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Cambodian Center for Human Rights

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December 2023

Fair Trial Rights in Cambodia

Monitoring at the Phnom Penh, Battambang, Tboung Khmum, and Preah Sihanouk Courts of Appeal

Annual Report (1 January to 31 December 2022)



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 (“The 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 peaceful Cambodia in which all people can enjoy the fundamental human rights to which they are entitled, all are subject to the rule of law without impunity, all are treated equally without discrimination, all are empowered to participate fully in the democratic process, and all can share in the benefits of Cambodia’s sustainable economic development.

CCHR’s logo shows a white bird flying out of a circle of blue sky – this symbolizes Cambodia’s bid for freedom.

CCHR’s Fair Trial Right Project

The Project is the successor of CCHR’s Trial Monitoring and Judicial Reform Projects and has the overall goal of supporting the right to a fair trial with two main objectives: firstly, increasing compliance with fair trial rights standards within the judiciary; and secondly socializing the concept of fair trial rights among the public. Under its first objective, the Project conducts trial monitoring at the Phnom Penh, Battambang, Tboung Khmum, and Preah Sihanouk Courts of Appeal, the results of which are published and used for evidence-based advocacy to encourage increased respect for international fair trial standards within Cambodia’s courts and justice sector. The Project has been monitoring appeal trials at the Phnom Penh Appeal Court since 2013; and at the Battambang, Tboung Khmum and Preah Sihanouk Appeal Court since June/July 2022. The present report is the seventh’s annual report produced by the Project, and the first that includes data from trials monitored at all the Appeal Courts.



Under the Project, CCHR has also produced a **series of modules** containing full explanations, videos, infographics, and quizzes on all the fair trial rights whose respect by the Appeal Courts is monitored by CCHR’s trial monitors. The modules are available on the Cambodian Human Rights Portal (www.sithi.org).

Queries and Feedback

This Report and the previous “Fair Trial Rights in Cambodia” reports can be found on CCHR’s website www.cchrcambodia.org and [Sithi Portal](http://www.sithi.org) at <https://www.sithi.org/tmp/publication?type=report>.

Should you have any questions or require any further information about this Report, please email CCHR at info@cchrcambodia.org.

Alternatively, please contact CCHR at:

#798, Street 99, Sangkat Boeng Trabek, Khan Chamkarmon, Phnom Penh, Cambodia.

Tel: +855 (0) 23 72 69 01



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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
CHRC	Cambodian Human Rights Committee
Checklist	The checklist used by CCHR’s Trial Monitors to record trial data when monitoring trials
Checklist Guidance	Comprehensive guidance notes to help CCHR’s 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’s Trial Monitors are bound
Constitution	The Constitution of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
Database	The database in which CCHR’s Trial Monitors store trial data recorded on checklists
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
UNHRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
LOC	Law on the Organization of the Courts
LSJP	Law on the Statute of Judges and Prosecutors
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
N/A	Non-Applicable
NSDP	National Strategic Development Plan
NGO	Non-governmental Organization
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’s Fair Trial Rights Project
Reporting Period	1 January 2022 to 31 December 2022
RGC	Royal Government of Cambodia
Trial Monitor	CCHR’s 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

Executive Summary

Between 1 January and 31 December 2022 (the “Reporting Period”), CCHR’s Fair Trial Rights Project (the “Project”) monitored 521 criminal trials at four Courts of Appeal in **Phnom Penh, Battambang, Tboung Khmum, and Preah Sihanouk** provinces¹ to assess their 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.

It should be noted that this Executive Summary does not reflect how the individual target courts have performed in upholding fair trial rights, except for the analysis on the evolution of fair trial rights at the Phnom Penh Appeal Court. The performance of each target court will be assessed over the course of the analysis.

The Report finds that a number of key fair trial rights were guaranteed before the Courts, namely the pre-trial right to speak with a lawyer, the right to adequate time and facilities to prepare a defense, and the right to a public judgment.

The monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The right not to be compelled to confess guilt and to testify against oneself has been classified as being not fully respected due to the remaining number of defendants who claim they have been subjected to violence or torture to force them into confessing the alleged crime (17 defendants out of 724) during the police investigation.

The fundamental right to a public hearing was not fully respected as 140 out of the 521 hearings monitored by CCHR did not have any notice posted online or on the public board outside the courtroom. The right to understand the nature and cause of the charges was not fully respected either: in 30.3% of the monitored cases, the defendants were not informed of all the charges against them; and in 10% of the monitored cases, they were not informed of the charges against them at all.

The right to legal representation was not always respected, but it should be noted that the target courts always complied with the relevant domestic legal provisions governing it. About 33.3% of defendants were not represented by a lawyer - although this only happened in misdemeanor and petty crime cases. Further, in 69 out of the 521 cases monitored by CCHR, the judges failed to inform and explain the accused about their right to legal representation, and in 47 cases, the judge only informed the defendants without explaining this fundamental right. Similarly, the presumption of innocence remains not fully respected, with judges failing to inform and explain 49.2% of the defendants about their right to remain silent. In addition, 33.9% of the defendants who appeared in court did so wearing the same prison uniform as convicts, including six children.

The right to liberty was not fully upheld by the Courts, with 410 defendants out of 724 being held in pre-trial detention. All of them remained in detention between the reception of their appeal and the courts’ verdict. Last but not least, the rights of children in conflict with the law, who are entitled to special protection under international human rights law and Cambodian law, continued to be undermined with no specific measures put into place to protect their privacy during the hearing in 10 of the 22 monitored cases where the minors

¹ The Project started to monitor trials at the Battambang Appeal Court on 29 June 2022; at the Tboung Khmum Appeal Court on 15 July 2022; and at the Preah Sihanouk Appeal Court on 24 July 2022.

were present, and the widespread use of pre-trial detention (23 juvenile defendants out of 26, including two children aged 14-15).

The Report also compares this year's data with that of previous reporting periods to identify trends and analyze the evolution of fair trial rights at the Phnom Penh Appeal Court.² It found that several key fair trial rights have been consistently upheld by the Court since 2014, including the pre-trial right to speak with a lawyer, the right to adequate time and facilities to prepare a defense, and the right to a public judgment. However, a certain number of rights have been consistently not fully respected since 2014, such as the right to a public hearing, the right to a reasoned judgment, evidentiary rights, and the rights of children in conflict with the law. While the majority of the findings are consistent with previous reporting periods, three main points emerge.

First, the right to a public hearing, which has been classified as not fully respected since 2014, saw a deterioration year on year, with the Court failing to post hearing notices on a board and/or online in nearly one-third of the cases monitored.

Second, the right not to be compelled to confess guilt or to testify against oneself continues to be not fully respected. During the Reporting Period, 4% of the defendants involved in the monitored cases alleged that their confession had been obtained through violence or torture during the police investigation, up from 2.5% in 2021. Although this rate is lower than in previous Reporting Periods - 6.7% in 2019/2020, 4.3% in 2018/2019, and 7% in 2017/2018 and 2016/2017 -; allegations of violence or torture remain highly problematic and must be immediately and thoroughly investigated by the competent authorities.

Third, the rights of children in conflict with the law have been consistently undermined by the Court since 2014. They continued to be during the Reporting Period, with no measures taken to protect their privacy during hearings and a quasi-systematic use of pre-trial detention. Children are among the most vulnerable segments of the population and need special protection when confronted with the justice system. It is therefore critical that the Court increases its efforts to fully uphold their fair trial rights.

CCHR is not yet able to conduct a similar analysis for the three other Appeal Courts, given that the corresponding trial monitoring activities only started in 2022. The Report ends with key thematic recommendations for the Courts and relevant institutions to address the shortcomings identified in the Report and improve respect for fair trial rights throughout Cambodia.

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.

² CCHR's Fair Trial Rights 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.

1. Introduction

1.1. The Right to a Fair Trial

The right to a fair trial is a central pillar of any criminal justice system and a key component of respect for the rule of law. 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 both 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.³

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.

1.1.1. The right to a fair trial under international law

The right is internationally recognized and enshrined in international law by the United Nations Universal Declaration on Human Rights (“UDHR”)⁴ and the United Nations International Covenant on Civil and Political Rights (“ICCPR”),⁵ among other instruments.⁶ Article 10 of the UDHR and Article 14 (1) of the ICCPR both guarantee the right to a fair and public hearing by a competent, independent, and impartial tribunal. The ICCPR further elaborates on the various components of a fair trial, which include, but are not limited to, the following rights and principles (referred to as “fair trial rights”): the right to a public hearing, the presumption of innocence, the right to liberty, the right to be tried without undue delay, the right to understand the nature and cause of the charge(s), the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare a defense, the right to legal representation, the protection against self-incrimination, and the right to appeal to a higher court on grounds of fact and law.

Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution directly incorporates international human rights obligations into Cambodian domestic law.⁷ This provision means that international human rights norms, including provisions of the ICCPR, are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.⁸

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 legal instruments.

³ For more details on this right, see CCHR’s module “What are fair trial rights?” (September 2022), <https://sithi.org/fair-trial-rights/what-are-fair-trial-rights>.

⁴ UDHR, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁵ ICCPR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶ See also American Convention on Human Rights (22 November 1969) Art. 8; African Charter on Human and Peoples Rights (27 June 1981) Art. 7; European Convention on Human Rights (4 November 1950) Art. 6; European Charter of Fundamental Rights of the European Union (7 December 2000) Art. 47-50.

⁷ 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, <https://www.sithi.org/laws/2008-02-19-constitution-of-the-kingdom-of-cambodia>.

⁸ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007) p. 2, https://www.ccc.gov.kh/detail_info_en.php?txtID=453.

The basic framework for a fair trial is provided for by the Constitution of the Kingdom of Cambodia (“Constitution”), which guarantees the following rights for Khmer citizens:

- 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, and 132 of the Constitution also provide for the separation of powers and for an independent judiciary, as guaranteed by the King.

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.⁹ The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), adopted in 2007,¹⁰ 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.

Additionally, the three fundamental laws pertaining to the judiciary, namely the Law on the Organization of the Courts (“LOC”),¹¹ the Law on the Statute of Judges and Prosecutors (“LSJP”),¹² and the Law on the Organization and Functioning of the Supreme Council of Magistracy (“LOFSCM”),¹³ adopted in 2014, aim to ensure the independence of the judicial power and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws have been criticized for weakening the separation of powers and the independence of the judiciary.¹⁴

⁹ ‘Cambodian Criminal Code’, <https://www.sithi.org/laws/2014-01-31-criminal-code-2014>.

¹⁰ 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 is available here: <https://sithi.org/tmp/publication/view/2007-09-03-criminal-procedure-code-of-the-kingdom-of-cambodia-2007>.

¹¹ ‘The Law on the Organization of the Court’ (2014) <https://www.arbitrationcouncil.org/download/law-on-the-organization-of-courts/?wpdmdl=2883&refresh=6327d7f63be941663555574>.

¹² ‘The Law on the Statute of Judges and Prosecutors’ (2014), <https://www.arbitrationcouncil.org/download/law-on-the-status-of-judges-and-prosecutors/?wpdmdl=2879&refresh=6327d84ac10921663555658>.

¹³ ‘The Law on the Organization and Function of the Supreme Council of Magistracy’ (2014), <https://www.arbitrationcouncil.org/download/law-on-the-organization-and-functioning-of-supreme-council-of-magistracy/?wpdmdl=2875&refresh=6327d875ee9ff1663555701>.

¹⁴ CCHR, Destination Justice, API, ADHOC, Transparency International, IFEX, ‘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’ (12 July 2018), <https://www.sithi.org/tmp/publication/view/2018-07-12-3rd-cycle-of-upr-report-on-the-access-to-justice>; CCHR, ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’ (2014) <https://sithi.org/medias/files/projects/tmp/publication/cchr-analysis-of-the-draft-laws-on-judicial-reforms-eng-final2014-05-16.pdf>; OHCHR Cambodia ‘Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards’ (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>; OHCHR Cambodia ‘Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards’ (May 2014) <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20SCM%20Draft%20law.%20ENG%20May%202014%20final.pdf>; OHCHR Cambodia ‘Comments on certain provisions of the draft law on the organisation of courts in relation to international human rights standards’ (May 2014)

Lastly, the Law on Juvenile Justice, which was adopted in July 2016 and came into force in January 2017,¹⁵ sets out the norms and procedures for dealing with children who commit criminal offenses.¹⁶ The law needs to be strictly applied in order to safeguard the rights and best interests of the child.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).¹⁷ 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, which formed the basis of a Legal and Judicial Reform in a National Strategic Development Plan (“NSDP”) for 2014-2018.¹⁸ The first of these objectives was the improvement of the protection of fundamental rights and freedoms. The RGC released a new NSDP for 2019-2023 in mid-2019, outlining the RGC’s key priorities, which include promoting the justice service by improving the effective work of law enforcement officials, strengthening the public’s trust in the judiciary, and fighting injustice.¹⁹ The 2019-2023 NSDP also announced that the Ministry of Justice (“MoJ”) will continue implementing its Legal and Judicial Reform.

The Courts and relevant Ministries have also made a number of announcements and taken initiatives in recent times which could lead to noticeable improvements on legal and judicial reform:

- The establishment of three regional appeal courts in Battambang, Tboung Khmum, and Preah Sihanouk provinces and plans to fully train and deploy judges to regional Appeal Courts.²⁰ All three new regional appeal courts started holding trials in 2020,²¹ enabling to ease court backlog at the Phnom Penh Court of Appeal. In June 2022, the MoJ also announced it would establish three additional appeal courts in Siem Reap, Oddar Meanchey, and Stung Treng provinces by the end of 2022 to help clear the appeal backlog and bring legal services closer to where people live.²² However, they had still not been established at the time of drafting.
- The publication of 1,04 verdicts from civil cases by the MoJ, to use as court precedents for lawyers and the public, with the promise to continue publishing civil and criminal verdicts.²³ The conduct of a 13-month campaign by the MoJ to clear criminal backlog throughout Cambodia in order to ease prison overcrowding. The MoJ wrapped up the campaign in June 2021, stating that more than 37,900 criminal cases, representing 96% of the total backlogged cases, had been resolved.²⁴

<http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20org%20of%20courts,%20ENG%20May%202014%20final.pdf>.

¹⁵ ‘Law on Juvenile Justice’ (2016), <https://sithi.org/laws/2016-06-29-law-on-juvenile-justice>.

¹⁶ UNICEF, ‘Q&A on the newly adopted Juvenile Justice Law in Cambodia’ (19 September 2016) <http://unicef-cambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html>

¹⁷ Cambodian Rehabilitation and Development Board (“CRBD”) & Council for the Development of Cambodia (“CDC”), ‘Government’s Policy Performance’ (2004), para. 16, http://old.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm.

¹⁸ Council for Legal and Judicial Reform, ‘Plan of Action for Implementing the Legal and Judicial Reform Strategy’ (29 April 2005); RGC, ‘National Strategic Development Plan 2014-2018’ pp. 9-12, paras 2.11 to 2.23, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_364549.pdf (translation).

¹⁹ Ministry of Planning, ‘National Strategic Development Plan 2019-2023’, p. 205-206, para 4.21(7), http://cdc-crdb.gov.kh/en/strategy/documents/nsdp-2019-2023_en.pdf.

²⁰ Report of the Special Rapporteur on the situation of human rights in Cambodia (15 August 2018) para. 81.

²¹ Sen Davis, ‘Preah Sihanouk Appeal Court in full service’ (*Khmer Times*, 7 September 2020) www.khmertimeskh.com/50761092/preah-sihanouk-appeal-court-in-full-service/.

²² Buth Reaksmey Kongkea, “Case load forces ministry to set up more appeal courts,” (*Khmer Times*, 9 June 2022), <https://www.khmertimeskh.com/501090610/case-load-forces-ministry-to-set-up-more-appeal-courts/?fbclid=IwAR0ABKu6vti3f18yaslvC2aeLrpOM7sUUanWcYaTTi1LzHodqRyIEjt4PCM>.

²³ This publication is available at <https://www.moj.gov.kh/kh/actual-civil-judgments>.

²⁴ Voun Dara, “Ministry of Justice wraps up case backlog clean-up effort” (*Phnom Penh Post*, 30 June 2021), <https://www.phnompenhpost.com/national/ministry-justice-wraps-case-backlog-clean-effort>.

- The issuance of a new *Prakas* on the Procedures for Monitoring, Supervising and Reintegrating Inmates on Conditional Release by the MoJ on 14 July 2021, which sets the conditions for conditional release of prisoners.²⁵
- The deployment of volunteer lawyers nationwide by the Bar Association of the Kingdom of Cambodia (“BAKC”) in collaboration with the Ministry of Interior (“MoI”) to provide access to legal aid for indigent defendants throughout the country,²⁶ including children in conflict with the law,²⁷ and the adoption by BAKC of a policy encouraging lawyers to provide increased pro-bono services to the poor.²⁸
- The formation, by the Cambodian Human Rights Committee (“CHRC”), of a legal aid group to defend the poor whose rights have been violated,²⁹ and the creation of a legal aid hotline in order to promote access to justice.³⁰
- On 26 May 2022, it was reported that the Bar Association of the Kingdom of Cambodia had recently built 26 lawyer-inmate meeting rooms offering improved conditions for legal consultations at prisons and correctional centers across the country. These rooms provide attorneys and their clients the ability to have private consultations, in line with international best practices.³¹
- On 29 June 2022, the MoJ said it was preparing legislation for the establishment of separate courts for commercial and labour disputes.³² The Commercial Court is expected to be operational by 2024.³³ On 17 February 2023, the MoJ and the Asian Development Bank (ADB) signed a Memorandum of Understanding (MoU) on Supporting the Capacity Building of Law Enforcement Officers and Cambodian Commercial Court Processes. Under this agreement, the ADB will support the MoJ in building the capacity of human resources and in technical matters, especially the preparation of laws.³⁴
- On 8 Dec 2022, the Cambodian Human Rights Commission (CHRC) announced plans to create a mobile application for citizens to report human rights violations and have them resolved in a timely manner. CHRC’s President said the app could result in an increase in the number of lawsuits related

²⁵ Lay Samean, “Inmate early release rules set,” (*Phnom Penh Post*, 19 July 2021), <https://phnompenhpost.com/national/inmate-early-release-rules-set>; Prakas No.090 MoJ.Brk/21 on the Procedures for Monitoring, Supervising and Reintegrating Inmates on Conditional Release (MoJ, 14 July 2021), https://policypulse.org/wp-content/uploads/2021/07/Prakas_090_0721_MOJ_KH.pdf (only available in Khmer).

²⁶ Buth Reaksmey Kongkea, “BACK to deploy more volunteer lawyers nationwide” (*Khmer Times*, 22 February 2021), <https://www.khmertimeskh.com/50816333/bakc-to-deploy-more-volunteer-lawyers-nationwide/>.

²⁷ Voun Dara, “Public defenders programme expanding legal aid provision” (*Phnom Penh Post*, 18 January 2022), <https://www.phnompenhpost.com/national/public-defenders-programme-expanding-legal-aid-provision>.

²⁸ Sen David, “New Bar Association policy to provide pro bono legal aid,”(*Khmer Times*, 29 January 2021), <https://www.khmertimeskh.com/50808340/new-bar-association-policy-to-provide-pro-bono-legal-aid/>.

²⁹ Niem Chheng, ‘CHRC to form legal assistance team’ (*Phnom Penh Post*, 7 August 2019) www.phnompenhpost.com/national/chrc-form-legal-assistance-team; Taing Vida, “CHRC marks notable achievements in providing free legal aid” (*Khmer Times*, 5 March 2020), <https://www.khmertimeskh.com/698246/chrc-marks-notable-achievements-in-providing-free-legal-aid/>.

³⁰ Soth Koemsoeun, ‘Human rights committee’s legal hotline receives praise’ (*Phnom Penh Post*, 4 December 2019) www.phnompenhpost.com/national/human-rights-committees-legal-hotline-receives-praise.

³¹ Kim Sarom, ‘Lawyer-inmate rooms at prisons in heavy use’ (*Phnom Penh Post*, 26 May 2022) <https://www.phnompenhpost.com/national/lawyer-inmate-rooms-prisons-heavy-use>.

³² Voun Dara, ‘Justice ministry moving to launch commercial court by end-2022’ (*Phnom Penh Post*, 1 July 2022) <https://www.phnompenhpost.com/national/justice-ministry-moving-launch-commercial-court-end-2022-senior-official>.

³³ Orm Bunthoern, ‘Commercial Court could function ‘as early as 2024’: Justice ministry officials’ (*Phnom Penh Post*, 3 Feb 2023) <https://www.phnompenhpost.com/business/commercial-court-could-function-early-2024-justice-ministry-officials>.

³⁴ Hun Sirivadh, ‘Commercial Courts to Exist in Cambodia’ (*eacnews.asia*, 17 February 2023) <https://eacnews.asia/home/details/20062>

to human rights violations, but pointed to challenges in finding the budget to implement this project.³⁵

- Several steps were also taken to address the current shortage of judges and prosecutors. On 8 April 2023, the King issued a royal decree allowing Appeal Court judges and prosecutors to retire at 65 instead of 60 at the request of the Ministry of Justice.³⁶ On 10 April 2023, the Royal Academy for Judicial Professions also opened enrollments for 50 judges and prosecutors, 100 student court clerks, 50 bailiffs, and 50 notaries.³⁷

More generally, the RGC took several measures to continue reforming the justice system, including increasing the national budget for legal aid,³⁸ undertaking capacity building, improving independence and impartiality of the courts and the separation of powers, and increasing respect for individual rights to “gain more trust from the public,”³⁹ and training of trainee judges on their conduct and the principle of integrity before they start adjudicating cases to address corruption in the judiciary.⁴⁰ The RGC has also sought to reform the child justice system through the establishment of an inter-ministerial working group – which includes the MoJ and the Phnom Penh Court of Appeal – which has been exploring the possibility of promoting alternative penalties for minor offenses committed by children in collaboration with UNICEF. It has also developed plans, measures and regulations to ensure the full and effective implementation of the Law on Juvenile Justice.⁴¹

These initiatives are commendable as they show the RGC’s efforts to implement the recommendations on access to justice it accepted during the United Nations Human Rights Council’s third Universal Periodic Review of Cambodia in January 2019.⁴²

³⁵ Hun Sirivadh, ‘Cambodian Human Rights Commission to Develop App for Citizen Reporting’ (eacnews.asia, 9 December 2022) <https://eacnews.asia/home/details/17748>

³⁶ Long Kimmarita, “Appeal court officers can now retire at age 65, says royal decree” (Phnom Penh Post, 10 April 2023), <https://www.phnompenhpost.com/national/appeal-court-officers-can-now-retire-age-65-says-royal-decree>

³⁷ Long Kimmarita, “Justice ministry seeking new judges, officials” (Phnom Penh Post, 13 April 2023), <https://www.phnompenhpost.com/national/justice-ministry-seeking-new-judges-officials>.

³⁸ OHCHR, “Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights,” (16 September 2021, para.30, https://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_48_49.pdf.

³⁹ RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 74; UN Human Rights Council, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’ (31 July 2019) A/HRC/42/31, para. 30, <https://cambodia.ohchr.org/sites/default/files/Ohchr-report/Role%20and%20achievements%20of%20the%20Office.pdf> (“OHCHR, Annual Report (31 July 2019).”

⁴⁰ RGC, “Replies of Cambodia to the list of issues in relation to its third periodic report,” (16 April 2021), CCPR/C/KHM/RQ/3, para.50, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKHM%2fRQ%2f3&Lang=en (“RCG’s Replies to list of issues of 3rd UPR”).

⁴¹ RCG’s Replies to list of issues of 3rd UPR, para.85.

⁴² CCHR, Destination Justice, API, ADHOC, Transparency International, IFEX, ‘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’ (12 July 2018), <https://www.sithi.org/tmp/publication/view/2018-07-12-3rd-cycle-of-upr-report-on-the-access-to-justice>; CCHR, “Implementation of the Universal Period Review: two years on” (January 2021), <https://sithi.org/medias/files/projects/upr/infographic/Implementation%20of%20the%20Universal%20periodic%20review%20Eng.pdf>.

1.2. Scope and Methodology

Figure 1: Overview of cases monitored by CCHR (2022)

Name of Court of Appeal	Total case	Reporting Period
<i>Phnom Penh Court of Appeal</i>		
# of cases	257	January-December 2022
# of felonies	129	
# of misdemeanors	124	
# of petty offenses	4	
# of defendants	352	
# of children in conflict with the law	6	
# of women defendants	50	
<i>Battambang Court of Appeal</i>		
# of cases	143	June-December 2022
# of felonies	51	
# of misdemeanors	90	
# of petty offenses	2	
# of defendants	199	
# of children in conflict with the law	15	
# of women defendants	28	
<i>Tboung Khmum Court of Appeal</i>		
# of cases	62	July-December 2022
# of felonies	18	
# of misdemeanors	42	
# of petty offenses	2	
# of defendants	86	
# of children in conflict with the law	0	
# of women defendants	13	
<i>Preah Sihanouk Court of Appeal</i>		
# of cases	59	July-December 2022
# of felonies	19	
# of misdemeanors	38	
# of petty offenses	2	
# of defendants	87	
# of children in conflict with the law	5	
# of women defendants	11	

Throughout the Reporting Period, CCHR’s Trial Monitors attended criminal trials at the four target Courts on a daily basis. Monitors used a specifically designed trial-monitoring checklist (the “Checklist”) that includes more than 80 questions focusing on a number of key fair trial rights, including the following:⁴³

- Right to a public hearing;
- Right to understand the nature and cause of the charge(s);

⁴³ CCHR ‘Appeal Hearing Monitoring Checklist,’ <https://sithi.org/tmp/publication/view/2021-01-01-appeal-hearing-monitoring-checklist>.

- Rights to liberty and to be tried without undue delay;
- Pre-trial right to speak with a lawyer and 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 or to testify against oneself;
- Evidentiary rights (including the right to call and examine witnesses);
- Rights to a public and reasoned judgment; and
- Rights of children in conflict with the law.

In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Courts and the Ministry of Justice. CCHR has also developed a one-page annex to the Checklist for trials involving children. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes (“Checklist Guidance”)⁴⁴ to provide an understanding of the legal basis and purpose of each question to ensure a uniform interpretation. 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 appeal⁴⁵ 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 sentence;⁴⁶ it must provide “a full evaluation of evidence and the conduct of trial.”⁴⁷ Finally, CCHR is committed to the international principles applicable to trial monitoring⁴⁸ and has devised a code of conduct (the “Code of Conduct”) for its Trial Monitors.⁴⁹ 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 Courts did not target specific trials. The trials to be monitored were randomly selected, on the basis of the courts’ 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”).⁵⁰

⁴⁴ CCHR, ‘Guidance Notes for CCHR Appeal Court Monitoring Checklist,’ <https://sithi.org/tmp/publication/view/2014-01-29-guidance-notes-for-cchr-appeal-court-monitoring-checklist>.

⁴⁵ ICCPR, Art. 14 (5); CCPC, Art. 375.

⁴⁶ UNHRC, ‘General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial’ (23 August 2007) CCPR/C/GC/32, para. 48, <https://www.refworld.org/docid/478b2b2f2.html>, (“UNHRC, General Comment No. 32”).

⁴⁷ UNHRC, Communications Nos. 623, 624, 626, 627/1995, *V. P. Domukovsky et al. v. Georgia* (6 April 1998) GAOR, A/53/40 (vol. II), p. 111, para. 18.11, <https://juris.ohchr.org/Search/Details/833>.

⁴⁸ Amnesty International ‘Fair Trial Manual,’ Second Edition, (2014),

<https://www.amnesty.org/en/documents/pol30/002/2014/en/>; (‘Amnesty International, ‘Fair Trial Manual (2014)’); Lawyers Committee for Human Rights ‘What is a Fair Trial: A Basic Guide to Legal Standards and Practice’ (2000)

https://internationalcourts.net/system/files/LawyersCommitteeForHumanRights_WhatIsAFairTrial_2000.pdf; Organization for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights ‘Trial Monitoring: A Reference Manual for Practitioners’ (2008), <https://www.osce.org/odihr/94216>; International Commission of Jurists ‘Trial Observation Monitoring’ (2002), https://courtmonitoring.org/wp-content/uploads/trial_observation_manual_international-commission-of-jurists.pdf.

⁴⁹ CCHR, ‘CCHR Trial Monitoring Code of Conduct,’ <https://sithi.org/tmp/publication/view/2010-01-01-cchr-trial-monitoring-code-of-conduct>.

⁵⁰ CCHR, ‘CCHR Trial Monitoring Database,’ <https://sithi.org/tmp/appeal>.

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. As trial monitoring activities continue, the Database will be used to draw comparative analysis and to identify trends in the practice of the Courts, gauge improvements, and identify further recommendations. For the purposes of the present analysis, CCHR will consider a given fair trial right as respected if it was upheld in at least 80% of the monitored trials during the Reporting Period. However, when faced with cases that amount to violations of non-derogable and absolute rights (see page 31), CCHR will systematically classify the corresponding fair trial right as not respected, regardless of the percentage.

CCHR has always ensured that all Courts of Appeal were given the opportunity to provide their inputs on the findings of CCHR's trial monitoring before publication. In late 2022, it started conducting quarterly meetings with the target courts to present the findings of its trial monitoring activities and ask for clarification where required. During these meetings, the courts welcomed CCHR's contribution and efforts to promote fair trial rights. They took place on 9 December 2022 and 28 March 2023 at the Preah Sihanouk Appeal Court; on 15 December 2022 and 23 March 2023 at the Battambang Appeal Court; and on 3 January 2023 and 19 May 2023 at the Tboung Khmum Appeal Court.

In addition, a final draft of the present Report was sent to the Presidents of the target courts and the General Prosecutors attached to the target courts for review, comments, and recommendations. CCHR received their input during Consultation Meetings on 29 August 2023 (Battambang Appeal Court), 18 September 2023 (Tboung Khmum Appeal Court), and 16 November 2023 (Phnom Penh Court of Appeal). The Preah Sihanouk Appeal Court also provided its input through a letter dated 20 September 2023. Their input was incorporated into the present Report to provide insights into the challenges faced by justice professionals. CCHR also sent this draft report to the MoJ on 11 October 2023.

2. Overview

This section of the Report sets out the raw data recorded on the Checklist from the 521 trials monitored at the four Courts between 1 January 2022 and 31 December 2022. This data will be analyzed throughout the Report.

Figure 2: Overview of cases monitored by CCHR in 2022

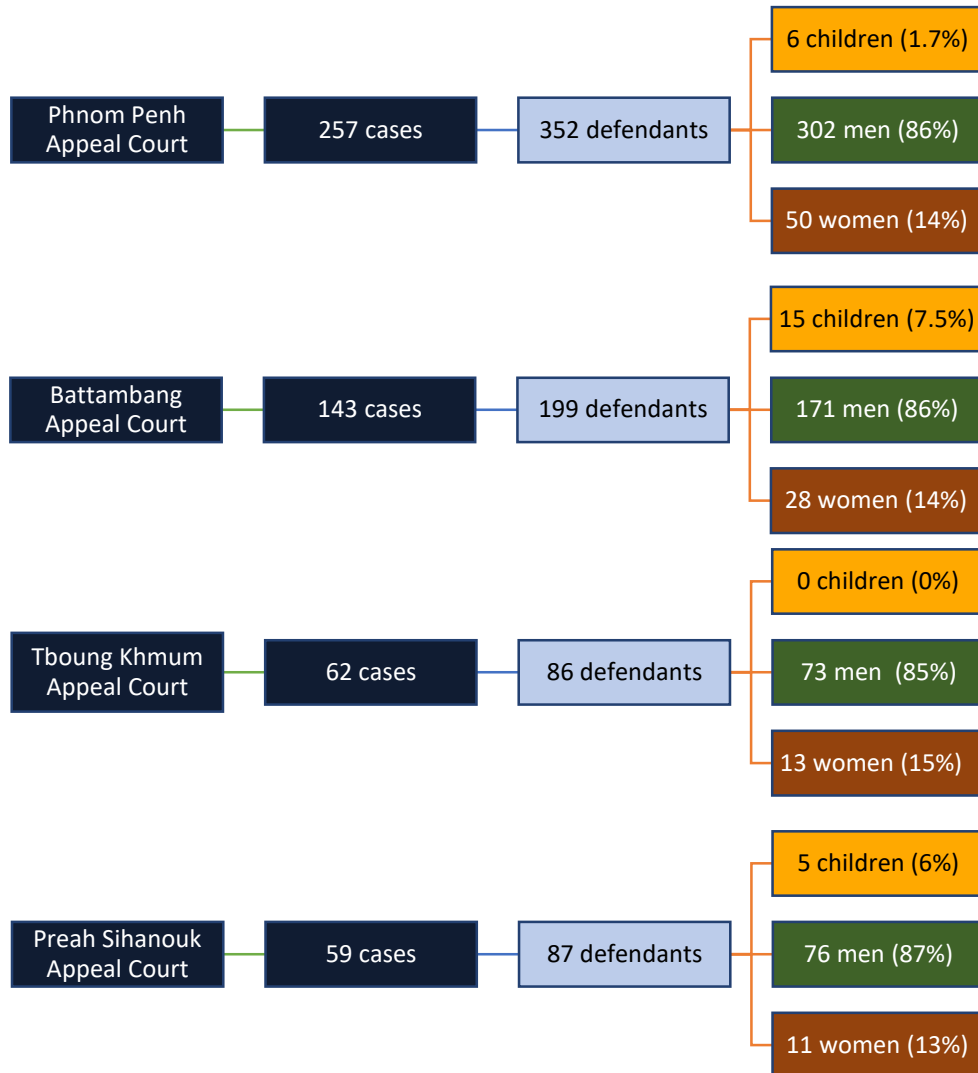


Figure 3: Appeal hearings monitored by type of charge⁵¹

Type of Charge
Felony: Article 46 of the Criminal Code defines a felony as any offense for which the maximum penalty is imprisonment of more than five years.
Misdemeanor: Article 47 of the Criminal code defines a misdemeanor as any offense for which the maximum penalty is imprisonment for more than six days and less than or equal to five years.
Petty offense: Article 48 of the Criminal Code defines a petty offense as any offense for which the maximum sentence of imprisonment incurred is six days or less, or punishable solely by a fine.

⁵¹ This data is based on the total number of cases monitored in 2022 (521).

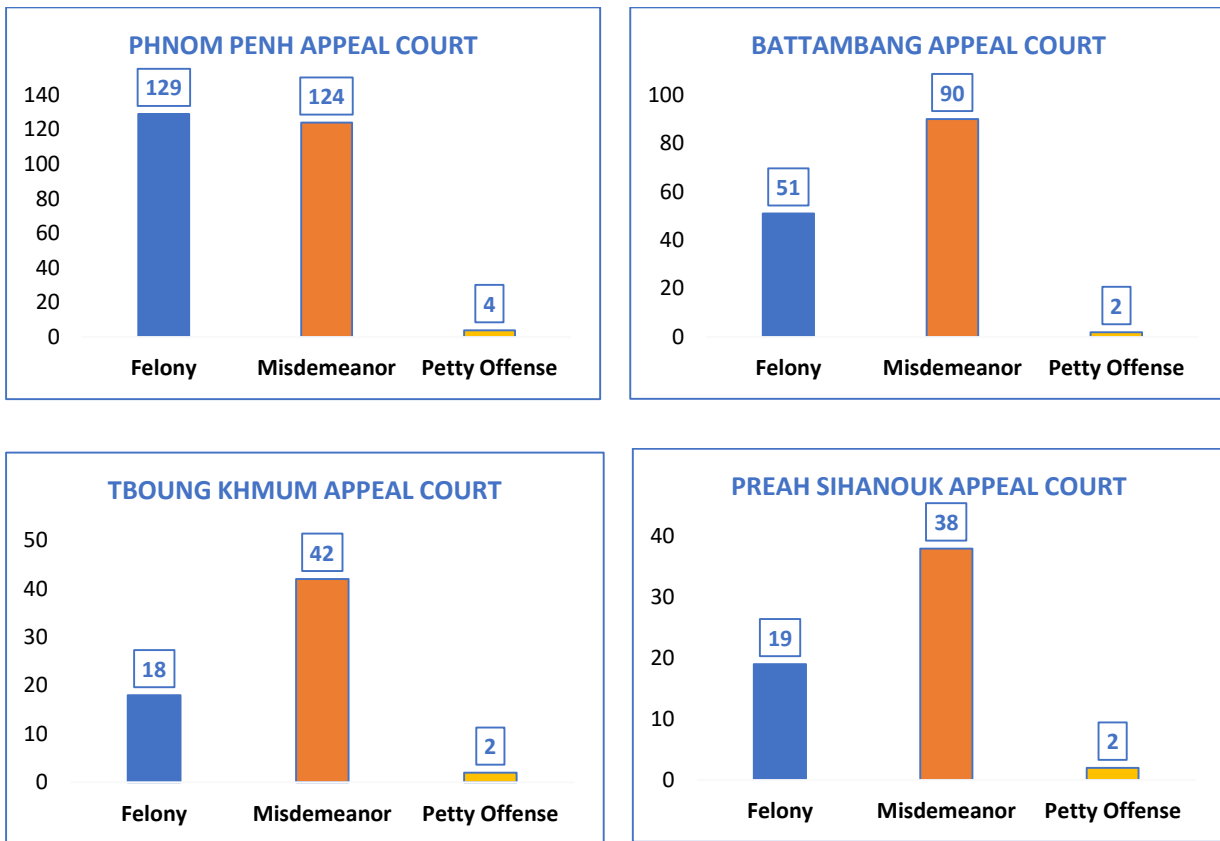
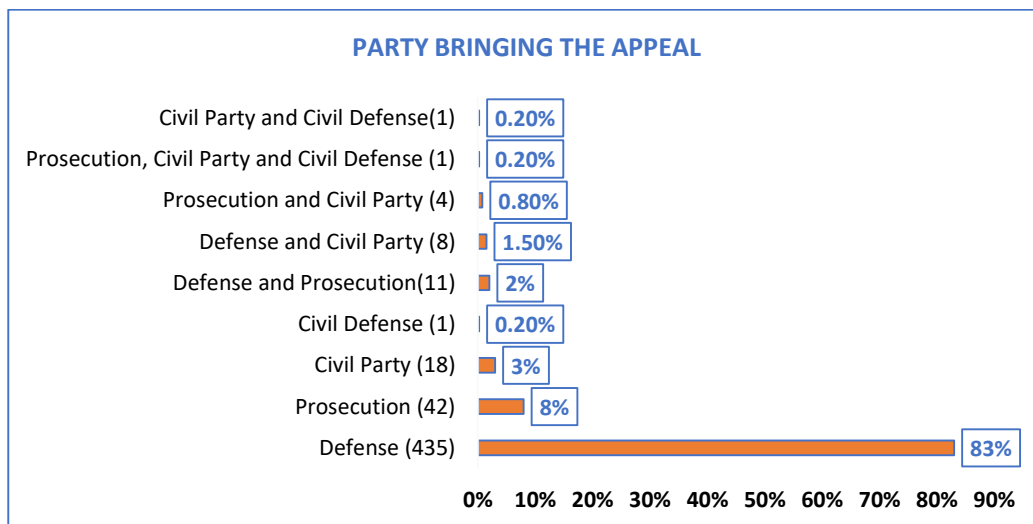


Figure 4: Party bringing the appeal⁵²



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 (defense), and the civil party or civil defendant (both regarding civil matters).⁵³ Figure 4 shows that the vast majority of appeals (83%) were filed by the defense.

⁵² This data is based on the total number of cases monitored in 2022 (521).

⁵³ CCPC, Art. 375.

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

Courts of Appeal	Fair Trial Rights Upheld	Fair Trial Rights Not Fully Respected
Phnom Penh Appeal Court	<ul style="list-style-type: none"> • Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense • Right to a public judgment • Right to be present at trial 	<ul style="list-style-type: none"> • Right to liberty • Right to be tried without undue delay • Right not to be compelled to confess guilt or to testify against oneself • Right to a public hearing • Right to understand the nature and cause of the charges • Right to legal representation • Right to a reasoned judgment • Professionalism of judges • Right to the presumption of innocence • Evidentiary rights • Rights of children in conflict with the law
Battambang Appeal Court	<ul style="list-style-type: none"> • Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense • Right to a public judgment • Right to a public hearing • Right to be present at trial • Right to be tried without undue delay 	<ul style="list-style-type: none"> • Right to liberty • Right not to be compelled to confess guilt or to testify against oneself • Right to understand the nature and cause of the charges • Right to legal representation • Right to a reasoned judgment • Professionalism of judges • Right to the presumption of innocence • Evidentiary rights • Rights of children in conflict with the law
Tboung Khmum Appeal Court	<ul style="list-style-type: none"> • Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense • Right to a public hearing • Right to understand the nature and cause of the charges • Right to be present at trial • Right to be tried without undue delay 	<ul style="list-style-type: none"> • Right to liberty • Right not to be compelled to confess guilt or to testify against oneself • Right to legal representation • Professionalism of judges • Right to the presumption of innocence • Evidentiary rights

<p>Preah Sihanouk Appeal Court</p>	<ul style="list-style-type: none"> • Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense • Right to a public judgment • Right to understand the nature and cause of the charges • Right to be tried without undue delay 	<ul style="list-style-type: none"> • Right to liberty • Right not to be compelled to confess guilt or to testify against oneself • Right to a public hearing • Right to legal representation • Right to be present at trial • Right to a reasoned judgment • Professionalism of judges • Right to the presumption of innocence • Evidentiary rights • Rights of children in conflict with the law
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The sections below analyze the implementation of the different relevant components of fair trial rights by the Courts during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights that were upheld in the Courts, and then shed light on the practices that did not fully respect fair trial rights.

3. Fair Trial Rights Upheld by All Courts

3.1. Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense

International Law	Cambodian Law	
ICCPR	CCPC	Law on Juvenile Justice
Article 14(3)(b)	Articles 48, 98, 145, 259 & 319	Article 29

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense. The length of time that is “adequate” depends on the circumstances of each case;⁵⁴ however, the guiding principle is that the accused must be able to properly prepare to challenge the prosecution’s evidence, investigate, and present defense witnesses. It is the role of the defense to request the adjournment of the trial if they reasonably feel that the time for the preparation of the defense is insufficient.⁵⁵

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 them, and so that they are able to provide full instructions to their lawyer.⁵⁶ In particular, this includes access to all materials that the prosecution plans to present in court and those that are exculpatory. At the appeal stage, in order to effectively exercise their right to appeal, the defendants should have access to a duly reasoned, written first instance judgment and the transcripts of the trial, in order to prepare their case.⁵⁷ In addition, accused persons must have adequate time and facilities to communicate with counsel of their own choosing. This provision ensures respect for the principle of equality of arms and requires that the accused is granted access to a lawyer promptly. Further, facilities enabling confidential communications between the accused and their counsel must be made available.⁵⁸

While the monitoring of the appeal hearings did not provide CCHR with all the requisite information to assess whether the accused had sufficient time and adequate facilities to prepare their defense and to communicate with a lawyer, from the information that is available to CCHR, it is very positive to note that the great majority of monitored cases indicated that these rights were respected by all four Courts. CCHR found that only three defendants (0.4% of the total) had their lawyer assigned to them on the day of the appeal - two defendants at the **Phnom Penh** Appeal Court, and one at the **Tboung Khmum** Appeal Court. Most defendants were given a lawyer early on in proceedings. In addition, in no cases did a defendant’s lawyer raise the issue of lack of adequate preparation.

⁵⁴ UNHRC General Comment 32, para. 32.

⁵⁵ UNHRC, General Comment 32, para. 32.

⁵⁶ UNHRC, General Comment 32, para. 33.

⁵⁷ UNHRC, General Comment 32, para. 49; *See i.e.* UNHRC, Communication No. 1797/2008, *Mennen v. The Netherlands* (27 July 2010), CCPR/C/99/D/1797/2008, paras 8.2.-8.4, <http://hrlibrary.umn.edu/undocs/1797-2008.html>.

⁵⁸ UNHRC, General Comment 32, para. 34; for more details, also see CCHR’s module “The right to adequate time and facilities to prepare a defense and the right to speak with a lawyer” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-adequate-time-and-facilities-to-prepare-a-defense-and-the-right-to-speak-with-a-lawyer>.

It was suggested that only **three defendants** had their lawyer assigned to them on the day of the appeal. This means the pre-trial right to speak with a lawyer was likely respected for **99.6%** of defendants.

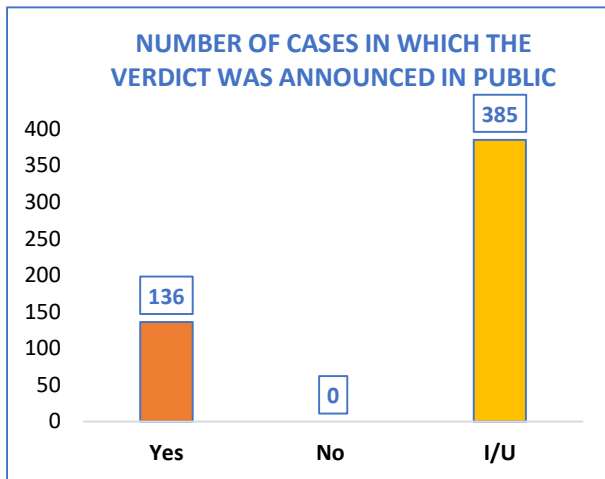
The issue of adequate time and facilities to prepare a defence was not raised by **any of the 724 defendants**. This means this right was likely respected for **100%** of defendants.



3.2. Right to a public judgment

International Law	Cambodian Law	
ICCPR	CCPC	LOC
Article 14(1)	Article 317	Article 7

Figure 5: The right to a public judgment⁵⁹



The right to a public judgment means that judgments rendered in legal proceedings must be made public. This right is key in ensuring transparency and accountability.⁶⁰ Under Article 14(1) of the ICCPR, even when the public is excluded from a trial, the judgment, including the essential findings, evidence, and legal reasoning, must be made public.⁶¹ There are only a few exceptions to this rule, such as when the interest of children requires the judgment not to be made public.⁶²

During the Reporting Period, the right to a public judgment was respected by three of the four Courts in all the cases for which the information was available (135 cases).

CCHR was only able to monitor one verdict at the **Tboung Khmum** Appeal Court. Although it was announced in public, CCHR cannot assess whether the Court has consistently upheld this right in 2022 due to the lack of data on the remaining 61 cases monitored.

⁵⁹ This data is based on the total number of 521 cases monitored in 2022. I/U refers to cases where the information was not available, or cases that were not followed up because the Trial Monitor was not present on the date of verdict.

⁶⁰ For more details, see CCHR’s module “The right to a public judgment and the right to a reasoned judgment” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-a-public-judgment-and-the-right-to-a-reasoned-judgment>.

⁶¹ UNHRC, General Comment 32, para. 29.

⁶² UNHRC, General Comment 32, para. 29.

4. Fair Trial Rights Upheld by Some of the Courts

4.1. Right to a public hearing

International Law	Cambodian Law	
ICCPR	CCPC	LOC
Article 14(1)	Article 392	Article 7

Everyone has the right to have their guilt or innocence determined in a public trial,⁶⁴ except in certain exceptional circumstances. Among the reasons that could prompt the court to order a complete or partial *in camera* hearing are the risk that a public hearing could cause “significant damage” to public order, national security or morality, the interest of the private lives of the parties (notably in some sexual assault cases), or the presence of a child in conflict with the law.⁶⁵

Guarantees in case of *in camera* hearings

Even if the public or part of the public is excluded from the hearings due to exceptional circumstances, there remains safeguards in order to ensure publicity. In such a situation, the judgment, including the essential findings, evidence and legal reasoning, must be made public.⁶³ Only in a very few cases (ex: if required by the interests of children) can exceptions be made to this last safeguard.

Only in exceptional circumstances prescribed by law can all or part of the public be excluded.⁶⁶ In any other circumstances, the hearings must be open to the public, including members of the media, and cannot exclude a particular category of persons.⁶⁷ The right to a public hearing also involves an obligation on courts to make information regarding the time and venue of the oral hearings available to the public and to provide, within reasonable limits, adequate facilities for public attendance.⁶⁸

⁶³ UNHRC, General Comment 32, para. 29.

⁶⁴ For more details on this right, see CCHR’s module “The right to a public hearing” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-a-public-hearing>.

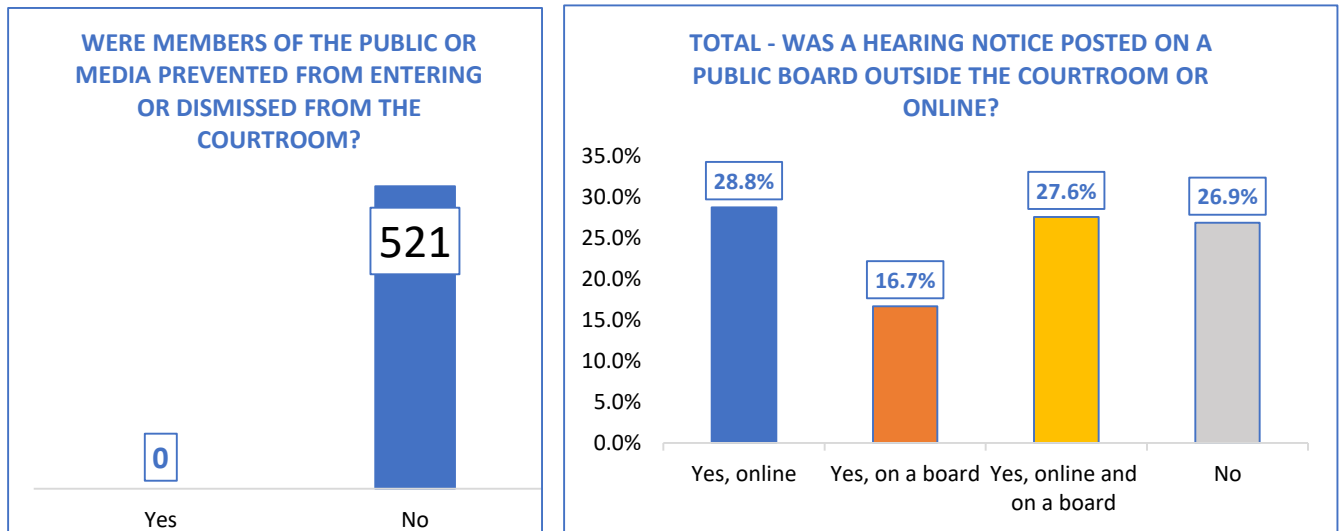
⁶⁵ UN Committee on the Rights of the Child (“CRC Committee”), General Comment No. 24 on children’s rights in the child justice system (replacing General Comment No. 10 (2007)) (18 September 2019) CRC/C/GC/24, para. 67, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQjFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2BfORPR9UMtGkA4> (“CRC Committee General Comment No. 24”).

⁶⁶ UNHRC, General Comment 32, para. 29.

⁶⁷ UNHRC, General Comment 32, para. 29.

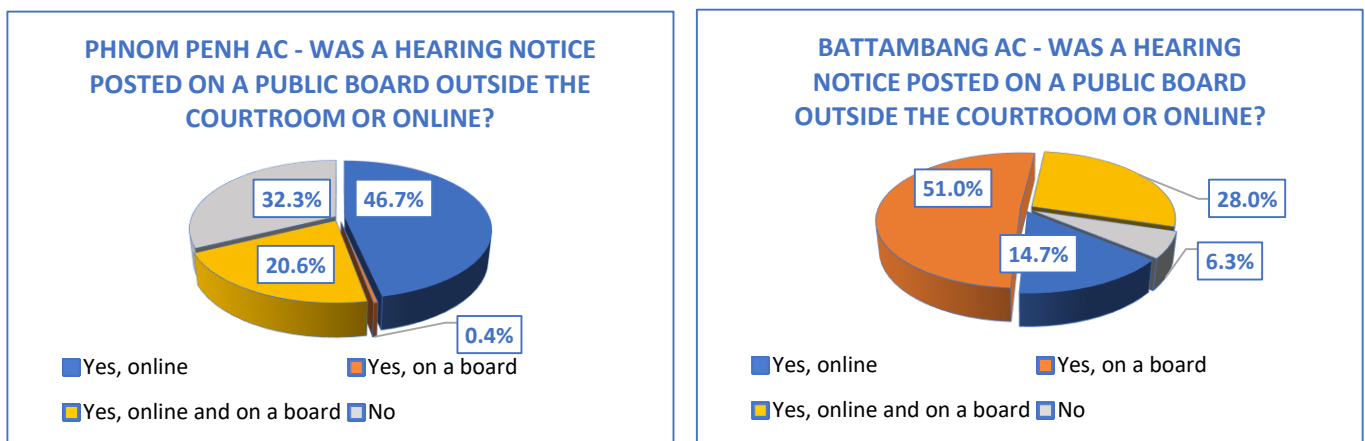
⁶⁸ UNHRC, General Comment 32, para.28; UNHRC, Communication No. 215/1986, *Van Meurs v. The Netherlands* (23 July 1990) CCPR/C/39/D/215/1986, para. 6.2, <http://juris.ohchr.org/Search/Details/311>.

Figure 6: The right to a public hearing⁶⁹



Hearing notices, displaying the date, location and starting time of a hearing, strategically placed outside courtrooms or published online, are one way of promoting public hearings and informing the public, who should be allowed access to the courtrooms where trials are taking place. Encouragingly, there was nothing to suggest that members of the public or media were prevented from entering or dismissed from the courtroom in the cases monitored by CCHR during the Reporting Period. In addition, hearing notices were posted on a public board outside the courtroom and/or online in 73.1% of the monitored trials (381 out of 521). However, there were significant disparities between the Courts.

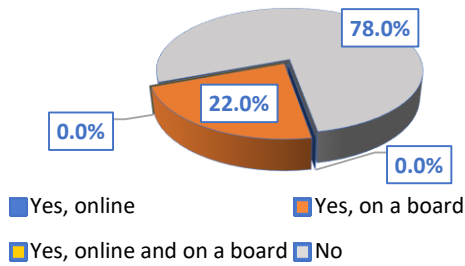
Figure 7: The right to a public hearing by Court⁷⁰



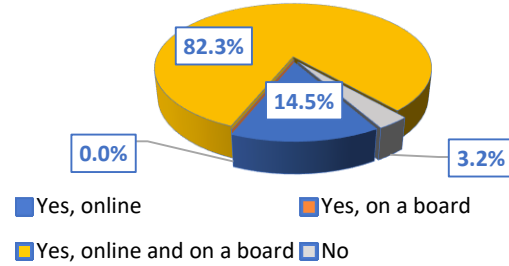
⁶⁹ This data is based on the total number of 521 cases monitored.

⁷⁰ This data is based on the total number of 521 cases monitored.

PREAH SIHANOUK AC - WAS A HEARING NOTICE POSTED ON A PUBLIC BOARD OUTSIDE THE COURTROOM OR ONLINE?



TBOUNG KHMUM AC - WAS A HEARING NOTICE POSTED ON A PUBLIC BOARD OUTSIDE THE COURTROOM OR ONLINE?



In 2017 and 2018, the **Phnom Penh** Appeal Court⁷¹ 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 information about and access to hearings. In 2019, the Court stated that displaying the public trial schedule was an administrative issue and not required by law. However, it prioritized this issue and developed a [webpage](#) to post information about upcoming cases, as well as a [hearing schedule](#). The information now made available includes - among other things - the date, time and location of the hearing, the case’s file number, the charge(s), and the name of the judge. Despite these efforts, the Court did not post any notice in nearly one-third (32.3%) of the cases monitored in the Reporting Period. The lack of hearing notices has been a constant issue since 2013, and it is essential that further steps are taken to remedy this deficiency for the right to a public hearing to be considered fully respected.

The **Battambang** Appeal Court posted notices for 93.7% of the trials monitored (134 out of the 143) by CCHR. 84.3% of these notices (113 out of 134 cases) were posted on a public board, and 45.5% (61 out of 134 cases) were posted online. Noteworthy, however, is the fact that the Court only followed the good practice of posting them both online and on its board in less than one-third (29.8%) of the cases where notices were posted. In December 2022, the Vice President of the Court acknowledged that hearing schedules had not been systematically posted on the Court’s information board and said he would address this issue.⁷²

The **Tboung Khmum** Appeal Court performed better in respecting the right to a public hearing, having posted notices in 96.8% of the cases monitored (60 out of the 62). 85% of these notices were posted both [online](#) and on an information board, while the remaining 15% were only posted online.

Concerningly, the **Preah Sihanouk** Appeal Court did not post any notice in 78% of the cases monitored (46 out of 59). Unlike the other courts, it did not post notices online, and relied exclusively on a board outside the courtroom in the 13 cases (22%) where notices were posted. In December 2022, the President of the Court acknowledged this shortcoming, and said it would be addressed. He also instructed his colleagues to start posting hearing schedules on the Court’s Facebook page.⁷³ However, this measure had yet to be implemented at the time of drafting. In September 2023, the Preah Sihanouk Court of Appeal and General

⁷¹ On 5 April 2018 and 27 August 2019, CCHR’s Fair Trial Monitoring Project team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Court of Appeal in order to discuss the findings contained in the 2016/2017 and 2017/2018 reports.

⁷² On 15 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁷³ On 9 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

Prosecution attached to the court noted that the right to a public hearing is about keeping courtrooms open for the public to be able to observe trials, adding that it does not carry an obligation to post hearing schedules online or on a board. They said hearing schedules were an administrative matter to keep the people who wish to attend a particular hearing informed.⁷⁴

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

International Law	Cambodian Law	
ICCPR	CCPC	Law on Juvenile Justice
Article 14(3) (a) & (f)	Articles 322, 325, 330, 331 & 396	Articles 6 & 51

Those accused of criminal offenses must be informed “promptly” of the nature of the offense with which they have been charged. Judges have the obligation to provide an adequate explanation and to make sure that the accused understands the nature and cause of the charge(s) against them so that they can properly prepare their defense.⁷⁵ Information regarding charges must be given as soon as the accused is formally charged with a criminal offense under domestic law or as soon as the individual is publicly named as an accused. This can be done either orally (only if later confirmed in writing) or in writing provided that the information indicates both the law and the alleged general facts on which the charge is based.⁷⁶

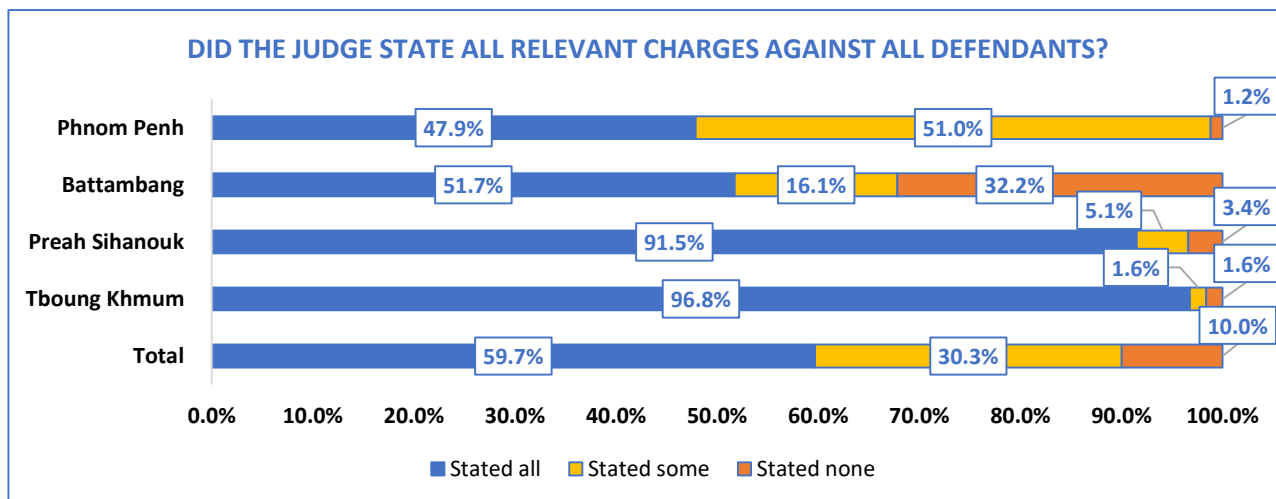
It should be noted that CCHR’s trial monitors collect data at the commencement of the appeal trial, at a time the accused should already be well aware of the charges against them. It is nonetheless important for judges to remind the accused person of this information and to ensure that the accused understands the information, especially in cases where charges may have been changed or amended between the initial arrest/charge and the actual trial. In addition, article 396 of the Code of Criminal Procedure explicitly states that the rules that apply to first instance hearings shall also apply to appeal hearings.

⁷⁴ Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of the present report.

⁷⁵ For more details on this right, see CCHR’s module “The right to be informed of the nature and causes of the charge(s)” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-be-informed-of-the-nature-and-causes-of-the-charges>.

⁷⁶ UNHRC, General Comment No. 32; *See also* UNHRC, Communication No. 609/1995, *Nathaniel Williams v. Jamaica* (4 November 1997) CCPR/C/61/D/609/1995, in which the Committee further clarified that detailed information about the charges must be provided at “the beginning of the preliminary investigation or the setting of some other hearing which gives rise to a clear official suspicion against the accused.”

Figure 8: The right to understand the nature and cause of the charge(s)⁷⁷



In 59.7% of the cases (311 out of 521) monitored by CCHR, the judges informed the defendants of all the relevant charges against them. However, in almost one third (30.3%) of the cases, defendants were not informed of the totality of the relevant charges against them, and in 52 cases (10%), the defendants were not informed about the charges against them at all, which is worrisome. Once again, there were significant disparities between the courts. Encouraging, however, is the fact that they all provided interpreters when needed.

Concerningly, the **Phnom Penh** Appeal Court only informed the defendants of all the relevant charges against them in 47.9% of the cases monitored by CCHR (123 out of the 257), down from 89.4% in 2021. Most defendants (51%) were only informed of some of the charges against them. During the Reporting Period, the information that was not shared by judges mostly related to the relevant law, which was only mentioned in 100 of the reported cases (38.9%). Furthermore, they did not state the place and date of the offense in 15.6% and 10.5% of the monitored cases, respectively. It should be reminded that these constitute key details which must be provided to a defendant during a criminal trial. In November 2023, representatives from the Phnom Penh Appeal Court and General Prosecution attached to the court reacted to these findings by saying they would more systematically explain their rights to defendants in the future.⁷⁸

Similarly, the **Battambang** Appeal Court did not state any of the relevant charges in 32.2% of the monitored cases (46 out of 143) and stated only some of the charges in 23 cases (16.1%). Thus, slightly more than half of the defendants (51.7%) were reminded of all the charges against them. Concerningly, the judges did not mention the relevant law in 105 of the monitored cases (73.4%); and in around one third of the cases they did not state the place and date of the offense, and the parties involved (see table below).

The **Tboung Khmum** and **Preah Sihanouk** Appeal Courts performed better in respecting the right of the defendant to understand the nature of the charges, with judges stating all the relevant charges in 96.8% and 91.5% of the cases monitored by CCHR, respectively. The judges consistently stated the place and date of the offense, and the parties involved in the vast majority of the monitored cases. Noteworthy, however, is the

⁷⁷ This data is based on the 521 cases that were monitored in 2022.

⁷⁸ On 16 November 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of the present report.

fact that the judges at the **Preah Sihanouk** Appeal Court did not mention the relevant law in 10.2% of the cases; compared to only 4.8% at the **Tboung Khmum** Appeal Court.

In September 2023, the **Preah Sihanouk** Appeal Court and General Prosecution attached to the court said the accused should be informed of the charges against them by the investigating judge after the release of the prosecutor’s introductory submission; not by the Appeal Court. They pointed out that appeal judges usually read the case file and first instance ruling. They then inform the accused about their rights and the parties to the hearing, before asking which parts of the first instance ruling they appeal against, and why. In general, defendants deny having committed the offense or say the sentence is too severe. Therefore, nothing requires the appeal judge to state and explain the cause and nature of the charges. However, the Court and prosecution representatives pointed out that they do so if the defendants say they do not understand the charges against them.⁷⁹

Figure 9: The right to understand the nature and cause of the charge(s)⁸⁰

Questions	PP AC		BB AC		TK AC		SHV AC	
	Yes	No	Yes	No	Yes	No	Yes	No
If required, was an interpreter provided?	14 100 %	0 0 %	1 100 %	0 0 %	1 100 %	0 0 %	12 100 %	0 0 %
Did the judge state the parties involved?	245 95.3 %	12 4.7 %	99 69.2 %	44 30.8 %	61 98.4 %	1 1.6 %	59 100 %	0 0 %
Did the judge state the place of the offense?	217 84.4 %	40 15.6 %	93 65 %	50 35 %	61 98.4 %	1 1.6 %	57 96.6 %	2 3.4 %
Did the judge state the date of the offense?	230 89.5 %	27 10.5 %	91 63.6 %	52 36.4 %	61 98.4 %	1 1.6 %	57 96.6 %	2 3.4 %
Did the judge state the relevant law?	100 38.9 %	157 61.1 %	38 26.6 %	105 73.4 %	59 95.2 %	3 4.8 %	53 89.8 %	6 10.2 %

4.3. Right to be present at trial⁸¹

International Law	Cambodian Law			
ICCPR	Constitution	CCPC	Law on Juvenile Justice	Law on Prisons ⁸²
Article 14(3)(d)	Article 38	Article 300	Articles 6 & 51	Article 62

Trials must be held in the presence of the accused,⁸³ as it permits them to hear and challenge the evidence against them and present a defense. Regarding children, the hearing should take place in the presence of “legal or other appropriate assistance”⁸⁴ and their parents, legal guardians, or other caregivers – unless found not to be in the best interests of the child or upon the child’s request for them not to be present.⁸⁵ The right

⁷⁹ Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of the present report.

⁸⁰ This data is based on the 521 cases that were monitored in 2022.

⁸¹ For more details on this right, see CCHR’s module “ The right to be present at trial and the right to defend oneself in person or through legal representation” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-be-present-at-trial-and-the-right-to-defend-oneself-in-person-or-through-legal-representation>.

⁸² ‘Law on Prisons of the Kingdom of Cambodia,’ [http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Prison%20law%202011%20-%20ENG%20\(unofficial%20translation\).pdf](http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/Prison%20law%202011%20-%20ENG%20(unofficial%20translation).pdf).

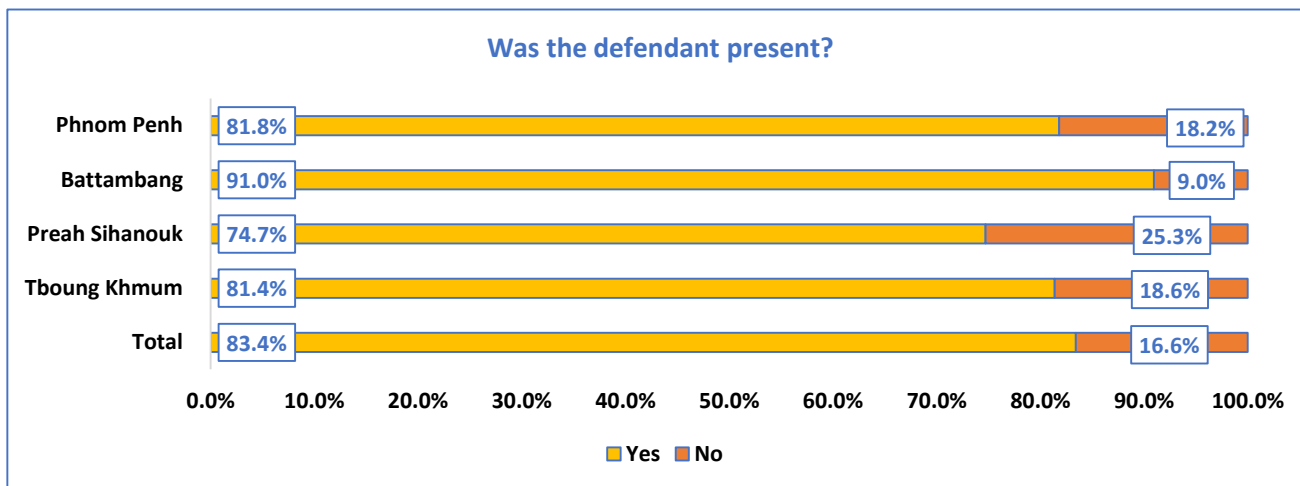
⁸³ ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 36.

⁸⁴ CRC Committee, General Comment 24, para. 63.

⁸⁵ CRC Committee, General Comment 24, para. 56.

to be present at trial is applicable to appeal proceedings, if they involve questions of both fact and law,⁸⁶ which is the case in Cambodia. Trials *in absentia*, i.e., in the accused’s absence, are permissible under international human rights law in exceptional circumstances and when it is in the interests of the proper administration of justice.⁸⁷ Cogent justification must be provided for them.⁸⁸ The accused must also have unequivocally waived their right to appear at trial.⁸⁹

Figure 10: The right to be present at trial⁹⁰



During the Reporting Period, 604 (83.4%) out of 724 defendants were present during the hearings. Although there were some disparities between the Courts, CCHR found that three of them upheld the right to be present at trial.

The percentage of defendants who were present at their trial at the **Phnom Penh** Appeal Court reached 81.8%, down from 83.1% in 2021 and 90.2% in 2019/2020. This figure points to a reversal in the progress made since 2017/2018, when it stood at 82.5%. During previous Reporting Periods, the absence of the defendant was often due to logistical issues and communication problems between the court and the places of detention. On many occasions, the transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers failed to keep the Court updated about the transfer of detained persons between correctional centers. This issue needs to be addressed by improving record keeping and communication between the Court and places of detention. The Court also explained that it could hear cases without the presence of the accused if their lawyers are present, if the appeal request is not considered valid, if the appeal request is made by the prosecution, or if the case has been pending before the Court for a long time and a party requests the judges to adjudicate the case without the presence of the accused.⁹¹

⁸⁶ UNHRC, Communication 387/1989, *Karttunen v. Finland* (23 October 1992) CCPR/C/46/D/387/1989, para. 7.3 <http://juris.ohchr.org/Search/Details/402>.

⁸⁷ UNHRC, General Comment 32, para. 36.

⁸⁸ UNHRC, Communication 016/1977, *Mbenge v. Zaire* (25 March 1983)CCPR/C/18/D/16/1977, para. 14.1, <http://juris.ohchr.org/Search/Details/573>.

⁸⁹ UNHRC, General Comment 32, para. 36.

⁹⁰ This data is based on the total number of defendants (724 individuals) involved in the 521 cases monitored.

⁹¹ Letter No. 431/21 issued on 12 October 2021 by the Phnom Penh Court of Appeal in response to the findings of CCHR’s Report 2019/2020.

A similar figure was documented at the **Tboung Khmum** Appeal Court, with 81.4% of defendants involved in the monitored trials attending their hearings during the Reporting Period. In September 2023, Court and General Prosecution representatives said the right to be present at trial was fundamental. They pointed out that the court always summons the defendants charged with felonies to appear at their hearing, noting however that some decide to waive this right for various reasons.⁹²

Encouragingly, the percentage of defendants who were present at their trial at the **Battambang** Appeal Court reached 91%; the highest figure among the four Courts. In December 2022, its Deputy President said the Court takes this issue seriously, as the presence of defendants at hearings is a major component of access to justice. He added that the Court requires all defendants to be present, including those who have requested not to attend.⁹³ On the other hand, this figure only reached 74.7% at the **Preah Sihanouk** Appeal Court; the lowest documented. In December 2022, its President said that, although the defendants were invited to attend their hearings, prison officials could not bring all of them due to COVID-19 restrictions.⁹⁴

4.4. Right to be tried without undue delay

International Law	Domestic Law
ICCPR	Law on Juvenile Justice
Article 14 (3) (c)	Article 57

Article 14(3)(c) of the ICCPR guarantees every individual charged with a criminal offense the right to be tried without undue delay, expeditiousness being an essential aspect of the fairness of a trial.⁹⁵ As far as adult defendants are concerned, Cambodian law does not contain any provisions on how long Appeal Courts have to hold an appeal hearing once the appeal has been lodged. However, article 57 of the Law on Juvenile Justice states that appeals lodged on behalf of children in conflict with the law shall be heard within three months, unless there is an external obstacle outside the control of the Court. For the purpose of this analysis, CCHR will consider the right to be tried without undue delay as being respected if the hearing took place less than six months after the appeal was received by the target courts. During the Reporting Period, this happened in 82.4% of the monitored cases for which information on the date the Appeal Court received the appeal was available (304 out of 369). There was, however, a disparity between the Phnom Penh Appeal Court and its provincial counterparts.

Indeed, the appeal hearing took place less than six months after the appeal was received in 96.4% of the relevant cases monitored at the **Battambang** Appeal Court (134 out of 139); 85.5% of those at the **Tboung Khmum** Appeal Court (53 out of 62); and 92.3% of those at the **Preah Sihanouk** Appeal Court (48 out of 52). Welcomingly, all but one of the hearings monitored at these three courts were held within a year of the reception of the appeal. By comparison, 77.6% (90 out of 116) of the relevant hearings monitored at the **Phnom Penh** Appeal Court were held within a year, with only 59.5% of them (69 out of 116) taking place less

⁹² On 18 September 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of the present report.

⁹³ On 15 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁹⁴ On 9 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁹⁵ UNHRC, General Comment 32, para.27.

than six months after the appeal was received. This points to the need for further measures to address case backlog and justifies classifying this right as being not fully respected by the Phnom Penh Appeal Court.

Figure 11: Time between the reception of the appeal and the appeal hearing in the cases monitored⁹⁶

Duration	Phnom Penh AC	Battambang AC	Tboung Khmum AC	Preah Sihanouk AC	Total
Less than 6 months	69	134	53	48	304
6 months to 1 year	21	4	9	4	38
>1 to 2 years	17	1	0	0	18
>2 to 3 years	5	0	0	0	5
Over 3 years	4	0	0	0	4
Data not available	141	4	0	7	152
Total	257	143	62	59	521

⁹⁶ This data is based on the 521 cases that were monitored in 2022.

5. Fair Trial Rights Not Fully Respected

5.1. Right to liberty

International Law		Cambodian Law	
UDHR	ICCPR	Constitution	CCPC
Article 3	Article 9 (1)	Article 32 Article 38	Articles 203, 204, 205, 208, 209 & 211

Article 9(1) of the ICCPR guarantees everyone freedom from confinement of the body,⁹⁷ meaning not to be physically deprived of their liberty to come and go as they wish.⁹⁸ The right to liberty is however not absolute.

Individuals can be deprived of their liberty on the basis of criminal charges, such as being placed in police custody, held in pre-trial detention, imprisoned after conviction, etc.⁹⁹ As the right to liberty is critical to protecting the presumption of innocence, any deprivation of liberty carried out in criminal proceedings must be lawful, i.e., it must be carried out in accordance with procedures established by law and with respect for the rule of law¹⁰⁰ and must not be arbitrary, i.e., it must not be inappropriate, unjust, or unpredictable, unreasonable, unnecessary, or disproportional. For instance, pre-trial detention must be used as a measure of last resort and occur only when necessary and in the exceptional circumstances set out in law.

During the Reporting Period, at least 410 out of the 724 defendants involved in the monitored cases were held in pre-trial detention. In addition, all of them remained in detention between their appeal and the courts' verdict. It is highly concerning that over half of the defendants (56.6%) were in detention when liberty must remain the principle and pre-trial detention an exceptional measure used as a last resort. The trial monitoring revealed that over two-thirds of the defendants (68.3%) involved in the monitored cases at the **Battambang** Appeal Court were held in pre-trial detention; compared to slightly over half of the defendants involved in the monitored cases at the **Phnom Penh** (52%), **Tboung Khmum** (52.3%), and **Preah Sihanouk** (52.9%) Appeal Courts.

It is crucial that the use of pre-trial detention remains the exception and that the right to liberty of the accused, who are innocent until proven guilty, is preserved whenever possible. Should measures to ensure the accused are present at trial or at the execution of judgement when applicable be necessary, the judiciary should prioritize less intrusive measures such as judicial supervision. In August 2023, the **Battambang** Appeal Court said that the cases involving defendants in pre-trial detention were always processed in priority, as exemplified by the figures above. It noted that this showed the court's efforts to promote the right to be tried without undue delay.¹⁰¹

⁹⁷ UNHRC, General Comment 35, para. 3.

⁹⁸ For more details on these rights, see CCHR's module "The Right to Liberty, the right to be tried within a reasonable time (or to release), and the right to be tried without undue delay" (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-liberty-the-right-to-be-tried-within-reasonable-time-or-to-release-and-the-right-to-be-tried-without-undue-delay>.

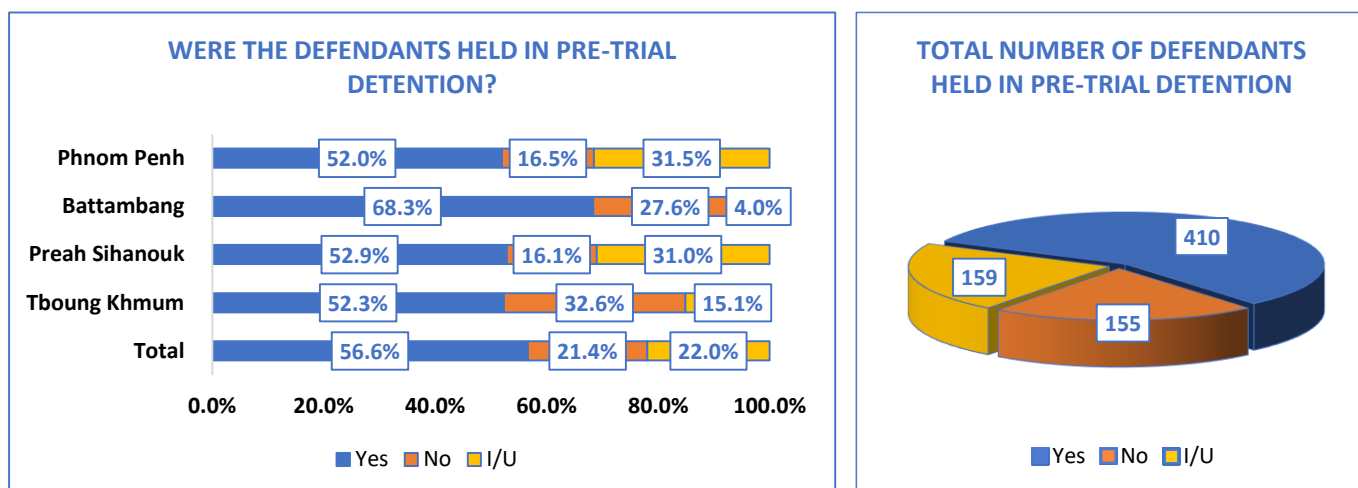
⁹⁹ UNHRC, General Comment 35, para. 5.

¹⁰⁰ UNHRC, General Comment 35, para.10.

¹⁰¹ On 29 August 2023, CCHR's Fair Trial Rights Team met with representatives from the Battambang Court of Appeal and General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

In September 2023, the **Preah Sihanouk** Appeal Court and General Prosecution attached to the court said pre-trial detention is decided by the court of first instance’s investigating judge. Therefore, it is incorrect to say, as the present report does, that the right to liberty is not fully respected by the target courts. They also pointed out that pre-trial detention is always a measure of last resort based on the facts and merits of each case, adding that the number of people in pre-trial detention should not be factored in when deciding to impose such a measure. Moreover, they said that, if one considers that pre-trial detention violates the right to be tried without undue delay, then the fact that the CCPC provides for such a procedure is in itself a violation of human rights.¹⁰²

Figure 12: The right to liberty¹⁰³



During the Reporting Period, 86 of the 190 (45.3%) defendants who were subject to pre-trial detention and whose date of arrest is known had spent between one and two years in custody at the time of their appeal hearing. Concerningly, just over one-third of them (65 out of 190) had spent less than a year in pre-trial detention, while roughly one in five (39 out of 190) had already been in custody for more than two years.

Figure 13: Total time spent in pre-trial detention at the time of the appeal¹⁰⁴

Duration	Phnom Penh AC	Battambang AC	Tboung Khmum AC	Preah Sihanouk AC	Total
Less than 1 year	15	24	18	8	65
1 to 2 years	41	19	21	5	86
>2 to 3 years	16	3	3	2	24
>3 to 4 years	3	1	0	0	4

¹⁰² Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of the present report.

¹⁰³ This data is based on the 521 cases that were monitored in 2022. I/U refers to cases where the information was not available.

¹⁰⁴ This data is based on the number of defendants who were subject to pre-trial detention (410) in the cases that were monitored in 2022.

>4 to 5 years	5	0	0	0	5
More than 5 years	6	0	0	0	6
Data not available	97	88	4	31	220
Total	183	135	46	46	410

5.2. Right not to be compelled to confess guilt or to testify against oneself

International Law			Cambodian Law		
UDHR	ICCPR	CAT	Constitution	CCPC	Law on Juvenile Justice
Article 5	Article 14(3)(g) & Article 7	Article 15	Article 38	Articles 145 & 321	Articles 5 & 6

Article 14(3)(g) of the ICCPR guarantees the right of an individual not to be compelled to confess guilt or to testify against themselves.¹⁰⁵ Firstly, this means that no direct or indirect physical or psychological coercion must be used to compel a suspect or accused to provide evidence against themselves.¹⁰⁶ Secondly, this means that a suspect or accused cannot be compelled to self-incriminate by testifying against themselves and must enjoy the unfettered right not to provide evidence that could be used against them.¹⁰⁷ Should a person refuse to testify against themselves or to confess guilt, the circumstances in which judges draw any negative inference from this silence are restricted.¹⁰⁸ In cases involving children in conflict with the law, the law is more general: they must not be compelled to “give testimony.”¹⁰⁹ The right not to be compelled to confess guilt or to testify against oneself encompasses the absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment as enshrined in Article 5 of the UDHR, Article 7 of the ICCPR, and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), notably in its Article 15. Any confession or statement obtained through the use of coercion, torture or other ill-treatment must be discarded, except if it is used as evidence that coercion, torture or any other form of ill-treatment occurred.¹¹⁰

¹⁰⁵ For more details on this right, see CCHR’s module “The right not to be compelled to confess guilt or to testify against oneself” (September 2022), <https://sithi.org/fair-trial-rights/the-right-not-to-be-compelled-to-confess-guilt-or-to-testify-against-oneself>.

¹⁰⁶ UNHRC, General Comment 32, para. 41; see also UNHRC, Communication 912/2000, *Deolall v. Guyana* (1 November 2004), CCPR/C/82/D/912/2000, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UNHRC, Communications 1263/2004 and 1264/2004, *Khuseynova and Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263–1264/2004, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>; ECCC, Kaing Guek Eav alias Duch (Case 001), Trial Chamber, (26 July 2010) para. 360.

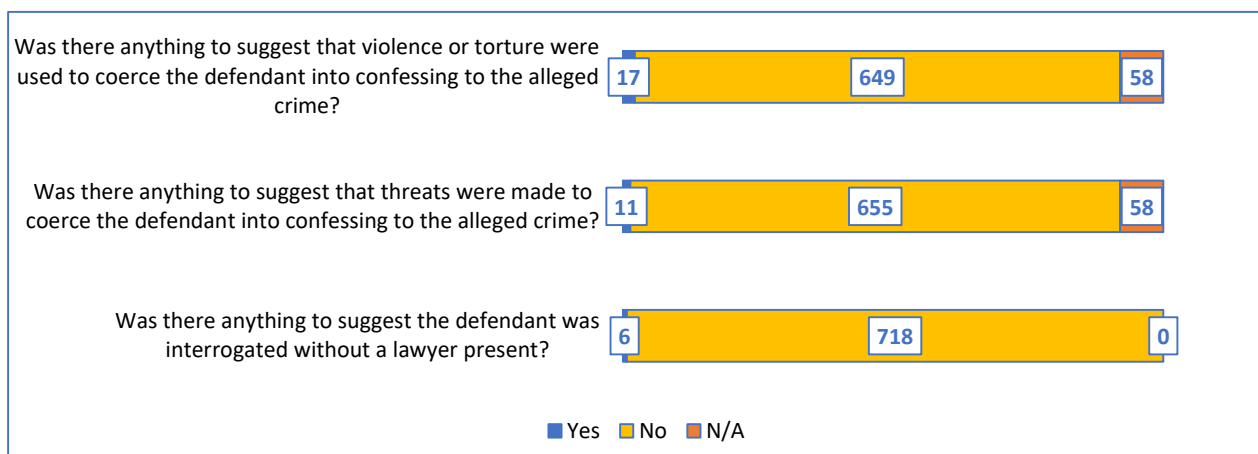
¹⁰⁷ ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

¹⁰⁸ ECtHR, *Condrón v. the United Kingdom* (2 May 2000) App no. 35718/97, para. 56, <http://hudoc.echr.coe.int/eng?i=001-58798>; ECtHR, *Beckles v. the United Kingdom* (8 October 2002) App no 44652/98, para. 58, <http://hudoc.echr.coe.int/eng?i=001-60672>.

¹⁰⁹ CRC, Art. 40(2)(b)(iv).

¹¹⁰ UNHRC, General Comment 32, para. 41.

Figure 14: The right not to be compelled to confess guilt or to testify against oneself ¹¹¹



During the Reporting Period, only six of the 724 defendants insinuated that they had been interrogated without their lawyer being present (0.8% of the total): two at the **Phnom Penh** Appeal Court; one at the **Battambang** Appeal Court; and three at the **Preah Sihanouk** Appeal Court. Encouragingly, no such instances were documented at the **Tboung Khmum** Appeal Court.

However, eleven defendants (1.5% of the total) alleged that they were threatened into giving a confession: seven at the **Phnom Penh** Appeal Court, two at the **Battambang** Appeal Court; and one each at the **Tboung Khmum** and **Preah Sihanouk** Appeal Courts. Concerningly, 17 defendants (2.3% of the total) 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. Most of such cases were documented at the **Phnom Penh** Appeal Court (13 defendants), followed by the **Battambang** Appeal Court (two), and the **Tboung Khmum** and **Preah Sihanouk** Appeal Courts (one each).

International Human Rights Law Terminology:

Non-derogable right: A right whose application cannot be suspended by governments in circumstances of “state of emergency” under Article 4 ICCPR.

Absolute right: A right to which no restrictions are allowed.

Peremptory norm of general international law (jus cogens): “A norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹¹²

The fact that some defendants made such claims remains concerning as it shows that violence or torture is still used to obtain confessions. Indications of coercion or torture during interrogations (either psychological or physical) are a matter of serious concern. The prohibition of torture has indeed a special status in international human rights law. Not only is it a non-derogable right, it is also an absolute right. It is widely

¹¹¹ This data is based on the total number of defendants (724 individuals) involved in the 521 cases monitored. N/A = Neither the defendant nor their lawyer was present, there was therefore no one to raise the issue.

¹¹² International Law Commission ‘Report of the International Law Commission on the Work of its Seventy-first Session’ Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10) (2019) para. 56, <https://legal.un.org/ilc/reports/2019/>.

accepted that the prohibition of torture is a peremptory norm of international law (*jus cogens*).¹¹³ CCHR, therefore, decided to classify the right not to be compelled to confess guilt or to testify against oneself as not being fully upheld.

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. They must also rule the subsequent confessional evidence as inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner. In August 2023, representatives from the **Battambang** Appeal Court said that, in general, defendants who allege that they faced intimidation or torture in police custody cannot present reliable evidence. Therefore, it is up to the judge to decide whether to take these allegations into account.¹¹⁴ In November 2023, representatives from the **Phnom Penh** Appeal Court and General Prosecution attached to the court said that there is no point in raising allegations of violence or torture committed during the police investigation at the appeal hearing stage because requests to nullify proceedings cannot be made once the investigation chamber has adopted its settlement warrant, as per CCPC article 256. However, they said that, although appeal judges pay particular attention to such claims, the defendants usually fail to provide enough evidence to back them up.¹¹⁵

5.3. Right to legal representation¹¹⁶

International Law	Cambodian Law		
ICCPR	Constitution	CCPC	Law on Juvenile Justice
Article 14(3)(d)	Article 38	Articles 143, 300, 301 & 389	Articles 6, 50 & 51

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. The right to legal representation ensures the accused access to expert professional advice from an advocate who has the ability to explain the charges against them, explain their rights, guide them through the trial process and represent their interests in court. If the accused cannot afford their own counsel, the relevant authorities should provide a lawyer free of charge, if the interests of justice so require (e.g., gravity of the offense, existence of some objective chance to win the appeal).¹¹⁷ In Cambodia, it is only compulsory for an accused to be legally represented if they are charged with a felony offense or if they are a child. While legal representation is not mandatory if the accused committed a misdemeanor offense (unless they are a child), individuals still have the option to hire a lawyer if they so wish, but this burden does not rest with the court.

During the Reporting Period, 483 (66.7%) out of 724 defendants were represented by a lawyer. In light of the fundamental character of this right, the fact that 33.3% of defendants did not benefit from legal

¹¹³ Manfred Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2nd ed, N.P. Engel 2005), p. 157.

¹¹⁴ On 29 August 2023, CCHR’s Fair Trial Rights Team met the representatives from the Battambang Court of Appeal and the General Prosecution Office attached to Battambang Court of Appeal to discuss the findings of the present report.

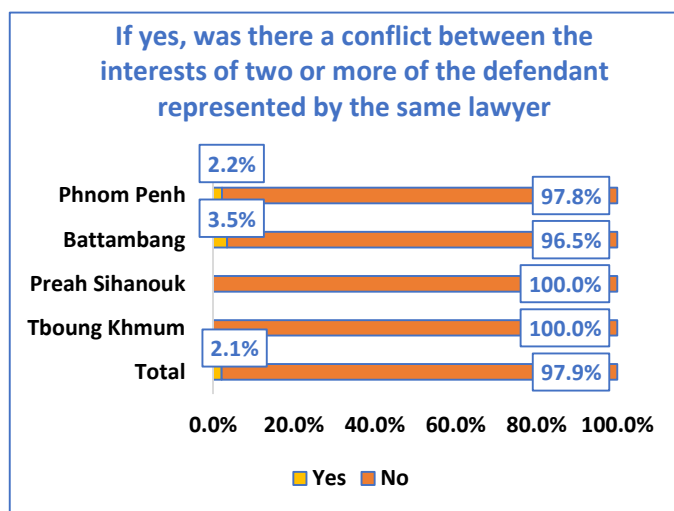
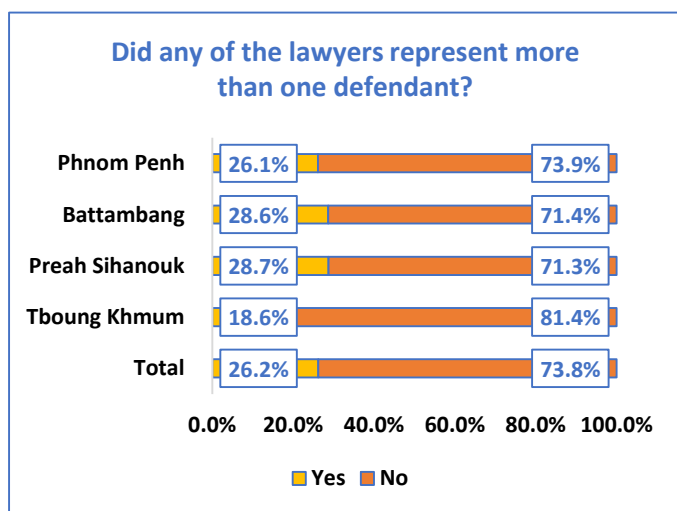
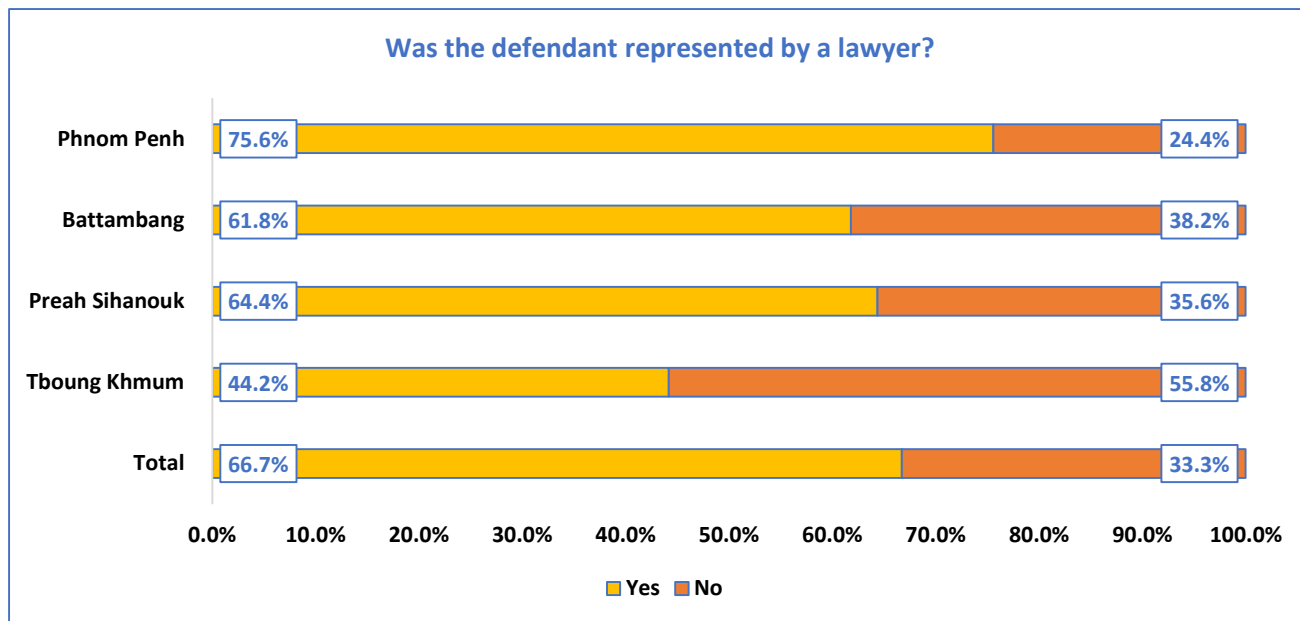
¹¹⁵ On 16 November 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of the present report.

¹¹⁶ For more details on this right, see CCHR’s module “The right to be present at trial and the right to defend oneself in person or through legal representation” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-be-present-at-trial-and-the-right-to-defend-oneself-in-person-or-through-legal-representation>.

¹¹⁷ ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 38.

representation is cause for serious concern. Although there were some disparities between the Courts, none of them fully upheld the right to legal representation.

Figure 15: The right to legal representation¹¹⁸



In addition, 190 defendants were represented by a lawyer who was defending more than one accused. Situations in which a lawyer represents multiple defendants, 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 both 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. Each defendant should therefore

¹¹⁸ This data is based on the total number of defendants (724 individuals) involved in the 521 cases monitored.

have a separate lawyer.¹¹⁹ It should be noted that during the Reporting Period, a total of four defendants shared the same lawyer as their co-defendant(s); amounting to conflicts of interest.

The percentage of defendants represented by a lawyer reached 75.6% at the **Phnom Penh** Appeal Court, marking a slight improvement compared to 2021 (75.4%) and confirming the progress observed since 2019/2020 (71.8%). Concerningly, the lawyer of 92 out of 352 defendants (26.1%) represented more than one accused, and CCHR's trial monitors identified two conflicts of interest. Representatives from the Court had previously stated that judges do inform unrepresented defendants in misdemeanor cases about legal aid, but noted that some agree to go ahead with the trial without a lawyer. Court officials also tried to help defendants access legal aid in misdemeanor cases. However, they pointed out that applying for legal representation is difficult for the poor, as they need to provide a certificate proving their low economic status to the Bar Association of the Kingdom of Cambodia (BAKC). Since BAKC faces budget challenges, it is often late in responding to applications.¹²⁰

The other three Courts performed less well in comparison, with only 61.8% of defendants being represented by a lawyer in the trials monitored at the **Battambang** Appeal Court. In December 2022, the Deputy President of the Court said requests for a lawyer must be submitted to the BAKC through the Ministry of Justice. Although he acknowledged the process could take time, he said all demands are met.¹²¹ In March 2023, he stated that all felony cases were heard with a lawyer present, unless they were requalified as a misdemeanor by the Court.¹²² Concerningly, the lawyer of 57 out of 199 defendants (28.6%) represented more than one accused, and CCHR's trial monitors identified two conflicts of interest.

The **Preah Sihanouk** Appeal Court did only slightly better, with 64.4% of defendants benefiting from legal representation during the Reporting Period. In March 2023, representatives from the Court said the judges complied with the Code of Criminal Procedure, which states that legal representation is not mandatory for misdemeanors. However, they still ask defendants in misdemeanor cases whether they want to be represented by a lawyer. If they do, the hearing is postponed until a lawyer is found. The defendant will then have to cover the legal fees.¹²³ Although the lawyer of 25 out of 87 defendants (28.7%) represented more than one accused, CCHR's trial monitors did not identify conflicts of interest during the Reporting Period.

Concerningly, only 44.2% of defendants were represented by a lawyer in the trials monitored at the **Tboung Khmum** Appeal Court. Although the lawyer of 16 out of 86 defendants (18.6%) represented more than one accused, CCHR's trial monitors did not identify conflicts of interest. In September 2023, representatives from the Court pointed out that they fully comply with the CCPC's provisions on legal representation (see above). They added that they always proceed with the appeal hearing in cases where non-represented defendants facing misdemeanor charges agree for the court to do so, in line with existing legal provisions.¹²⁴

¹¹⁹ See CCHR 'Guidance Notes for CCHR Appeal Court Monitoring Checklist', p. 47.

¹²⁰ On 13 August 2020, CCHR team met the President and Deputy President of the Phnom Penh Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

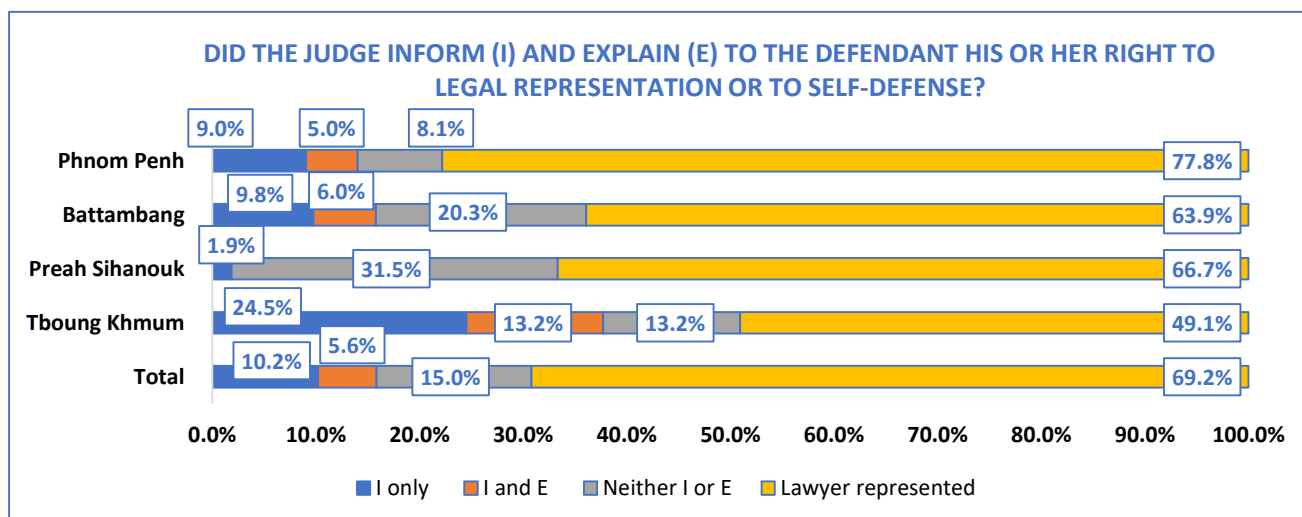
¹²¹ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹²² On 23 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹²³ On 28 March 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹²⁴ On 18 September 2023, CCHR's Fair Trial Rights Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of the present report.

Figure 16: Explanation of rights¹²⁵



In 48.6% of the relevant cases in which the defendants who attended the hearing were not represented by a lawyer (69 out of 142), the judges failed to inform and explain to the accused their right to legal representation or to represent themselves. There were, however, significant disparities between the Courts. Indeed, this percentage reached 36.7% at the **Phnom Penh** Appeal Court (18 out of 49 relevant cases), 56.25% at the **Battambang** Appeal Court (27 out of 48 relevant cases), and 25.9% at the **Tboung Khmum** Appeal Court (7 out of 27).

Concerningly, it reached at 94.4% at the **Preah Sihanouk** Appeal Court (17 out of 18 relevant cases). In December 2022, the Court’s President acknowledged the existence of shortcomings when it comes to explaining their rights to defendants; and said he would hold a technical meeting to address this issue.¹²⁶

5.4. Right to the presumption of innocence

International Law	Cambodian Law	
ICCPR	Constitution	Law on Juvenile Justice
Article 14(2)	Article 38	Article 5

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.¹²⁷ 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

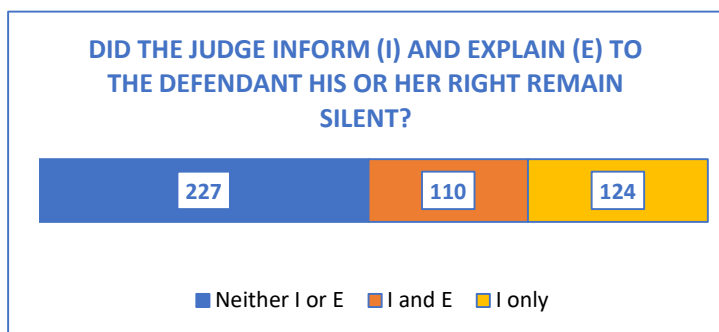
¹²⁵ This data is based on the 461 monitored cases where the defendant was present at the hearing (221 cases at the Phnom Penh Appeal Court, 133 at the Battambang Appeal Court, 53 at the Tboung Khmum Appeal Court, and 54 at the Preah Sihanouk Appeal Court).

¹²⁶ On 9 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹²⁷ OHCHR ‘The Right to a Fair Trial (Part I), Chapter 6’, p. 219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>; Amnesty International, ‘Fair Trial Manual’ (2014) p. 125, Section 15.1.

presumption of innocence.¹²⁸ Even if the accused says nothing and presents no evidence, they 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 they are innocent.¹²⁹

Figure 17: The right to remain silent ¹³⁰



The right to remain silent is rooted in the right to the presumption of innocence. During the Reporting Period, judges failed to inform and explain this right to the defendants in 49.2% of the monitored cases (227 out of 461) in which the accused were present. However, there were significant disparities between the Courts.

The **Phnom Penh** Appeal Court failed to inform and explain this right in 36.2% of the relevant monitored cases (80 out of 221). This figure amounts to 31.1% of all cases (80 out of 257), up from only 18.8% in 2021. Although this remains a significant improvement from the 2017/2018 Reporting Period, during which judges failed to inform and explain it in 71.8% of all cases, it points to a reversal in the progress made since 2019/2020, when it stood at 25.6%. The Court had previously stated that the principle of the presumption of innocence does not require the judges to inform the defendants of their right to remain silent. It added that defendants are nevertheless free to exercise their right to remain silent if they wish.¹³¹

Concerningly, the **Battambang** and **Tboung Khmum** Appeal Courts failed to inform and explain the right to remain silent in respectively 55.6% (74 out of 133) and 52.8% (28 out of 53) of the relevant monitored cases. The **Preah Sihanouk** Appeal Court performed even worse, failing to inform and explain it in 83.3% of the relevant cases (45 out of 54). In March 2023, its representatives said judges do not need to inform defendants represented by a lawyer about this right, given that doing so theoretically falls under the responsibility of the lawyer.¹³² Although nothing suggested that the judge drew an inference of guilt from the silence of the defendant in the monitored trials, it stems from the above that the practice of judges informing and explaining the right to remain silent to *all* defendants needs to be implemented as a matter of urgency to preserve the presumption of innocence.

In September 2023, the **Preah Sihanouk** Appeal Court and General Prosecution attached to the court said that, on occasions, the judges might fail to inform the accused about this right. However, they noted that most defendants understand and exercise it. The representatives also said the court never coerces a defendant to answer a question, and eventually moves to another question if the accused fails to respond.¹³³

¹²⁸ UNHRC, General Comment 32, para. 30.

¹²⁹ For more details, see CCHR’s module “The right to the presumption of innocence and the right to remain silent” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-the-presumption-of-innocence-and-the-right-to-remain-silent>.

¹³⁰ The data includes the 461 monitored cases (out of 521) where the defendant was present at the hearing.

¹³¹ Letter No. 431/21 issued on 12 October 2021 by the Phnom Penh Court of Appeal in response to the findings of CCHR’s Report 2019/2020.

¹³² On 28 March 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹³³ Letter No. 1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of the present report.

The right to be presumed innocent also includes an obligation on authorities to ensure that no attributes of guilt, such as shackles, handcuffs, cages, or prison uniforms, are attached to the accused during the trial.¹³⁴ International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. It is prejudicial when remand prisoners attend appeal hearings wearing the same prison uniforms as prisoners who have already received a final conviction, as it may influence the judge’s decision and the public’s perception.

The 2015 UN Standard Minimum Rules for the Treatment of Prisoners (“The Nelson Mandela Rules”),¹³⁵ which represent internationally recognized best practices for the treatment of prisoners, provides that untried prisoners should be allowed to wear their own clothing at trial or if they wear prison uniforms, they must be different from those of convicted prisoners. Similarly, defendants tried by the ECCC are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction. In Cambodia, the issue of defendants appearing in court in prison uniforms falls within the responsibility of the General Department of Prisons. According to the Ministry of Interior’s *Prakas*, the blue uniform is for convicted prisoners whose conviction is final, while the dark orange uniform, which was introduced in late 2013, is for prisoners who have not yet been convicted.¹³⁶ Defendants should be allowed to appear before the Court with their own clothing or at the very least, not in the blue uniform of convicted prisoners.

Figure 18: The presumption of innocence¹³⁷

Duration	Phnom Penh AC			Battambang AC			Tboung Khmum AC			Preah Sihanouk AC		
	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A
Was the defendant handcuffed throughout the hearing?	0	266	86	0	137	62	0	49	37	0	53	34
Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	0	352	0	0	199	0	0	86	0	0	87	0
Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant?	0	288	64	0	181	18	0	70	16	0	65	22

During the Reporting Period, 34.5% of all the defendants who were present at their trials and imprisoned (173 out of 502) wore the blue prison uniform for convicts at their hearings. Such a practice clearly undermines the presumption of innocence. This figure reached 24.8% at the **Phnom Penh** Appeal Court (66

¹³⁴ UNHRC, General Comment 32, para. 30; see also ECtHR, *Samoila and Cionca v. Romania* (4 March 2008) App no. 33065/03, paras 99-101,

[https://hudoc.echr.coe.int/eng#{"fulltext":\["SAMOILA%20AND%20CIONCA"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-85390"\]}](https://hudoc.echr.coe.int/eng#{).

¹³⁵ UN General Assembly ‘United Nations Standard Minimum Rules for the Treatment of Prisoners’, Resolution 70/175, Annex, (17 December 2015), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

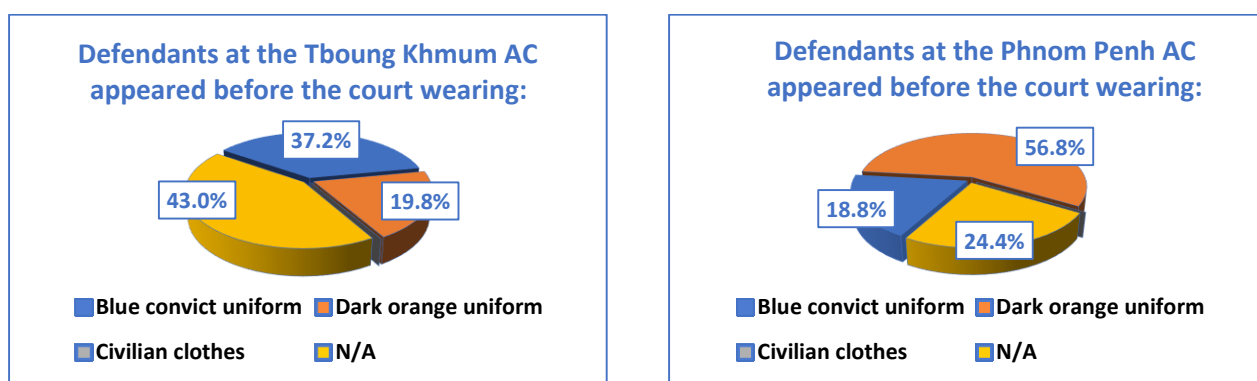
¹³⁶ See CCHR’s Fair Trial Rights Newsletter ‘Prisoners Uniform and Presumption of Innocence’ (June 2017) <https://sithi.org/medias/files/projects/tmp/publication/cchr-fair-trial-rights-newsletter-on-prisoner-uniform-and-the-presumption-of-innocence-english2017-06-05.pdf>.

¹³⁷ This data is based on the total number of defendants (724 individuals) involved in the 521 cases monitored. N/A = The defendant was either absent or s/he was not imprisoned.

out of 266), an increase from 19.5% in 2021. Although this represents a decrease compared to 2019/2020, when this figure stood at 28.2%, these findings remain particularly concerning given the high level of advocacy made on this matter, as it has been raised with the Court numerous times in recent years. During the consultation meeting with the Court for the 2018/2019 reporting period, they stated that the uniform of the defendants was not set by their department and they would not interfere with the practice of the prison department.¹³⁸

As for the other Courts, the percentage of imprisoned defendants wearing blue uniforms during their trials reached 65.3% at the **Tboung Khmum** Appeal Court (32 out of 49), 47.4% at the **Battambang** Appeal Court (65 out of 137), and 20% at the **Preah Sihanouk** Appeal Court (10 out of 50). In December 2022, the Deputy President of the **Battambang** Appeal Court noted that he had requested prison officials to bring defendants in their own clothes, but they responded that it was prohibited on security grounds by the General Department of Prisons.¹³⁹ In August 2023, representatives from the Court said this matter falls under the exclusive responsibility of the prison department.¹⁴⁰ In January 2023, the General Prosecutor of the **Tboung Khmum** Court of Appeal made similar comments, but added that local prison officials were considering this issue.¹⁴¹ In March 2023, representatives from the **Preah Sihanouk** Appeal Court also said they had told prison officials to let defendants wear civilian clothes during hearings.¹⁴²

Figure 19: The presumption of innocence¹⁴³



¹³⁸ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

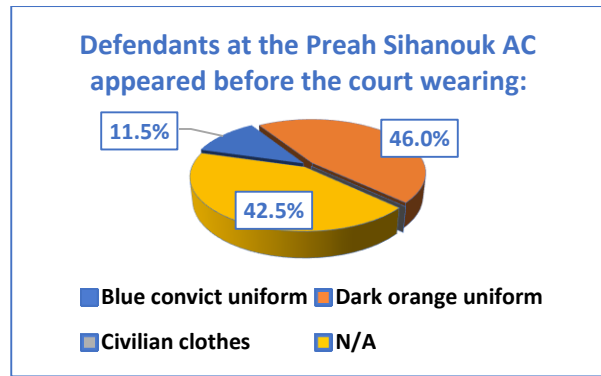
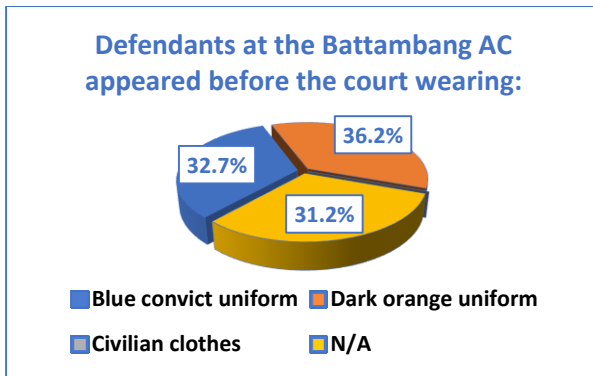
¹³⁹ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁴⁰ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with the representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

¹⁴¹ On 13 January 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁴² On 28 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁴³ This data is based on the total number of defendants involved in the cases monitored in 2022. N/A = The defendant was either absent or s/he was not imprisoned.



In addition, 329 imprisoned defendants who were present at the trials monitored by CCHR (65.5% of the total) appeared in court wearing a different prison uniform than that of convicted. While this is tolerated according to international standards, priority should be given to civilian clothes. Welcomingly, no defendants were handcuffed during the hearings.

5.5. Evidentiary rights

International Law	Cambodian Law	
ICCPR	CCPC	Law on Juvenile Justice
Article 14(3)(e)	Articles 153, 154, 298, 321, 324, 326, 328 & 394	Article 6

All the decisions of the Court must be based exclusively upon the evidence presented at trial. Each party must therefore be able to present evidence and call witnesses in support of their case, to cross-examine witnesses presented by other parties and to challenge evidence that they do not accept.¹⁴⁴ This is essential to ensuring equality of arms between the parties involved, a fundamental principle that requires that all parties be treated in a way that ensures equality at all stages of the trial and that no party be placed at a disadvantage in presenting their case.

The provision of evidence *via* a written statement (i.e., not during a court hearing) is not contrary to the rights of the accused if they 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.¹⁴⁵ Finally, any confession given by an accused must be done in the absence of any direct or indirect, physical or psychological coercion. If the defendant alleges a violation of their 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.¹⁴⁶ Evidence obtained by coercion must not be admissible at trial.

¹⁴⁴ UNHRC, General Comment No. 32, paras 13, 39. For more details on these rights, see CCHR’s module “Evidentiary rights (the right to call and examine witnesses)” (September 2022), <https://sithi.org/fair-trial-rights/evidentiary-rights-right-to-call-and-examine-witnesses>.

¹⁴⁵ See e.g. ECHR, *Mirilashvili v. Russia* (11 December 2008), App no. 6291/04, para. 163, <http://hudoc.echr.coe.int/eng?i=001-90099>; ECtHR, *Asch v. Austria* (26 April 1991) Series A no. 203, para. 27, <http://hudoc.echr.coe.int/eng?i=001-57676>; ECtHR, *Isgrò v Italy* (19 February 1991) Series A no. 194-A, para. 34, <http://hudoc.echr.coe.int/eng?i=001-57653>; ECtHR, *Kostovski v. the Netherlands* (20 November 1989) Series A no. 166, para. 41, <http://hudoc.echr.coe.int/eng?i=001-57615>.

¹⁴⁶ UNHRC, General Comment 32, para. 41; see also UNHRC, Communication 1033/2001, *Singarasa v. Sri Lanka* (21 July 2004) CCPR/C/81/D/1033/2001, para. 7.4, <https://juris.ohchr.org/Search/Details/1125>; UNHRC, Communications 1263/2004 and 1264/2004, *Khuseynova and Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263-1264/2004, para.

In only three of the 521 cases monitored during the Reporting Period (0.6% of the total) did something suggest that the defense was not given the opportunity to call witnesses: two at the **Phnom Penh** Appeal Court, and one at the **Preah Sihanouk** Appeal Court. In addition, nothing suggested that any party was not given the opportunity to present evidence or to view the case file before the hearing. While this is encouraging, evidentiary rights remain not fully respected for three main reasons.

First of all, in 18 of the 43 cases in which witnesses were called (41.9% of the total), witnesses were present in the courtroom before they were questioned. This happened in half the cases featuring witnesses at the **Phnom Penh** and **Preah Sihanouk** Appeal Courts (three out of six each), and in nearly 40% of those at the **Battambang** (seven out of 18) and **Tboung Khmum** (five out of 13) Appeal Courts. 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. The Deputy President of the **Battambang** Appeal Court said that, in some cases, the witness was present in the courtroom because the parties had invited them without informing the judge.¹⁴⁷ In August 2023, representatives from the Court said that they allow witnesses to wait in the courtroom if the accused has already confessed. However, new witnesses and witnesses in drug smuggling cases are not allowed inside the courtroom before they testify.¹⁴⁸ In December 2022, the President of the **Preah Sihanouk** Appeal Court said that clerks sometimes neglect to call or check whether the parties are present, and thus do not know whether potential witnesses are in the courtroom before testifying.¹⁴⁹

The Courts must also ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity). The data collected during the trial monitoring activities reveals that the quality of evidence presented can be of great concern. A total of 46 confessions were presented during trials and, among these, 29 confessions were relied on by the judge as evidence. There were, however, significant disparities between the Courts: the **Preah Sihanouk** Appeal Court relied on confessions as evidence in 100% of the eight cases in which they were presented, while the **Phnom Penh** Appeal Court did so in 18 (78.3%) of the 23 cases featuring confessions. By comparison, the **Battambang** Appeal Court only relied on confessions as evidence in three (21.4%) of 14 such cases. The **Tboung Khmum** Appeal Court only dealt with one case featuring a confession but did not rely on it as 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.

Finally, the lack of legal representation of many defendants in the cases monitored calls into question the capacity of the defendants who did not benefit from a lawyer's legal knowledge and expertise to effectively exercise their right to call witnesses and cross-examine the other parties' witnesses, and therefore raised doubts as to the respect for the principle of equality of arms. Another cause for concern is the access of unrepresented defendants to their case files. While in none of the cases monitored during the Reporting Period did the defense raise any issues related to adequate time and facilities for defense preparation, the

8.3, <https://juris.ohchr.org/Search/Details/1457>.

¹⁴⁷ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁴⁸ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

¹⁴⁹ On 9 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

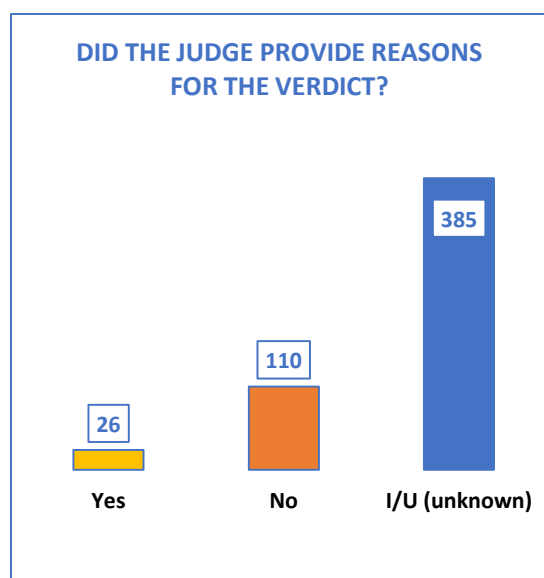
provisions of the CCPC¹⁵⁰ that allow defense lawyers to examine the case file and make copies do not provide the same access to unrepresented defendants. This poses a potential risk that those defendants are denied access to the evidence against them and are unable to adequately prepare their own defense.

5.6. Right to a reasoned judgment

Cambodian Law
CCPC
Articles 357 & 403

The right to a reasoned judgment¹⁵¹ 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 (i.e. date, the location, and the actual event(s), the evidence relied on by judges to reach their verdict findings, and an explanation of why they relied on it) and the law (i.e. the crime and the mode of liability: direct perpetrator, accomplice, etc.) on which the judgment is based must be explained. 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. Having a reasoned judgment is not only necessary to protect the accused against arbitrary judgments,¹⁵² but also to safeguard their fundamental right to appeal. International law prescribed that 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.¹⁵³ Within the Cambodian context, this is respected by both the accused and prosecution being able to petition the Supreme Court to review appeal rulings.

Figure 20: Provision of the reasons for the verdict by judges¹⁵⁴



During the Reporting Period, in 80.9% of the cases monitored by CCHR for which the verdict is known (110 out of 136 cases), the judges failed to provide detailed reasons for their judgment, instead only announcing the ruling. This percentage reached 81.25% at the **Phnom Penh** Appeal Court, down from 90% in 2021. Despite this slight improvement year on year, this figure still represents a sharp deterioration compared to 2019/2020, in which nearly two-thirds of judgments were given without adequate reasoning. This is highly concerning as it leaves the door open to unlawful convictions. In October 2021, the Court said its judges only give the reasons for the verdict if the parties are present, and pointed out that this does not contravene any

¹⁵⁰ Articles 145,254,304,319,391, and 428 of the CCPC.

¹⁵¹ For more details on this right, see CCHR’s module “The right to a public judgment and the right to a reasoned judgment” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-a-public-judgment-and-the-right-to-a-reasoned-judgment>.

¹⁵² Amnesty International, ‘Fair Trial Manual’ (2014) p. 173, Section 24.2.

¹⁵³ UNHRC, General Comment No. 32, para. 49; UNHRC, Communication No. 320/1988, *V. Francis v. Jamaica* (24 March 1993), *GAOR*, A/48/40 (vol. II), para. 12.2, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>.

¹⁵⁴ This data is based on the 521 trials monitored in 2022. I/U (unknown) means that the Trial Monitor was not present on the date of the verdict.

legal provision.¹⁵⁵ However, in November 2023, Court and General Prosecution representatives said the judges would now briefly state the reasons behind their decision when announcing the judgment so the accused can better understand their case.¹⁵⁶

Similarly, the judges at the **Battambang** and **Preah Sihanouk** Appeal Courts failed to explain their reasoning in respectively 82.2% and 78.6% of the monitored cases for which the verdict is known. In March 2023, the Deputy President of the **Battambang** Appeal Court said the reasons for the verdict are not given if the defendants are absent. However, he pointed out that a full copy of the judgement is sent to the parties.¹⁵⁷

CCHR’s Trial Monitor also noticed that, in 87.1% of the cases where a judgment was rendered at the time CCHR was monitoring the hearings, the Appeal Courts handed down a guilty verdict, upholding the decisions of the Courts of First Instance. The percentage of guilty verdicts reached 93% at the **Phnom Penh** Appeal Court (a trend which has been ongoing since the 2016/2017 reporting period), 83.3% at the **Battambang Appeal Court**, and 85% at the **Preah Sihanouk** Appeal Court. These high figures, 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. The right to a reasoned judgment therefore remains not fully respected by these three Courts.

It should be noted that, during the Reporting Period, CCHR could only record one verdict at the **Tboung Khmum** Appeal Court. Although the judge did provide reasons for this particular guilty verdict, the lack of data on other cases prevents CCHR from drawing definitive conclusions and assessing whether the Court fully respects the right to a reasoned judgment. In September 2023, representatives from the Court said some verdicts were not delivered on the day of the hearing because not all the parties were present.¹⁵⁸

5.7. Professionalism of judges

International Law	Cambodian Law		
ICCPR	Constitution	LSJP	Cambodian Code of Judicial Ethics
Article 14(1)	Articles 128 & 132	Articles 8, 50 & 77	Articles 2 & 8

Guaranteed by Article 14(1) of the ICCPR, the right to be tried by a competent, independent, and impartial tribunal is a cornerstone of fair trial rights.¹⁵⁹ Without respect for this right, all other fair trial rights become superfluous. Indeed, a tribunal that is not competent, independent, and impartial is incapable of discharging its duty to ensure fair trials and to properly administer justice. Judges must therefore convey an image of professionalism at all times to appear competent, independent, and impartial. In Cambodia, the conduct of judges is regulated by the LSJP and the Cambodian Code of Judicial Ethics, which require judges to remain

¹⁵⁵ Letter No. 431/21 issued on 12 October 2021 by the Phnom Penh Court of Appeal in response to the findings of CCHR’s Report 2019/2020.

¹⁵⁶ On 16 November 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of the present report.

¹⁵⁷ On 23 March 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁵⁸ On 18 September 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of the present report.

¹⁵⁹ For more details on this right, see CCHR’s module “The right to be tried by a competent, independent, and impartial tribunal (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-be-tried-by-a-competent-independent-and-impartial-tribunal>.

free of any form of influence by the parties or any other persons, groups or institutions and to adjudicate cases with the utmost conscientiousness, respect, patience, politeness, and morality to ensure that justice is served.

During the Reporting Period, none of the prosecutors or the judges behaved in an intimidating manner or made discriminatory comments towards any party, including the defendants. Welcomingly, judges only answered their mobile phone during the hearing in five monitored trials; a mere 1%. Three of these instances took place at the **Battambang** Appeal Court, while the other two happened at the **Phnom Penh** and **Tboung Khmum** Appeal Courts. In four out of these five cases, the judges responded briefly before hanging up. However, one judge at the **Battambang** Appeal Court conducted a phone conversation during a monitored hearing. The phones of the above-mentioned judges were on silent mode, except in one instance at the **Battambang** Appeal Court. In August 2023, representatives from the Court said they were taking measures to prevent such cases from happening.¹⁶⁰

Figure 21: Length of monitored trials¹⁶¹

Overall

Trial Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	126	48	51	27	252
Misdemeanor	98	77	63	21	259
Petty Offense	4	4	1	1	10
Total	228	129	115	49	521
Total in %	43.76%	24.76%	22.07%	9.40%	100%

Phnom Penh Appeal Court

Trial Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	104	34	22	5	165
Misdemeanor	44	23	13	8	88
Petty Offense	3	1	0	0	4
Total	151	58	35	13	257
Total in %	58.7%	22.6%	13.6%	5%	100%

Battambang Appeal Court

Trial Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	19	10	17	5	51
Misdemeanor	41	31	15	3	90
Petty Offense	1	1	0	0	2
Total	61	42	32	8	143
Total in %	42.6%	29.4%	22.4%	5.6%	100%

¹⁶⁰ On 29 August 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

¹⁶¹ This data is based on the hearing length recorded for the 521 cases monitored.

Tboung Khmum Appeal Court

Trial Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	1	2	9	6	18
Misdemeanor	5	12	16	9	42
Petty Offense	0	1	1	0	2
Total	6	15	26	15	62
Total in %	9.7%	24%	42%	24.2%	100%

Preah Sihanouk Appeal Court

Trial Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	2	2	5	10	19
Misdemeanor	6	15	14	3	38
Petty Offense	0	1	0	1	2
Total	8	18	19	14	59
Total in %	13.6%	30.5%	32.2%	23.7%	100%

The majority of the appeal hearings monitored were relatively short, raising concerns over the thoroughness with which the cases were examined by the judges during the trials, especially regarding the most severe offenses. Of the 521 trials monitored during the Reporting Period, 43.76% lasted 15 minutes or less (228), 24.76% lasted between 16 and 30 minutes (129), 22.07% lasted between 31 minutes and an hour (115), and only 9.40% lasted more than an hour (49). Concerningly, 55.3% of the hearings that lasted 15 minutes or less concerned felonies – the shortest monitored felony hearing having lasted a mere four minutes – and 43% concerned misdemeanors – the shortest monitored misdemeanor hearing having been as brief as three minutes. As in other sections, there were significant disparities between the Courts.

Trials tended to be much quicker at the **Phnom Penh** Appeal Court, with 58.7% of hearings lasting 15 minutes or less (151 out of 257), and a further 22.6% lasting between 16 and 30 minutes (58 out of 257). Concerningly, 68.9% of the trials that lasted less than 15 minutes concerned felonies. Similarly, 42.6% of the hearings monitored at the **Battambang** Appeal Court lasted 15 minutes or less (61 out of 143), and a further 29.4% lasted between 16 to 30 minutes (42 out of 143). Nearly one third of the hearings that lasted less than 15 minutes concerned felonies (19 out of 61). In August 2023, representatives from the Court said some hearings were short because the accused had already confessed to the offense or was absent.¹⁶²

By contrast, 66% of monitored trials at the **Tboung Khmum** Appeal Court lasted more than 30 minutes (41 out of 62); and 9.7% of them (6 out of 62) lasted 15 minutes or less. In addition, only one trial that lasted 15 minutes or less concerned a felony. Similarly, 55.9% of monitored trials at the **Preah Sihanouk** Appeal Court lasted more than 30 minutes (33 out of 59); and 13.6% of them (8 out of 59) lasted less than 15 minutes, including two felonies.

Overall, it is alarming to see that the average duration of the 521 monitored trials was of only 28 minutes and 44 seconds. In many of the shortest hearings, it was observed that the defendants were either absent or/and not represented. In addition, no witnesses were called to testify in most of the monitored hearings. While there are no set standards regarding the length of trials, hearings that last less than 30 minutes,

¹⁶² On 29 August 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

especially when they concern offenses punishable with imprisonment, can hardly provide an enabling environment in which the parties can fully exhaust their cases.

Acting in a conscientious and patient manner to provide fair justice to the parties is a principle that judges must uphold under the Code of Judicial Ethics. The Courts are therefore encouraged to dedicate adequate time to hearing cases in order to ensure that they are properly and thoroughly adjudicated, that all the fair trial rights of the defendants, including their right to be present and to legal representation, are fully respected, and that sufficient evidence is collected and presented at trial to ensure the proper administration of justice.

5.8. Rights of Children in Conflict with the Law

International Law		Cambodian Law			
ICCPR	CRC	Constitution	CCPC	Criminal Code	Law on Juvenile Justice
Article 14(1)	Articles 37 & 40	Articles 31 & 48	Articles 100 & 212	Articles 39 & 40	Articles 5, 6, 39, 47, 48, 49, 54, 57 & 82

International law guarantees children - individuals below the age of 18¹⁶³ - who are accused of having committed a criminal offense all the fair trial rights that apply to adults, but recognizes that they also need special protection giving due consideration to their age, maturity, and intellectual development.¹⁶⁴

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 children in criminal justice proceedings,¹⁶⁵ which are supported by several international rules and guidelines.¹⁶⁶ They translate by the particular necessity for State Parties to establish laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having infringed criminal law. In particular, States shall establish a minimum age of criminal responsibility under which children shall be presumed not to have the capacity to infringe criminal law and cannot be held responsible in criminal proceedings.¹⁶⁷ Children at or above the minimum age of criminal responsibility but below the age of 18 can be formally charged and subjected to child justice procedures in accordance with the CRC.¹⁶⁸ However, State parties are required to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings, “whenever appropriate.”¹⁶⁹ 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.¹⁷⁰ Cambodian law further provides differential

¹⁶³ CRC, Art. 1.

¹⁶⁴ For more details on these rights, see CCHR’s module “ The rights of Children in Conflict with the Law” (September 2022), <https://sithi.org/fair-trial-rights/the-rights-of-children-conflict-with-the-law>.

¹⁶⁵ CRC, Art. 40(2); CRC Committee, General Comment No. 24, paras 38-71; ICCPR, Art. 14; UN Human Rights Committee, General Comment No. 32, para. 42.

¹⁶⁶ For example, UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) or the UN Rules for the Protection of Juveniles Deprived of their Liberty, among others.

¹⁶⁷ CRC, Art. 40(3).

¹⁶⁸ CRC Committee, General Comment No. 24, para. 21.

¹⁶⁹ CRC, Art. 40 (3); CRC Committee, General Comment No. 24, para. 13.

¹⁷⁰ CRC, Art. 40 (4).

treatment provisions for children in conflict with the law in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of children in conflict with the law.

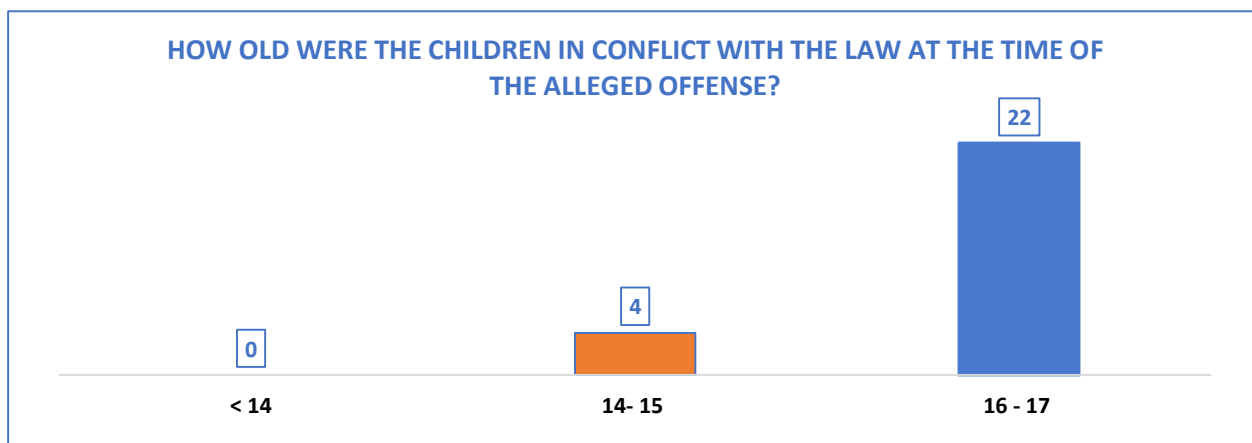
Criminal Responsibility of Children

Internationally, the most common minimum age is 14 years old.¹⁷¹ Cambodian law has set the age of criminal responsibility at the same age,¹⁷² which means that no child under this age at the time of the alleged offense should be tried by a court. Competent authorities must seek evidence to determine the age of a child suspected of having committed an offense as promptly as possible, including looking for birth certificates or documents certifying birth or using any other reliable means accepted by the judiciary to determine their age in the absence of birth documentation. Any doubt as to the age of a child must be resolved in their favor.¹⁷³ Similarly, courts must verify the age of children in conflict with the law involved in the cases they are in charge of adjudicating. If it can be determined that the defendant was under 14 at the time of the alleged offense or if there is any doubt as to their age when the offense occurred, the judges must immediately acquit them.

During the Reporting Period, out of the 724 defendants involved in the cases monitored by CCHR, 26 were children at the time of the alleged offense. Four were aged 14-15 (15.4%), and 22 (84.6%) were aged 16-17 at the time of the alleged offense.

Fifteen of these defendants stood trial at the **Battambang** Appeal Court, including three who were aged 14-15 at the time of the alleged offense. A further six appeared before the **Phnom Penh** Appeal Court, including one who was aged 14-15 at the time of the alleged offense. The last five, all of whom were aged 16-17 at the time of the alleged offense, stood trial at the **Preah Sihanouk** Appeal Court.

Figure 22: Age at the time of the offense¹⁷⁴



Right to Liberty

During the Reporting Period, 23 of the 26 children in conflict with the law involved in the monitored cases (88.5%) were held in pre-trial detention, including two who were aged 14-15 at the time. Concerningly, all three Courts made extensive use of this measure. In addition, 21 out of the 23 detained children were

¹⁷¹ CRC Committee, General Comment No. 24, para. 21.

¹⁷² Cambodian Criminal Code, Art.38 and Law on Juvenile Justice, Art.7.

¹⁷³ Law on Juvenile Justice, Art.7.

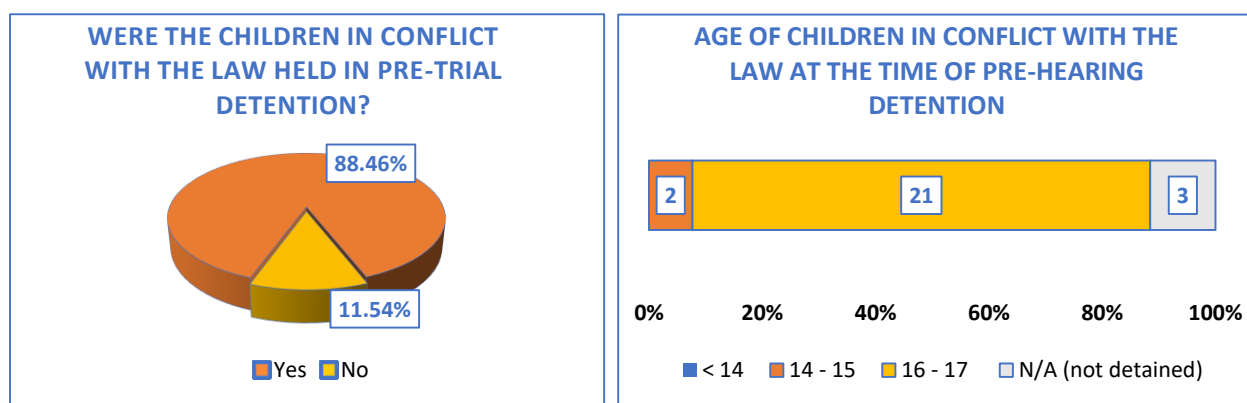
¹⁷⁴ This data based on the total number of children in conflict with the law (26 individuals) involved in the 521 cases monitored.

wearing prison uniforms at their hearing, including six who appeared in the blue uniform for convicts; thus undermining their presumption of innocence.

83.3% of the children in conflict with the law who stood trial at the **Phnom Penh** Appeal Court (5 out of 6) were held in pre-trial detention, up from 75% in 2021. While these figures are an improvement compared to 2019/2020, when all of them were held in pre-trial detention, the right to liberty of children in conflict with the law has been consistently undermined by the Court since 2014. Indeed, the findings from the monitoring conducted by CCHR from 2014 to 2022 show a quasi-systematic use of pre-trial detention in the cases involving children. All the detained children appeared before the Court in prison uniform during the Reporting Period, including three in the blue uniform.

Similarly, 93.3% of the children in conflict with the law who stood trial at the **Battambang** Appeal Court were held in pre-trial detention (14 out of 15). All but one of the detained children appeared before the Court in prison uniform, including two in the blue uniform. Lastly, 80% of the children in conflict with the law who stood trial at the **Preah Sihanouk** Appeal Court were held in pre-trial detention (4 out of 5). Again, all but one appeared in prison uniform at their hearing, including one in the blue uniform.

Figure 23: Percentage of children in conflict with the law held in detention in 2022¹⁷⁵



The best interests of the child must be the primary consideration when ordering or imposing penalties upon children found to have infringed criminal law.¹⁷⁶ Deprivation of liberty of children, from the moment of arrest, throughout the proceedings and in sentencing, is to be considered as a measure of last resort, and should be employed only in exceptional cases, for the shortest appropriate period of time.¹⁷⁷ The laws should provide for different non-custodial measures and should expressly prioritize the use of such measures;¹⁷⁸ and Cambodian law does provide for non-custodial measures.¹⁷⁹

Concerningly, for only one child out of 12 for whom the verdict is known did something suggest that a judge considered imposing a non-prison sentence. In 2019, the **Phnom Penh** Appeal Court had previously raised the fact that the implementation of a diversion scheme for child offenders, requiring alternatives to formal prosecution, was not possible due to a lack of mechanisms in place to support it.¹⁸⁰

¹⁷⁵ This data based on the total number of children in conflict with the law (26 individuals) involved in the 521 cases monitored.

¹⁷⁶ CRC, Art. 3(1); *see also* CRC Committee, General Comment No. 24, paras 76.

¹⁷⁷ CRC, Art. 37(b); *see also* CRC Committee, General Comment No. 24, paras, 73, 82-95.

¹⁷⁸ CRC Committee, General Comment No. 24, para. 73.

¹⁷⁹ Criminal Code, Art. 40 and Law on Juvenile Justice, Art. 57.

¹⁸⁰ 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 Phnom Penh Court of Appeal in order to discuss the findings of 2017/2018 report.

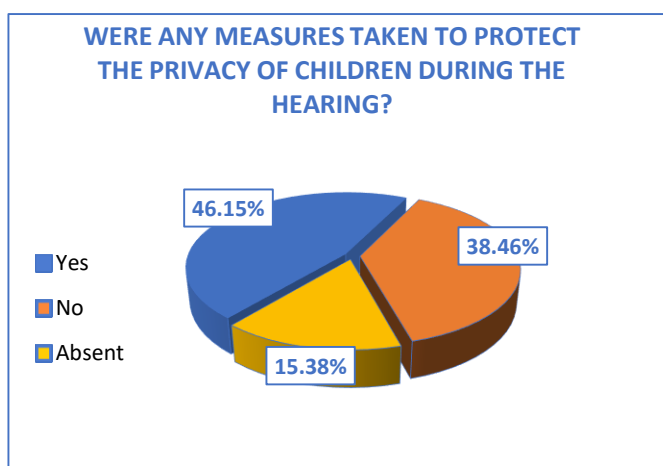
Segregation of child detainees in prison

International standards on child justice also recommend the separation of child and adult detainees, unless it is not considered in their best interests, to avoid exposing them to the negative influences of adult detainees. Detained children must not be placed in a center or prison for adults and be held in a facility for children.¹⁸¹ Welcomingly, during the Reporting Period, nothing indicated that detained children in conflict with the law were not separated from adult detainees.

Protection of child defendants' privacy

Under human rights law, a child has the right to have their privacy respected during all stages of the proceedings,¹⁸² from the initial contact with law enforcement until the final decision or, if sentenced, the release from supervision, custody or deprivation of liberty. The underlying rationale is to avoid the harm caused by undue publicity or libel.¹⁸³ Therefore, the rule should be that child justice hearings are to be conducted behind closed doors, with limited exceptions provided for by the law.¹⁸⁴ The privacy of children in conflict with the law or child victims may further be protected by 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. If the verdict or the sentence is to be pronounced in public, the identity of the child should not be revealed.¹⁸⁵ Finally, any documentation concerning children should be kept strictly confidential and closed to third parties, except for those directly involved in the investigation and adjudication of the case.¹⁸⁶ This should be ensured even once the child has reached the age of 18.¹⁸⁷

Figure 24: Protection of children's privacy¹⁸⁸



During the Reporting Period, measures (closed hearings) were taken to protect the privacy of the child in conflict with the law in 54.5% of the monitored cases where the defendant attended the hearing (12 out of 22). There were, however, significant disparities between the Courts.

Concerningly, no such measures were taken in the five relevant cases monitored at the **Phnom Penh** Appeal Court. This was also the case in 2021. The Court did conduct a closed hearing for a case involving a child defendant during the Reporting Period; but CCHR was not able to monitor it.

This figure is highly problematic, particularly given that the question of the child's right to privacy during criminal proceedings was extensively discussed with the Court in August 2019, when it refuted similar negative findings on the rights of children in conflict with the law. In support of this, the Court mentioned the installation of video conferencing technology donated by UNICEF to better protect the privacy of children.

¹⁸¹ CRC Committee, General Comment No. 24, paras. 92 and 93.

¹⁸² CRC, Art. 40(2)(vii); *see also* CRC, Art. 16 and 40(1); CRC Committee, General Comment No. 24, para. 66.

¹⁸³ CRC Committee, General Comment No. 24, para. 70.

¹⁸⁴ CRC Committee, General Comment No. 24, para. 67.

¹⁸⁵ CRC Committee, General Comment No. 24, para. 67.

¹⁸⁶ CRC Committee, General Comment No. 24, para. 67.

¹⁸⁷ CRC Committee, General Comment No. 24, para. 70.

¹⁸⁸ This data based on the total number of children in conflict with the law (26 individuals) involved in the 521 cases monitored.

They also suggested that CCHR record and report judges who do not fully uphold fair trial rights in child cases, as well as instances in which privacy is not fully respected during the hearing to the President of the Court.¹⁸⁹

During the consultation on the findings for the 2021 annual report, the Court said that, in cases involving a child defendant, victim or witness, trials were conducted using privacy screens and video conferencing. They stated that both trials and the delivery of verdicts for cases involving children were conducted in closed hearings, even if the cases also involved adult defendants. It is deeply regrettable that despite such efforts, it appears that the rights of children in conflict with the law are still routinely violated at the Court. In November 2023, Court and General Prosecution representatives said they would improve respect for the rights of children in conflict with the law, with a particular focus on the use of closed hearings.¹⁹⁰

Similarly, the **Preah Sihanouk** Appeal Court did not take any measure to protect the privacy of the child in conflict with the law in the three relevant cases monitored by CCHR. In December 2022, representatives from the Court said that, in cases of rape or indecent assault, the judge usually proceeds with closed hearings and uses screens to protect the privacy of child victims. However, they noted that this depends on the decision of the judge, as it is not a legal requirement.¹⁹¹ In March 2023, Court officials noted that they lacked equipment such as screens to protect the privacy of juveniles during hearings.¹⁹²

By contrast, the **Battambang** Appeal Court conducted closed hearings in 85.7% of the relevant cases monitored by CCHR (12 out of 14). In March 2023, representatives from the Court said the judges usually proceed with closed hearings in cases involving child defendants, but noted that they did not have enough privacy screens.¹⁹³ In August 2023, they said they were taking measures to strengthen the protection of the privacy of children in conflict with the law.¹⁹⁴

Welcomingly, the **Tboung Khmum** Appeal Court conducted closed hearings for all the cases involving children in conflict with the law during the Reporting Period, in compliance with the Law on Juvenile Justice. It can therefore be said that it took the necessary measures to protect their privacy. However, since CCHR was not able to monitor these closed hearings, it could not assess whether the other rights mentioned in this section were fully respected by the Court.

¹⁸⁹ 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 Phnom Penh Court of Appeal in order to discuss the findings of 2017/2018 report.

¹⁹⁰ On 16 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of the present report.

¹⁹¹ On 9 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁹² On 28 March 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁹³ On 23 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁹⁴ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of the present report.

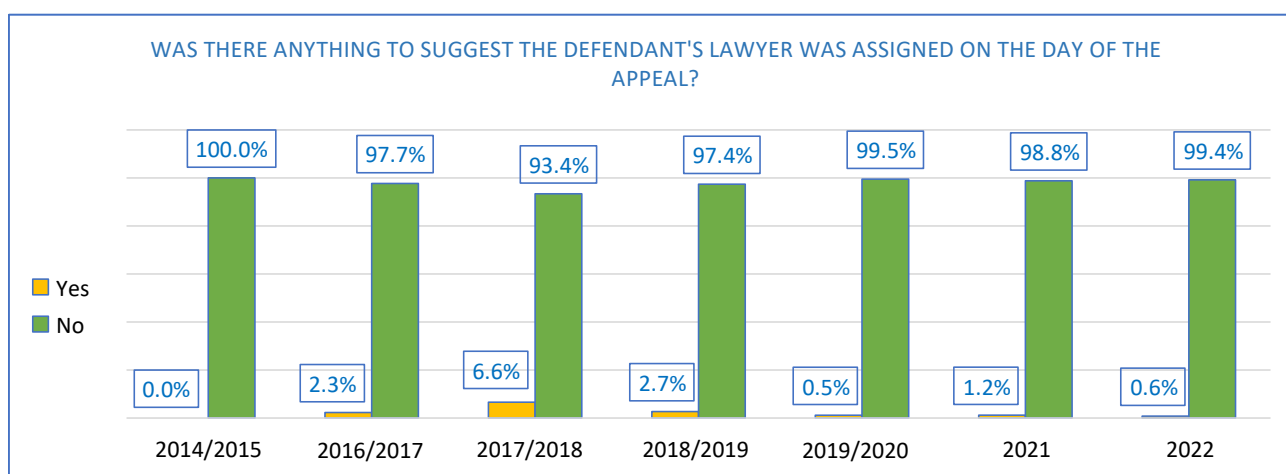
6. 2014-2022: Evolution of Fair Trial Rights Protection at the Phnom Penh Appeal Court

This section outlines key trends in terms of adherence to international fair trial rights standards by the **Phnom Penh** Appeal Court during the Reporting Periods from 2014 until 2022.¹⁹⁵ CCHR is not yet able to conduct a similar analysis for the three other Appeal Courts, given that the corresponding trial monitoring activities only started in 2022.

Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare the defense: The pre-trial right to speak with a lawyer and the aspects of the right to adequate time and facilities to prepare the defense monitored by CCHR have been consistently respected since 2014. As demonstrated in the table below, in over 99% of the cases monitored, nothing suggested that the defendant's lawyer was assigned on the day of the appeal.¹⁹⁶

Also, only four defendants out of all those involved in the cases monitored since 2014 raised the issue of adequate time and facilities for the preparation of the defense raised by the defense, which make this right largely respected by the Court.¹⁹⁷

*Figure 25: Evolution of the pre-trial right to speak with a lawyer (2014-2022)*¹⁹⁸



Right to a public judgment: From 2014 until 2022, the verdict was announced in public for all the monitored cases for which information was available at that point.¹⁹⁹

¹⁹⁵ Note that CCHR's Fair Trial Rights 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 that period.

¹⁹⁶ This data is based on the monitored cases in which the defendant was represented by a lawyer: 149 defendants (out of 161) in 2014/2015, 443 defendants (out of 562) in 2016/2017, 241 defendants (out of 315) in 2017/2018, 262 defendants (out of 352) in 2018/2019, 53 defendants (out of 85) in 2021, and 266 defendants (out of 352) in 2022.

¹⁹⁷ This data is based on the number of defendants who were present and/or represented by a lawyer: 149 defendants (out of 161) in 2014/2015, 443 defendants (out of 562) in 2016/2017, 241 defendants (out of 315) in 2017/2018, 262 defendants (out of 352) in 2018/2019, 89 defendants (out of 118) in 2021, and 288 defendants (out of 352) in 2022.

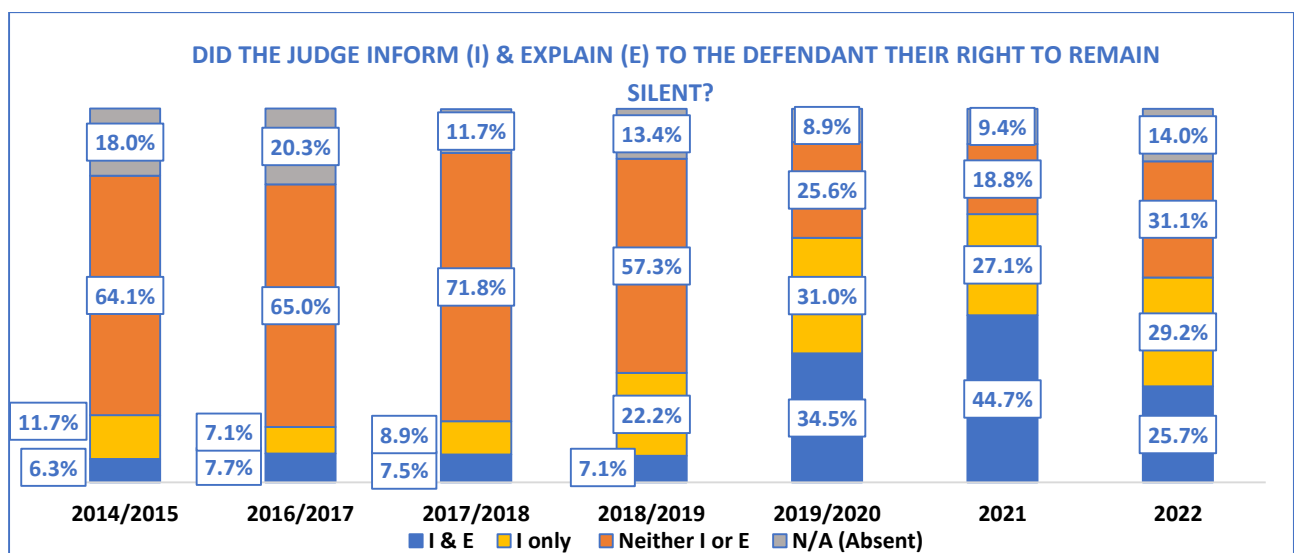
¹⁹⁸ This data is based on the number of defendants who were represented by a lawyer: 149 defendants (out of 161) in 2014/2015, 443 defendants (out of 562) in 2016/2017, 241 defendants (out of 315) in 2017/2018, 262 defendants (out of 352) in 2018/2019, 183 defendants (out of 255) in 2019/2020, 89 defendants (out of 118) in 2021, and 266 defendants (out of 352) in 2022.

¹⁹⁹ This data is based on all the cases monitored in 2014/2015, 252 cases (out of 341) monitored in 2016/2017, 95 cases (out of 213) monitored in 2017/2018, 99 cases (out of 239) monitored in 2018/2019, 21 cases (out of 203) monitored in 2019/2020, 21 cases (out of 85) monitored in 2021, and 48 cases (out of 257) monitored in 2022.

Right to the presumption of innocence: After being classified as *fully respected* in 2014/2015,²⁰⁰ this right moved to the *not fully respected* category in the 2016/2017 reporting period and has since remained in this category. While in no case monitored since 2014 did a judge make any statement about the guilt of the defendant prior to the delivery of the verdict, nor was any defendant handcuffed throughout the hearing,²⁰¹ there remain several factors justifying this right being classified as being not fully respected.

Indeed, since 2014, the judges have not informed nor explained to all the defendants their right to remain silent. However, there has been an overall positive trend in each Reporting Period, with a decline between this reporting period and the last, as demonstrated in the figure below. While the judges informed and explained the right to remain silent to the defendants in only 6.3% of the cases monitored in 2014/2015, they did so in 25.7% of the cases monitored in this Reporting Period. When compared to the 44.7% of cases in which they did so in 2021, a considerable decline can be observed in 2022. Although there has been an overall improvement, information and explanation by the Court of this fundamental right to the defendants remain insufficient, which undermines their presumption of innocence.

Figure 26: Information and explanation of the right to remain silent (2014-2022)²⁰²



Additionally, the fact that defendants have been appearing before the court in convict uniform since 2014²⁰³ further justifies the right to the presumption of innocence being classified as not fully respected. As demonstrated in the figure below, the data shows that, while only 5.4% of defendants appeared before the

²⁰⁰ In 2014/2015, the data related to the information and explanation of the right to remain silent to defendants by judges, was not included in the right to the presumption of innocence, but in a different category related to the explanation of rights.

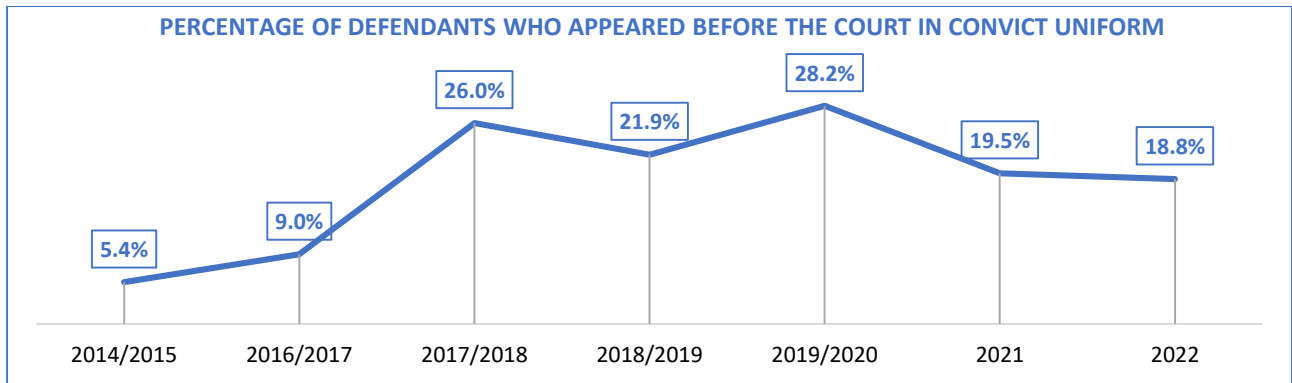
²⁰¹ This data is based on the total number of defendants involved in the monitored cases during each reporting periods: the 161 defendants involved in the 128 cases monitored in 2014/2015, the 558 defendants involved in the 340 cases monitored in 2016/2017, the 315 defendants involved in the 213 cases monitored in 2017/2018, the 352 defendants involved in the 239 cases monitored in 2018/2019, the 255 defendants involved in the 203 cases monitored in 2019/2020, the 118 defendants involved in the 85 cases monitored in 2021, and the 352 defendants involved in the 257 cases monitored in 2022.

²⁰² The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019, the 203 cases monitored in 2019/2020, the 85 cases monitored in 2021, and the 257 cases monitored in 2022.

²⁰³ The dark orange uniform for remand prisoners was introduced in Cambodia in late 2013, distinguishing them from convict prisoners who were a blue uniform.

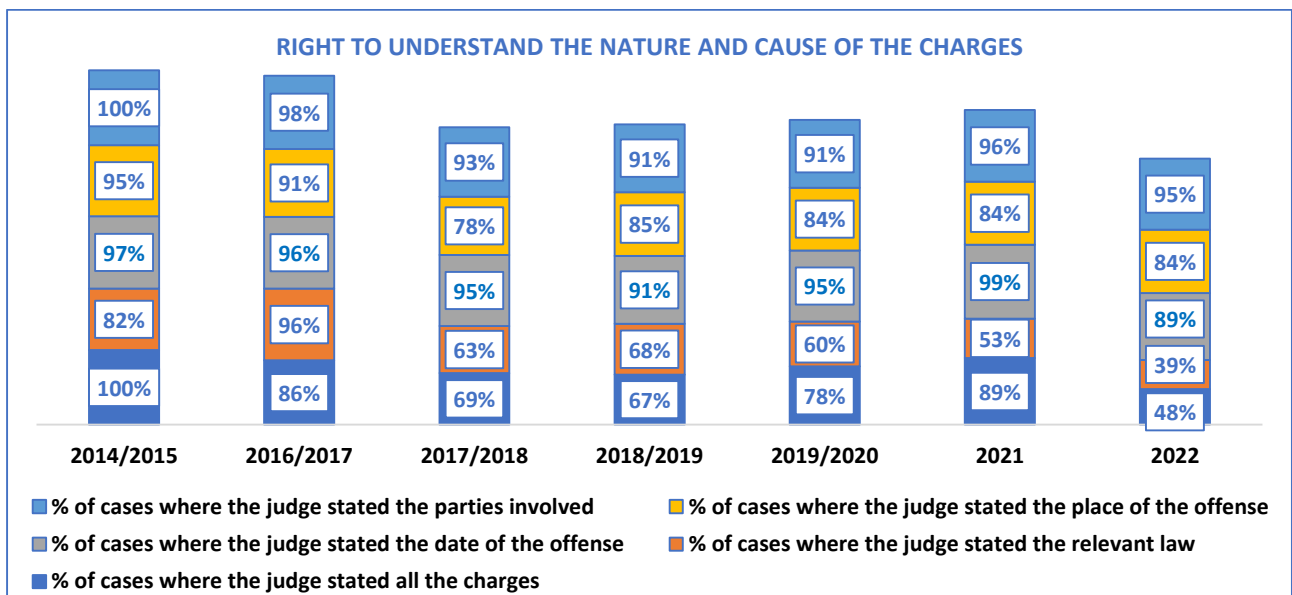
court in the prison uniform for convicts in 2014/2015, 18.8% did so in 2022. This is a slight increase when compared to 2021, where 19.5% of the defendants appeared before the Court in convict uniform.

Figure 27: Percentage of defendants appearing before the court in convict uniform (2014-2022)²⁰⁴



The right to understand the nature and cause of the charges: While it used to be considered as respected during the 2014/2015 and 2016/2017 Reporting Periods, this right has been considered as not fully respected since then. As shown in the figure below, there has been an overall decrease in all fields measured, and specifically in the percentage of cases in which the judge stated all the relevant charges against the defendants, the relevant law, or the place of the offence. Concerningly, this Reporting Period saw a considerable decline in the percentage of cases where the judge stated the date of the offence, the relevant law, and all the charges when compared to 2021.

Figure 28: Evolution of the right to understand the nature and cause of the charge(s) (2014-2022)²⁰⁵



²⁰⁴ This data is based on the number of defendants involved in the monitored cases which were present at the hearing and imprisoned: defendants out of 161 in 2014/2015, 356 defendants out of 558 in 2016/2017, 249 defendants out of 315 in 2017/2018, 254 defendants out of 352 in 2018/2019, 221 defendants out of 255 in 2019/2020, 89 defendants out of 118 in 2021, and 266 defendants out of 352 in 2022.

²⁰⁵ The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019, the 203 cases monitored in 2019/2020, the 85 cases monitored in 2021, and the 257 cases monitored in 2022.

Right to legal representation and to be present at trial: The percentage of defendants who were represented by a lawyer at their trial has been steadily decreasing from 2014/2015 until 2019/2020, with slight improvements for the 2021 and 2022 Reporting Periods. This is illustrated in the figure below, and highlights that the right to legal representation is not being fully respected. Similarly, the right to be present at trial has never been fully upheld, with 10% to 27% of defendants being absent at their trial in the cases monitored from 2014 to 2022.

Figure 29: Evolution of the right to legal representation (2014-2022)²⁰⁶

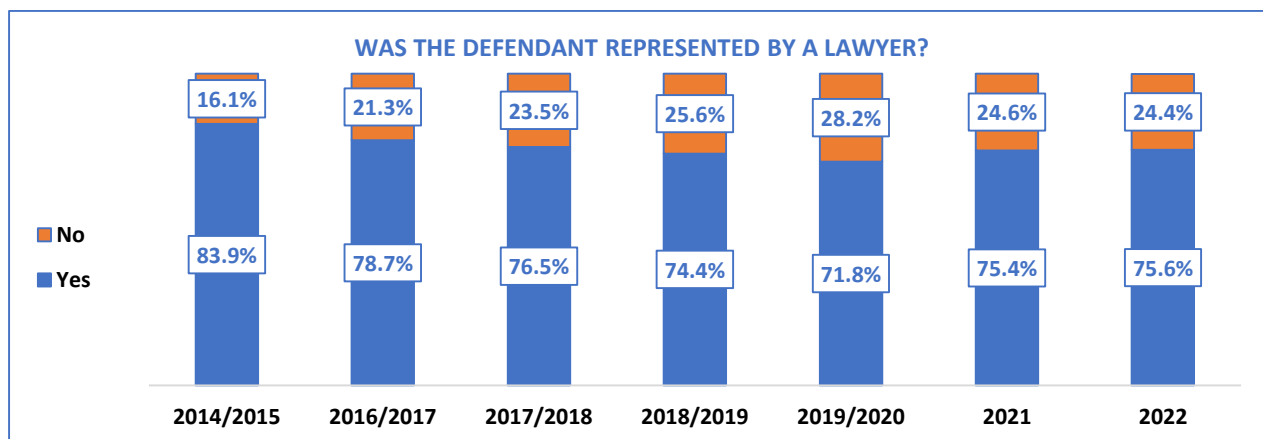


Figure 30: Evolution of the right to be present at trial (2014-2022)²⁰⁷

Was the defendant present at trial?	Yes	No
2014/2015	79.0%	21.0%
2016/2017	72.4%	27.6%
2017/2018	82.5%	17.5%
2018/2019	80.7%	19.3%
2019/2020	90.2%	9.8%
2021	83.1%	16.9%
2022	81.8%	18.2%

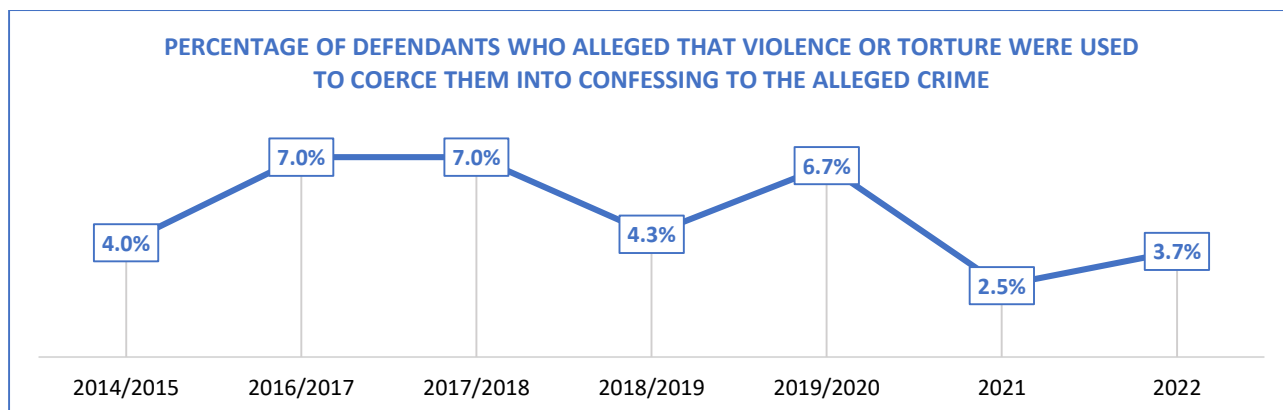
Right not to be compelled to confess guilt or to testify against oneself: Some defendants have reported having experienced violence or torture at the hands of the authorities to coerce them into confessing in all the Reporting Periods. As seen below, the percentage of defendants who did varied from 2.5% to 2.7% with

²⁰⁶ This data is based on the 135 defendants represented by a lawyer out of the 161 defendants involved in the 128 cases monitored in 2014/2015, the 439 defendants represented by a lawyer out of the 558 defendants involved in the 340 cases monitored in 2016/2017, the 241 defendants represented by a lawyer out of the 315 defendants involved in the 213 cases monitored in 2017/2018, the 262 defendants represented by a lawyer out of the 352 defendants involved in the 239 cases monitored in 2018/2019, the 183 defendants represented by a lawyer out of the 255 defendants involved in the 203 cases monitored in 2019/2020, the 89 defendants represented by a lawyer out of the 118 defendants involved in the 85 cases monitored in 2021, the 266 defendants represented by a lawyer out of the 352 defendants involved in the 257 cases monitored in 2022.

²⁰⁷ This data is based on the 129 defendants present at trial out of the 161 defendants involved in the 128 cases monitored in 2014/2015, the 404 defendants present at trial out of the 558 defendants involved in the 340 cases monitored in 2016/2017, the 260 defendants present at trial out of the 315 defendants involved in the 213 cases monitored in 2017/2018, the 284 defendants present at trial out of the 352 defendants involved in the 239 cases monitored in 2018/2019, the 230 defendants present at trial out of the 255 defendants involved in the 203 cases monitored in 2019/2020, the 98 defendants present at trial out of the 118 defendants involved in the 85 cases monitored in 2021, and the 288 defendants present at trial out of the 352 defendants involved in the 257 cases monitored in 2022.

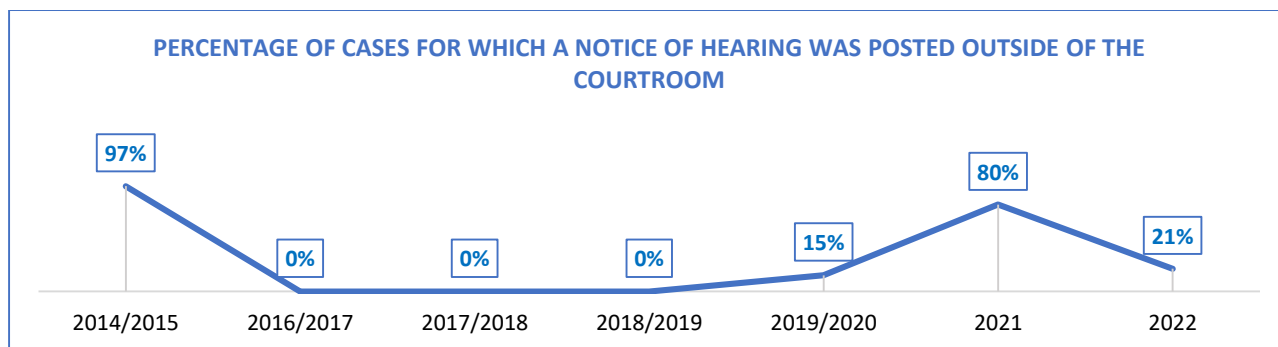
a slight increase in 2022 compared to 2021. This, combined to the fact that allegations of threats or violence have been consistently made since 2014, justifies classifying this right as being not fully respected.

Figure 31: Evolution of the right not to be compelled to confess guilt (2014-2022)²⁰⁸



Right to a public hearing: It must be commended that, between 2014 and 2022, in only one of the monitored trials were members of the public or media prevented from entering or dismissed from the courtroom. Despite this, the right to a public hearing has been classified as not being fully respected since 2014. The three most recent Reporting Periods have seen an improvement in the number of cases in which a notice of hearing was posted outside the courtroom, following three consecutive Reporting Periods (2016/2017, 2017/2018 and 2018/2019) during which no notices were published at all.²⁰⁹ Although this Reporting Period has shown a significant decline when compared to 2021, it should be noted that hearing notices were posted online in 67.7% of the cases monitored by CCHR.

Figure 32: Evolution of the right to a public hearing (2014-2022)²¹⁰



²⁰⁸ This data is based on the 7 defendants who alleged that violence or torture were used to coerce them into confessing to the alleged crime out of the 161 defendants involved in the cases monitored in 2014/2015, the 40 defendants who alleged the same out of the 315 defendants involved in the 213 cases monitored in 2017/2018, the 15 defendants who alleged the same out of the 352 defendants involved in the 239 cases monitored in 2018/2019, the 17 defendants who alleged the same out of the 255 defendants involved in the 203 cases monitored in 2019/2020, the 3 defendants who alleged the same out of the 118 defendants involved in the 85 cases monitored in 2021, and the 13 defendants who alleged the same out of the 352 defendants involved in the 257 cases monitored in 2022.

²⁰⁹ The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019, the 203 cases monitored in 2019/2020, the 85 cases monitored in 2021, and the 257 cases monitored in 2022.

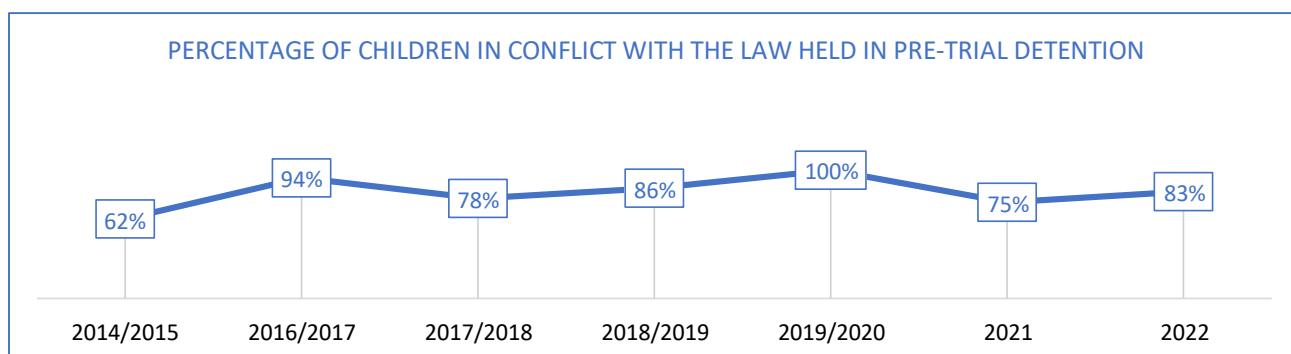
²¹⁰ The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019, the 203 cases monitored in 2019/2020, the 85 cases monitored in 2021, and the 257 cases monitored in 2022.

Right to a reasoned judgment: Respect for the right to a reasoned judgment has remained problematic through all the Reporting Periods. While a significant improvement was noted in 2018/2019, when judgments without adequate reasoning were given in only 47.5% of cases, - compared to 87.4% in 2017/2018 or 84.6% in 2014/2015 - this improvement was short-lived as the 2019/2020 reporting period saw 66.5% of judgments being given without adequate reasoning, and a staggering 90% in 2021. The figure remains high in this Reporting Period, with 81.25% of cases featuring judgments without adequate reasoning.

Evidentiary rights: Since 2014, CCHR has consistently expressed concerns about the quality of the evidence presented during trials, which often lacks sufficient probative value. However, since 2014, in only a handful of cases did something suggest that a party was not given the opportunity to call witnesses. While this is an overall positive finding, CCHR has observed that in the majority of cases in which witnesses were called, they were present in the courtroom before they were questioned. This practice can lead to a witness' testimony being influenced by hearing that of others.

Rights of children in conflict with the law: Since 2014, the rights of children in conflict with the law, who should be given special protection under international human rights law and Cambodian law, have been largely ignored: most of the children were held in pre-hearing detention, and, in most cases, no measures were taken to protect their privacy during the hearing. Moreover, custodial sentences were imposed in the majority of the monitored cases for which the verdict is known.²¹¹

Figure 33: Evolution of the use of pre-trial detention for children in conflict with the law (2014-2022)²¹²



²¹¹ This data is based on the number of children in conflict with the law for whom the verdict was followed or known: 11 children in conflict with the law in 2014/2015, 28 children in conflict with the law in 2016/2017, three children in conflict with the law in 2017/2018, six children in conflict with the law in 2018/2019, and six children in conflict with the law in 2022.

²¹² This data is based on the 11 children in conflict with the law involved in the cases monitored in 2014/2015, the 35 children in conflict with the law in cases monitored in 2016/2017, the nine children in conflict with the law involved in the cases monitored in 2017/2018, the 22 children in conflict with the law involved in the cases monitored in 2018/2019, the 15 children in conflict with the law involved in the cases monitored in 2019/2020, the four children in conflict with the law involved in the cases monitored in 2021, and the six children in conflict with the law involved in the cases monitored in 2022.

7. Conclusion and Recommendations

A number of key fair trial rights were guaranteed by the four Courts – including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare one’s defense and the right to a public judgment. Welcomingly, both the **Preah Sihanouk** and the **Tboung Khmum** Appeal Courts upheld the right of the defendants to understand the nature and cause of the charges; while the **Tboung Khmum** and **Battambang** Appeal Courts upheld the right to a public hearing. The right to be tried without undue delay was also upheld by the **Preah Sihanouk**, **Tboung Khmum**, and **Battambang** Appeal Courts. However, CCHR notes with concern that the four Courts have yet to uphold most of the fair trial rights identified in this report. Particularly concerning is their over-reliance on pre-trial detention, including in cases involving children in conflict with the law, as well as the fact that one third of the defendants were not represented by a lawyer during the Reporting Period.

While several rights have been consistently protected by the **Phnom Penh** Appeal Court since 2014, many more have consistently not been fully respected, such as the right not to be compelled to confess guilt or to testify against oneself; the right to a public hearing; the right to a reasoned judgment; evidentiary rights; and the rights of children in conflict with the law. This creates significant cause for concern, particularly given that those issues have been brought to the attention of the Court on multiple occasions. When comparing the findings of the current report with those of the last year, the majority of the findings are similar in terms of which rights are upheld and which are not. This evidence shows that, despite areas of improvement, urgent measures are needed in order to protect fair trial rights.

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. Others can easily be improved by training judges and lawyers in the implementation of fair trial rights. By taking immediate measures to address these concerns, the Courts 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.

7.1. General Recommendations

- 7.1.1 The MoJ should hold regular meetings on the practical implementation of fair trial rights with the judges of the Courts of Appeal, following the concept of fair trial rights based on national and international standards.
- 7.1.2 The MoJ 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: 1. The offense(s) with which the defendant is charged and the relevant law(s); 2. The date, time, location of the alleged offense and relevant parties; 3. The fair trial rights to which the defendant is entitled.

In particular, the standard form for judgments should remind judges of the defendants’ right to be presumed innocent until a final and non-appealable judgment is rendered, and of the fact that the burden of proof is on the Prosecutor.

7.1.3 The judges should ask the defendant directly whether they understand the charges and their rights. Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

7.2. Recommendations Regarding the Right to Liberty and to be Tried Without Undue Delay

7.2.1 The judges should promote the greater use of alternatives to pre-trial detention, including judicial supervision,²¹³ in accordance with UN SDG 16.3.2 to ensure that pre-trial detention remains the exception and the right to liberty remains the rule.

7.2.2 The Courts must ensure that defendants, especially those who are held in detention, are brought to trial as promptly as possible and that unjustified delays do not undermine the speedy administration of justice.

7.3. Recommendations Regarding the Right not to be Compelled to Confess Guilt

7.3.1 The Courts must promptly and thoroughly investigate the defendants' claims of coercion, duress or torture to obtain confessions of guilt before rendering their rule.

7.3.2 The Courts must ensure that if any coercion, duress or torture claims are substantiated following investigations, that any evidence or confessions obtained by such methods are inadmissible and that relevant re-trials are conducted and ensure that appropriate reparations are made to victims.

7.4. Recommendations Regarding the Right to a Public Hearing

7.4.1 The Courts and the MoJ should ensure that daily schedules of all hearings are posted online and on information boards outside the courtroom 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 children. When such information is published online or on the information board, the name of children should not be spelled out, but instead they should be referred to by their initials, to protect their privacy.

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

7.5.1 The judges of the Courts 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. The judges should take particular care to ensure they are stating the relevant law and location of the offence.

7.5.2 The judges of the Courts should provide a comprehensive explanation of the trial rights of the accused.

²¹³ SRSHRC, End of Mission Statement (14 March 2018), p. 4

7.5.3 The judges of the Courts should ask the defendant directly whether they understand the charges against them and their rights.

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

7.6.1 The Courts and the General Department of Prisons should consult and coordinate with each other to address any logistical and communication issues as soon as possible regarding the locations of defendants.

7.6.2 The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to the General Prosecution to make sure that the Courts give the information regarding the date and time of the appeal hearings to the correct correctional center in which the defendant is detained.

7.6.3 The judges of the Courts should postpone any hearing if the defendant is not present, even if they are represented by a lawyer, unless they have unequivocally and formally waived their right to be present.

7.6.4 The Courts should ensure that, where a lawyer is representing several defendants in a trial, there is not an inappropriate conflict of interest.

7.6.5 The judges of the Courts should inform and explain to the accused their right to legal representation if they do not appear represented.

7.6.6 The MoJ should inform the public about the right to state-sponsored legal aid, including through publications in police offices, prisons, and court buildings.

7.7. Recommendations Regarding the Right to the Presumption of Innocence

7.7.1 The judges of the Courts must unequivocally inform the defendant of their 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 them.

7.7.2 The MoJ and the MoI 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.

7.7.3 The judges of the Courts should allow those accused who are brought to court wearing a convict uniform to change into civilian clothes instead before the hearing.

7.8. Recommendations Regarding the Professionalism of Judges

7.8.1 The MoJ and the Supreme Council of Magistracy should work together to review the code of conduct for judges and implement any necessary amendments. The amendments should include a complete ban on the use of mobile phones and allow for short breaks to enable judges, prosecutors and lawyers to leave the courtroom or answer their phones. Judges should also ensure that they allocate sufficient time to hear cases to ensure that they are adjudicated in a proper and thorough manner.

7.9. Recommendations Regarding Evidentiary Rights

- 7.9.1 The judges of the Courts should inform the defendants of their right to present evidence in the same conditions as the evidence presented against them.
- 7.9.2 The judges of the Courts should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure that witnesses are not influenced by other evidence and testimony presented during the trial.
- 7.9.3 The judges of the Courts should 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, they must be acquitted.
- 7.9.4 The MoJ should develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,²¹⁴ and ensure that all judges are trained accordingly.

7.10. Recommendations Regarding the Right to a Reasoned Judgment

- 7.10.1 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.
- 7.10.2 Drawing from the practice of the ECCC,²¹⁵ 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.

7.11. Recommendations Regarding the Rights of Children in Conflict with the Law

- 7.11.1 The judges of the Courts should speed up and strengthen the implementation of the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 7.11.2 The judges of the Courts should follow the best practice of the ECCC and allow children in conflict with the law to appear in court wearing civilian clothing, at all stages of the criminal procedure.
- 7.11.3 The judges of the Courts should limit pre-trial detention of children in conflict with the law to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect their rights, including separating them from adult detainees.
- 7.11.4 The MoJ should ensure that judges and prosecutors undergo specific training concerning issues relating to child justice.
- 7.11.5 The judges of the Courts should examine and make use of non-custodial measures for children in conflict with the law, and implement a set of sentencing guidelines for children who are recognized

²¹⁴ 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 November 2016) Case File / Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/F36_KH.pdf.

²¹⁵ See esp. 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 November 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.

as having infringed criminal law that focus firmly on reintegration rather than punishment alone and on the best interests of the child.

- 7.11.6 The Courts should introduce a general rule that child justice hearings should be conducted behind closed doors, with limited exceptions provided by law, in order to respect the privacy of children in conflict with the law.
- 7.11.7 In cases involving children in conflict with the law that are public, steps should be taken to protect their privacy, such as the use of privacy screens. The **Phnom Penh** Appeal Court should make use of the video conference system currently available and ensure that staff members are trained accordingly.
- 7.11.8 The MoJ and the MoSVY should implement a diversion scheme; through which a child 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.
- 7.11.9 The MoJ should review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on the child justice system, including, but not limited to, the Beijing Rules, the UNICEF guidance for legislative reform on juvenile justice,²¹⁶ the UNICEF implementation handbook for the Convention on the Rights of the Child²¹⁷ and the UNICEF law reform and implementation of the Convention on the Rights of the Child report.²¹⁸

²¹⁶ UNICEF, 'Guidance for Legislative Reform on Juvenile Justice'

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²¹⁷ UNICEF, 'Implementation for the Convention on the Rights of the Child', p. 107, <https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf>.

²¹⁸ UNICEF, 'Law Reform and Implementation of the Convention on the Rights of the Child', p. 87, http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf.

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