



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
**Cambodian Center for Human Rights**

June 2023

# Fair Trial Rights in Cambodia Monitoring at the Phnom Penh Court of Appeal

Annual Report (1 January to 31 December 2021)



## 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 Court 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 since 2013. The present report is the seventh’s annual report produced by the Project.

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



Access to the modules at <https://sithi.org/fair-trial-rights> or scan here



► Education Platform  
► Fair Trial Rights

## Queries and Feedback

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

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## Acronyms

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|                           |  |
|---------------------------|--|
| <b>BAKC</b>               | The Bar Association of the Kingdom of Cambodia   |
| <b>Cambodia</b>           | Kingdom of Cambodia  |
| <b>CCHR</b>               | Cambodian Center for Human Rights  |
| <b>CCPC</b>               | Code of Criminal Procedure of the Kingdom of Cambodia  |
| <b>CHRC</b>               | Cambodian Human Rights Committee   |
| <b>Checklist</b>          | The checklist used by CCHR Trial Monitors to record trial data when monitoring trials  |
| <b>Checklist Guidance</b> | Comprehensive guidance notes to help CCHR Trial Monitors understand each question in the Checklist                               |
| <b>Code of Conduct</b>    | A document outlining the obligations of non-interference, objectivity and confidentiality to which CCHR Trial Monitors are bound |
| <b>Constitution</b>       | The Constitution of the Kingdom of Cambodia  |
| <b>Court</b>              | The Phnom Penh Court of Appeal of the Kingdom of Cambodia  |
| <b>CRC</b>                | Convention on the Rights of the Child  |
| <b>Database</b>           | The database in which CCHR Trial Monitors store trial data recorded on checklists  |
| <b>ECCC</b>               | Extraordinary Chambers in the Courts of Cambodia   |
| <b>ECHR</b>               | European Court of Human Rights   |
| <b>UNHRC</b>              | United Nations Human Rights Committee  |
| <b>ICCPR</b>              | International Covenant on Civil and Political Rights   |
| <b>I/U</b>                | Information Unknown  |
| <b>LOC</b>                | Law on the Organization of the Court   |
| <b>LSJP</b>               | Law on the Statute of Judges and Prosecutors   |
| <b>MoI</b>                | Ministry of Interior   |
| <b>MoJ</b>                | Ministry of Justice  |
| <b>MoSVY</b>              | Ministry of Social Affairs, Veterans and Youth Rehabilitation  |
| <b>N/A</b>                | Non-Applicable   |
| <b>NSDP</b>               | National Strategic Development Plan  |
| <b>NGO</b>                | Non-governmental Organization  |
| <b>OHCHR</b>              | Office of the United Nations High Commissioner for Human Rights  |
| <b>OSCE</b>               | Organization for Security and Co-operation in Europe   |
| <b>Criminal Code</b>      | The Criminal Code of the Kingdom of Cambodia   |
| <b>Project</b>            | CCHR Trial Monitoring Project  |
| <b>Reporting Period</b>   | 1 January 2021 to 31 December 2021   |
| <b>RGC</b>                | Royal Government of Cambodia   |
| <b>Trial Monitor</b>      | CCHR Trial Monitor   |
| <b>UDHR</b>               | Universal Declaration of Human Rights  |
| <b>UN</b>                 | United Nations   |
| <b>UNICEF</b>             | United Nations International Children’s Emergency Fund   |
| <b>UNSRSHRC</b>           | United Nations Special Rapporteur on the Situation of Human Rights in Cambodia   |
| <b>UNTAC</b>              | United Nations Transitional Authority in Cambodia  |

## Executive Summary

Between 1 January and 31 December 2021 (the “Reporting Period”), CCHR’s Fair Trial Rights Project (the “Project”) monitored 85 criminal trials at the Phnom Penh Court of Appeal (the “Court”) in order to assess the Court’s adherence to fair trial rights as set out in international and Cambodian law. This Report presents and analyzes the data collected during the Reporting Period, and, in doing so, aims to contribute to transparency, accountability and positive change in Cambodia.

The Report finds that a number of key fair trial rights were guaranteed before the Court.

### Fair Trial Rights Protected by the Court

- Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense
- Right to a public judgment
- Prohibition against retroactive application of criminal law
- Protection against double jeopardy

Regrettably, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The 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, including a child, who claim they have been subjected to violence or torture to force them into confessing the alleged crime (3 defendants out of 118) in the investigation stage of judicial officers. The fundamental right to a public hearing is not fully respected as 17 out of the 85 hearings monitored by CCHR did not have any notice posted on the public board outside the courtroom. Further, the right to understand the nature and cause of the charges continues to be considered not fully respected as in 9.4% of the monitored cases, the defendants were not informed of all the charges against them and in 1.18% of the monitored cases, they were not informed of the charges against them at all. The right to have legal representation was not always respected: about 25% of defendants were not represented by a lawyer. Further, in 8 out of the 85 cases monitored by CCHR, the judges failed to inform and explain the accused about their right to legal representation, and in 9 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 18.8% of the defendants about their right to remain silent and 19.5% defendants appearing in court in the same prison uniform as convicts. The right to liberty and to be tried without undue delay was not fully upheld by the Court, with 89 defendants out of 118 being held in pre-trial detention, of which some were minors or were detained with their children. 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 the privacy, including of a child under 14 years old.

### Fair Trial Rights not fully respected at the Court

- Rights to liberty and to be tried without undue delay
- Right not to be compelled to confess guilt or testify against oneself
- Right to a public hearing
- Right to understand the nature and cause of the charges
- Right to legal representation and to be present at trial
- Right to a reasoned judgment

- Right to presumption of innocence
- Evidentiary rights
- Professionalism of judges
- Rights of children in conflict with the law

The Report compares this year's data with that of previous reporting periods to identify trends and analyze the evolution of fair trial rights in the Kingdom.<sup>1</sup> While the majority of the findings are similar, three main points emerge.

First, the right to a public hearing, while classified as not respected since 2016, saw a significant improvement during the Reporting Period as the Court posted a hearing notice on a public board outside the room in 80% of the cases monitored, compared to only 15% were in the previous reporting period.

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, 2.5% of the defendants involved in the monitored cases alleged that their confession had been obtained through violence or torture in the investigation stage of judicial officers. This rate is lower than in any of the previous reporting periods, were 6.7% of the defendants in 2019/2020, 4.3% of the defendants in 2018/2019, 7% of the defendants in 2017/2018 and 2016/2017, and 4% of the defendants in 2014/2015 made the same claims. While the latest rate is encouraging, 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 since 2014 and continued to be during the Reporting Period, including those of a minor under 14 years old, which according to both international and domestic law, should have never been brought to trial. Children are amongst 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.

Several key fair trial rights have been consistently upheld by the Court since 2014, including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare a defense, the right to a public judgment, the non-retroactive application of the law and the prohibition against double jeopardy. Regrettably, 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.

The Report ends with key thematic recommendations for the Court 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.

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

# 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 of 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.<sup>2</sup>

### 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”)<sup>3</sup> and the United Nations International Covenant on Civil and Political Rights (“ICCPR”)<sup>4</sup> amongst other instruments.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### 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.

<sup>2</sup> 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>.

<sup>3</sup> UDHR, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>4</sup> ICCPR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>5</sup> 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.

<sup>6</sup> 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>. The updated version of the Constitution, as last amended in February 2018 and after, is not yet available online.

<sup>7</sup> 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](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.<sup>8</sup> The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”), adopted in 2007,<sup>9</sup> 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 Court (“LOC”),<sup>10</sup> the Law on the Statute of Judges and Prosecutors (“LSJP”),<sup>11</sup> and the Law on the Organization and Function of the Supreme Council of Magistracy (“LOFSCM”),<sup>12</sup> adopted in 2014, aim to ensure the independence of the judiciary power and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws have been criticized for weakening the separation of powers and the independence of the judiciary.<sup>13</sup>

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<sup>8</sup> ‘Cambodian Criminal Code’, <https://www.sithi.org/laws/2014-01-31-criminal-code-2014>.

<sup>9</sup> 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>.

<sup>10</sup> ‘The Law on the Organization of the Court’ (2014) <https://www.arbitrationcouncil.org/download/law-on-the-organization-of-courts/?wpdmdl=2883&refresh=6327d7f63be941663555574>.

<sup>11</sup> ‘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>.

<sup>12</sup> ‘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>.

<sup>13</sup> CCHR, Destination Justice and ADHOC, ‘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) Section 2 [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx\(J7\)](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx(J7)) (“Access to Justice UPR Submissions, (12 July 2018); CCHR, ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’ (2014) [https://cchrcambodia.org/admin/media/analysis/analysis/english/2014\\_06\\_17\\_CCHR\\_Analysis\\_of\\_the\\_Draft\\_Laws\\_on\\_Judicial\\_Reforms\\_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf); 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

Finally, the Law on Juvenile Justice, which was adopted in July 2016 and came into force in January 2017,<sup>14</sup> sets out the norms and procedures for dealing with minors who commit criminal offenses.<sup>15</sup> The law needs to be strictly applied in order to safeguard the rights and best interests of the minor.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).<sup>16</sup> 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.<sup>17</sup> 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 section, and fighting injustice.<sup>18</sup> The 2019-2023 NSDP also announced 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:

- Yearly training for judges and prosecutors on technical skills, professional ethics, and international human rights law.<sup>19</sup>
- The inauguration of a new rehabilitation center for inmates below 18 years old, in Kandal province, in December 2021. While the RGC’s efforts to separate children from adults in detention facilities are commendable, the detention of minors should be used as a last resort. It is therefore critical that authorities undertake a thorough review of cases involving children in conflict with the law and ensure that there are no other alternatives to detention before deciding who to transfer to the new center. Caution should especially be paid in reviewing cases involving children from remote provinces to ensure that they do not lose the material and moral support of their families.<sup>20</sup>
- The creation of “lawyer rooms” to be included in prisons throughout the country, wherein accused individuals without the financial means can consult with a lawyer free of charge.<sup>21</sup>As of May 2020,

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relation to international human rights standards’ (May 2014) <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20org%20of%20courts.%20ENG%20May%202014%20final.pdf>.

<sup>14</sup> ‘Law on Juvenile Justice’ (2016), <https://sithi.org/laws/2016-06-29-law-on-juvenile-justice>.

<sup>15</sup> UNICEF, ‘Q&A on the newly adopted Juvenile Justice Law in Cambodia’ (19 September 2016) <http://unicefcambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html>

<sup>16</sup> 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](http://old.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm).

<sup>17</sup> 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](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_364549.pdf) (translation).

<sup>18</sup> 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](http://cdc-crdb.gov.kh/en/strategy/documents/nsdp-2019-2023_en.pdf).

<sup>19</sup> RGC, ‘National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cambodia’ (15 November 2018) UN Doc. A/HR/WG.6/32/KHM/1, para. 19, <https://digitallibrary.un.org/record/1655575?ln=en> (“RGC Report for the 3rd Cycle of the UPR (15 November 2018)”).

<sup>20</sup> Human Rights Committee, “Concluding observations on the third periodic report of Cambodia,” (CCPR/C/KHM/CO/3, 18 May 2022), para.40, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKHM%2FCO%2F3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKHM%2FCO%2F3&Lang=en).

<sup>21</sup> RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 18B.

legal rooms have been set up and equipped in 19 prisons across the country, with six yet to be completed in order to have a legal office in all 25 municipal-provincial prisons.<sup>22</sup>

- The establishment of three regional appeal courts in Battambang, Tbong Khmum, and Preah Sihanouk provinces and plans to fully train and deploy judges to regional Appeal Courts.<sup>23</sup> All three new regional appeal courts started holding trials in 2020,<sup>24</sup> enabling to ease court backlog at the Phnom Penh Court of Appeal. In June 2022, the MoJ also announced it will established three additional appeal courts in Siem Reap, Oddar Meanchey, and Stung Treng provinces by the end of 2022 to help clear the appeal cases backlog and bring legal services closer to where people live.<sup>25</sup>
- The publication of 44 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.<sup>26</sup> The conduct of a 13-month campaign by the MoJ to clear court case 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.<sup>27</sup>
- 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.<sup>28</sup>
- The deployment of volunteer lawyers nationwide by the Bar Association of the Kingdom of Cambodia (“BAKC”) in collaboration with the Ministry of Interior (“Mol”) to provide access to legal aid for indigent defendants throughout the country,<sup>29</sup> including to children in conflict with the law,<sup>30</sup> and the adoption by BACK of a policy encouraging lawyers to provide increased pro-bono services to the poor.<sup>31</sup>

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<sup>22</sup> “Bar association builds room for lawyer, client consultation”(Phnom Penh Post, 21 May 2020), <https://www.phnompenhpost.com/national/bar-association-builds-room-lawyer-client-consultation>.

<sup>23</sup> Report of the Special Rapporteur on the situation of human rights in Cambodia (15 August 2018) para. 81.

<sup>24</sup> 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/](http://www.khmertimeskh.com/50761092/preah-sihanouk-appeal-court-in-full-service/).

<sup>25</sup> 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=IwAR0ABKu6vtI3fi8yaslvC2aeLrpOM7sUUanWcYaTTi1LzHodqRyIEjt4PCM>.

<sup>26</sup> Niem Chheng, ‘Courts’ decisions now published as reference source’ (Phnom Penh Post, 4 January 2021) [www.phnompenhpost.com/national/courts-decisions-now-published-reference-source](http://www.phnompenhpost.com/national/courts-decisions-now-published-reference-source)

<sup>27</sup> 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>.

<sup>28</sup> 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](https://policypulse.org/wp-content/uploads/2021/07/Prakas_090_0721_MOJ_KH.pdf) (only available in Khmer).

<sup>29</sup> 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/>.

<sup>30</sup> 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>.

<sup>31</sup> 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/>.

- The formation, by the Cambodian Human Rights Committee (“CHRC”), of a legal aid group to defend the poor whose rights have been violated,<sup>32</sup> and the creation of a legal aid hotline in order to promote access to justice.<sup>33</sup>

More generally, the RGC undertook certain measures to continue reforming the justice system, including by increasing the national budget for legal aid,<sup>34</sup> by 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;”<sup>35</sup> training of trainee judges on their conduct and the principle of integrity before they start adjudicating cases to address corruption in the judiciary.<sup>36</sup> 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 Court of Appeal- which has been exploring the possibility of promoting alternative penalties for minor offenses committed by minors in collaboration with UNICEF and as developed plans, measures and regulations to ensure the full and effective implementation of the Law on Juvenile Justice.<sup>37</sup>

These initiatives are commendable as they show the RGC’s efforts to implement the recommendations regarding access to justice that it accepted in the United Nations Human Rights Council’s third Universal Periodic Review of Cambodia in January 2019, committing to their implementation.<sup>38</sup>

## 1.2. Scope and Methodology

*Figure 1: Overview of cases monitored by CCHR (2014-2021)*

| Overview of monitored cases |           |           |           |           |           |      |       |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|------|-------|
| Reporting Period            | 2014      | 2016      | 2017      | 2018      | 2019      | 2021 | Total |
|                             | -<br>2015 | -<br>2017 | -<br>2018 | -<br>2019 | -<br>2020 |      |       |
| # of cases                  | 128       | 340       | 213       | 239       | 203       | 85   | 1,208 |
| # of defendants             | 161       | 558       | 315       | 352       | 255       | 118  | 1,759 |
| # of Felonies               | 46        | 191       | 99        | 89        | 93        | 36   | 554   |

<sup>32</sup> Niem Chheng, ‘CHRC to form legal assistance team’ (*Phnom Penh Post*, 7 August 2019) [www.phnompenhpost.com/national/chrc-form-legal-assistance-team](http://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/>;

<sup>33</sup> 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](http://www.phnompenhpost.com/national/human-rights-committees-legal-hotline-receives-praise)

<sup>34</sup> 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](https://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_48_49.pdf)).

<sup>35</sup> 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).”

<sup>36</sup>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](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 3<sup>rd</sup> UPR”).

<sup>37</sup> RCG’s Replies to list of issues of 3<sup>rd</sup> UPR, para.85.

<sup>38</sup> CCHR, “Access to justice in Cambodia: Third UPR review, <https://cchrcambodia.org/admin/media/newsletter/newsletter/english/Update%202020-01-14-infographic%20UPR%20Access-EN.pdf>; 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>; See also CCHR, Destination Justice and ADHOC, “Access to Justice UPR Submissions, (12 July 2018).”

|   |    |     |     |     |     |    |            |
|---|----|-----|-----|-----|-----|----|------------|
| <b># of Misdemeanors</b>                      | 77 | 142 | 111 | 150 | 110 | 48 | <b>638</b> |
| <b># of Petty offenses</b>                    | 5  | 7   | 3   | 0   | 0   | 1  | <b>16</b>  |
| <b># of children in conflict with the law</b> | 11 | 35  | 9   | 22  | 15  | 4  | <b>96</b>  |
| <b># of Women defendants</b>                  | 14 | 84  | 36  | 47  | 19  | 18 | <b>218</b> |

Throughout the Reporting Period, CCHR’s Trial Monitors usually attended criminal trials at the Court on a daily basis. However, similarly to the previous reporting period, there have been periods in 2021 during which the courts have stopped hearing trials in response to governmental COVID-19 directives. Further, due to COVID-19 safety requirements, and courtroom crowding, trial monitors were only able to monitor 85 trials in 2021. While this sample size is smaller than previous years, it is sufficient to compare to previous years. Monitors use a specifically designed trial-monitoring checklist (the “Checklist”) that includes more than 70 questions focusing on a number of key fair trial rights including the following:<sup>39</sup>

- Right to a public hearing;
- Right to understand the nature and cause of the charge(s);
- 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;
- Prohibition against retroactive application of penal legislation and;
- Prohibition against double jeopardy; 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 Court. CCHR has also developed a one-page annex to the Checklist for use in trials involving children. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes (“Checklist Guidance”)<sup>40</sup> to provide an understanding of the legal basis and purpose of each question, and ensure a uniform interpretation of each question. The Trial Monitors were also provided with a legal framework document which outlines the relevant national and international laws underpinning each question in the Checklist.

CCHR paid particular attention to the fact that the right to appeal<sup>41</sup> 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<sup>42</sup>; it must provide “a full evaluation of evidence and the conduct of trial.”<sup>43</sup>

<sup>39</sup> CCHR ‘Appeal Hearing Monitoring Checklist,’ <https://sithi.org/tmp/publication/view/2021-01-01-appeal-hearing-monitoring-checklist>.

<sup>40</sup> 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>.

<sup>41</sup> ICCPR, Art. 14 (5); CCPC, Art. 375.

<sup>42</sup> 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”).

<sup>43</sup> 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>.

Finally, CCHR is committed to the international principles applicable to trial monitoring<sup>44</sup> and has devised a code of conduct (the “Code of Conduct”) for its Trial Monitors.<sup>45</sup> The Code of Conduct outlines the obligations of non-interference, objectivity, and confidentiality by which the Trial Monitor is bound.

CCHR’s trial monitoring at the Court did not target specific trials. The trials to be monitored were randomly selected, on the basis of the court’s schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitors observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself, no additional interviews or dialogues took place; except where the Trial Monitor made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but adjourned to a later date. After each trial, the data gathered was entered into the CCHR Trial Monitoring Database (the “Database”).<sup>46</sup>

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 Court, gauge improvements, and identify further recommendations.

CCHR has always ensured that the Court of Appeal is given the opportunity to provide its inputs on the findings of CCHR’s trial monitoring before publication. Hence, a final draft of the present Report was sent to Phnom Penh Court of Appeal on 18 November 2022, and Ministry of Justice on 12 May 2023 for comments, and recommendations. It will serve as a key basis for an exchange of ideas, to provide insight into the challenges faced by those working to strengthen the justice system, and to promote fair trial rights.

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<sup>44</sup>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](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](https://courtmonitoring.org/wp-content/uploads/trial_observation_manual_international-commission-of-jurists.pdf).

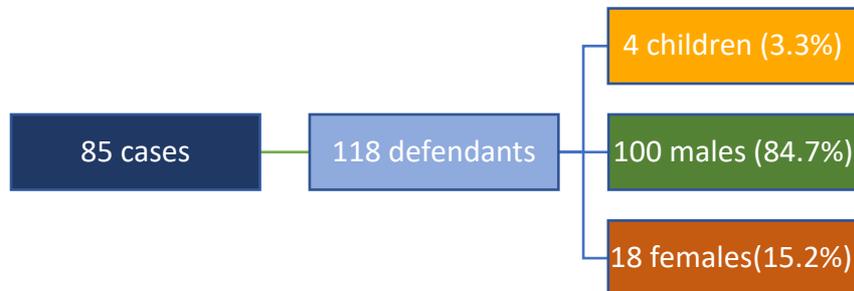
<sup>45</sup> CCHR, ‘CCHR Trial Monitoring Code of Conduct,’ <https://sithi.org/tmp/publication/view/2010-01-01-cchr-trial-monitoring-code-of-conduct>.

<sup>46</sup> CCHR, ‘CCHR Trial Monitoring Database,’ <https://sithi.org/tmp/appeal>.

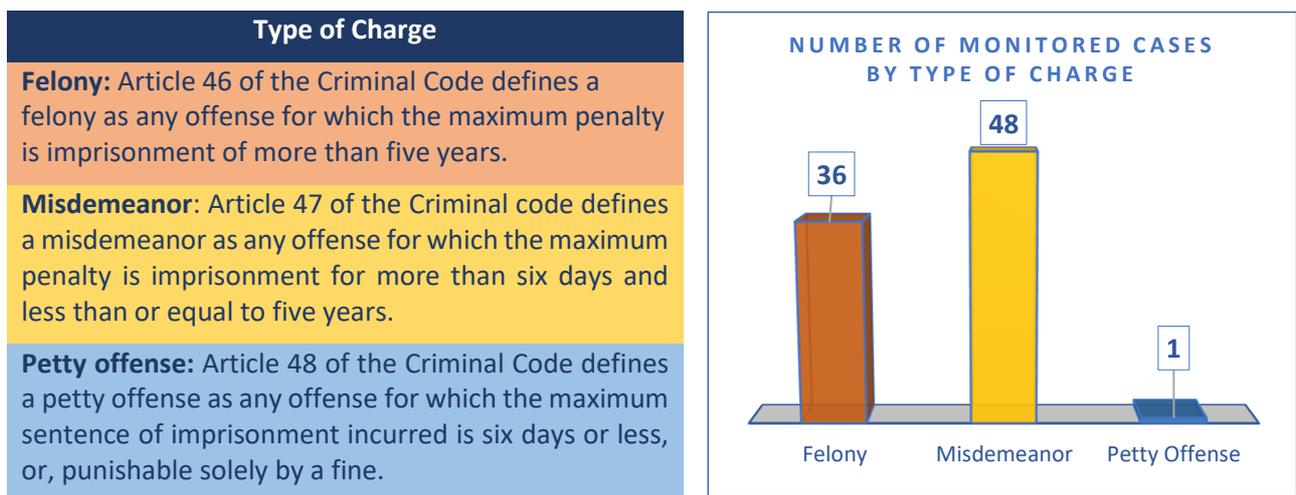
## 2. Overview

This section of the Report sets out the raw data recorded on the checklist from the 85 trials monitored at the Court between 1 January 2021 and 31 December 2021, which will be evaluated throughout the Report.

*Figure 2: Overview of cases monitored by CCHR in 2021*



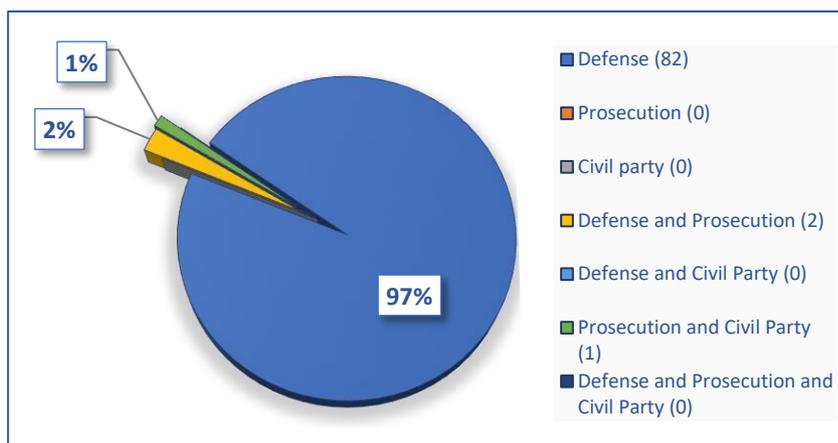
*Figure 3: Appeal hearings monitored by type of charge<sup>47</sup>*



*Figure 4: Party bringing the appeal<sup>48</sup>*

<sup>47</sup> This data is based on the total number of cases monitored (85).

<sup>48</sup> This data is based on the total number of cases monitored (85).



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 the civil matter).<sup>49</sup> Figure 4 shows that the vast majority of appeals (97%) were filed by the defense.

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

| Fair Trial Rights Upheld   | Fair Trial Rights Not Fully Respected  |
|--|--|
| <ul style="list-style-type: none"> <li>● Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense</li> <li>● Right to a public judgment</li> <li>● Prohibition against retroactive application of criminal law</li> <li>● Protection against double jeopardy</li> </ul> | <ul style="list-style-type: none"> <li>● Rights to liberty and to be tried without undue delay</li> <li>● Right not to be compelled to confess guilt or to testify against oneself</li> <li>● Right to a public hearing</li> <li>● Right to understand the nature and cause of the charges</li> <li>● Right to legal representation and to be present at trial</li> <li>● Right to a reasoned judgment</li> <li>● Professionalism of judges</li> <li>● Right to the presumption of innocence</li> <li>● Evidentiary rights</li> <li>● Rights of children in conflict with the law</li> </ul> |

The section below analyzes the implementation of the different relevant components of fair trial rights by the Court during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights which are respected in the Court, and then shed light on the practices which are not fully respected fair trial rights.

<sup>49</sup> CCPC, Art. 375.

### 3. Fair Trial Rights Upheld

#### 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;<sup>50</sup> 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.<sup>51</sup>

The necessary facilities to prepare a defense include 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.<sup>52</sup> 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 this also means that in order to effectively exercise their right to appeal the defendant should have access to a duly reasoned, written first instance judgment and the transcripts of the trial, in order to prepare their case.<sup>53</sup> 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.<sup>54</sup>

While the monitoring of the appeal hearing did not provide CCHR with all the requisite information to assess whether or not the accused had sufficient time and adequate facilities to prepare their defense 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. CCHR found that only one defendant (0.8% of defendants) had their lawyer assigned to them on the day of the appeal, and that most were given a lawyer early on in proceedings, which is similar to the previous reporting period’s findings where only one defendant was assigned a lawyer on the day of appeal as well. However, it is an improvement compared to 2018/2019 and 2017/2018 in which 2% and 5% of defendants, respectively, were assigned a lawyer on the day of the appeal. In addition, in no cases did a defendant’s lawyer raise the issue of lack of adequate preparation.

<sup>50</sup> UNHRC General Comment 32, para. 32.

<sup>51</sup> UNHRC, General Comment 32, para. 32.

<sup>52</sup> UNHRC, General Comment 32, para. 33.

<sup>53</sup> 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>

<sup>54</sup> 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 in only **1 case** that the defendant’s lawyer was assigned on the day of the appeal. This means the pre-trial right to speak with a lawyer was likely respected for **74.5%** of defendants.

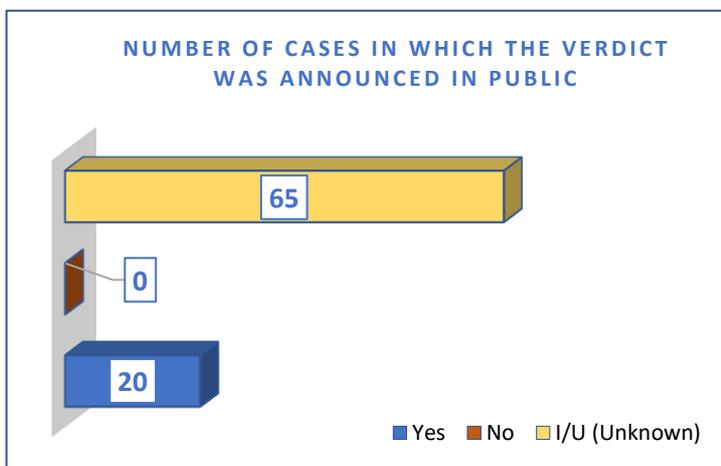


The issue of adequate time and facilities to prepare a defence was not raised by **any of the 118 defendants**. This means this right was likely respected for **100%** of defendants.

### 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 judgment<sup>55</sup>



The right to a public judgment means that judgments rendered in legal proceedings must be made public. This right is key to ensuring transparency and accountability.<sup>56</sup> Under Article 14(1), even when the public is excluded from a trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public.<sup>57</sup> There are only a few exceptions to this rule, such as when the interest of children requires the judgment not to be made public (*see* Section 4.8).<sup>58</sup> During the Reporting Period, the right to

a public judgment was respected in all the cases for which the information was available (20).

### 3.3. Prohibition against retroactive application of criminal law (principle of legality)

| International Law |            | Cambodian Law   |
|-------------------|------------|-----------------|
| UDHR              | ICCPR      | Criminal Code   |
| Article 11(2)     | Article 15 | Articles 3 & 10 |

Article 15 ICCPR contains the principle of legality and prohibits the retroactive application of criminal law, reflecting the principles of *nullum crimen sine lege* (no crime except in accordance with the law), and *nulla poena sine lege* (no punishment except in accordance with the law). This means that no one can be found guilty of a criminal offense for an act or omission that did not constitute a criminal offense at the time the

<sup>55</sup> This data is based on the total number of 85 cases monitored. 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 at the date of verdict delivery.

<sup>56</sup> 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>.

<sup>57</sup> UNHRC, General Comment 32, para. 29.

<sup>58</sup> UNHRC, General Comment 32, para. 29.

alleged action or omission took place. Similarly, the penalty imposed may not be heavier than the one applicable at the time the criminal offense was committed.<sup>59</sup>

In **100%** of the monitored trials the law under which the defendant was charged was in force on the date the offence was committed.



In none of the 85 trials monitored did anything indicate that the law under which the defendant was charged was not in force on the date the offense was allegedly committed. CCHR’s findings therefore show that the protection against non-retroactivity of the law is protected. Welcomingly, this trend has been constant since 2014.

### 3.4. Prohibition against double jeopardy

| International Law | Cambodian Law |            |
|-------------------|---------------|------------|
| ICCPR             | Criminal Code | CCPC       |
| Article 14(7)     | Article 23    | Article 12 |

Article 14(7) of the ICCPR contains the principle of *ne bis in idem* and establishes the right of a person not to be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and the penal procedure of each country.<sup>60</sup> This prohibition does not prohibit the retrial of an individual after a higher court quashes a conviction, nor the resumption of a criminal trial if justified by “exceptional circumstances”, such as the discovery of new evidence.<sup>61</sup> There are a number of benefits of having this finality, both to the individual accused and the society as a whole, including legal certainty and avoidance of wasting of legal resources.<sup>62</sup>

In **100%** of the monitored trials there was nothing to suggest the defendant had been tried and sentenced for the offence previously.



It is encouraging to note that none of the 118 defendants involved in the 85 cases monitored by CCHR had already been tried and sentenced for the same offense in the past. The protection against double jeopardy is therefore guaranteed. Notably, this trend has been constant since 2014.

<sup>59</sup> For more details, see CCHR’s module “The prohibition against retroactive application of criminal law” (September 2022), <https://sithi.org/fair-trial-rights/prohibition-against-retroactive-application-of-criminal-law-or-principle-of-legality>.

<sup>60</sup> UNHRC, General Comment 32, para. 54.

<sup>61</sup> UNHRC, General Comment 32, para. 56.

<sup>62</sup> For more details on this prohibition, see CCHR’s module “The prohibition against double jeopardy” (September 2022), <https://sithi.org/fair-trial-rights/prohibition-against-double-jeopardy>.

## 4. Fair Trial Rights Not Fully Respected

### 4.1. Rights to liberty and to be tried without undue delay

| International Law |                                     | Cambodian Law            |   |
|-------------------|-------------------------------------|--------------------------|---|
| UDHR              | ICCPR                               | Constitution             | CCPC                                      |
| Article 3         | Article 9 (1)<br>Article 14 (3) (c) | Article 32<br>Article 38 | Articles 203, 204, 205,<br>208, 209 & 211 |

Article 9(1) of the ICCPR guarantees everyone freedom from confinement of the body,<sup>63</sup> meaning not to be physically deprived of their liberty to come and go as they wish.<sup>64</sup> The right to liberty is however not absolute. Individuals can therefore 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.<sup>65</sup> 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 law<sup>66</sup> 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, 95 out of the 118 defendants involved in the monitored cases were held in pre-trial detention. It is highly concerning that over three quarters of the defendants (80.5%) were in detention when liberty must remain the principle and pre-trial detention an exceptional measure used as a last resort. The excessive use of pre-trial detention appeared particularly concerning in two monitored misdemeanor trials, one involving a female defendant who was sent to detention and one involving a child in conflict with the law aged under 14 years old who was sent to pre-trial detention. No mention of bail application or of judicial supervision measures was made during any of the trials. It is crucial that the use of pre-trial detention remains the exception and that the right to liberty of accused, who are innocent until proven guilty, is preserved whenever possible. Should measures to ensure 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.

*Figure 6: The right to liberty<sup>67</sup>*

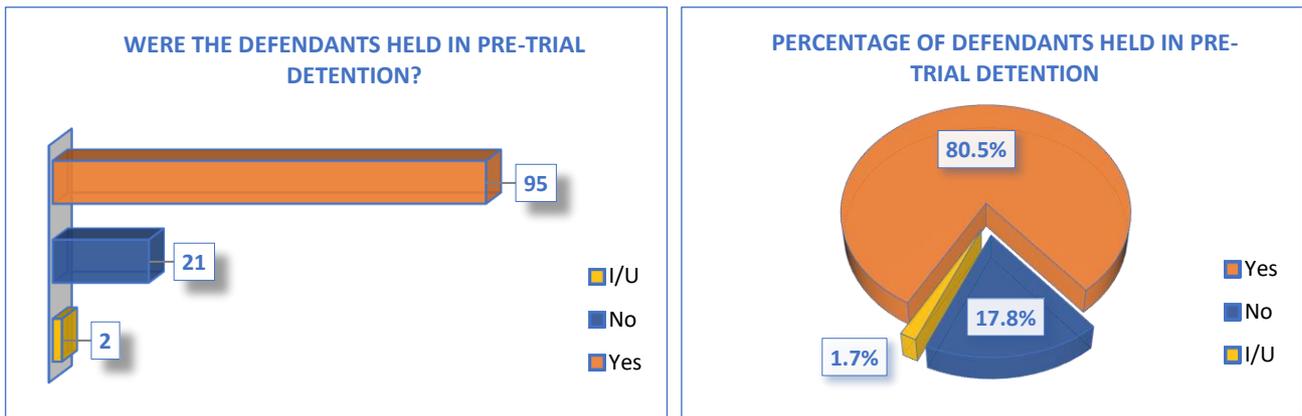
<sup>63</sup> UNHRC, General Comment 35, para. 3.

<sup>64</sup> 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>.

<sup>65</sup> UNHRC, General Comment 35, para. 5.

<sup>66</sup> UNHRC, General Comment 35, para.10.

<sup>67</sup> This data is based on the total number of 85 cases monitored. 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 at the date of verdict delivery.



Article 14(3)(c) 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.<sup>68</sup>

While for many of the cases monitored during the Reporting Period, lack of information as to the date of charging and dates of first verdict does not enable to assess whether the right to be tried without undue delay was respected by the courts, some cases for which the date of the first verdict, of the appeal and of the appeal verdict are known, raise serious doubts as to the fact that the defendants were tried within a reasonable time. In a monitored felony case involving one detained defendant, the data collected indicates that the appeal hearing took place over five and half years after the delivery of the first instance verdict, which convicted them to five years of imprisonment. In another felony case involving two detained defendants, the Court of Appeal adjudicated the case over three years after the first verdict, contravening international fair trial rights standards requiring that the accused deprived of their liberty be particularly promptly tried. Similarly, in two misdemeanor cases, one involving three defendants and the other six defendants, the appeal hearing took place over three and a half and four years, respectively, after the first instance verdicts. While the defendants were not held in detention while awaiting their appeal hearing, a period of between three and four years to bring misdemeanor cases to trial appears excessive. CCHR, therefore, decided to classify this right as not being fully upheld.

#### 4.2. 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.<sup>69</sup> Firstly, this means that no direct or indirect physical or psychological coercion must be used to compelled a suspect or accused to provide evidence against themselves.<sup>70</sup> Secondly, this

<sup>68</sup> UNHRC, General Comment 32, para.27.

<sup>69</sup> 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-onself>.

<sup>70</sup> 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,

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.<sup>71</sup> 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.<sup>72</sup> In cases involving children in conflict with the law, the law is more general: they must not be compelled to “give testimony.”<sup>73</sup> The right not to be compelled to confess guilt or to testify against oneself encompasses the absolute prohibition against 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”), in particular Article 15. Any confession or statement made through coercion, torture or other ill-treatment must be excluded from the evidence, except if used as evidence that coercion, or torture or other treatment occurred.<sup>74</sup>

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*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.

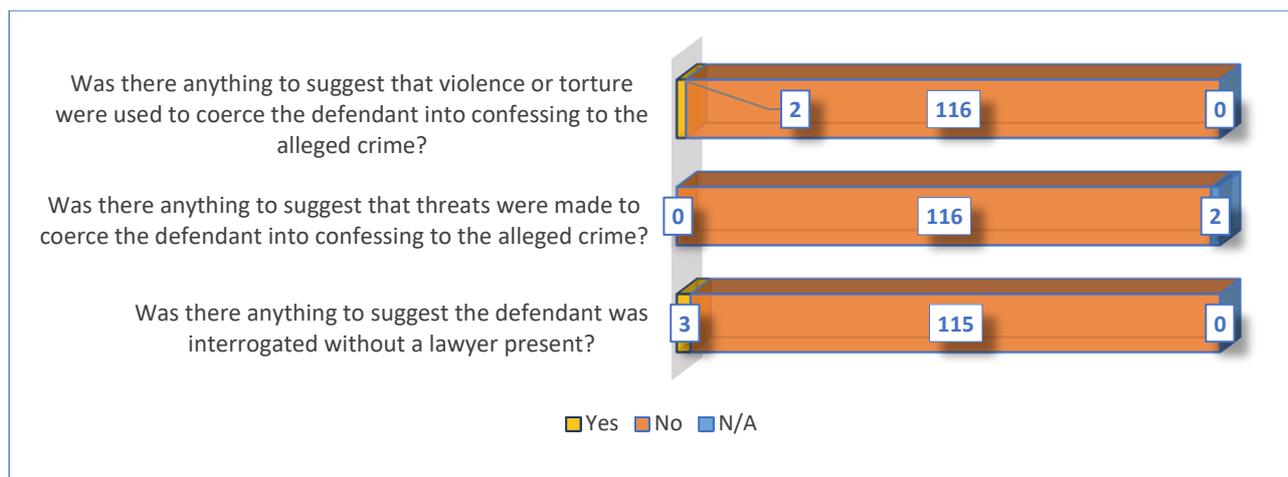
<sup>71</sup> ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

<sup>72</sup> ECtHR, *Condron 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>.

<sup>73</sup> CRC, Art. 40(2)(b)(iv).

<sup>74</sup> UNHRC, General Comment 32, para. 41.

Figure 7: The right not to be compelled to confess guilt or to testify against oneself<sup>75</sup>



During the Reporting Period, three of the 118 defendants insinuated that they had been interrogated without their lawyer being present (2.5%). While none of them alleged that they were threatened into giving a confession, three (2.5%) 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.

One of the cases involved a child aged 16 -17 who, beyond reporting the use of violence by the authorities to obtain their confession, also stated that he did not have any lawyer to assist them in the police, prosecution, and judicial investigation stages. The fact that some defendants made such claims remains concerning as it shows that violence or torture is still used to obtain confessions and that no significant improvement was made despite this issue being raised to the Court. 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 accepted that the prohibition of torture is a peremptory norm of international law (*jus cogens*).<sup>77</sup>

**International Human Rights Law Terminology:**

**Non-derogable right:** A right whose application cannot be suspended by government 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.”<sup>76</sup>

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 inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner.

While this is an issue that should be dealt with during the investigation stage of proceedings, appeal judges must also remain vigilant and ensure that any claims of coercion that have not been dealt with during the pre-trial stages of the case are thoroughly investigated before the trial is allowed to proceed any further. They must also rule the subsequent confessional evidence inadmissible if there are reasonable grounds to believe that it was obtained in a coercive manner.

<sup>75</sup> This data is based on the total number of defendants (118 individuals) involved in the 85 cases monitored. N/A = Neither the defendant nor their lawyer was present, there was therefore no one to raise the issue.

<sup>76</sup> 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/>.

<sup>77</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2<sup>nd</sup> ed, N.P. Engel 2005), p. 157.

In its letter to CCHR, the Court of Appeal stated that in some cases, the defendants denied the confessions they made at earlier stages, arguing that they were coerced into confessing their guilt through intimidation, violence, or pressure. However, the Court highlighted that none of the defendants provided evidence of such coercion or violence and they had not denied these confessions with judicial police, prosecutor, investigating judge, or during the first instance hearing. In the absence of evidence, the Court considered that the defendants' denial of their previous confessions was not reasonable and that there were no valid reasons to refuse to admit their confessions as evidence and no need to reinvestigate the cases.<sup>78</sup>

### 4.3. 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,<sup>79</sup> except in certain exceptional circumstances. Amongst 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<sup>81</sup> (see Section 4.10).

#### *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.<sup>80</sup> 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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

<sup>78</sup> 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.

<sup>79</sup> 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>.

<sup>80</sup> UNHRC, General Comment 32, para. 29.

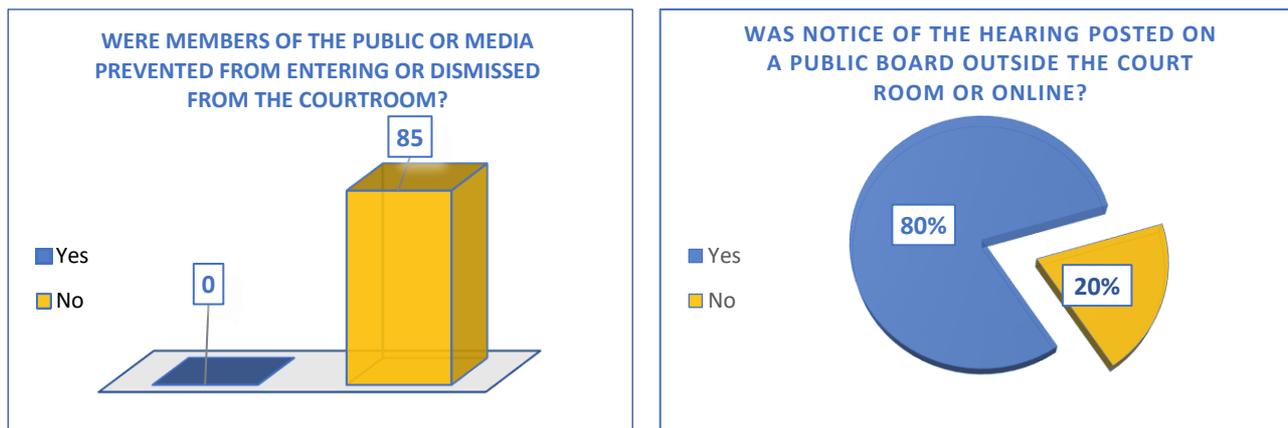
<sup>81</sup> UN Committee on the Rights of the Child (“CRC Committee”), General Comment No. 24 on children’s rights in the child justice system (replacing General Comment No. 10 (2007)) (18 September 2019) CRC/C/GC/24, para. 67, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUx5FivhToQfjGxYjV05tUAlgpOwHQsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4> (“CRC Committee General Comment No. 24”).

<sup>82</sup> UNHRC, General Comment 32, para. 29.

<sup>83</sup> UNHRC, General Comment 32, para. 29.

<sup>84</sup> 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 8: The right to a public hearing<sup>85</sup>



Hearing notices, displaying the date, location and starting time of a hearing, and strategically placed outside courtrooms, are one way of promoting public hearings by informing the public, who should be allowed access to the courtrooms in which trials are taking place.

In 2017 and 2018, the Court<sup>86</sup> 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, the Court has prioritized this issue and has developed a [webpage](#) to post information about upcoming cases, as well as a [hearing schedule](#). The information now made available includes - among others - the date, time and location of the hearing, the case’s file number, the charge(s) and the name of the judge. During the Reporting Period, hearing notices were posted outside the courtroom for 68 (80%) out of the 85 monitored trials. This represents a significant improvement from the 2019/2020 reporting period, where hearing notices were posted outside the courtroom for 25% of the monitored trials. However, 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 all hearings at the Court for the right to a public hearing to be considered fully respected. In relation to hearings remaining open to the public and the media, it is welcome to note that during this reporting period, the public or media was not prevented or dismissed from entering the courtroom for all 85 (100%) of the monitored trials.

#### 4.4. 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

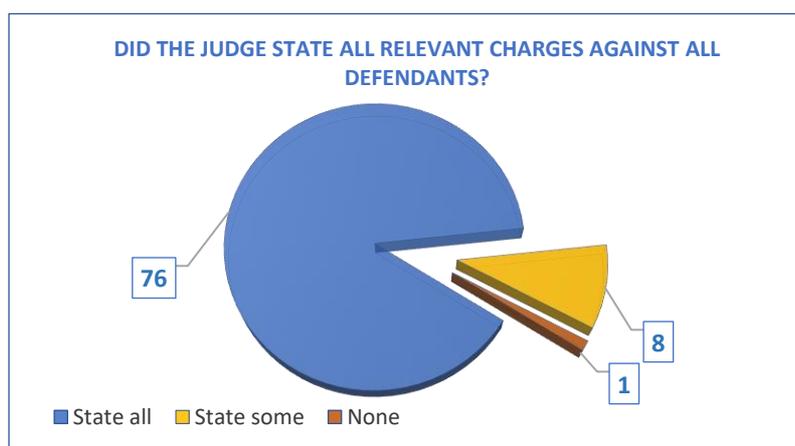
<sup>85</sup> This data is based on the 85 cases that were monitored.

<sup>86</sup> On 5 April 2018 and 27 August 2019, CCHR’s Fair Trial Monitoring Project team met with the Court of Appeal in order to discuss the findings contained in the 2016/2017 and 2017/2018 reports.

prepare their defense.<sup>87</sup> 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.<sup>88</sup>

It should be noted that CCHR’s trial monitors collect data at the commencement of a 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.

**Figure 9: The right to understand the nature and cause of the charge(s) - Overview<sup>89</sup>**



In 76 out of 85 cases (89.41%), the judges did inform the defendants of all relevant charges against them. However, in almost one tenth (9.41%) of cases monitored by CCHR during the reporting period, defendants were not informed of the totality of the relevant charges against them and in one case (1.18%), the defendants were not informed about charges against them at all, which is worrisome. While

this percentage is lower than during the previous reporting periods (See Figure 10 below), it is not acceptable that some defendants are still not provided with all the adequate information related to the charges held against them. Therefore, this right remains not fully respected by the Court.

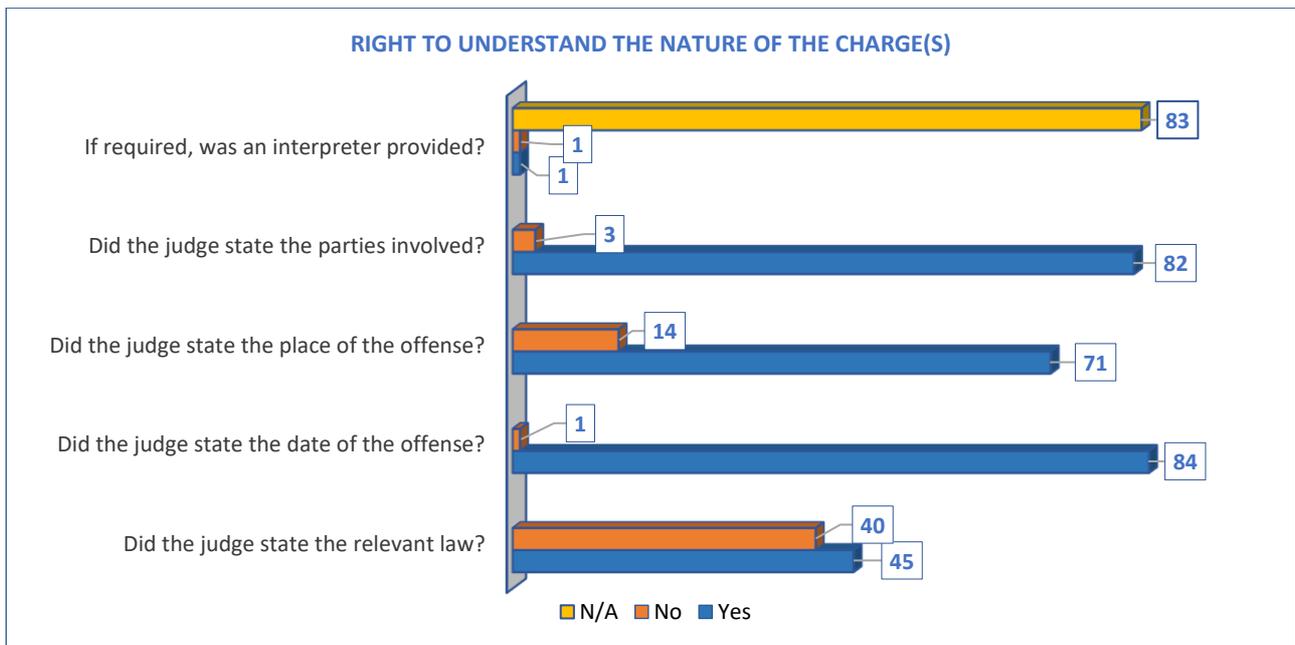
**Figure 10: The right to understand the nature and cause of the charge(s) - Detail<sup>90</sup>**

<sup>87</sup> 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>.

<sup>88</sup> 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.”

<sup>89</sup> This data is based on the 85 cases that were monitored.

<sup>90</sup> This data is based on the 85 cases that were monitored.



The figures above show that, in the majority of cases, the judges at the Court re-stated all the relevant charges against the defendants, as well as the date and place of the offense and the parties involved in the case. However, in almost half of the cases monitored, the judges failed to state the relevant law. In addition, in one case in which a foreign defendant needed interpretation, no interpreter was provided by the Court, impeding the defendant from understanding the relevant information related to the charges held against them. The right to understand the nature of the charge at the appeal stage of proceedings, therefore, remains not fully respected by the Court. However, when compared with the two previous reporting periods, respect for this right has overall improved, as outlined in the table below.

**Figure 11: The right to understand the nature and cause of the charge(s) – Evolution from 2018 to 2021<sup>91</sup>**

|   | 2018/2019 | 2019/2020 | 2021  |
|---|-----------|-----------|-------|
| Percentage of cases where the judge stated all the charges          | 67.4%     | 78.3%     | 89.4% |
| Percentage of cases where the judge stated the relevant law         | 68.2%     | 59.6%     | 52.9% |
| Percentage of cases where the judge stated the date of the offense  | 90.8%     | 95.1%     | 98.8% |
| Percentage of cases where the judge stated the place of the offense | 85.4%     | 83.7%     | 83.5% |
| Percentage of cases where the judge stated the parties involved     | 91.2%     | 90.6%     | 96.4% |

During the Reporting Period, the information that was not shared by judges mostly related to the relevant law and the location of the offence. Instances in which judges have failed to state information pertaining to the relevant law and to the place of the offence have declined when compared to the last three reporting periods. Those constitute key details which must be provided to a defendant during a criminal trial. The Court of Appeal stated in its letter to CCHR that the judges read out a summary of the case stating all required information on the relevant parties, including the parties of appeal, as well as on the charges, the facts, the

<sup>91</sup> This data is based on the 213 cases monitored in 2017/2018; the 239 cases monitored in 2018/2019; the 203 cases monitored in 2019/2020; and the 85 cases monitored in 2021.

evidence and verdict rendered by the court of first instance and the appeal request, as required by the criminal procedure.<sup>92</sup>

#### 4.5. Right to legal representation and right to be present at trial<sup>93</sup>

| International Law | Cambodian Law |                              |                         |                              |
|-------------------|---------------|------------------------------|-------------------------|------------------------------|
| ICCPR             | Constitution  | CCPC                         | Law on Juvenile Justice | Law on Prisons <sup>94</sup> |
| Article 14(3)(d)  | Article 38    | Articles 143, 300, 301 & 389 | Articles 6, 50 & 51     | Article 62                   |

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 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).<sup>95</sup> In Cambodia, it is only compulsory for an accused be legally represented if they are charged with a felony offense or if they are a minor. While it is not mandatory to be legally represented if the accused committed a misdemeanor offense (unless they are a minor), individuals still have the option, if they so wish, but this burden does not rest with the court.

Trials must be held in the presence of the accused,<sup>96</sup> 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”<sup>97</sup> 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.<sup>98</sup>

The right to be present at trial is applicable to appeal proceedings, if they involve questions of both fact and law,<sup>99</sup> 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.<sup>100</sup> Cogent justification must be provided for them.<sup>101</sup> The accused must also have unequivocally waived their right to appear at trial.<sup>102</sup>

<sup>92</sup> 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.

<sup>93</sup> For more details on these rights, 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>.

<sup>94</sup> ‘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).

<sup>95</sup> ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 38.

<sup>96</sup> ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 36.

<sup>97</sup> CRC Committee, General Comment 24, para. 63.

<sup>98</sup> CRC Committee, General Comment 24, para. 56.

<sup>99</sup> 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>.

<sup>100</sup> UNHRC, General Comment 32, para. 36.

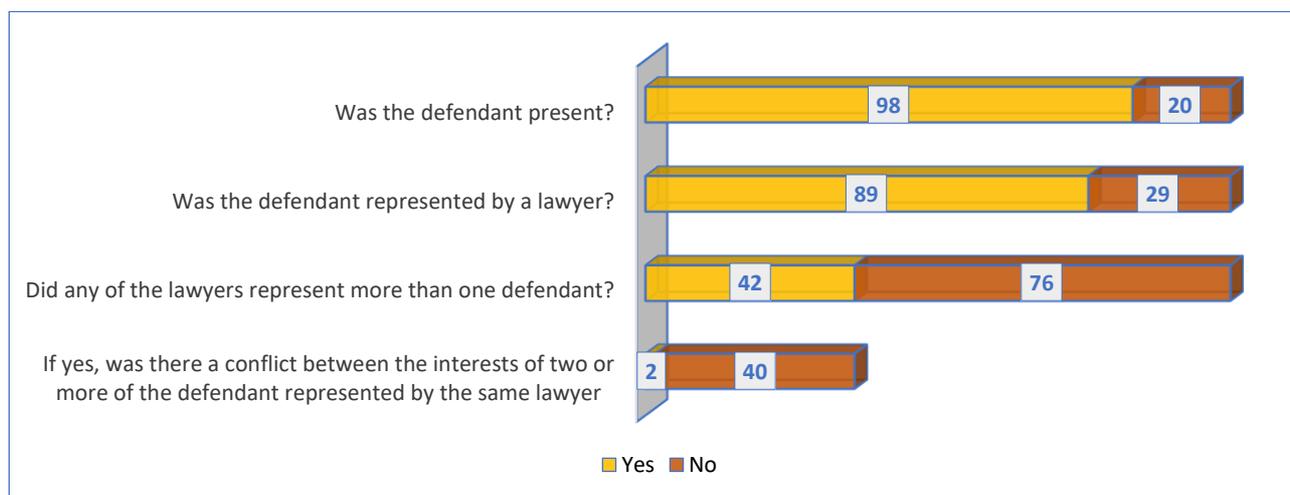
<sup>101</sup> UNHRC, Communication 016/1977, *Mbenge v. Zaire* (25 March 1983) CCPR/C/18/D/16/1977, para. 14.1, <http://juris.ohchr.org/Search/Details/573>.

<sup>102</sup> UNHRC, General Comment 32, para. 36.

In relation to legal representation, the Court of Appeal stated in its letter that the Court does not guarantee access to legal representation to all the defendants who are accused of committing an offense. The Court recalled that legal representation is only mandatory for felony and cases involving children in conflict with the law. For misdemeanor cases, legal representation depends on whether the defendants wish to be represented or not. The Court of Appeal can therefore hear these cases even if the defendants have no legal representation. The Court also reported that appeal judges inform the accused of their right to legal representation.<sup>103</sup>

Concerning the right to be present at trial, the Court of Appeal explained that the Court can also hear the 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.<sup>104</sup>

**Figure 12: The rights to legal representation and to be present at trial<sup>105</sup>**



While in 2019/2020, the percentage of defendants who were present during the hearing welcomingly increased, from 80.7% to 90.2% compared to 2018/2019, this percentage decreased to 83% in 2021. However, the number of defendants represented by a lawyer increased from 71.8% in 2019/2020 to 75.4% during the reporting period.

In light of the fundamental character of the right to be tried in one’s presence and to have a lawyer, the fact that 24.5% of defendants were not represented by a lawyer, and that 16.9% of defendant were not present is cause for serious concern. In April 2018, the Court’s Deputy Presidents<sup>106</sup> noted that in most cases, the accused’s absence during hearings was due to the lack of transportation from the detention center to the Court, which falls under the responsibility of the prison authorities. In August 2019, the Court stated that

<sup>103</sup> 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.

<sup>104</sup> 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.

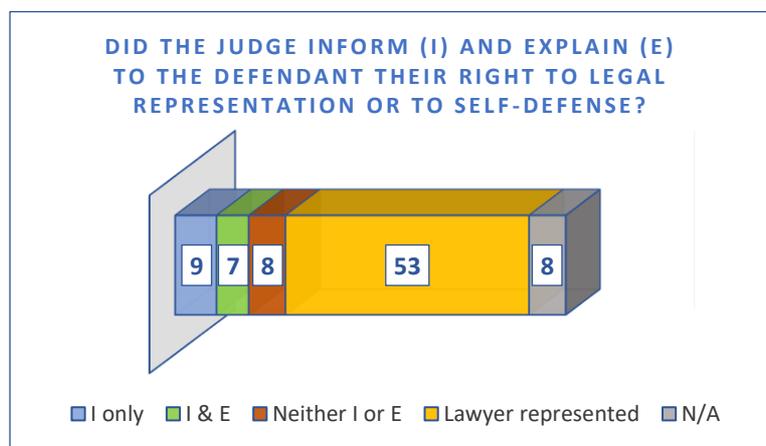
<sup>105</sup> This data is based on the total number of defendants (118 individuals) involved in the 85 cases monitored.

<sup>106</sup> On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhong Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

while legal representation is always required for felony and cases involving children in conflict with the law, in misdemeanor cases the accused does not require legal representation, provided they are not minors.<sup>107</sup>

Further, a lawyer represented more than one accused in 42 cases during the reporting period. Situations in which a lawyer represents multiple accused, while sometimes cost-effective, raise concerns for the individuals' fair trial rights, for instance when one co-defendant's defense or version of events is different or contradictory to that of another co-defendant. If the same lawyer represents 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. In such cases, a conflict of interest occurs. Each defendant should have a separate lawyer.<sup>108</sup> It should be noted that during the Reporting Period, CCHR's trial monitors identified a conflict of interest in one case where a lawyer was representing two defendants accusing one another of committing the alleged offense.

**Figure 13: Explanation of rights<sup>109</sup>**



The fact that in 75.4% (53 out of 85 cases) of the cases monitored by CCHR the defendants had legal representation shows that individuals' rights to access to a lawyer have mostly been protected, improving since 2019/2020. However, in 9.4% (8 out of 85 cases) the judges failed to inform and explain to the accused their right to legal representation or the right to represent themselves. This constitutes a slight deterioration compared to

2019/2020, when the percentage was 7.4%. This fundamental right remains not fully respected.

In cases where defendants were not present at trial, the absence of the defendant was often due to logistical issues as well as communication problems between the judges and the correctional centers or places of detention. There were many occasions where transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers 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 correctional centers.

In relation to right to legal representation, the Court stated in the consultation meeting for the 2018/2019 report that legal representation was mandatory for felony and cases involving children in conflict with the law. For misdemeanor cases, the state does not guarantee the provision of legal aid, but defendants are not banned from hiring lawyers personally. The Court reported they have tried to find legal aid for defendants. There are two rooms for legal consultation between lawyers and their clients at the court, and waiting rooms for defendants, and it is free for lawyers to copy the case files of poor defendants. Moreover, they stated that applying for legal presentation for the poor is difficult as they are required to provide a certificate proving their poor status to the BAKC. Moreover, BAKC has challenges with budget, which means it is often

<sup>107</sup> On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

<sup>108</sup> See CCHR 'Guidance Notes for CCHR Appeal Court Monitoring Checklist', p. 47.

<sup>109</sup> This data is based on the 85 monitored cases. N/A = the defendant was absent.

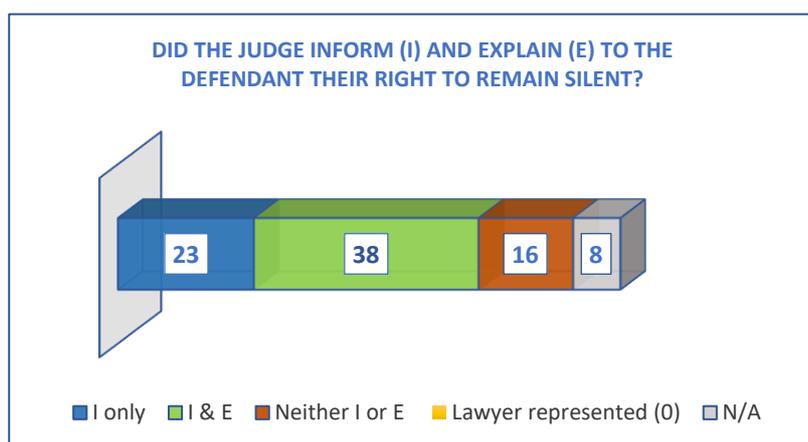
late in responding to applications and providing legal representation. The Court stated that judges ask defendants charged with misdemeanor cases about legal aid if they are unrepresented, but some defendants agree to go ahead with the trial without legal aid.<sup>110</sup>

#### 4.6. 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.<sup>111</sup> It means that one is presumed innocent until proven guilty by law and through a final ruling. The principle that the burden of proof lies with the prosecuting body, not the accused, stems from the presumption of innocence.<sup>112</sup> 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.<sup>113</sup>

Figure 14: The right to remain silent<sup>114</sup>



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 defendants in 18.8% of cases. This remains a significant improvement from the 2018/2019 reporting period, during which judges failed to inform and explain the right in 66% of cases, and a further improvement from the

2019/2020 reporting period during which judges failed to inform and explain the right in 25.6% of cases. While this improvement is notable and welcome, 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 its letter to CCHR, the Court of Appeal stated that the presumption of innocence is a key principle enshrined in international law and domestic law, especially in Article 38 of the Cambodian Constitution, that the judges of the Court must strictly apply. However, this principle does not require the

<sup>110</sup> 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.

<sup>111</sup> 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.

<sup>112</sup> UNHRC, General Comment 32, para. 30.

<sup>113</sup> 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>.

<sup>114</sup> The data includes the 77 monitored cases (out of 85) where the defendant was present at the hearing.

judges to inform the defendants of their right to remain silent. The Court added that defendants are nevertheless free to exercise their right to remain silent if they wish.<sup>115</sup>

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.<sup>116</sup> International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. When remand prisoners attend court in prison uniforms, even when they are serving sentences, they are presented in the same way as prisoners who may have already been convicted, especially if no distinction can be drawn between the two categories of prisoners. This may influence the judge’s decision and the public’s perception and is prejudicial. The 2015 UN Standard Minimum Rules for the Treatment of Prisoners (“The Nelson Mandela Rules”),<sup>117</sup> which represent internationally recognized best practices for the treatment of prisoners, provides that untried prisoner 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.<sup>118</sup> 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 15: The presumption of innocence**<sup>119</sup>

|  | Yes        | No          | N/A        |
|--|------------|-------------|------------|
| Did the defendant appear before the court in convict uniform?  | 23 (19.5%) | 66 (55.9%)  | 29 (24.6%) |
| Was the defendant handcuffed throughout the hearing?   | 0 (0%)     | 89 (75.4%)  | 29 (24.6%) |
| Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict? | 0 (0%)     | 118 (100%)  | 0 (0%)     |
| Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant?   | 0 (0%)     | 109 (92.4%) | 9 (7.6%)   |

The figure above shows that 23 out of 118 defendants still appeared in court wearing the blue prison uniform for convicts at their hearings – representing 19.5% of the defendants whose cases were monitored by CCHR. This represents a decrease compared to 2019/2020, when 28.2% of the defendants appeared in the blue convict uniform. Such a practice undermines the presumption of innocence. In addition, 66 out of 118 defendants (55.9%) 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. These findings

<sup>115</sup> 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.

<sup>116</sup> 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#{).

<sup>117</sup> 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](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).

<sup>118</sup> *See* CCHR’s Fair Trial Rights Newsletter ‘Prisoners Uniform and Presumption of Innocence’ (June 2017) [https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence\\_Eng.pdf](https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf).

<sup>119</sup> This data is based on the total number of defendants (118 individuals) involved in the 85 cases monitored. N/A = The defendant was either absent or s/he was not imprisoned.

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.<sup>120</sup>

#### 4.7. 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.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> Evidence obtained by coercion must not be admissible at trial (see Section 4.2.)

In all 85 cases monitored during the Reporting Period, nothing suggested that a party was not given the opportunity to call witnesses. While this is encouraging, evidentiary rights remain not fully respected for three main reasons. First of all, in the only case in which witnesses were called, witnesses were present in the courtroom before they were questioned. 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 Court 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 is of great concern. Nine confessions were presented during trials as evidence and, amongst these, four confessions were relied on by the judge as evidence. The quality and quantity of evidence presented and considered during a trial hearing

<sup>120</sup> 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.

<sup>121</sup> 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>.

<sup>122</sup> 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>.

<sup>123</sup> 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. 8.3, <https://juris.ohchr.org/Search/Details/1457>.

is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence and forensic evidence. CCHR’s trial monitoring revealed there is no trend of examining this type of evidence at the Court.

In its letter on the findings of this Report, the Court of Appeal affirmed that each party has the right to present evidence freely at trial. The Court of Appeal explained that judges admitted any evidence that was helpful in seeking the truth and in finding justice and that the decision to admit or exclude evidence was at the discretion of the Court.<sup>124</sup>

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 provisions of the CCPC<sup>125</sup> that allow defense lawyers to examine the case file and make copies but do not provide the same access to unrepresented defendants pose a potential risk that those defendants are denied access to the evidence against them and are unable to adequately prepare their own defense.

#### 4.8. Right to a reasoned judgment

| Cambodian Law      |
|--------------------|
| CCPC               |
| Articles 357 & 403 |

The right to a reasoned judgment<sup>126</sup> 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,<sup>127</sup> 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.<sup>128</sup> Within the Cambodian context, this is respected by both the accused and prosecution having the right to appeal an appeal judgment to the Supreme Court.

<sup>124</sup> 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.

<sup>125</sup> Articles 145,254,304,319,391, and 428 of the CCPC.

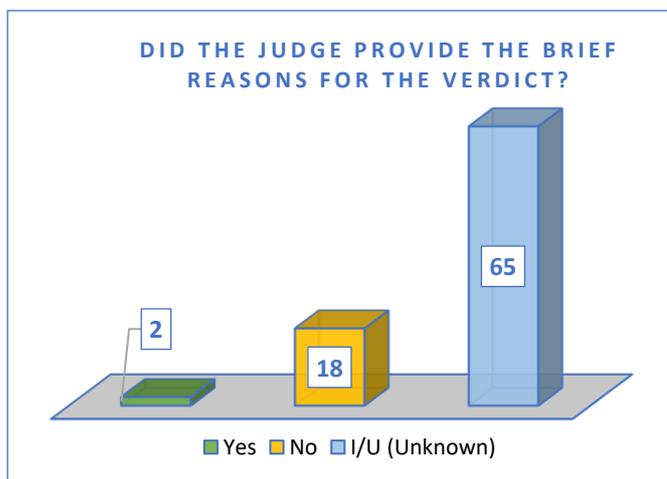
<sup>126</sup> For more details on this right, see CCHR’s module “The right to a public judgment and the right to a reasoned judgment” (September 2022), <https://sithi.org/fair-trial-rights/the-right-to-a-public-judgment-and-the-right-to-a-reasoned-judgment>.

<sup>127</sup> Amnesty International, ‘Fair Trial Manual’ (2014) p. 173, Section 24.2.

<sup>128</sup> 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>.

**Figure 16: Provision of the reasons for the verdict by judges<sup>129</sup>**

During the Reporting Period, in 90% of the cases monitored by CCHR in which the verdict is known, the judges failed to provide brief reason for their judgment, instead only announcing the ruling. This represents a sharp deterioration compared to the 2019/2020, which saw 64.7% of judgments be given without adequate reasoning. This is highly concerning as it leaves the door open for unlawful convictions.



CCHR’s Trial Monitor also noticed that in all the cases where a judgment was rendered at the time CCHR was monitoring the hearings, the Court handed down a guilty verdict, upholding the decisions of the Courts of First Instance – a trend which has been ongoing since the 2016/2017 reporting period. This, taken together with the lack of a reading of the reasoned decision, creates cause for concern as to whether the accused’s fair trial rights were respected. The right to a reasoned judgment therefore remains a not fully respected right. In response to this finding, the Court of Appeal stated that the appeal judges announced both the verdict and the full reasoning unless the parties were absent. In this case, the judges only read the verdict. The Court of Appeal further stated that as per the law, judges can read out both the verdict and full reasoning or only the verdict depending on the nature of the cases and time constraints.<sup>130</sup>

#### 4.9. 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.<sup>131</sup> 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 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.

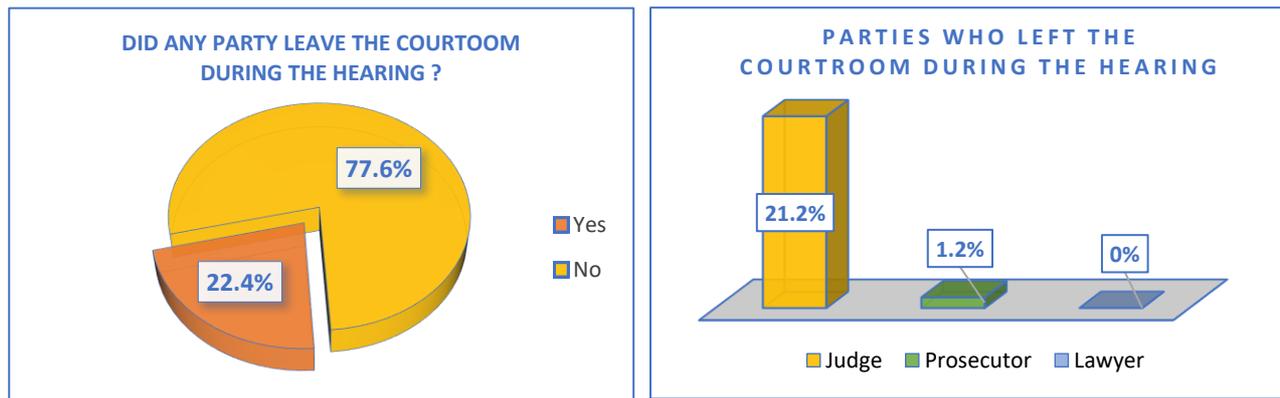
<sup>129</sup> This data is based on the 85 trials monitored.

<sup>130</sup> 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.

<sup>131</sup> 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>.

During the Reporting Period, none of the appeal judges adjudicating the monitored cases behaved in an intimidating manner or made discriminatory comments towards any party, including the defendants. However, the trial monitoring revealed a number of unprofessional behaviors on behalf of the judges and prosecution. The judges or prosecutors left the courtroom during the hearing in 22.4% of the monitored trials (19 out of 85 trials). In addition, the judges answered their mobile telephone during the hearing in 3.5% of monitored trials (3 out of 85 trials) and in 1.2% of the hearings, the judge had their ringtone audible (1 out of 85 trials). This behavior is not indicative of the judges giving their undivided attention to the case and respect to the parties involved.

**Figure 17: Conduct of the judiciary officers<sup>132</sup>**



Finally, the trial monitoring also found that 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 all 85 trials monitored, 53% lasted less than 15 minutes (45 out of 85 trials), 23.8% trials lasted between 15 and 30 minutes (20 out of 85 trials), 14.1% lasted between 31 minutes and an hour (12 out of 85 trials) and 9.4% lasted more than an hour (8 out of 85 trials), the longest trial monitored having lasted slightly less than two and a half hours. Concerningly, 21.2% of the hearings that lasted less than 15 minutes concerned felonies - the shortest monitored felony hearing having lasted a mere four minutes – and 31.8% concerned misdemeanors – the shortest monitored misdemeanor hearing having been as brief as three minutes.

Overall, it is alarming to see that the average duration of the 85 monitored trials was of only 24 minutes. 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. In most of the monitored cases in which the verdict is known, judges relied on the confessions of the defendants or the statements of the victims presented at trial. These elements show a correlation between the defendants' absence and lack of representation and the lack of substantial evidence presented during the hearings, thus explaining their particularly short duration. While there are no set standards regarding the length of trials, hearings that last less than 30 minutes, especially when they concerns offenses punishable with imprisonment, can hardly allow to 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 Court of Appeal is 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

<sup>132</sup> This data is based on the hearing length recorded for the 85 cases monitored.

representation, are fully respected and that sufficient evidence is collected and presented at trial to ensure the proper administration of justice.

**Figure 18: Length of monitored trials<sup>133</sup>**

| Trial Length      | > 15 min   | 15 - 30 min  | 31 min – 1h  | < 1 h       | Total       |
|-------------------|------------|--------------|--------------|-------------|-------------|
| Felony            | 18         | 8            | 5            | 5           | 36          |
| Misdemeanor       | 27         | 12           | 6            | 3           | 48          |
| Petty Offense     | 0          | 0            | 1            | 0           | 1           |
| <b>Total</b>      | <b>45</b>  | <b>20</b>    | <b>12</b>    | <b>8</b>    | <b>85</b>   |
| <b>Total in %</b> | <b>53%</b> | <b>23.5%</b> | <b>14.1%</b> | <b>9.4%</b> | <b>100%</b> |

#### 4.10. 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 |

International law guarantees children - individuals below the age of 18<sup>134</sup> - 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.<sup>135</sup>

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,<sup>136</sup> which are supported by several international rules and guidelines.<sup>137</sup> 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 the penal 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 the penal law and cannot be held responsible in criminal law proceedings.<sup>138</sup> 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.<sup>139</sup> However, State parties are required to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings, “whenever appropriate”.<sup>140</sup> 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

<sup>133</sup> This data is based on the hearing length recorded for the 85 cases monitored.

<sup>134</sup> CRC, Art. 1.

<sup>135</sup> 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>.

<sup>136</sup> 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.

<sup>137</sup> 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.

<sup>138</sup> CRC, Art. 40(3).

<sup>139</sup> CRC Committee, General Comment No. 24, para. 21.

<sup>140</sup> CRC, Art. 40 (3); CRC Committee, General Comment No. 24, para. 13.

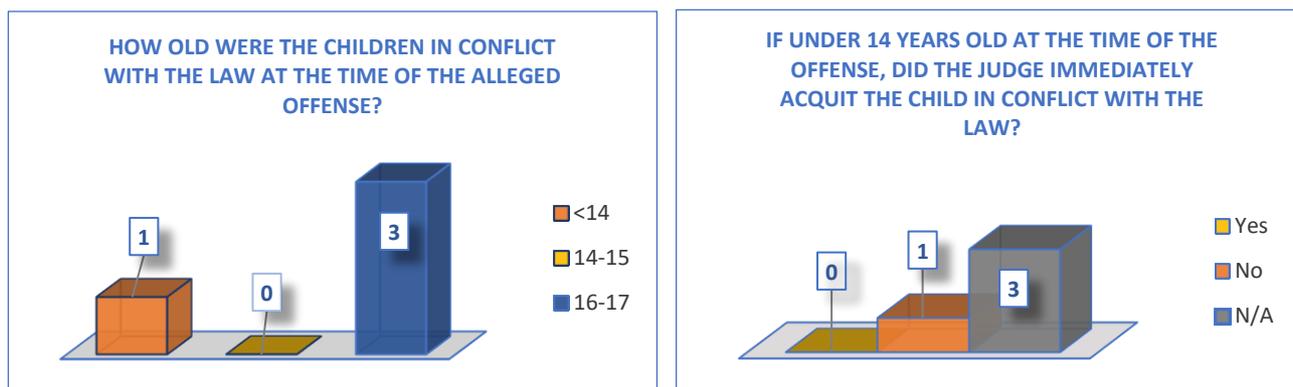
proportionate both to their circumstances and the offence.<sup>141</sup> Cambodian law further provide differential treatment provisions for children in conflict with the law in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of children in conflict with the law. .

### **Criminal Responsibility of Children**

Internationally, the most common minimum age is 14 years old.<sup>142</sup> Cambodian law has set the age of criminal responsibility at the same age,<sup>143</sup> which means that no minor 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 minor 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 minor must be resolved in their favor.<sup>144</sup> 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 118 defendants involved in the cases monitored by CCHR, four were children at the time of the offense, of whom three were aged 16-17 at the time of the alleged offense (75%), and one (15%) was under 14 years old at the time of the alleged offense. This case is highly concerning as the information collected by CCHR’s Monitor at their appeal trial show that the concerned child had been held in pre-trial detention since November 2019 and was convicted for a misdemeanor and sentenced to imprisonment by the Court of First Instance in June 2020, thus indicating the failure of competent authorities to determine their age in the early stages of the criminal proceedings. In addition, while their lawyer presented the child’s birth certificate at the appeal trial as evidence that they were under 14 years old at the time of the alleged offense, the Court did not immediately acquit them and instead scheduled the verdict delivery to a later date. The verdict rendered by the Court in this case is unknown as CCHR’s monitor was not able to attend the verdict hearing.

**Figure 19: Age at the time of the offense<sup>145</sup>**



This Reporting Period was therefore marked by a deterioration of the treatment of children in conflict with the law by the Court compared to previous reporting periods in which three other child defendants under 14

<sup>141</sup> CRC, Art. 40 (4).

<sup>142</sup> CRC Committee, General Comment No. 24, para. 21.

<sup>143</sup> Cambodian Criminal Code, Art.38 and Law on Juvenile Justice, Art.7.

<sup>144</sup> Law on Juvenile Justice, Art.7.

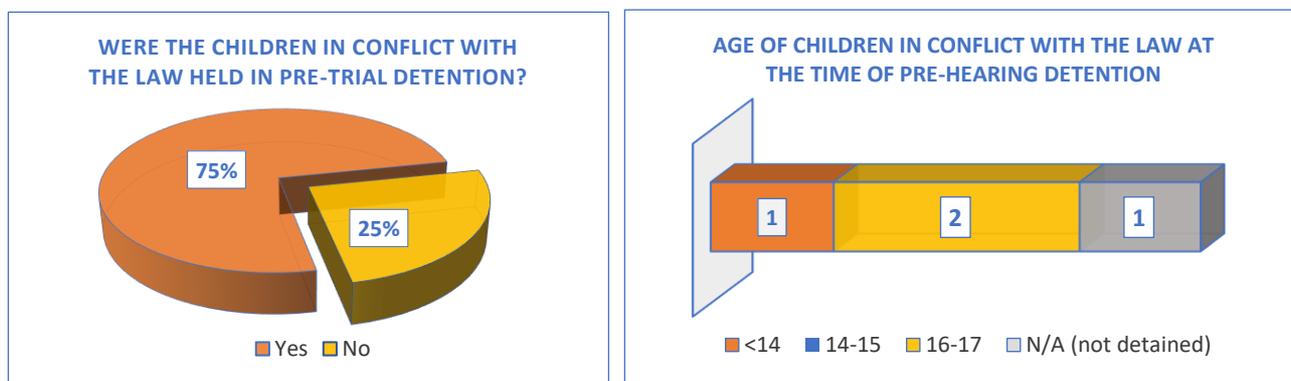
<sup>145</sup> This data based on the total number of children in conflict with the law (four individuals) involved in the four cases monitored.

years old involved in the cases monitored by CCHR in 2013/2014, 2016/2017 and 2018/2019 had immediately been acquitted by the appeal judges after evidence of their age had been presented at their appeal trial. It is important that the Court and other competent authorities increase their efforts to actively determine the age of children accused of offenses and that the Court immediately acquits child defendants aged under 14 years old at the time of the offense upon determination of their age or if any doubts as to their age arise.

### **Right to Liberty**

During the Reporting Period, three of the four children in conflict with the law involved in the monitored cases (75%) were held in detention, including the child who was under 14 years old at the time of the alleged offense. While this is an improvement compared to the previous reporting period in which all the children in conflict with the law were held in pre-trial detention, the right to liberty of children in conflict with the law has been consistently undermined since 2014, the findings from the monitoring conducted by CCHR from 2014 to 2021 showing a quasi-systematic use of pre-trial detention in the cases involving children (See Figure 19 below). In addition, the three detained children appeared before the Court in prison uniform, including one in the blue uniform for convicts, thus undermining their presumption of innocence.

**Figure 20: Percentage of children in conflict with the law held in detention in 2021<sup>146</sup>**



The best interests of the child must be the primary consideration when ordering or imposing penalties upon children found to have infringed criminal law.<sup>147</sup> 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.<sup>148</sup> The laws should provide for different non-custodial measures and should expressly prioritize the use of such measures.<sup>149</sup> Cambodian law provides for non-custodial measures.<sup>150</sup>

### **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

<sup>146</sup> This data based on the total number of children in conflict with the law (four individuals) involved in the four cases monitored.

<sup>147</sup> CRC, Art. 3(1); *see also* CRC Committee, General Comment No. 24, paras 76.

<sup>148</sup> CRC, Art. 37(b); *see also* CRC Committee, General Comment No. 24, paras, 73, 82-95.

<sup>149</sup> CRC Committee, General Comment No. 24, para. 73.

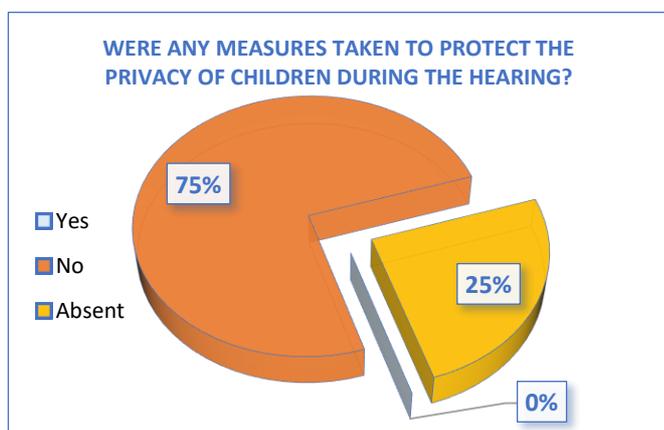
<sup>150</sup> Criminal Code, Art. 40.

children.<sup>151</sup> . During the Reporting Period, there were indications that one of the three detained children in conflict with the law (25%) was held in detention with adults.

### **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.<sup>152</sup> This includes from 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.<sup>153</sup> Therefore, the rule should be that child justice hearings are to be conducted behind closed doors, with limited exceptions provided for by the law.<sup>154</sup> 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.<sup>155</sup> 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.<sup>156</sup> This should be ensured even once the child reaches the age of 18.<sup>157</sup>

**Figure 21: Protection of children's privacy<sup>158</sup>**



No measures were taken to protect the privacy of the three children in conflict with the law present at the trials during the Reporting Period. Further, all trials were open to the public. This is highly problematic, particularly given that the question of the child's right to privacy during criminal trial was extensively discussed with the Court in August 2019, and the Court refuted the negative findings of the report in relation to the rights of children in conflict with the law. In support of this they mentioned the installation of video conferencing

technology donated by UNICEF to better protect the privacy of children. 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. Furthermore, they 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 such a scheme.<sup>159</sup> 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.

<sup>151</sup> CRC Committee, General Comment No. 24, paras. 92 and 93.

<sup>152</sup> CRC, Art. 40(2)(vii); *see also* CRC, Art. 16 and 40(1); CRC Committee, General Comment No. 24, para. 66.

<sup>153</sup> CRC Committee, General Comment No. 24, para. 70.

<sup>154</sup> CRC Committee, General Comment No. 24, para. 67.

<sup>155</sup> CRC Committee, General Comment No. 24, para. 67.

<sup>156</sup> CRC Committee, General Comment No. 24, para. 67.

<sup>157</sup> CRC Committee, General Comment No. 24, para. 70.

<sup>158</sup> This data is based on the total number of children in conflict with the law (15 individuals) involved in the 15 cases monitored.

<sup>159</sup> On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and general administrative secretariat of the Court of Appeal in order to discuss the findings of 2017/2018 report.

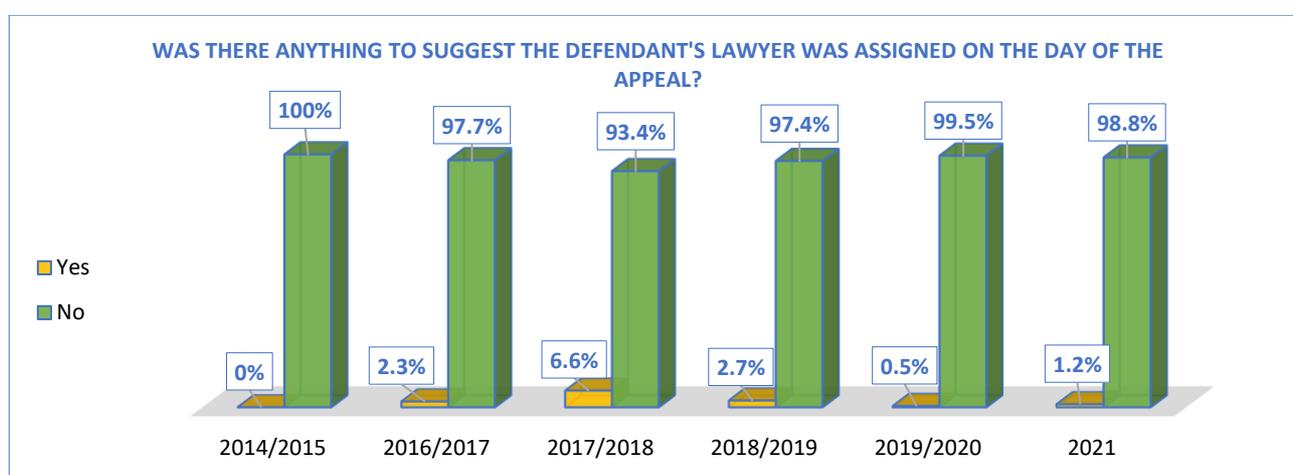
In contrast with the monitoring findings, the Court stated during the consultation on the findings of this Report that in cases where there was a child defendant, victim or witness, trials were conducted using barriers and video conferencing. They stated that both trials and the delivery of verdicts for cases involving children were conducted in closed hearings, even if the cases also involved adult defendants.

## 5. 2014-2021: Evolution of Fair Trial Rights Protection

This section outlines key trends in terms of adherence to international fair trial rights standards by the Court during the reporting periods from 2014 until 2021.<sup>160</sup>

**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 98% of the cases monitored, nothing suggested that the defendant's lawyer was assigned on the day of the appeal.<sup>161</sup> Also, only four defendants out of all the defendants 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.<sup>162</sup>

*Figure 22: Evolution of the pre-trial right to speak with a lawyer (2014-2021)*<sup>163</sup>



**Right to a public judgment:** From 2014 until 2021, the verdict was announced in public for all the monitored cases for which information was available on that point.<sup>164</sup>

**Prohibition against retroactive application of penal legislation:** The principle of non-retroactive application of the law has also been consistently respected. In all the cases monitored from 2014 until 2021, the law under which the defendant was charged was in force on the date the offence was allegedly committed.<sup>165</sup>

<sup>160</sup> Note that CCHR's Fair Trial Rights monitoring project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for that period.

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

<sup>162</sup> 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 (out of 562) in 2016/2017, 241 (out of 315) in 2017/2018, 262 (out of 352) in 2018/2019, and 89 defendants (out of 118) in 2021.

<sup>163</sup> 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, and 89 defendants (out of 118) in 2021.

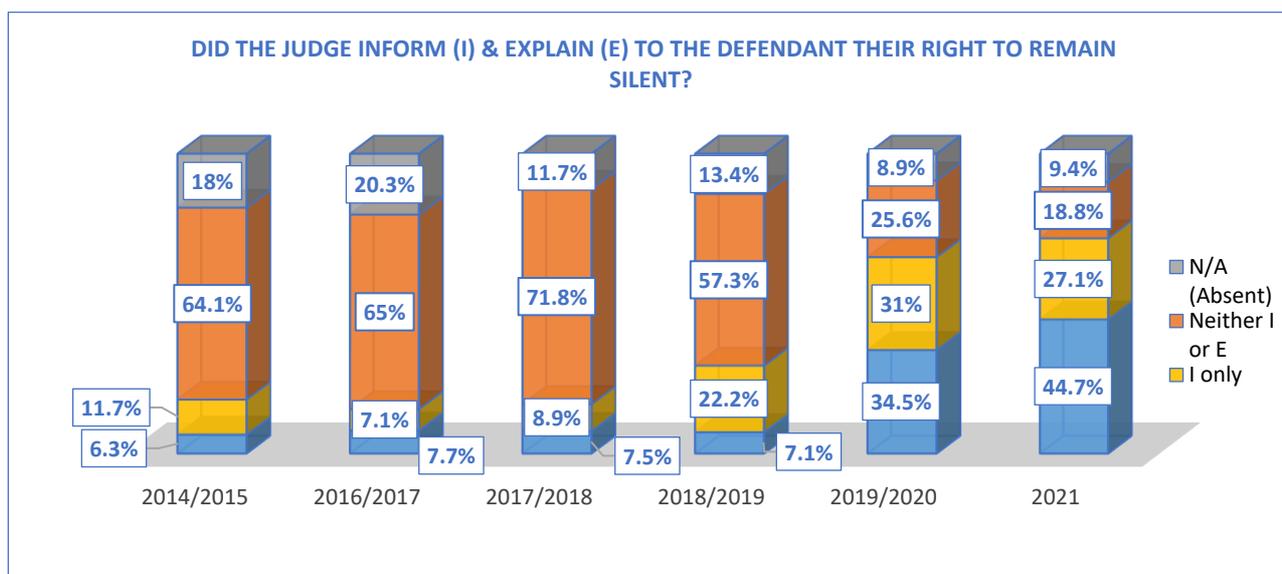
<sup>164</sup> This data is based on all the cases monitored in 2014/2015, 252 cases (out of 341) monitored in 2016/2017, 95 cases (out of 213) monitored in 2017/2018, 99 cases (out of 239) monitored in 2018/2019, 21 cases (out of 203) in 2019/2020, and 21 cases (out of 85) in 2021.

<sup>165</sup> This data is based on 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

**Protection against double jeopardy:** The principle of *ne bis in idem* has been constantly respected since 2014. Indeed, except for two defendants, there was nothing to suggest that the defendants in the cases monitored from 2014-2021 had been tried and sentenced for the charged offence previously.<sup>166</sup>

**Right to the presumption of innocence:** After being classified as fully respected in 2014/2015,<sup>167</sup> this right moved to the category of not fully respected rights in the 2016/2017 reporting period and has since then constantly 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,<sup>168</sup> there remain several factors justifying this right being classified as being not fully respected. Indeed, since 2014, the judge has not informed nor explained to all the defendants their right to remain silent. However, a constant improvement in each reporting period can be noted as demonstrated by the figure above. While the judge informed and explained the right to remain silent to the defendants in only 6.3% of the cases monitored in 2014/2015, it did so in 44.7% of the cases monitored in the Reporting Period. While this is a commendable improvement, information and explanation by the Court of this fundamental right to the defendants remain insufficient, which undermines their presumption of innocence.

**Figure 23: Information and explanation of the right to remain silent (2014-2021)<sup>169</sup>**



involved in the 239 cases monitored in 2018/2019, the 255 involved in the 203 cases monitored in 2019/2020, and the 118 defendants involved in the 85 cases monitored in 2021.

<sup>166</sup> This data is based on 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 involved in the 203 cases monitored in 2019/2020, and the 118 defendants involved in the 85 cases monitored in 2021. There were indications that one defendant had been tried and sentenced for the charged offence previously in 2016/2017 and 2017/2018.

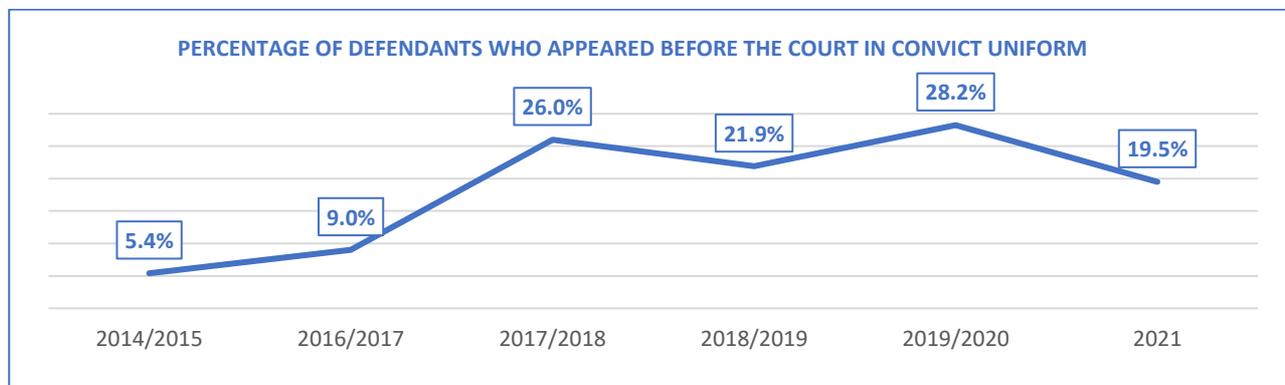
<sup>167</sup> In 2014/2015, the data related to the information and explanation of the right to remain silent to defendants by judges, was not included in the right to the presumption of innocence, but in a different category related to the explanation of rights.

<sup>168</sup> 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, and the 118 defendants involved in the 85 cases monitored in 2021.

<sup>169</sup> 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, and the 85 cases monitored in 2021.

In addition, the fact that there has been defendants appearing before the court in convict uniform since 2014<sup>170</sup> 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 court in the prison uniform for convicts in 2014/2015, 28.2% did so in 2019/2020. A slight improvement was however noticed during the Reporting Period as 19.5% of the defendants appeared in convict uniform.

**Figure 24: Percentage of defendants appearing before the court in convict uniform (2014-2021)<sup>171</sup>**



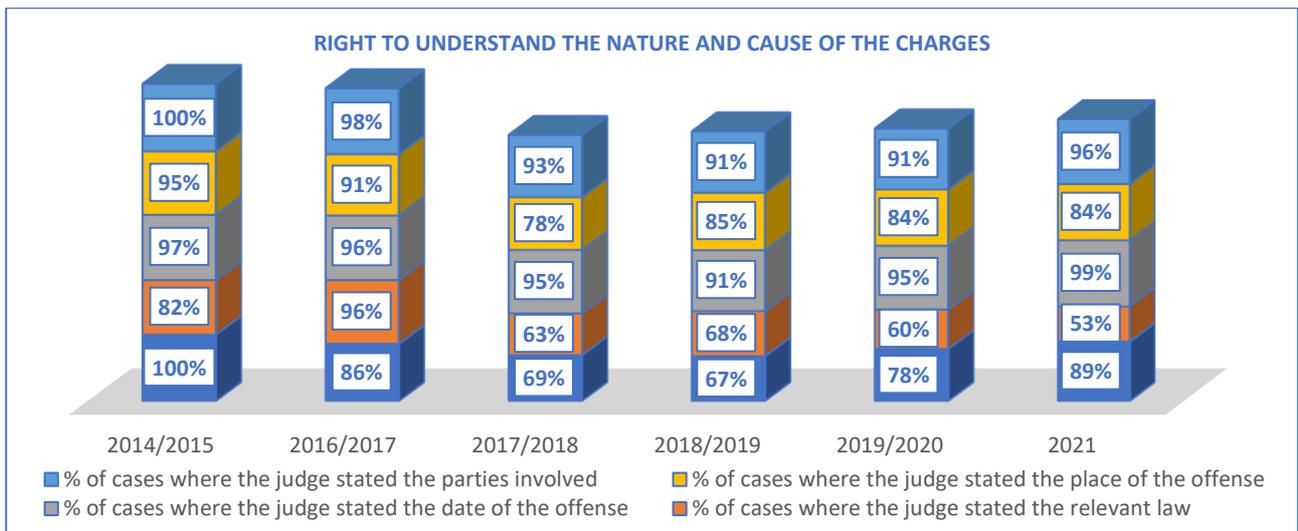
**Right to understand the nature and cause of the charges:** While being considered respected during the 2014/2015, and 2016/2017 reporting periods, this right has been considered as not fully respected since then. As shown in the figures below, there has been a continued decrease in the percentage of cases in which the judge stated all the relevant charges against all the defendants, the date of the offense or the parties involved. While the period 2019/2020 an the Reporting Period saw an improvement in the respect for this right by the Court, there remains a noticeable percentage of cases in which the judge did not state the relevant law or the place of the offense.

**Figure 25: Evolution of the right to understand the nature and cause of the charge(s) (2014-2021)<sup>172</sup>**

<sup>170</sup> The dark orange uniform for remand prisoners was introduced in Cambodia in late 2013, distinguishing them from convict prisoners who were a blue uniform.

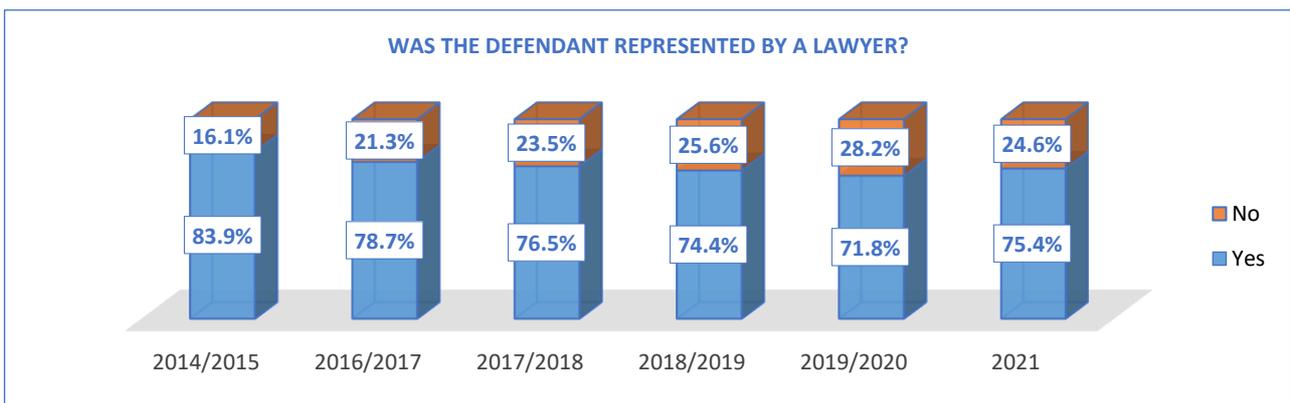
<sup>171</sup> This data is based on the number of defendants involved in the monitored cases which were present at the hearing and imprisoned: defendants out of 161 in 2014/2015, 356 defendants out of 558 in 2016/2017, 249 defendants out of 315 in 2017/2018, 254 defendants out of 352 in 2018/2019, 221 defendants out of 255 in 2019/2020, and 89 defendants out of 118 in 2021.

<sup>172</sup> 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, and the 85 cases monitored in 2021.



**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 since 2014/2015 as illustrated in the figure below, which explains its classification as not being fully respected. Similarly, the right to be present at trial has never been fully upheld, with between 10 and 27% of defendants absent at their trial in the cases monitored from 2014 to 2021.

*Figure 26: Evolution of the right to legal representation (2014-2021)<sup>173</sup>*



*Figure 27: Evolution of the right to be present at trial (2014-2021)<sup>174</sup>*

| Was the defendant present at trial? | Yes   | No    |
|-------------------------------------|-------|-------|
| 2014/2015                           | 79.0% | 21.0% |
| 2016/2017                           | 72.4% | 27.6% |

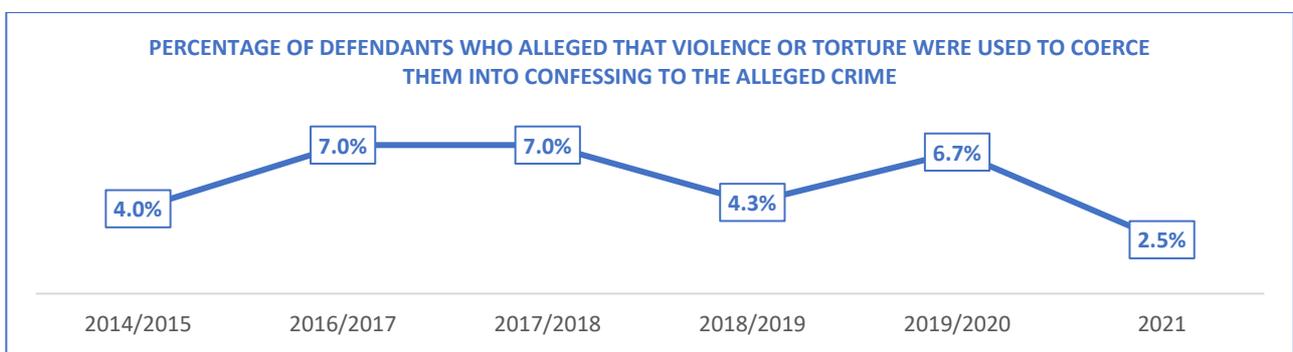
<sup>173</sup> This data is based on the 135 defendants represented by a lawyer out of the 161 defendants involved in the 128 cases monitored in 2014/2015, the 439 defendants represented by a lawyer out of the 558 defendants involved in the 340 cases monitored in 2016/2017, the 241 defendants represented 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, and the 89 defendants represented by a lawyer out of the 118 defendants involved in the 85 cases monitored in 2021.

<sup>174</sup> 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, and the 98 defendants present at trial out of the 118 defendants involved in the 85 cases monitored in 2021.

|           |       |       |
|-----------|-------|-------|
| 2017/2018 | 82.5% | 17.5% |
| 2018/2019 | 80.7% | 19.3% |
| 2019/2020 | 90.2% | 9.8%  |
| 2021      | 83.1% | 16.9% |

**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. While this trend in 2018/2019 shows a slight decrease in comparison to previous reporting periods, data collected in 2019/2020 and the Reporting Period reveals that the number of defendants who claim violence or torture was used against them is on the rise again. This, combined to the fact that allegations of threats or violence have been consistently made since 2014 justified classifying this right as being not fully respected.

*Figure 28: Evolution of the right not to be compelled to confess guilt (2014-2021)<sup>175</sup>*



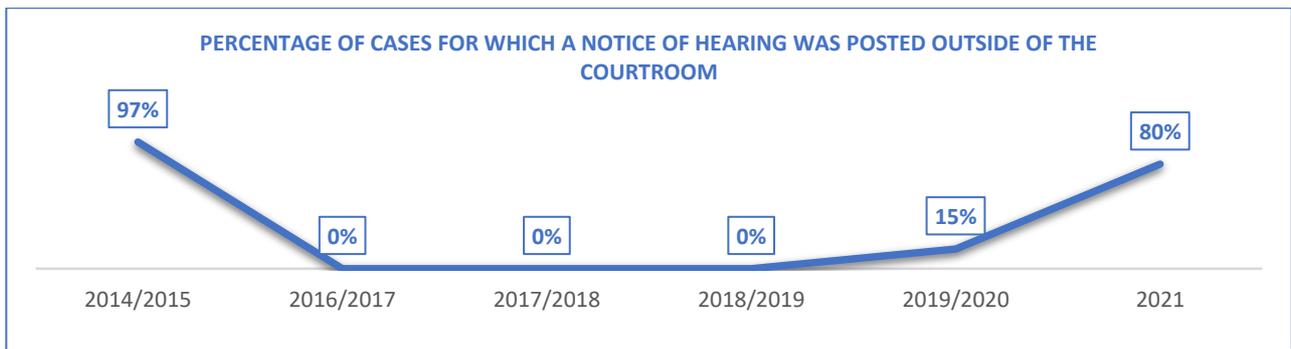
**Right to a public hearing:** It must be commended that, between 2014 and 2021, only in one of the monitored trials were members of the public or media prevented from entering or dismissed from the courtroom. Despite this, the right to a public hearing has been classified as not being fully respected since 2014, the Court has posted a hearing notice on a public board outside the court room in 18,5% (223 out of 1208 trials) of the total number of cases monitored, with three reporting periods in a row (2016/2017, 2017/2018 and 2018/2019) during which no notices were published at all.<sup>176</sup> However, the Reporting Period showed a significant improvement as the Court posted a hearing notice on a public board outside the room in 80% (68 out of 85 trials monitored) of the cases monitored.

*Figure 29: Evolution of the right to a public hearing (2014-2021)<sup>177</sup>*

<sup>175</sup> This data is based on 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, and the 3 defendants who alleged the same out of the 118 defendants involved in the 85 cases monitored in 2021.

<sup>176</sup> 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 and the 85 cases monitored in 2021.

<sup>177</sup> 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 and the 85 cases monitored in 2021.

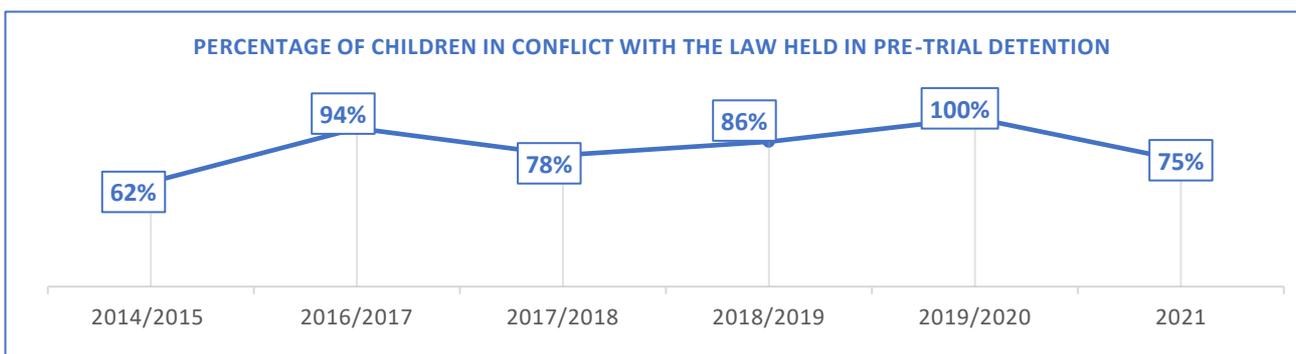


**Right to a reasoned judgment:** Respect for the right to a reasoned judgment has remained problematic through all the reporting periods. While a significant improvement was noted in 2018/2019, when judgments without adequate reasoning were given in only 47.5% of cases, - compared to 87.4% in 2017/2018 or 84.6% in 2014/2015 - this improvement was short-lived as the 2019/2020 reporting period saw 66.5% of judgments be given without adequate reasoning and the Reporting Period saw a staggering 90% of the judgements being rendered 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 a positive finding, CCHR noticed 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 children were held in pre-hearing detention and in most cases, and no measures were taken to protect the children’s privacy in the majority of the monitored cases involving children in conflict with the law. Moreover, custodial sentences were imposed in the majority of the monitored cases for which the verdict is known.<sup>178</sup>

*Figure 30: Evolution of the use of pre-trial detention for children in conflict with the law (2014-2021)<sup>179</sup>*



<sup>178</sup> 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, and six children in conflict with the law in 2018/2019.

<sup>179</sup> 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, and the 4 children in conflict with the law involved in the cases monitored in 2021.

## 6. Conclusion and Recommendations

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A number of key fair trial rights were guaranteed before the Court– 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. In addition, the Court consistently upheld the protections against double jeopardy and non-retroactivity.

While several rights have been consistently protected 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 in Cambodia.

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 Court could set a precedent, serve as an example to Courts of First Instance and, as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

### 6.1. General Recommendations

- 6.1.1 The 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.
- 6.1.2 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.

- 6.1.3 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.

## **6.2. Recommendations Regarding the Right to Liberty and to be Tried Without Undue Delay**

- 6.2.1 The judges should promote the greater use of alternatives to pre-trial detention, including judicial supervision,<sup>180</sup> in accordance with UN SDG 16.3.2 to ensure that pre-trial detention remain the exception and the right to liberty remains the rule.
- 6.2.2 The Court must ensure that defendants, especially those who are held in detention, are brought to trial as promptly as possible and that unjustified delays undermine the speedy administration of justice.

## **6.3. Recommendations Regarding the Right not to be Compelled to Confess Guilt**

- 6.3.1 The Court must promptly and thoroughly investigate the defendants' claims of coercion, duress or torture to obtain confessions of guilt before rendering their rule.
- 6.3.2 The Court must ensure that if any coercion, duress or torture claims are substantiated following investigations, any evidence or confessions obtained by such methods is inadmissible and relevant re-trials are conducted, and ensure appropriate reparations are made to victims.

## **6.4. Recommendations Regarding the Right to a Public Hearing**

- 6.4.1 The Court and the MoJ should ensure that daily schedules of all hearings are posted on information boards outside the court room at least 24 hours prior to the hearing, and continue to guarantee public access to courtrooms in all but exceptional cases, which would include that of children. When such information is published 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.

## **6.5. Recommendations Regarding the Right to Understand the Nature and Cause of the Charge(s)**

- 6.5.1 The judges of the Court 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 sharing the relevant law and location of the offence, as these are the most frequently missed as per page 34 of this Report.
- 6.5.2 The judges of the Court should provide a comprehensive explanation of the trial rights of the accused.
- 6.5.3 The judges of the Court should ask the defendant directly whether they understand the charges against them and their rights.

## **6.6. Recommendations Regarding the Right to be Present at Trial and to Legal Representation**

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<sup>180</sup> SRSHRC, End of Mission Statement (14 March 2018), p. 4

- 6.6.1 The Court 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;
- 6.6.2 The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to the General Prosecution to ensure the Court gives the information regarding date and time of the appeal hearings to the correct correctional center, in which the defendant is detained;
- 6.6.3 The judges of the Court 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.
- 6.6.4 The Court should ensure that, where a lawyer is representing several defendants in a trial, there is not an inappropriate conflict of interest.
- 6.6.5 The judges of the Court should inform and explain to the accused their right to legal representation if they do not appear represented.
- 6.6.6 The MoJ should inform the public about the right to state-sponsored legal aid, including through publications in police offices, prisons and courts buildings.

## **6.7. Recommendations Regarding the Right to the Presumption of Innocence**

- 6.7.1. The judges of the Court 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.
- 6.7.2 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.
- 6.7.3 The judges of the Court should allow those accused who are brought to court wearing a convict uniform to use their civil uniform instead before the hearing.

## **6.8. Recommendations Regarding the Professionalism of Judges**

- 6.8.1 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 telephones and allow for short breaks to enable judges, prosecutors and lawyers to leave the courtroom or answer their phones. Judges should also ensure they allocate sufficient time to hear to their hearings to ensure that their cases are adjudicated in a proper and thorough manner.

## **6.9. Recommendations Regarding Evidentiary Rights**

- 6.9.1 The judges of the Court shall inform the defendants of their right to present evidence in the same conditions as the evidence presented against them.

- 6.9.2 The judges of the Court should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure witnesses are not influenced by other evidence and testimony presented during the trial.
- 6.9.3 The judges of the Court must carefully assess whether the evidence presented to them establishes beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, they must be acquitted.
- 6.9.4 The MoJ should develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,<sup>181</sup> and ensure that all judges are trained accordingly.

## **6.10. Recommendations Regarding the Right to a Reasoned Judgment**

- 6.10.1 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.
- 6.10.2 Drawing from the practice of the ECCC,<sup>182</sup> establish a framework in which judges are obligated to inform and explain the legal and evidential reasons behind their verdict and ensure that reasoned written judgments are given to the defendant.

## **6.11. Recommendations Regarding the Rights of Children in Conflict with the Law**

- 6.11.1 The judges of the Court should speed up and strengthen the implementation off the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 6.11.2 The judges of the Court should follow the best practice of the ECCC and allow children in conflict with the law to appear in court wearing their own clothing, at all stages of the criminal procedure.
- 6.11.3 The judges of the Court 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.
- 6.11.4 The MoJ should ensure that judges and prosecutors undergo specific training concerning issues relating to child justice.
- 6.11.5 The judges of the Court should examine and make use of non-custodial measures for children in conflict with the law, and implement a set of sentencing guidelines relating to children who are recognized as having infringed the criminal law whereby the focus is placed firmly upon reintegration rather than punishment alone and on the best interests of the minor.

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<sup>181</sup> 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](https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/F36_KH.pdf).

<sup>182</sup> 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](https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf).

- 6.11.6 The Court 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.
- 6.11.7 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 Court should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly.
- 6.11.8 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.
- 6.11.9 The MoJ shall review the existing legislation in order to ensure their compliance with international standards on child justice system, including, but not limited to, the Beijing Rules<sup>183</sup>, the UNICEF guidance for legislative reform on juvenile justice,<sup>183</sup> the UNICEF implementation handbook for the Convention on the Rights of the Child<sup>184</sup> and the UNICEF law reform and implementation of the Convention on the Rights of the Child report.<sup>185</sup>

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<sup>183</sup> UNICEF, 'Guidance for Legislative Reform on Juvenile Justice'  
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<sup>184</sup> UNICEF, 'Implementation for the Convention on the Rights of the Child', p. 107,  
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<sup>185</sup> 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](http://www.unicef-irc.org/publications/pdf/law_reform_crc_imp.pdf).

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