.”</p>
CCPC Article 328	<p>“Before answering the questions, each witness shall swear according to their religion or believe that he/she shall only speak the truth.”</p>
CCPC Article 394	<p>“Following his questioning of the accused, the presiding judge shall hear the civil party and the civil defendants in the order he deems useful. Witnesses and experts will be questioned only if the court so orders.”</p>

All the decisions of the court must be based exclusively upon the evidence presented during the course of the trial. It is therefore essential that each party has the opportunity to present evidence and call witnesses in support of their case.¹²³ It is equally important that each party is given the opportunity to cross-examine witnesses and to challenge evidence that he/she does not accept. While the provision of evidence *via* a written statement (that is, not during a court hearing) is not contrary to the rights of the accused, it is only compliant with human rights law if the defendant had the right to challenge and question the witness when that witness made the statement, or at a later stage of the proceedings before the trial itself.¹²⁴ Finally, pursuant to human rights law, when a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.¹²⁵ If the individual alleges a violation of his/her rights, the burden of proof is on the party that took the statement to demonstrate that it was not done under duress, and not on the defendant to show that it was.¹²⁶ Evidence obtained in violation of this right must not be admissible at trial.¹²⁷

It is encouraging to note from the data collected, in all 213 cases monitored there was nothing to suggest that a party was not given the opportunity to call witnesses. However, evidentiary rights remain at risk for two main reasons. The Trial Monitors noticed that among the small number of cases in which witnesses were present, witnesses were present in the courtroom before they were questioned in six cases out of 213 cases, i.e. one in every 36 cases. This practice can lead to a witness’s testimony being influenced by hearing the testimony of other witnesses prior to giving evidence. A better practice is for witnesses to leave the courtroom and not return until they are called to testify.

In addition, the Court of Appeal must ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity), and that all parties have the opportunity to challenge the evidence. The data collected during the trial monitoring activities reveals that the quality of evidence presented is of great concern. Most of the evidence presented during trials that were monitored was either a confession or documentary evidence. The quality and quantity of evidence presented and considered during a trial hearing is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence and forensic evidence. CCHR’s trial monitoring revealed there is no trend of examining this type of evidence at the Court of Appeal.

¹²³ CCPC, Art. 334.

¹²⁴ See e.g. ECtHR, *Mirilashvili v. Russia*, 2008, para. 163, <http://hudoc.echr.coe.int/eng?i=001-90099>; ECtHR, *Asch v. Austria*, 1991, para. 27, <http://hudoc.echr.coe.int/eng?i=001-57676>; ECtHR, *Isgrò v Italy*, 1991, para. 34, <http://hudoc.echr.coe.int/eng?i=001-57653>; ECtHR, *Kostovski v. the Netherlands*, 1989, para. 41, <http://hudoc.echr.coe.int/eng?i=001-57615>.

¹²⁵ UN HRC General Comment 32, para. 41; see also UN Human Rights Committee, *Deolall v. Guyana*, Communication 912/2000, 2004, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>.

¹²⁶ UN HRC General Comment 32, para. 41; see also UN Human Rights Committee, *Singarasa v. Sri Lanka*, Communication 1033/2001, 2004, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, Communications 1263/2004 and 1264/2004, 2008, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>.

¹²⁷ UN HRC General Comment 32, paras 6, 41; UN Human Rights Committee, General Comment 29, 2001, paras 7, 15, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhjYoiCfMKolRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iix49nIFOsUPO4oTG7R/o7TSsorhtwUUG%2By2PtsIYr5BlDM8DN9shT8B8NpbsC%2B7bODxKR6zdESeXKjilnNU%2BgQ%3D%3D>.

4.6. Right to a reasoned judgment

Sources in Cambodian Law	
CCPC Article 357	<p>“Every judgment shall have two parts:</p> <ul style="list-style-type: none">• the ground means the arguments of facts and laws which lead the court to make decision;• the enacting term means decision of the court. <p>The facts shall be clear and beyond a reasonable doubt. The court shall examine all charges and arguments raised during the hearing.</p> <p>In the ground judgment, the court shall respond to written conclusions of the parties.</p> <p>In the enacting term judgment, the court shall note the offense committed by an accused person which is not permissible by an applicable legal texts and any civil remedy.”</p>
CCPC Article 403	<p>“The rules governing the form and signature of the judgment of the court of the first instance shall apply to the judgment of the Court of Appeal.”</p>

The right to a reasoned judgment is inherent to the right to a fair trial, and is included in the right to a public judgment. According to international standards, in order to enjoy the effective exercise of the right to have convictions and sentences reviewed by a higher tribunal, a convicted person is entitled to have, within reasonable time, access to a written judgment which is duly reasoned, for all instances of appeal.¹²⁸ Within the Cambodian context, this is respected by both the accused and prosecution having the right to appeal an appeal judgment to the Supreme Court.

The Cambodian Code of Criminal Procedure provides that every judgment by the Court of First Instance should have two parts: the grounds for the judgment, meaning “the arguments of facts and laws which lead the court to make decision” and the decision of the court (Art. 357). The judgment must be clear, and the judges must examine “all charges and arguments raised during the hearing”. It must also respond to the written conclusions of the parties (Art. 357). Article 403 of the Code provides that these provisions equally apply to Appeal Judgments.

In March 2018, the United Nations Special Rapporteur on the situation of Human Rights in Cambodia, Rhona Smith, highlighted the importance of this right by calling for “greater transparency in judicial decision-making” and “more consistent decisions on evidence and on the application of the law” in order to promote greater legal certainty and improve public perceptions. She recommended that “plans to make public judgments and legal reasoning should be progressed”.¹²⁹

The right to a reasoned judgment means that a criminal judgment rendered against an individual must explain why and how the verdict has been reached and why the person was found guilty or innocent. To do so, both the facts and the law on which the judgment is based must be explained:

¹²⁸ UN Human Rights Committee, *V. Francis v. Jamaica*, Communication No. 320/1988, 1993, para. 12.2, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>.

¹²⁹ 14 March 2018 UNSRSHRC End of Mission Statement.

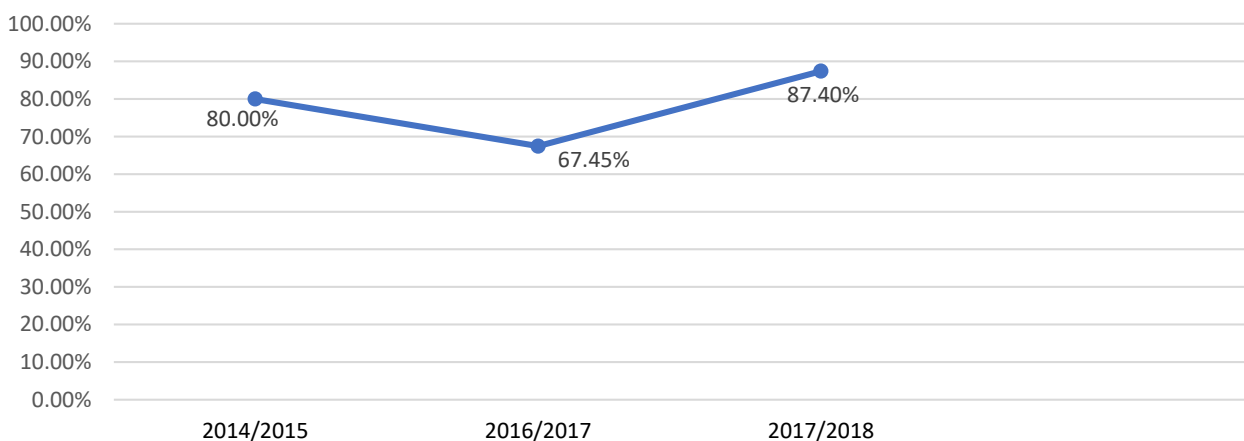
- **The facts:** the judgment must set out the facts for which the person is convicted as clearly as possible, including the date, the location, and the actual event(s). In doing so, the judges must ideally refer to the piece(s) of evidence on which they relied in order to reach the finding, for instance a confession, or a specific witness' testimony, and explain why they relied on it.
- **The law:** the judgment must also include the legal basis on which the ruling is based, both in terms of substantive law (the crime) and of criminal liability (the mode of liability: direct perpetrator, accomplice, etc.).

Having a reasoned judgment is crucial in safeguarding against arbitrariness¹³⁰ as it compels the judges to explain their decision, and ensures that the person who is convicted knows why, and for what, they are convicted.

The right to a reasoned judgment applies to rulings rendered by the Court of Appeal, since, in Cambodia, individuals can challenge its judgments before the Supreme Court. Unfortunately, in nearly all of the cases monitored by CCHR the judges failed to provide detailed reason for their judgment, instead only announcing the ruling.

In 2014-2015, judges failed to refer to the relevant law in detail when rendering their verdict 80% of the time, and failed to refer to sufficient evidence 73% of the time.¹³¹ In cases monitored by CCHR between 1 November 2016 and 31 October 2017 the judgment given was not well reasoned or detailed 67.5% of the time. During the Reporting Period, in 95 of the 213 cases monitored by CCHR, CCHR was present when a judgment was rendered. In those 95 cases, the judgment given was not well reasoned or detailed in 87.4% of the cases. This constitutes a significant increase, which is particularly concerning given that the number of cases where and unclear and undetailed judgment was given had reduced between 2014/2015 (80%) and 2016/2017 (67.5%). As outlined above, the right to a reasoned judgment is one of the most fundamental fair trial rights. It is essential that more attention is given on this issue, in order to protect fair trial rights in Cambodia.

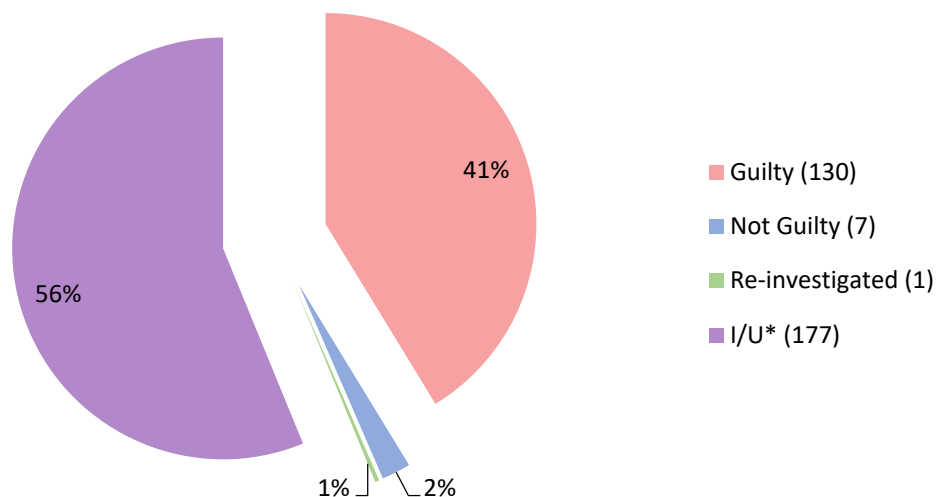
Figure 17: Evolution of cases where the judgment given was not well reasoned or detailed between 2014-2018



¹³⁰ 'Fair Trial Manual', Amnesty International, p. 174, Section 24.2, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> ('Amnesty International Fair Trial Rights Manual').

¹³¹ 'Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal', CCHR, Jun 2018, p. 37, <http://tmp.sithi.org/index.php?p=detail&id=119&l=en>.

Figure 18: Overview of Court of Appeal's verdicts¹³²



* CCHR's monitoring team was not present at the time the verdict was delivered.

In 41% of the cases monitored by CCHR during the Reporting Period, the defendants were found guilty. However, this must be viewed in light of the fact that for more than half these cases (56%), CCHR's monitor was not present at the time of the judgment. By contrast, in 2016/2017, defendants were found guilty in 67% of the case, while CCHR was not present to monitor the judgment in 28% of the cases.

CCHR's Trial Monitor noticed that in a significant number of cases, the Court of Appeal upheld the decisions of the Courts of First Instance, a trend which continued from 2016/2017. This, taken together with the lack of a reading of the reasoned decision, creates cause for concern as to whether the accused's fair trial rights were respected.

In nearly all the cases where a judgment was rendered at the time CCHR was monitoring the hearings, the judges failed to justify their ruling in detail. They largely failed to state clearly and in detail the provisions of the law and the evidence which they relied upon in their verdicts.

The Court of Appeal stated that the reading of the holding is not required by law. So it was up to the judge whether they do it or not when reading the verdict, moreover they stated there was no need to include this if the parties to the case are not present. The Court of Appeal also raised the fact that this report should not highlight the procedural rules of the ECCC as it only has competence over international crimes.¹³³ Even if the Criminal Procedure Code states that the judgment should be divided into two parts (1) the holding (the arguments of facts and law that led the court's decision) (2) the ruling (the decision of the court) [...],¹³⁴ article 359 of CCPC states that the entire judgment shall be issued and announced during a public hearing. The ruling part shall be read aloud by the presiding judge.

¹³² This data is based on the total number of defendants (315 individuals) involved in the 213 cases monitored.

¹³³ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

¹³⁴ Article 357 of Criminal Procedure Code

4.7. Rights of Juveniles

Sources in Cambodian and International Law	
ICCPR Article 14(1)	ICCPR, Article 14(1): “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.”
CRC Article 40(2)(b)	“States Parties shall, in particular, ensure that [...] [a child has] his or her privacy fully respected at all stages of the proceedings.”
CRC Article 40(4)	“A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training program and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”
Constitution Article 31	“The Kingdom of Cambodia recognizes and respects human rights as stipulated in [...] the covenants and conventions related to [...] children’s rights.”
Constitution Article 48	“The State shall protect the rights of children as stipulated in the Convention on Children.”
CCPC Article 100	“When a detained person is a minor, the judicial police officer shall use all means to notify the parents, legal representatives or any person who is responsible for that minor.”
CCPC Article 212	“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.”
Criminal Code Article 39	“Minors who committed offences shall be subject to supervision, education, protection and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
Criminal Code Article 40	“Supervisory, educational, protective and assistance measures shall include: returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy; committing the minor to a social service agency which cares for minors; committing the minor to a private organization that is qualified to receive minors; committing the minor to a specialized hospital or institution; placing the minor under judicial protection.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning a minor shall ensure the observance of the following principles: Consider primarily on actions concerning the best interest of minors; in particular, to ensure the minors’ right to life and maximum survival and development [...] Shall be given an opportunity to express their views freely, and their views shall be given weight according to their age, physical development, intelligence, and cognitive development toward their

	action; Shall address the child in a friendly manner ¹³⁵ ; Shall ensure that the arrest, detention or imprisonment of a minor is used only as a measure of last resort and for the shortest period of time [...]"
Law on Juvenile Justice Article 6	<p>"Every minor suspected or accused of having committed an offence shall has the following basic procedural rights:</p> <ul style="list-style-type: none"> • the right to refuse to answer questions with or without the presence of a lawyer • the right not to be forced to give testimony against him/herself • the right to privacy • the right to have medical care and treatment • the right to be informed of the charge • the right to be informed of the arrest to designated representative • the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure • the right to have designated representative participate in the case, unless it is contrary to the best interest of the minor • the right to be assisted by pro bono interpreter, if necessary the right to present evidence • the right to request to call and pose question to witnesses • the right to request bail • the right to ask for revision of the court supervision • the right to contact his/her embassy, consulate if a minor is a foreigner • Other rights which stipulated in other legal instruments that are currently in force."
Law on Juvenile Justice Article 39	"Pre-trial detention is a measure of last resort [...]"
Law on Juvenile Justice Article 47	"The cross-examination and pronouncement of judgment shall be conducted in closed court [...]"
Law on Juvenile Justice Article 48	"[...] Under special circumstances, the minor's lawyer, social agent or prosecutor may request the court to place the minor behind the screen or use other alternate means of providing testimony."
Law on Juvenile Justice Article 49	"If the court finds that the minor is below the age of 14 years at the time of commission of the offence, the court shall immediately acquit the minor and immediately release him/her to the custody of designated representative even if there is an appeal made by the prosecutor [...]"
Law on Juvenile Justice Article 54	"Judgment shall be pronounced after the cross examination or at the next trial. In principle, the judgment of the court shall be pronounced in closed court, and in the presence of the minor, designated representative, support person, lawyer, social agent and relevant parties. The judgment may be pronounced without the presence of the minor if it is detrimental to the best interest of the minor."

¹³⁵ Law on Juvenile Justice, Art. 4 (7).

Law on Juvenile Justice

Article 57

“[...] For the best interest of the minor, while awaiting trial, the Court of Appeal or the Supreme Court shall consider the release of the minor. In the case where the trial is adjourned, the Court of Appeal or Supreme Court shall consider releasing the minor.”

According to the Convention on the Rights of the Child, which defines a child as any individual below the age of 18,¹³⁶ State Parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having, infringed the penal law, and in particular:

- i. The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; and
- ii. Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.¹³⁷ In other words, international human rights law promotes the use of non-judicial proceedings in cases where a child is alleged, accused or recognized as having breached the criminal law, when appropriate and desirable and particularly in the case of minor offences such as shoplifting or other property offenses.¹³⁸

Further, a variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs; and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.¹³⁹

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 to additional protections giving due consideration to their age, maturity, and intellectual development. The ICCPR and the Convention on the Rights of the Child (“CRC”), which entered into force in Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings. They are supported by a number of international rules and guidelines. As stated above a number of legal provisions in Cambodian law further provide differential treatment provisions for juveniles in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of minors who have committed criminal offences.

¹³⁶ CRC, Art. 1: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

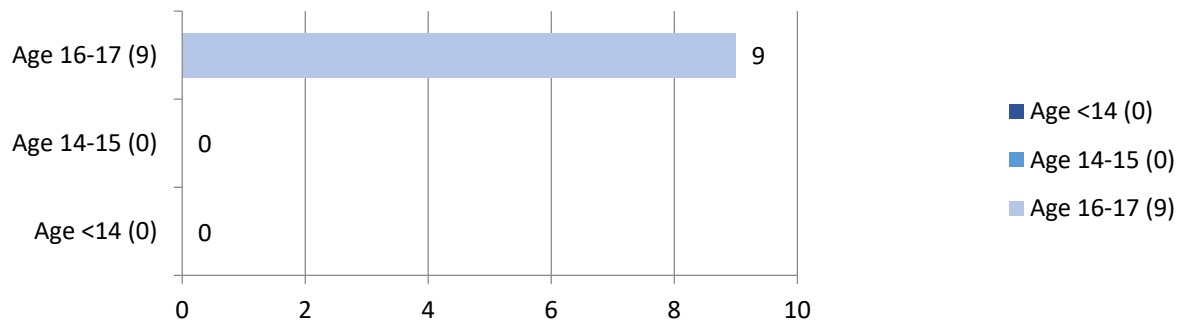
¹³⁷ CRC, Art. 40 (3).

¹³⁸ UN Committee on the Rights of the Child, General comment No. 10, 2007, paras 24 & 25,

<https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (“CRC General Comment 10”). The Committee on the Rights of the Child is the official body created by Article 43 of the CRC, to examine the progress made by State Parties regarding the CRC, and to make suggestions and recommendations on the CRC (Art.45 (d)).

¹³⁹ CRC, Art. 40 (4).

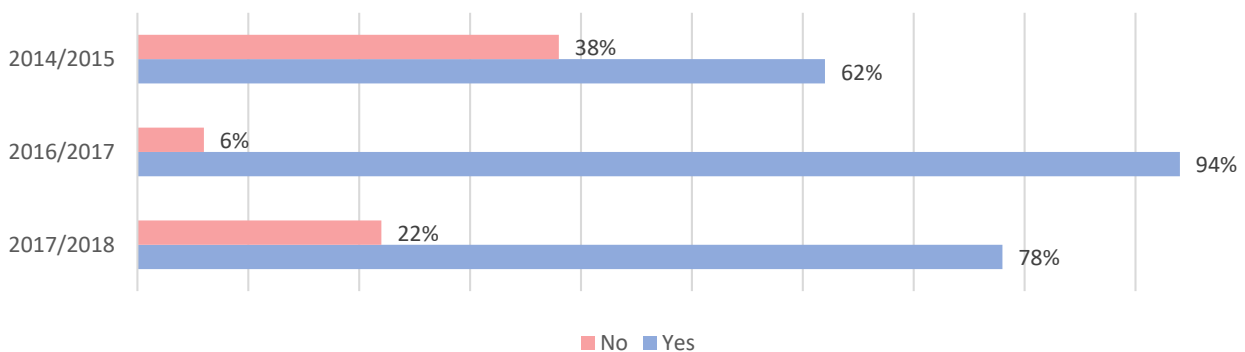
Figure 19: Age at the time of hearing¹⁴⁰



In all the cases involving juveniles which CCHR monitored during the Reporting Period, the defendants were aged 16-17. This constitutes a significant improvement from 2016/2017, when four defendants were below 15 years of age.

During the Reporting Period, out of the 315 defendants involved in the cases that were monitored, nine were juveniles at the time of the offense. Seven of them were held in detention.

Figure 20: Number of juveniles held in detention between 2014-2018



The best interests of the child must be the primary consideration when ordering or imposing penalties upon juveniles found to have infringed criminal law.¹⁴¹ Imprisonment of juveniles is to be considered as a measure of last resort and should be employed only in exceptional cases.¹⁴² Cambodian law also provides for alternative measures to custodial sentences.¹⁴³

Thus, the figures above give rise to serious concerns and are at odds with both international and domestic law, as pre-trial detention of juvenile appears to be the norm rather than a measure of last resort. The Court of Appeal did not make use of the alternative sentencing options identified in Article 40 of the Criminal Code, and in the Law on Juvenile Justice in Article 28 and Chapter 10 on Diversion, such as committing the minor to a social service agency or to a qualified private organization or a specialized hospital or institution. The Court of Appeal also did not act in compliance with Article 5 of the Law on Juvenile Justice, which requires any person in a public function concerning a minor to act in the best interests of the minor, particularly their

¹⁴⁰ This data based on the total number of juvenile defendants (9 individuals) involved in the 8 cases monitored.

¹⁴¹ CRC, Art. 3(1); *see also*, CRC General Comment 10, paras 10 and 71.

¹⁴² CRC, Art. 37(b).

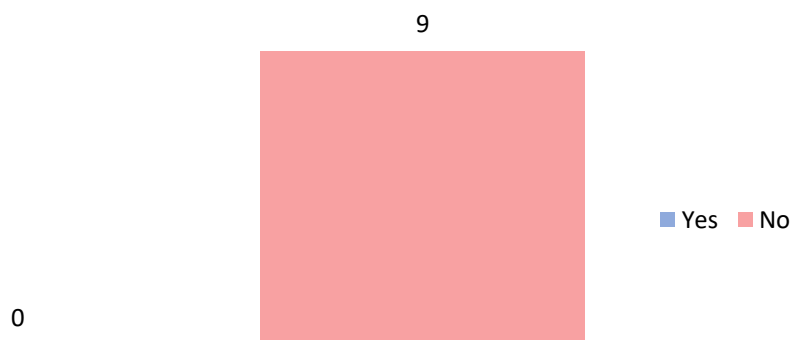
¹⁴³ Criminal Code, Art. 40.

right to development, and which states that arrest or detention of minors should only be used as a measure of last resort.

Under human rights law, a juvenile has the right to have his/her privacy respected at all stages of the proceedings.¹⁴⁴ This includes from initial contact with law enforcement until the final decision or, if sentenced, the release from supervision, custody or deprivation of liberty.¹⁴⁵ The underlying rationale is to avoid the harm caused by undue publicity or libel. Therefore, no information should be publicized regarding the identification of the child offender.¹⁴⁶ Juvenile victims' or defendants' privacy may further be protected via placing the minor behind screens or using other alternative means of providing testimony. The use of tools such as video conferencing systems or closed hearings should be considered.

Figure 21: The protection of juveniles' privacy¹⁴⁷

Were measures taken to protect juveniles' privacy?



No measures were taken to respect the juveniles' privacy in the monitored cases involving juveniles, contravening international human rights standards. Further, all trials were open to the public. This is highly problematic, particularly given that the question of the juvenile's right to privacy during criminal trial was extensively discussed with the Court of Appeal's Deputy Presidents in April 2017,¹⁴⁸ who undertook to review the existing practices related not only to juveniles' privacy, but also to that of victims and witnesses, in order to be compliant with both national and international standards. It is deeply regrettable that despite such efforts, it appears that the rights of juveniles are not fully guaranteed at the Court of Appeal.

¹⁴⁴ CRC, Art. 40(2)(vii).

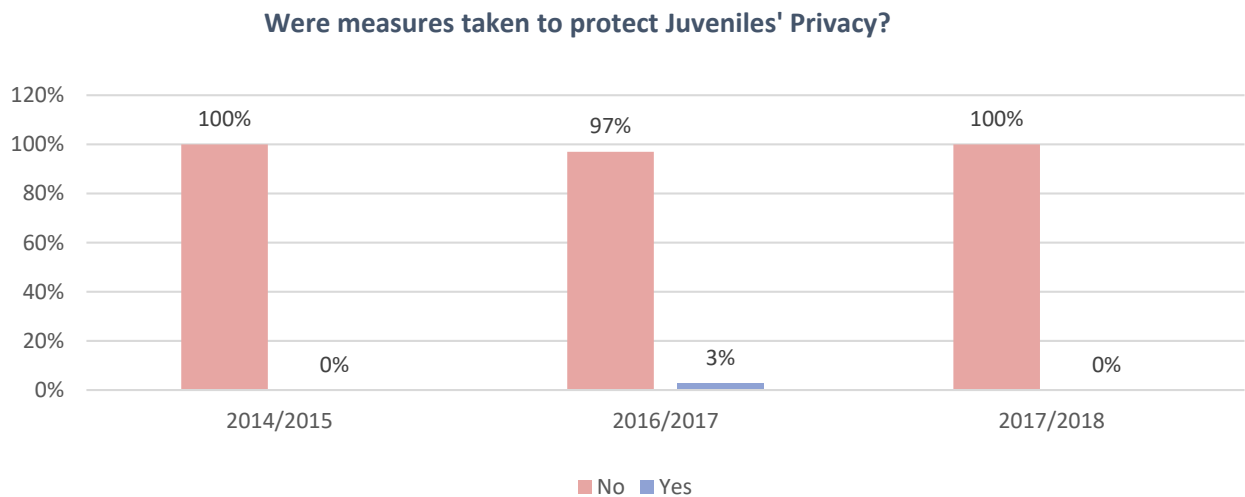
¹⁴⁵ CRC General Comment 10, para. 64.

¹⁴⁶ CRC General Comment 10, para. 64.

¹⁴⁷ This data based on the total number of juvenile defendants (9 individuals) involved in the 8 cases monitored.

¹⁴⁸ On 5 April 2018, CCHR's Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

Figure 22: Evolution of the protection of juveniles' privacy since 2014¹⁴⁹



During the meeting between the Court of Appeal and CCHR, the Court of Appeal refuted the negative findings of the report in relation to the rights of juveniles. In support of this they mentioned the recent installation of video conferencing technology donated by UNICEF to better protect the privacy of juveniles. They also suggested CCHR should record and report to the president of the Court the case number and name of judges who do not fully uphold fair trial rights in juvenile cases, as well as those instances in which privacy is not protected during the hearing. Furthermore, they raised the fact that the implementation of a diversion scheme for juvenile offenders, requiring alternatives to formal prosecution, was not possible due to a lack of mechanisms in place to support such a scheme.¹⁵⁰

¹⁴⁹ This data based on the total number of juvenile defendants (9 individuals) involved in the 8 cases monitored.

¹⁵⁰ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

5. Conclusion

A number of key fair trial rights were guaranteed before the Court of Appeal – including the right to have adequate time and facilities to prepare one’s defense and the right to a public judgment. In addition, the Court of Appeal upheld the protections against double jeopardy and non-retroactivity. Notably, 2017/2018 showed a significant improvement in the enforcement of the protection against self-incrimination (the right not to be compelled to confess guilt) in cases monitored by CCHR.

Regrettably however, the monitoring also uncovered that some fundamental fair trial rights are not fully respected. The right to a public hearing is not fully respected, as none of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom, precluding people from being informed of about the hearing. Further, the right to understand the nature and cause of the charges is, unlike in 2016/2017, are considered not to be fully respected, since the percentage of cases where the defendants were informed of the nature and cause of the charges decreased from 86% to 69% when compared to last year’s monitoring. The right to have legal representation in misdemeanor cases was not always respected, however domestic law does allow judges to proceed with hearings in cases where the defendant is not a juvenile. This practice is not in line with international human rights law which enshrines the right to legal representation before a court for all criminal offences. About 25% of defendants in misdemeanor cases (not involving minors) monitored by CCHR were not represented by a lawyer.

Further, in 34 out of the 213 cases monitored by CCHR, the judges failed to inform the accused about her/his right to legal representation, a concerning trend. Similarly, the presumption of innocence is not fully respected 26% of defendants appearing in the same prison uniform as convicts. Much like in previous years, the respect for the right to a reasoned judgement remains problematic. In virtually all the hearings monitored by CCHR where a judgment was rendered at the time that CCHR was monitoring, the judges failed to cite in detail the legal provisions and evidence upon which they relied to reach their verdict – a drastic increase from 2016/2017. Instead, they only stated that the Court of First Instance’s judgment was upheld or overturned, without explaining why. Last but not least, the rights of juvenile defendants, who should be given special protection under international human rights law and in Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy.

Key fair trial rights have been consistently upheld by the Appeals Court since 2014:

- the right to have adequate time and facilities to prepare a defense;
- the right to a public judgment;
- the non-retroactive application of the law; and
- the protection against double jeopardy.

Regrettably, an equal number of rights have not been fully respected since 2014:

- the right to a public hearing;
- evidentiary rights;
- the right to a reasoned judgment; and,
- the rights of juveniles.

This creates significant cause for concern, particularly given that those issues have been brought to the attention of the authorities on multiple occasions.

When comparing the findings from 2014/2015 to those in the current report, the majority of the findings are similar in terms of which rights are upheld and which are not fully respected. However, two points emerge: first, the right to understand the nature and cause of the charges, which CCHR found was protected in 2014/2015 and 2016/2017, moved to the “not fully respected” section since the percentage of cases where defendants were informed of all relevant charges against them decreased from 85% (2014/2015) and 86% (2017-2018) to 69%. This could be due to a number of factors, including the number or type of cases monitored by CCHR, however, it remains a troubling finding, as the right to know the charges is one of the most fundamental fair trial rights.

Second, and more positively, the protection of the right not to confess guilt (protection against self-incrimination), which was listed as “not fully respected” in 2014/2015 and 2016/2017, significantly improved in 2017/2018, as cases where confessions were obtained free of any form of coercion increased to 95% as opposed to 88% in 2016/2017. It must be noted, however, that 21 individuals alleged that their confession had been obtained under coercive circumstances, including through threats and violence by judicial police, which remains highly problematic. Such cases must be immediately and thoroughly investigated by the competent authorities.

This evidence shows that urgent measures are needed in order to protect fair trial rights in Cambodia. The following sections contains key recommendations to assist the RGC and the authorities in their ongoing efforts.

6. Recommendations

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. For example, improved coordination regarding the transportation of defendants from correctional centers to their hearing, asking witnesses to leave the hearing before they make their statements, and requiring that judges explain their rights to defendants. Others can easily be improved by training judges and lawyers in the implementation of fair trial rights. To that end, CCHR welcomes the issuing of a royal decree establishing regional appeal courts in Tbong Khmum, Battambang and Sihanoukville as this will address some of the issues raised above. By taking immediate measures to address these concerns, the Court of Appeal could set a precedent, serve as an example to Courts of First Instance and, as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

6.1. General Recommendations

- 6.1.1 The Ministry of Justice should hold regular meetings on the practical implementation of fair trial rights with the judges of the Court of Appeal, following the concept of fair trial rights based on national and international standards.
- 6.1.2 The Ministry of Justice should develop a standard form for judgments and send it to all courts to be implemented. The form should set out the following information in order to ensure that the brief report read by the presiding judge is complete:
- The offense(s) with which the defendant is charged and the relevant law(s);
 - The date, time, location of the alleged offense and relevant parties;
 - The fair trial rights to which the defendant is entitled, as outlined on page 7 of this report. In particular, his or her right to be presumed innocent until a final and non-appealable judgment is rendered, and the fact that the burden of proof is on the Prosecutor.
- 6.1.3 The judges should ask the defendant directly whether he or she understands the charges and his or her rights. Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

6.2. Recommendations Regarding the Right to a Public Hearing

- 6.2.1 The Court of Appeal and the Ministry of Justice should ensure that daily schedules of all hearings are posted on information boards outside the court room at least 24 hours prior to the hearing, and continue to guarantee public access to courtrooms in all but exceptional cases, which would include that of juveniles. When such information is published on the information board, the name of juveniles should not be spelled out, but instead they should be referred to by their initials, in order to protect their privacy.

6.3. Recommendations Regarding the Right to Understand the Nature and Cause of the Charge(s)

- 6.3.1 The judges of the Court of Appeal should inform the defendant of the charges against them and provide relevant information such as the date, location, parties involved and the applicable law. This is particularly important in cases where charges may have been changed or amended since the initial arrest/charge.

6.3.2 The Judges of the Court of Appeal should provide a comprehensive explanation of the trial rights of accused.

6.3.3 The judges of the Court of Appeal should ask the defendant directly whether he or she understands the charges against them and his or her rights.

6.4. Recommendations Regarding the Right to be Present at Trial and to Have Legal Representation

6.4.1 The Court of Appeal and the General Department of Prisons should consult and coordinate with each other in order to address any logistical and communication issues as soon as possible regarding the locations of defendants, and in particular:

- The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to Prosecutors;
- The Court of Appeal must ensure that information regarding date and time of the appeal hearings are sent to the right correctional center in which the defendant is detained.

6.4.2 The judges of the Court of Appeal should postpone any hearing if the defendant is not present, even if he or she is represented by a lawyer, unless he or she has unequivocally and formally waived his or her right to be present.

6.5. Recommendations Regarding the Right to the Presumption of Innocence

6.5.1 The Ministry of Justice and the Ministry of Interior shall issue and disseminate clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgement has not been issued, must be allowed to appear in Court wearing civilian clothes.

6.5.2 The judges of the Court of Appeal should allow those accused who are brought to court wearing a convict uniform to use their civil uniform instead before the during hearings.

6.5.3 The judges of the Court of Appeal must unequivocally inform the defendant of his or her right to be presumed innocent until a final judgment is rendered; of the fact that the burden of proof is on the prosecutors; and that the defendant has the right to remain silent without such silence being used against him or her.

6.5.4 Promote the greater use of alternatives to pre-trial detention, including judicial supervision,¹⁵¹ in accordance with UN SDG 16.3.2.

6.5.5 Inform the public about the right to state-sponsored legal aid, including through publications in police offices, prisons and courts buildings.

6.6. Recommendations Regarding Evidentiary Rights

6.6.1 The judges of the Court of Appeal shall inform the defendants of their rights to present evidence in the same conditions as the evidence presented against them.

6.6.2 The judges of the Court of Appeal should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure witnesses are not influenced by other evidence and testimony presented during the trial.

¹⁵¹ 14 March 2018 UNSRSHRC End of Mission Statement, p. 4.

- 6.6.3 The judges of the Court of Appeal must carefully assess whether the evidence presented to them establishes beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, he or she must be acquitted.
- 6.6.4 Develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,¹⁵² and ensure that all judges are trained accordingly.

6.7. Recommendations Regarding the Right to a Reasoned Judgment

- 6.7.1 Ensure that written Judgments are made publicly available, with redactions to be applied where necessary to protect the identity of the defendants, victims or witnesses or for any other reason.
- 6.7.2 Drawing from the practice of the ECCC,¹⁵³ establish a framework in which judges are obligated to inform and explain the legal and evidential reasons behind their verdict and ensure that reasoned written judgments are given to the defendant.

6.8. Recommendations Regarding the Protection of Juveniles' Rights

- 6.8.1 Speed up and strengthen the implementation off the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 6.8.2 Follow the best practice of the ECCC and allow juvenile defendant to appear in court wearing their own clothing to court, at all stages of the criminal procedure.
- 6.8.3 Limit pre-trial detention of juveniles to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile's rights.
- 6.8.4 Ensure that judges and prosecutors undergo specific training concerning issues relating to juvenile justice.
- 6.8.5 Examine alternatives to custodial sentences for juveniles, and implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone.
- 6.8.6 The Court of Appeal should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly. The MoJ and the MoSVY should implement a diversion scheme; through which a juvenile offender is supported and rehabilitated within the community as an alternative to formal prosecution. This scheme must be implemented for all first time offenders with the exception of the most serious felony offenses.
- 6.8.7 The Ministry of Justice shall review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on juvenile justice system, including, but not limited to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"),¹⁵⁴ the UNICEF guidance for legislative reform

¹⁵² The practice of the ECCC may prove useful guidance, particularly its internal rules as well as paragraphs 204 to 209 of the case 002/01 Appeal Judgement, see 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 Nov 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf.

¹⁵³ See esp. 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 Nov 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf.

¹⁵⁴ Available at <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

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¹⁵⁵ Available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf.

¹⁵⁶ Especially p. 107, http://www.unicef.org/publications/index_43110.html.

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Database

CCHR Trial Monitoring Database, available at <http://tmp.sithi.org/>

8. Appendices

Appendix I: Appeal Hearing Monitoring Checklist

A. General Trial Information

1. OVERVIEW				
1(a) Trial Date:	Start Time:		Room Number:	
1(b) Monitors:				
1(c) Party bringing the appeal (give reasons):	<input type="checkbox"/> Defense	<input type="checkbox"/> Prosecution (Court of first instant or Appeal Court)		
	<input type="checkbox"/> Civil Party			
	Reason for appeal:		<input type="checkbox"/> I/U	
	Date of Appeal:			
1(d) Judge:	1 st 2 nd 3 rd			
1(e) Prosecutor:				
1(f) Clerk:				
1(g) Lawyer:				
1(h) Number of Accused	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(i) 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:
1(j) Original verdict and sentence	Imprisonment: D1: D2: D3: D4: D5	Fine: D1: D2: D3: D4: D5	Compensation: D1: D2: D3: D4: D5	Date of Verdict <input type="checkbox"/> I/U
1(k) Which Court of First Instance is the party appealing from?				
1(l) Which prison was the accused detained?	<input type="checkbox"/> N/A <input type="checkbox"/> I/U			

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 Reason:

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

3(a) Did the judge state all relevant charges against all accused?	<input type="checkbox"/> State all <input type="checkbox"/> State some <input type="checkbox"/> Non
3(b) Did the judge state the relevant law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(c) Did the judge state the date of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3 (d) Did the judge state the place of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(e) Did the judge state the parties involved?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(f) If required, was an interpreter provided?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3(g) 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 <input type="checkbox"/>
4(a) Did the judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E <input type="checkbox"/> Lawyer Represented
4(b) Did the judge inform (I) and explain (E) to the accused their right not to answer or answer?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E

5. RIGHT TO CALL AND EXAMINE WITNESSES

5(a) Was there anything said by any party during the hearing or did anything happen to	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party?
	<input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party

suggest that any party was not given the opportunity to call witnesses?	Reason: If yes, was a formal application made at any stage during the hearing for the witness to attend? <input type="checkbox"/> Yes <input type="checkbox"/> No		
5 (b) Were the witnesses present in the courtroom before they were questioned?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

PLEASE GIVE A CLEAR DESCRIPTION OF THE FACTS OF THE CASE:

6. PRESENTATION OF EVIDENCE:

6.1: PROSECUTION		<input type="checkbox"/> N/A
6.1(a) Confession evidence	Where was confession made? <input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating J <input type="checkbox"/> Other: <input type="checkbox"/> N/A	
	Any other evidence to corroborate confession? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, please give detail:	
6.1(b) Documentary evidence	Summary of Contents: <input type="checkbox"/> N/A	
	Reason (if known) that evidence is read and witness not present: <input type="checkbox"/> N/A <input type="checkbox"/> I/U	
	Were there any Submissions re-reading out evidence rather than calling witness made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:	
	Does any party disagree with content? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, who? <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:	
6.1(c) Live witness evidence	Summary of Evidence: <input type="checkbox"/> N/A	

	<p>Challenges to the evidence by any other party (describe nature of challenge and detail which party):</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If there were any challenges, which party made the objection;</p> <p><input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
6.1(d) Expert evidence	<p>Type: <input type="checkbox"/> forensic <input type="checkbox"/> medical</p> <p><input type="checkbox"/> other: <input type="checkbox"/> N/A</p>
	<p>Witness present or statement/report read out?</p> <p><input type="checkbox"/> Present <input type="checkbox"/> Absent <input type="checkbox"/> N/A</p> <p>If absent, giving reason:</p> <p><input type="checkbox"/> I/U</p>
	<p>Other parties agree with expert evidence?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why?</p> <p><input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>
	<p>If read out and witness not present, submissions re-reading out evidence rather than calling witness made by any party? Give details.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p>

6.2 DEFENSE	<input type="checkbox"/> N/A <input type="checkbox"/> Absent
6.2(a) Confession evidence	<p>Was the confession retracted at any stage? Give details.</p> <p><input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating J</p> <p><input type="checkbox"/> Trial Judge <input type="checkbox"/> N/A</p> <p>Detail:</p>
	<p>Challenge to confession evidence?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail basis of any challenge:</p>
	<p>Response/ ruling to any challenge and reasons given by the judge:</p> <p><input type="checkbox"/> N/A</p>
6.2(b) Documentary evidence	<p>Summary of Contents:</p> <p><input type="checkbox"/> N/A</p>
	<p>Reason (if known) that evidence is read and witness not present:</p>

	<input type="checkbox"/> N/A <input type="checkbox"/> I/U Submissions re-reading out evidence rather than calling witness made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:
	Does any party disagree with content? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:
6.2(c) Live witness evidence	Summary of Evidence: <input type="checkbox"/> N/A Challenges to the evidence by any other party (describe nature of challenge and detail which party) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If there is any which party that make the objection; <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:
6.2(d) Expert evidence	Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical <input type="checkbox"/> Other: <input type="checkbox"/> N/A Witness present or statement read out? <input type="checkbox"/> Present <input type="checkbox"/> Absent If absent, reason given: <input type="checkbox"/> I/U Other parties agree with expert evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If No, who and why? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail: If read out and witness not present, submissions re-reading out evidence rather than calling witness made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Give detail:
6.2(e) Defense put forward (eg. Alibi, self-defense etc.)	Summary: <input type="checkbox"/> N/A

6.3 CIVIL PARTIES	<input type="checkbox"/> N/A <input type="checkbox"/> Absent
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6.3(a) Documentary evidence	Summary of Contents:
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	<p><input type="checkbox"/> N/A</p> <p>Reason (if known) that evidence was read and witness not present:</p> <p><input type="checkbox"/> N/A <input type="checkbox"/> I/U</p> <p>Submissions re-reading out evidence rather than calling witness made by any party?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p> <hr/> <p>Does any party disagree with content?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other:</p> <p>Detail:</p>
6.3(b) Live witness evidence	<p>Summary of Evidence:</p> <p><input type="checkbox"/> N/A</p> <p>Challenges to the evidence by any other party (describe nature of challenge and detail which party)</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If there is any which party that make the objection;</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defense <input type="checkbox"/> Other:</p> <p>Detail:</p>
6.3(c) Expert evidence	<p>Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical</p> <p><input type="checkbox"/> Other: <input type="checkbox"/> N/A</p> <hr/> <p>Witness present or statement read out?</p> <p><input type="checkbox"/> Present <input type="checkbox"/> Absent</p> <p>If absent, giving reason:</p> <p><input type="checkbox"/> I/U</p> <hr/> <p>Other parties agree with expert evidence?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Other:</p> <p>Detail:</p> <hr/> <p>If read out and witness not present, submissions re-reading out evidence rather than calling witness made by any party? Give details.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Other:</p> <p>Give detail:</p>

6.4 OBJECTIONS

Did any party make any formal objections to any evidence during the hearing? Describe nature of the objection and the judges' response:

Yes No N/A

Prosecution	Defense	Civil Party

7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

7(a) Was there anything said during the hearing or did anything happen to suggest that any party was not 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: If yes, was a formal application made for the evident to be admitted? <input type="checkbox"/> Yes <input type="checkbox"/> No
7 (b) Was there anything to suggest that any party was not 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: If yes, was a formal application made at any stage during the hearing to question the witness? <input type="checkbox"/> Yes <input type="checkbox"/> No
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 access to the case file prior to the hearing? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant (if self-represented) <input type="checkbox"/> Defense Counsel <input type="checkbox"/> Civil Party Comment: [Please provide details as to why it is suggested that the relevant party did not have access to the case-file?]
7(d) Was the defendant or defense counsel denied the opportunity to have the last word?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Defendant <input type="checkbox"/> Defense Counsel If no, comment:

8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE PARTIES INVOLVED

8(a) Did the judge behave in an intimidating manner towards a party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
8(b) Did the judge make discriminatory	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was the discriminatory comment based on the party's:

comments about any party?	<input type="checkbox"/> Race	<input type="checkbox"/> Gender	<input type="checkbox"/> Religion	<input type="checkbox"/> Other
Please explain the nature of the comment:				
8(c) Did any party leave the court room during the trial?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
	If yes, which party?			
	<input type="checkbox"/> Judge	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Lawyer	
Please explain reason:				
<input type="checkbox"/> I/U				
8(d) Did any party answer a mobile telephone during the trial?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
	If yes, which party:			
	<input type="checkbox"/> Judge	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Lawyer	
How did they respond?				
	<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 Enter deliberation room 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 ASSESSMENT OF EVIDENCE

10(a) Did the evidence presented substantiate the necessary elements of the offence?		
Element of offence:	Relevant evidence:	
10(b) Summaries of closing arguments:		
Prosecution	Defense	Civil Party

11. VERDICT

11(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		
11(b) Date of verdict:	_____	<input type="checkbox"/> N/A		
11(c) How many judge were present when the verdict was delivered?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> I/U
11(d) Was the verdict announced in public?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> I/U	
	If no, please comment:			
11(e) Summary of judge's reasons for verdict :	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> I/U	
11(f) Were the lawyers representing the parties presented?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	<input type="checkbox"/> I/U
11(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? If yes, please provide details:	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

TOTAL TIME OF HEARING:

SPECIAL NOTE:

B. Individual Defendant Information

12. CRIMINAL RESPONSIBILITY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
12(a) Was the defendant 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

13. LEGAL BASIS OF CHARGES					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5

13(b) Charge against defendant	<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: Relevant law: Relevant article of the law:					
6(b) Elements of offence to be proven in order to secure a conviction:					

PRE-TRIAL RIGHTS

14. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
14(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
14(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
14 (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
14 (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 (e) Was there an application for bail?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
If Yes, Summary of defense application and any proposed					

conditions of judicial supervision;	
Summary of Prosecutor's comments:	
Summary of CP comments:	
Judges' decision and reasons:	

15. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
15(a) Was there anything to suggest the defendant was interrogated without a lawyer present? If yes, please explain:	<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
15(b) Was there anything to suggest that threats were made to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<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
15(c) Was there anything to suggest that violence or torture were used to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<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. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
16(a) Was there anything to suggest that the lawyer of the defendant was assigned on the day of the appeal? If yes, please explain:	<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 issue of adequate time and facilities for preparation raised by the defense? If yes, please explain:	<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
---	---	---	---	---	---

TRIAL RIGHTS

17. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
17 (a) Was the defendant 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
17 (b) Was the defendant 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
17(c) Did any of the lawyers represent more than one defendant?	<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 defendant 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
Details:					

18. PRESUMPTION OF INNOCENCE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
18(a) Did the defendant 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
18(b) Was the defendant 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
18(c) Were any statements made by the judge about the guilt of the defendant 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:					
18 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant? If yes, please explain:	<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

19. PROHIBITION OF DOUBLE JEOPARDY

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
19(a) Was there anything to suggest that the defendant had been tried and sentenced for this offense previously? If yes, please explain:	<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. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
20(a) Was the law under which the defendant is charged in force on the date the offense was allegedly committed? If no, please explain:	<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

21. VERDICT I/U

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
21(a) What was the court's ruling?	<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
21(b) Did the judge refer to the article of the law under which the defendant 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

21(c) 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
21 (d) If the defendant 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

22. SENTENCE <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
22(a) Was the defendant 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: Prison: Probation:					
22(b) Was the defendant ordered to pay a fine? Amount:	<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
22(c) Was the defendant ordered to pay compensation? Amount:	<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
22(d) Was there any other alternative sentence? If yes, please provide details:	<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

JUVENILE DEFENDANT

23. AGE					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5

23(a) Age at the time of the offense	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
23(b) If under the age of 14 at the time of the offense did the judge immediately acquit the juvenile?	<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

24. PRE-TRIAL DETENTION

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
24 (b) Was there anything to suggest that the juvenile was not separated from adults? Comment:	<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

25. TRIAL N/A Absent

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
25(a) Were any measures taken to protect the privacy of the juvenile during the hearing? Details:	<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
25 (b) Did the judge give the 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	<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

26. SENTENCE N/A I/U

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
26(a) Did the judge cite Article 38 or 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39

of the Penal Code when sentencing the juvenile?	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A
26(b) Was there anything to suggest that the judge considered imposing a non-prison sentence? Comment:	<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

Appendix II: Trial Monitors Code of Conduct

Preparation and prerequisites

General Duties

Confidentiality

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

Prior to Implementation of the Trial Monitoring Project

Preliminary assessments

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

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

Notification

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

Prior to Each trial to be monitored

Preliminary Assessments

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

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

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

Notification

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

Access

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

During the Trial

General

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

Identification

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

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.
- Wear appropriate clothing.
- Arrive promptly at court.

- Maintain a respectful approach during all interactions with court officials and actors.
- Visibly make extensive notes during hearings based on the CCHR checklist, irrespective of whether the trial is being recorded.
- Monitors must be familiar with and fully understand the checklist and guidelines for trial monitoring.
- Ensure the safety and confidentiality of notes.
- Get a neutral party to give introduction to court (only if staying the entire time) to increase visibility.

Impartiality and non-interference

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

Where possible, Trial Monitors should take note of related newspaper articles referring to the trial and be aware of practical observations for future Trial Monitors.