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Cambodian Center for Human Rights

Fair Trial Rights in Cambodia Monitoring at Courts of Appeal

1 January to 31 December 2023



October 2024

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Cambodian Center for Human Rights (CCHR)

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

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

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

CCHR’s Fair Trial Right Project

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



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

Queries and Feedback

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

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Acronyms

BAKC	The Bar Association of the Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
Checklist	The checklist used by CCHR to record trial data
Checklist Guidance	Comprehensive guidelines to help CCHR's Trial Monitors understand the Checklist
Code of Conduct	A document outlining the obligations of non-interference, objectivity, and confidentiality to which CCHR's Trial Monitors are bound
Constitution	The Constitution of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
Database	The database in which CCHR's Trial Monitors store trial data recorded on checklists
ECCC	Extraordinary Chambers in the Courts of Cambodia
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
LOC	Law on the Organization of the Courts
LOFSCM	Law on the Organization and Functioning of the Supreme Council of Magistracy
LSJP	Law on the Status of Judges and Prosecutors
MoI	Ministry of Interior
MoJ	Ministry of Justice
N/A	Non-Applicable
NSDP	National Strategic Development Plan
NGO	Non-governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Project	CCHR's Fair Trial Rights Project
Reporting Period	1 January 2023 to 31 December 2023
RGC	Royal Government of Cambodia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund

Executive Summary

Between 1 January and 31 December 2023, CCHR's Fair Trial Rights Project monitored 772 criminal trials at the **Phnom Penh, Battambang, Tboung Khmum, and Preah Sihanouk** Appeal Courts¹ to assess their adherence to key fair trial rights. This Report presents and analyzes the data collected and, in doing so, aims to contribute to transparency, accountability and positive change in Cambodia. It also compares this data with that of previous reporting periods to identify trends and analyze the evolution of compliance with fair trial rights at, or within the jurisdiction of the target courts.

The Report finds that, for the second consecutive year, a number of key fair trial rights were guaranteed before all the target courts, namely the pre-trial right to speak with a lawyer, the right to adequate time and facilities to prepare a defense, and the right to a public judgment. Welcomingly, the fundamental right to be present at trial was respected by three target courts (**Phnom Penh, Battambang, and Preah Sihanouk**). The right to be tried without undue delay was also upheld by three of the courts (**Battambang, Tboung Khmum and Preah Sihanouk**); and so was the right to a public hearing (**Phnom Penh and Tboung Khmum**).

The **Preah Sihanouk** Appeal Court showed the most promising year-on-year progress, upholding six key fair trials out of the 14 assessed, up from four in 2022. The Court upheld the rights to legal representation, to be present at trial, and to the presumption of innocence during the Reporting Period; a first since CCHR started monitoring criminal hearings there. In a departure from the previous year, the **Phnom Penh** Appeal Court consistently respected the right to a public hearing in 2023. Although it only upheld four of the 14 fair trial rights assessed, this still represents a slight improvement from 2022, when this figure stood at three.

By contrast, the **Battambang** Appeal Court failed to consistently respect the right to a public hearing after having done so in 2022, and thus saw its number of key fair trial rights respected decrease from five to four out of 14. At the **Tboung Khmum** Appeal Court, the Court was failing to consistently uphold the right to be present at trial. As a result, only four of the 11 key fair trial rights assessed there were respected in 2023, down from five in 2022.

Monitoring uncovered a worrisome lack of compliance with key fair trial rights. Firstly, the right to liberty continued to be undermined, with data showing an extensive use of pre-trial detention, including in cases involving child defendants. CCHR notes with concern that roughly three in four defendants were subject to this measure in 2023, pointing to a blatant misuse of a process designated for special cases. Secondly, the right not to be compelled to confess guilt was once again classified as being not fully respected. This is due to the fact that allegations of police abuse to force defendants into confessing were not duly investigated. Thirdly, the target courts consistently failed to provide detailed reasons for their judgments in four out of five cases monitored. Given that seven in 10 hearings lasted 30 minutes or less, this casts doubt as to whether judges were able to substantially review all the elements of the case.

The Report ends with key thematic recommendations for the target courts and relevant institutions to address the shortcomings identified. CCHR hopes that the data, analysis, and recommendations set out in this Report will assist the RGC's efforts to improve the judicial system and respect for fair trial rights, and support those working to ensure that the judicial system in Cambodia is fair and equal for all.

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

1. Introduction

1.1. The Right to a Fair Trial

The right to a fair trial is a central pillar of any criminal justice system and a key component of respect for the rule of law. It entitles each and every person charged with a criminal offense to be treated fairly and equally, while the state determines their guilt or innocence. When implemented correctly, it protects both the rights of the accused and the victim and ensures the proper administration of justice. The right to a fair trial is comprised of a number of different individual rights and encompasses the entire legal process, from the initial arrest of the suspect, through to the completion of the final appeal.²

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”)³ and the United Nations International Covenant on Civil and Political Rights (“ICCPR”),⁴ among other instruments.⁵ 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.⁶ 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 2007.⁷

1.1.2. The right to a fair trial under Cambodian law

The basic framework for a fair trial is enshrined in the Cambodian Constitution. It provides for the separation of powers and an independent judiciary, and 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;
- 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

² For more details on this right, see CCHR’s module “What are fair trial rights?” (September 2022), <https://tinyurl.com/bdfnh66h>

³ UDHR (1948), <https://tinyurl.com/4mkrt8c>

⁴ ICCPR (1966), <https://tinyurl.com/3bkm3t8t>

⁵ American Convention on Human Rights (1969) Art. 8; African Charter on Human and Peoples Rights (1981) Art. 7; European Convention on Human Rights (1950) Art. 6; European Charter of Fundamental Rights of the European Union (2000) Art. 47-50.

⁶ Constitution of Cambodia (1993), Art. 31, <https://tinyurl.com/58rn4thj>

⁷ Constitutional Council of Cambodia, Decision No. 092/003/2007 (10 July 2007) p. 2, <https://tinyurl.com/3p3z9zzn>

- Every citizen shall enjoy the right to defense through judicial recourse.

The Criminal Code of the Kingdom of Cambodia (“Criminal Code”) sets out classes of offenses, principles of criminal responsibility, and principles of sentencing.⁸ The Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”)⁹ establishes in detail how suspects should be treated. It sets out the roles and responsibilities of judges, prosecutors, and defense counsel; from the initiation of an investigation to the time of arrest and throughout the entire criminal process until the final appeal. The 2016 Law on Juvenile Justice¹⁰ establishes norms and procedures for dealing with children in conflict with the law and protect their rights during criminal proceedings.¹¹

Additionally, the three fundamental laws pertaining to the judiciary, namely the Law on the Organization of the Courts (“LOC”),¹² the Law on the Statute of Judges and Prosecutors (“LSJP”),¹³ and the Law on the Organization and Functioning of the Supreme Council of Magistracy (“LOFSCM”),¹⁴ adopted in 2014, aim to ensure the independence of the judicial power and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws have been criticized.¹⁵

In June 2003, the RGC approved a Legal and Judicial Reform Strategy¹⁶ centered around four principles: the rights of individuals, the principle of liberal democracy, the separation of powers, and the rule of law. The RGC’s National Strategic Development Plan (“NSDP”) for 2019-2023 outlined key priorities to implement this Strategy: improving the effective work of law enforcement officials, strengthening the public’s trust in the judiciary, and fighting injustice.¹⁷ In August 2023, the RGC released a “*Pentagonal Strategy-Phase I*” listing the “*Enhancement and Strengthening of the Effectiveness of Laws and Justice System*” as a priority. Among other things, it pledged to focus on enhancing the capacity of human resources in the justice sector; providing legal consultation and representation to the poor and vulnerable; strengthening the effectiveness of court proceedings; modernizing court administration to improve justice delivery; and promoting the development of dispute settlement mechanisms.¹⁸

Several developments which could lead to noticeable improvements on legal and judicial reform also took place during the Reporting Period:

- On 17 March 2021, the Bar Association of the Kingdom of Cambodia (BAKC) signed an MoU with the Cambodia National Council for Women to provide legal defense services to poor women and girls victimized by violence and to train enforcement officials in relevant laws. Under this MoU, BAKC will offer legal representation to those affected by domestic violence, sexual abuse, and other violations

⁸ Criminal Code of Cambodia (2014), <https://tinyurl.com/2hrdjb7>

⁹ Code of Criminal Procedure of Cambodia (‘CCPC’) (2017), <https://tinyurl.com/3tk7sk6c>

¹⁰ Law on Juvenile Justice (2016), <https://tinyurl.com/2vvr7293>

¹¹ UNICEF, ‘Q&A on the newly adopted Juvenile Justice Law in Cambodia’ (19 September 2016), <https://tinyurl.com/46ftzbjk>

¹² Law on the Organization of the Courts (2014), <https://tinyurl.com/csk3c96f>

¹³ The Law on the Status of Judges and Prosecutors (2014), <https://tinyurl.com/y8zhk6yc>

¹⁴ The Law on the Organization and Functioning of the Supreme Council of Magistracy (2014), <https://tinyurl.com/yc2t8kwz>

¹⁵ CCHR, Destination Justice, API, ADHOC, Transparency International, IFEX, ‘Joint Submission on Access to Justice in Cambodia’ (12 July 2018), <https://tinyurl.com/545deb9s>; CCHR, ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’ (2014), <https://tinyurl.com/jzmpp4un>; See also OHCHR Cambodia’s Comments on the three fundamental draft laws pertaining to the judiciary (May 2014): <https://tinyurl.com/ys4jvpw5>; <https://tinyurl.com/yt3ud573>; <https://tinyurl.com/yufd4442>.

¹⁶ Cambodian Rehabilitation and Development Board & Council for the Development of Cambodia, ‘Government’s Policy Performance’ (2004), para. 16, <https://tinyurl.com/bddka8a>

¹⁷ Ministry of Planning, ‘National Strategic Development Plan 2019-2023’, p. 205-206, para 4.21(7), <https://tinyurl.com/yep76sfa>

¹⁸ RGC, “Pentagonal Strategy-Phase I” (August 2023), p. 31, <https://tinyurl.com/3nu67vh4>

of rights, while the council for women will provide financial support for legal services.¹⁹ On 7 February 2024, this MoU was extended until 2028.²⁰

- On 8 April 2023, the King issued a royal decree allowing Appeal Court judges and prosecutors to retire at 65 instead of 60 to address the current shortage of judges and prosecutors.²¹ On 10 April 2023, the Royal Academy for Judicial Professions also opened enrollments for 50 judges and prosecutors, 100 student court clerks, 50 bailiffs, and 50 notaries.²²
- On 27 October 2023, the RGC approved a draft Royal Decree to establish a National Authority for Out-of-Court Dispute Resolution (NAOCDR) as an alternative avenue for resolving civil cases and commercial disputes, aiming to alleviate the backlog of cases in the legal system.²³ On 9 January 2024, the MoJ announced that the NAOCDR would start accepting complaints on 1 March 2024.²⁴
- On 30 December 2023, a Royal Decree established a Judicial Reform Steering Committee (JRST) to “*guide, coordinate and promote the implementation of judicial reform.*” The JRST is responsible for reviewing and advising on draft laws and legal standards pertaining to the judiciary, presenting progress work reports, and proposing essential measures to address existing challenges. It is co-chaired by the Justice Minister and the President of the Supreme Court, and brings together representatives from various ministries and judicial bodies.²⁵
- On 9 January 2024, the Justice Minister announced it would roll out two campaigns to speed up court hearings and resolve alleged irregularities in the justice system to enhance transparency. He said the first campaign would focus on resolving cases in three major areas – drug, traffic and civil cases; while the second would review complaints of misconducts by court officials.²⁶ On 13 March 2024, the MoJ announced that it had resolved 99% of congested civil registration cases.²⁷
- On 2 February 2024, the MoJ released a list of 209 volunteer lawyers who would offer free legal aid to the public across the country. The list was published on the MoJ’s social media accounts.²⁸

These initiatives are commendable as they show the RGC’s efforts to implement the recommendations on access to justice it accepted during its third Universal Periodic Review in January 2019.²⁹

¹⁹ Voun Dara, “BAKC inks MoU for victimised women” (*Phnom Penh Post*, 21 March 2021), <https://tinyurl.com/4697y34b>

²⁰ Pen Srey Neat, “Women and girls who have suffered any violence or injustice, please find a lawyer at the Bar Association to help defend you for free because there is a memorandum of understanding” [in Khmer] (*Cambodia Express News*, 8 February 2024), <https://tinyurl.com/487zeyw6>

²¹ Long Kimmarita, “Appeal court officers can now retire at age 65, says royal decree” (*Phnom Penh Post*, 10 April 2023), <https://tinyurl.com/mr6ytksp>

²² Long Kimmarita, “Justice ministry seeking new judges, officials” (*Phnom Penh Post*, 13 April 2023), <https://tinyurl.com/2537ya7e>

²³ Sok Raksa, “Cabinet pass draft Royal Decree on out-of-court mediation body” (*Phnom Penh Post*, 29 October 2023), <https://tinyurl.com/yc456snf>

²⁴ Samban Chandara, “Out-of-court settlements come into effect March 1” (*Phnom Penh Post*, 9 January 2024), <https://tinyurl.com/p8jnpvxy>

²⁵ Sok Raksa, “Royal Decree outlines commission’s roles in legal reform” (*Phnom Penh Post*, 1 January 2024), <https://tinyurl.com/i6ubsa2n>

²⁶ Khuoun Narim, “Justice Ministry Rolls out Campaigns to Expedite Court Hearings, Review Irregularities” (*CamboJA News*, 11 January 2024), <https://tinyurl.com/4rj5cxfk>

²⁷ Samban Chandara, “Court resolves 99% of civil registration cases” (*Phnom Penh Post*, 17 March 2024), <https://tinyurl.com/bdd5wvn4>

²⁸ Ministry of Justice of Cambodia, publication via Facebook on 3 Feb 2024 (accessed 19 Mar 2024), <https://tinyurl.com/mr2dfh9e>

²⁹ CCHR, Destination Justice, API, ADHOC, Transparency International, IFEX, ‘Joint Submission on Access to Justice in Cambodia’ (12 July 2018), <https://tinyurl.com/545deb9s>; CCHR, “Implementation of the Universal Period Review: Two Years On” (January 2021), <https://tinyurl.com/yjbunsnz>

1.2. Scope and Methodology

Throughout the Reporting Period, CCHR's Trial Monitors attended criminal trials at the four target Courts on a daily basis. Monitors used a specifically designed trial-monitoring checklist (the "Checklist") that includes more than 80 questions focusing on a number of key fair trial rights, including the following:³⁰

- 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; and
- Rights of children in conflict with the law.

In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Courts and the Ministry of Justice. CCHR has also developed a one-page annex to the Checklist for trials involving children. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes ("Checklist Guidance")³¹ to provide an understanding of the legal basis and purpose of each question to ensure a uniform interpretation. The Trial Monitors were also provided with a legal framework document which outlines the relevant national and international laws underpinning each question in the Checklist.

CCHR paid particular attention to the fact that the right to appeal³² 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;³³ it must provide "a full evaluation of evidence and the conduct of trial."³⁴ Finally, CCHR is committed to the international principles applicable to trial monitoring³⁵ and has devised a code of conduct (the "Code of Conduct") for its Trial Monitors.³⁶ The Code of Conduct outlines the obligations of non-interference, objectivity, and confidentiality by which the Trial Monitor is bound.

CCHR's trial monitoring at the Courts did not target specific trials. The trials to be monitored were randomly selected, on the basis of the courts' schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitors observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself, no additional interviews or dialogues took place; except where the Trial Monitor made efforts to obtain information relating to trial verdicts that

³⁰ CCHR, 'Appeal Hearing Monitoring Checklist,' <https://tinyurl.com/3jcd458>

³¹ CCHR, 'Guidance Notes for CCHR Appeal Court Monitoring Checklist,' <https://tinyurl.com/ywr3twde>

³² ICCPR, Art. 14 (5); CCPC, Art. 375.

³³ 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://tinyurl.com/ymw9vvcv>

³⁴ 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://tinyurl.com/mvntuakv>

³⁵ Amnesty International, 'Fair Trial Manual, Second Edition' (2014), <https://tinyurl.com/nnhppm6b>; Lawyers Committee for Human Rights, 'What is a Fair Trial: A Basic Guide to Legal Standards and Practice' (2000), <https://tinyurl.com/y9ymx3zZ>; OSCE 'Trial Monitoring: A Reference Manual for Practitioners' (2008), <https://tinyurl.com/2p88e64s>; International Commission of Jurists, 'Trial Observation Manual' (2002), <https://tinyurl.com/3a3b3u9r>

³⁶ CCHR, 'Trial Monitoring Code of Conduct,' <https://tinyurl.com/3fxvhxz6>

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”).³⁷

CCHR analyzed the trial data recorded in the Database and sought to identify positive practices as well as areas of concern arising at each trial. As trial monitoring activities continue, the Database will be used to draw comparative analysis and to identify trends in the practice of the Courts, gauge improvements, and identify further recommendations.

For the purposes of the present analysis, CCHR will consider a given fair trial right as respected if it was upheld in at least 80% of the monitored trials during the Reporting Period. However, when faced with cases that amount to violations of non-derogable and absolute rights (see page 45), CCHR will systematically classify the corresponding fair trial right as not respected, regardless of the percentage. In a departure from previous reporting periods, CCHR will not factor in the data pertaining to the explanation of rights to assess whether the rights to legal representation and to the presumption of innocence were respected by the target courts. This is due to the fact that this responsibility does not lie with appeal judges under Cambodian law.

CCHR has always ensured that all Courts of Appeal were given the opportunity to provide their inputs on the findings of CCHR’s trial monitoring before publication. In late 2022, it started conducting quarterly meetings with the target courts to present the findings of its trial monitoring activities and ask for clarification where required. During these meetings, the courts welcomed CCHR’s contribution and efforts to promote fair trial rights. CCHR expresses its sincere gratitude to the target courts for their invaluable collaboration and ongoing commitment to participate in these crucial dialogues.

In addition, a final draft of the present Report was sent to the Presidents of the target courts and the General Prosecutors attached to the target courts for review, comments, and recommendations. CCHR received their input during consultation meetings on 25 July 2024 (Battambang Appeal Court), on 8 August 2024 (Tboung Khmum Appeal Court), on 13 August 2024 (Preah Sihanouk Appeal Court) and the Phnom Penh Court of Appeal and General Prosecution attached to this court provided their inputs through the letter No.706/24 issued on 01 August 2024. Their input was incorporated into the present Report to provide insights into the challenges faced by justice professionals. CCHR also sent this draft report to the MoJ on 20 October 2024.

³⁷ CCHR, ‘Trial Monitoring Database <https://tinyurl.com/5549dd44>

2. Overview

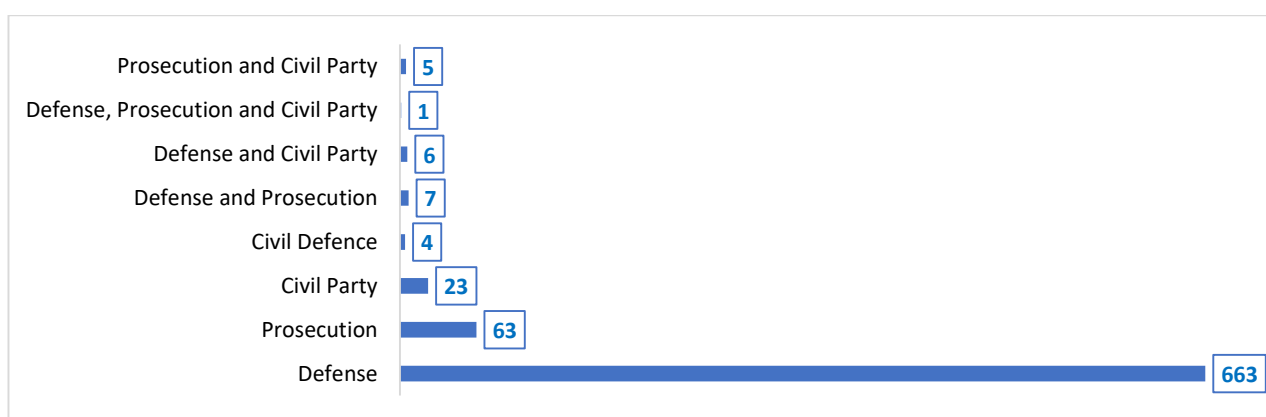
This section sets out the raw data recorded on the Checklist from the 772 trials monitored at the four target courts between 1 January and 31 December 2023. This data will be analyzed throughout the Report.

Figure 1: Overview of the cases monitored by CCHR in 2023

<i>Court of Appeal</i>	<i>Phnom Penh</i>	<i>Battambang</i>	<i>Preah Sihanouk</i>	<i>Tboung Khmum</i>	<i>Total</i>
<i># of cases</i>	336	241	75	120	772
<i># of felonies³⁸</i>	145	80	32	36	292
<i># of misdemeanors³⁹</i>	186	157	42	82	468
<i># of petty offenses⁴⁰</i>	5	4	1	2	12
<i># of defendants</i>	460	346	136	176	1118
<i># of child defendants</i>	7	17	2	0	26
<i># of female defendants</i>	69	64	15	33	181

A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance, the General Prosecutor attached to the Court of Appeal, the convicted person (defense), and the civil party or civil defendant (both regarding civil matters).⁴¹ Figure 2 shows that the vast majority of appeals (85.9%) were filed by the defense.

Figure 2: Party that brought the appeal in the hearings monitored in 2023⁴²



³⁸ Any offense for which the maximum penalty is imprisonment of more than five years (Criminal Code, art. 46).

³⁹ Any offense for which the maximum penalty is imprisonment for more than 6 days and up to five years (CC, art. 47).

⁴⁰ Any offense for which the maximum penalty is imprisonment for six days or less or solely a fine (CC, art. 48).

⁴¹ CCPC, Art. 375.

⁴² This data is based on the total number of cases monitored in 2023 (772).

The table below outlines, in the trials monitored by CCHR, the fair trial rights which were respected (green cells) and those which were not fully complied with (orange cells). Cells featuring an up arrow symbol (↑) refer to rights that were newly upheld in 2023, indicating significant progress from the previous Reporting Period. Conversely, cells featuring a down arrow symbol (↓) denote rights that were respected in 2022 but not in 2023, signaling areas of concern and potential regression in ensuring fair trial standards. Grey cells indicate that CCHR was not able to collect enough data to assess whether a particular right was upheld.

Figure 3: Compliance with key fair trial rights in 2023, by target court

Fair Trial Right \ Appeal Court	Phnom Penh	Battambang	Preah Sihanouk	Tboung Khmum
Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense				
Right to a public judgement				
Right to legal representation			↑	
Right to a public hearing	↑	↓		
Right to understand the nature and cause of the charges			↓	
Right to be present at trial			↑	↓
Right to be tried without undue delay				
Right to the presumption of innocence			↑	
Right to liberty				
Right not to be compelled to confess guilt or testify against one self				
Evidentiary rights				
Right to a reasoned judgment				
Professionalism of judges				
Rights of children in conflict with the law				

The sections below analyze the implementation of the different relevant components of fair trial rights by the Courts during the Reporting Period. For the purpose of the analysis, the Report will first highlight those aspects of fair trial rights that were upheld in the Courts, and then shed light on the practices that did not fully respect fair trial rights.

3. Fair Trial Rights Upheld by All Courts

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

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

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense. The length of time that is “adequate” depends on the circumstances of each case;⁴³ 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.⁴⁴

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.⁴⁵ In particular, this includes access to all materials that the prosecution plans to present in court and those that are exculpatory. At the appeal stage, in order to effectively exercise their right to appeal, the defendants should have access to a duly reasoned, written first-instance judgment and the transcripts of the trial, to prepare their case.⁴⁶ 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 prompt access to a lawyer. Further, facilities enabling confidential communications between the accused and their counsel must be made available.⁴⁷

While the monitoring of the appeal hearings did not provide CCHR with all the requisite information to assess whether the accused had sufficient time and adequate facilities to prepare their defense and to communicate with a lawyer, the information available indicates that these rights were respected by the four target courts. In addition, none of the 656 defendants represented by a lawyer had their lawyer assigned to them on the day of the appeal. Most of these defendants were given a lawyer early on in proceedings, and in no cases did a defendant’s lawyer raise the issue of lack of adequate preparation. CCHR notes with appreciation that the pre-trial right to speak with a lawyer and the aspects of the right to adequate time and facilities to prepare a defense have been consistently respected by the Cambodia’s appeal courts since 2014.

⁴³ UNHRC General Comment 32, para. 32.

⁴⁴ UNHRC, General Comment 32, para. 32.

⁴⁵ UNHRC, General Comment 32, para. 33.

⁴⁶ 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, <https://tinyurl.com/z2x7tu9e>

⁴⁷ 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://tinyurl.com/yckvz5>

It was suggested that **no defendants** had their lawyer assigned to them on the day of the appeal.

The issue of adequate time and facilities to prepare a defence was not raised by **any of the 656 defendants represented by a lawyer.**



3.2. Right to a public judgment

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

The right to a public judgment means that judgments rendered in legal proceedings must be made public. This right is key in ensuring transparency and accountability.⁴⁸ Under Article 14(1) of the ICCPR, even when the public is excluded from a trial, the judgment, including the essential findings, evidence, and legal reasoning, must be made public.⁴⁹ Public judgments encourage transparency and accountability, compelling judges to act with the upmost rigor and ensure the fair delivery of justice.⁵⁰ There are only a few exceptions to this rule, such as when the interest of children requires the judgment not to be made public.⁵¹

During the Reporting Period, the right to a public judgment was respected by three of the four Courts in all the cases for which the information was available (224 out of 772). CCHR notes with appreciation this right has been consistently upheld by the country's Appeal Courts since 2014. CCHR was only able to monitor three verdicts at the **Tboung Khmum** Appeal Court. Although these were announced in public, CCHR cannot assess whether the Court has consistently upheld this right in 2023 due to the lack of data on the remaining 117 cases monitored there.

In all 224 monitored cases where a verdict was reached in the presence of CCHR's trial monitors, it was **announced publicly.**



⁴⁸ For more details, see CCHR's module "The right to a public judgment and the right to a reasoned judgment" (September 2022), <https://tinyurl.com/5ssncyyy>

⁴⁹ UNHRC, General Comment 32, para. 29.

⁵⁰ See CCHR's module "The right to a public judgment and the right to a reasoned judgment."

⁵¹ UNHRC, General Comment 32, para. 29.

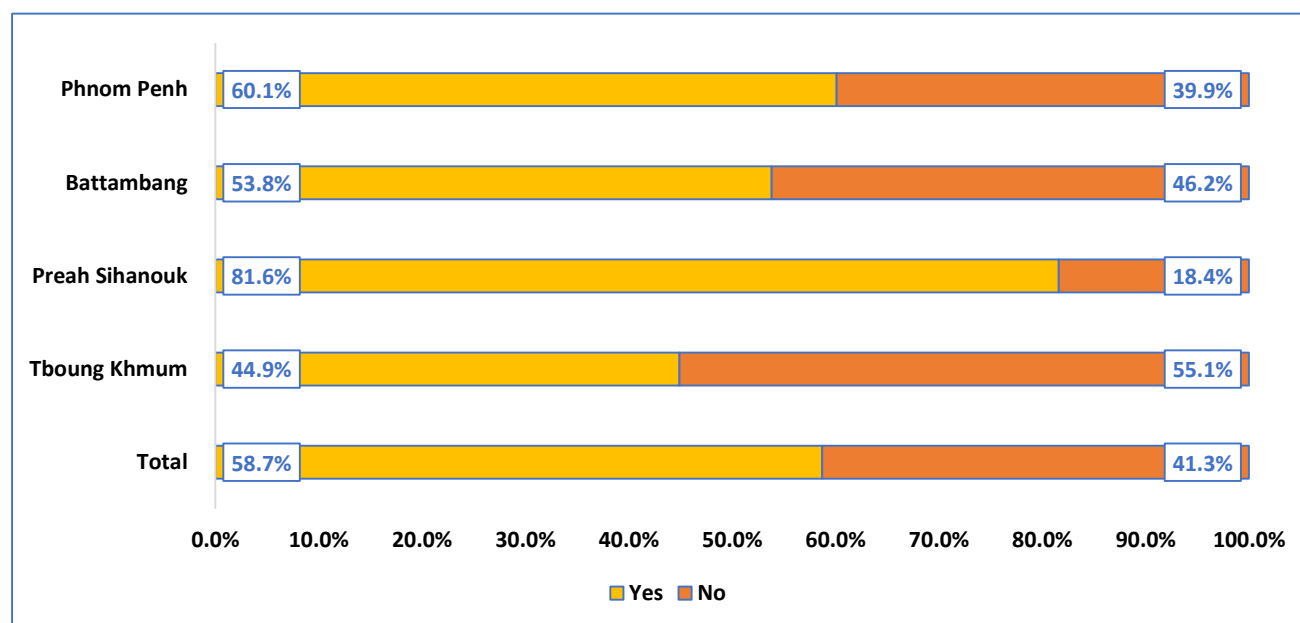
4. Fair Trial Rights Upheld by Some of the Courts

4.1. Right to legal representation⁵²

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

Being charged with an offense entails navigating through legal procedures that can be complex and confusing. To ensure that defendants' rights are fully protected during criminal proceedings, they should be represented by professional lawyers who have the ability to explain their rights and the charges against them, 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).⁵³ In Cambodia, it is only compulsory for an accused to be legally represented if they are charged with a felony offense or if they are a child. While legal representation is not mandatory if the accused committed a misdemeanor offense (unless they are a child), individuals still have the option to hire a lawyer if they so wish, but this burden does not rest with the court.

Figure 4: Percentage of defendants represented by a lawyer in 2023, by target court⁵⁴



In 2023, 58.7% of the defendants involved in the monitored cases (656 out of 1,118) were represented by a lawyer, down from 66.7% in 2022. In light of the fundamental character of this right, this disappointing year-on-year retrogression coupled with the fact that more than four in ten defendants did not benefit from legal

⁵² For more details on this right, see CCHR's module "The right to be present at trial and the right to defend oneself in person or through legal representation" (September 2022), <https://tinyurl.com/ytxdtkt4>

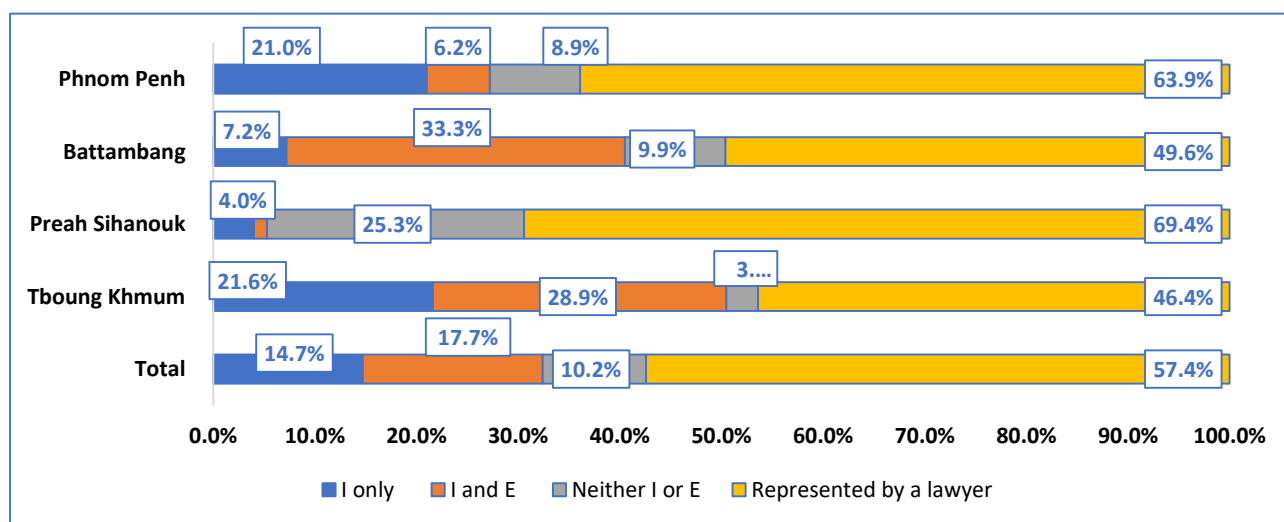
⁵³ ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 38.

⁵⁴ This data is based on the total number of defendants (1,118 individuals) involved in the 772 cases monitored in 2023.

representation - although this only happened in misdemeanor and petty crime cases - is cause for serious concern. Although two of the target courts saw their compliance rates decrease during the Reporting Period, CCHR notes with appreciation that the **Preah Sihanouk** Appeal Court consistently upheld the right to legal representation in 2023. This had not happened across any target court since 2014/2015.

In the determination of any criminal charge against them, every defendant shall be entitled to be informed, if they do not have legal assistance, of this right.⁵⁵ Although Cambodian law places this responsibility on judicial police officers, investigating judges, and prosecutors,⁵⁶ CCHR encourages appeal judges to systematically follow the good practice of not only informing but also explaining to unrepresented defendants what the right to defend themselves in person or through legal representation entails. In 2023, the judges did so in 41.3% of the relevant cases where the defendants attended the monitored hearing (121 out of 292). This figure represents a significant increase compared to 2022, when it stood at 18.3%. Similarly, the percentage of relevant cases in which the judges failed to inform or explain this right to the accused decreased from 48.6% in 2022 to 24%. In other words, the defendants were at least informed of this right in 76% of the relevant cases monitored in 2023, up from 51.4% in 2022. Despite this commendable progress, there were still significant disparities between the target courts.

Figure 5: Percentage of cases where the judge informed (I) and explained (E) to defendants their right to legal representation or to defend themselves, by target court⁵⁷



Lastly, 43.3% of represented defendants (284 out of 656) were defended by a lawyer who was representing more than one accused; a marginal year-on-year increase of four percentage points. Situations in which a lawyer represents multiple defendants, while sometimes cost-effective, raise concerns for the individuals' fair trial rights, for instance when one co-defendant's defense or version of events is different or contradictory to that of another co-defendant. If the same lawyer represents both defendants, putting forward one's defense would negatively impact the other, who would then be precluded from having an effective defense and from being adequately represented by counsel. Each defendant should therefore have

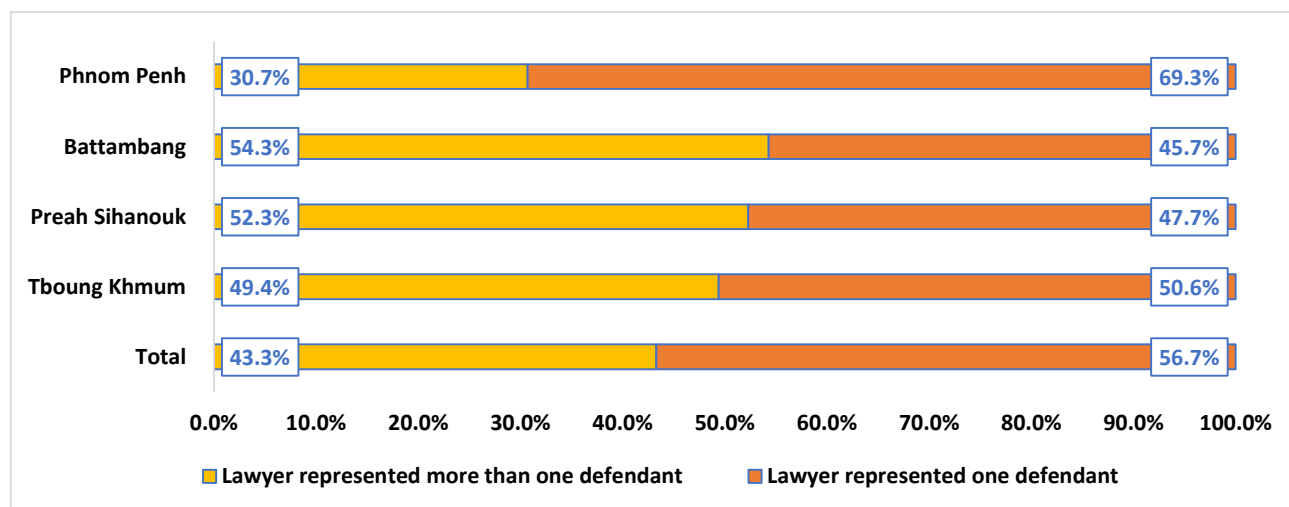
⁵⁵ ICCPR, Art. 14(3)(d).

⁵⁶ CCPC, Art. 46, 48, 97, 143, 304.

⁵⁷ This data is based on the 685 monitored cases where at least one defendant was present at the hearing (291 cases at the Phnom Penh Appeal Court; 222 at the Battambang Appeal Court; 75 at the Preah Sihanouk Appeal Court; and 97 at the Tboung Khmum Appeal Court).

a separate lawyer.⁵⁸ Welcomingly, however, CCHR only identified two conflicts of interests in 2023 - both at the Preah Sihanouk Appeal Court.

Figure 6: Percentage of defendants defended by a lawyer who was representing more than one accused, by target court



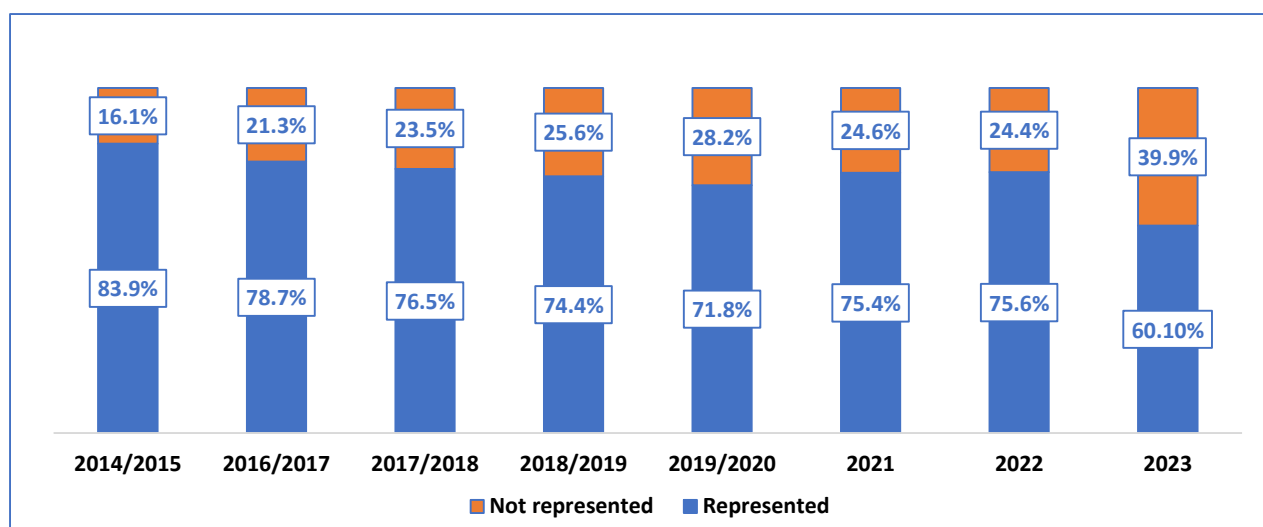
Phnom Penh Appeal Court

Concerningly, the percentage of defendants represented by a lawyer reached At the Phnom Penh Appeal Court, 60.9% of defendants (280 out of 460) had legal representation. Notably, 100% of those charged with felony offenses (200 out of 200) were represented by a lawyer, in compliance with domestic law. However, only 7.2% of those charged with misdemeanor offenses (19 out of 260) and 20% of those charged with petty offenses (2 out of 10) had legal representation. This indicates that 67.6% of individuals facing misdemeanor charges (169 out of 250) and 80% of those facing petty offense charges (8 out of 10) proceeded without legal counsel, having agreed to be heard without a lawyer based on the court's affirmation, marking a significant decline from 2022 (75.6%) and the lowest figure ever recorded by CCHR at this Court. Although the lawyer of 30.7% of these defendants (86 out of 280) represented more than one accused in 2023, no conflicts of interest were identified. CCHR notes with concern that the right to legal representation has not been consistently upheld at the Court since the 2014/2015 Reporting Period, when the percentage of defendants represented by lawyers reached 83.9%. These findings point to the need for urgent measures to reverse the unprecedented decrease observed from 2022 to 2023 and, at the very least, return to the compliance levels documented in 2014/2015.

Figure 7: Evolution of the percentage of defendants represented by a lawyer at the Phnom Penh Appeal Court (2014-2023)⁵⁹

⁵⁸ See CCHR 'Guidance Notes for CCHR Appeal Court Monitoring Checklist,' p. 47.

⁵⁹ This data is based on the 135 defendants represented by a lawyer out of the 161 defendants involved in the 128 cases monitored in 2014/2015; the 439 defendants represented by a lawyer out of the 558 defendants involved in the 340 cases monitored in 2016/2017; the 241 defendants represented by a lawyer out of the 315 defendants involved in the 213 cases monitored in 2017/2018; the 262 defendants represented by a lawyer out of the 352 defendants involved in the 239 cases monitored in 2018/2019; the 183 defendants represented by a lawyer out of the 255 defendants involved in the 203 cases monitored in 2019/2020; the 89 defendants represented by a lawyer out of the 118 defendants involved in the 85 cases monitored in 2021; the 266 defendants represented by a lawyer out of the 352 defendants involved in the 257 cases monitored in 2022; and the 280 defendants represented by a lawyer out of the 460 defendants involved in the 336 cases monitored in 2023.



During the Reporting Period, judges informed unrepresented defendants of their right to defend themselves in person or through legal representation in 75.2% of the relevant cases monitored (79 out of 105), up from 63.3% in 2022. Despite this commendable progress, judges only followed the good practice of explaining this right in 17.1% (18 out of 105) of relevant cases, a slight decrease compared to 2022 (22.4%). To boost access to legal representation, CCHR recommends that the Court systematically explain this right to unrepresented defendants to ensure that they fully understand the potential implications of waiving their right to be defended by a lawyer. In case the accused express the desire for legal representation following this explanation, hearings should be immediately adjourned and measures taken to facilitate their prompt access to counsel, including through existing legal aid schemes.

In August 2020, the Court stated that judges and Court officials do attempt to help defendants access legal aid in misdemeanor cases. However, they pointed out that applying for legal representation is difficult for the poor, as they need to provide a certificate proving their low economic status to the Bar Association of the Kingdom of Cambodia (BAKC). Since BAKC faces budget challenges, it is often late in responding to applications.⁶⁰ In November 2023, representatives from the Court and General Prosecution attached to the Court acknowledged that judges sometimes fail to inform unrepresented defendants of their right to legal representation. They said the Court will organize a meeting with all the judges and instruct them to do it on a systematic basis.⁶¹

Battambang Appeal Court

For the second consecutive year, the right to legal representation was not consistently upheld at the Battambang Appeal Court, with only 53.8% of defendants (186 out of 346) being represented by a lawyer in the trials monitored during the Reporting Period, among this data, 100% of defendants charged with felony offenses (118 out of 118) were represented by a lawyer, in compliance with domestic law. However, only 30.2% of those charged with misdemeanor offenses (67 out of 222) and 16.7% of those charged with petty offenses (1 out of 6) had legal representation. This indicates that 69.8% of individuals facing misdemeanor charges (155 out of 222) and 83.3% of those facing petty offense charges (5 out of 6) proceeded without legal counsel, having agreed to do so based on consultations with the court. This is a concerning retrogression

⁶⁰ On 13 August 2020, CCHR team met the President and Deputy President of the Phnom Penh Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

⁶¹ On 16 November 2023, CCHR team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR's trial monitoring activities.

compared to 2022, when this figure stood at 61.8%. Although the lawyer of 54.3% of the defendants who benefited from legal representation (101 out of 186) defended more than one accused in 2023, no conflicts of interest were identified.

Welcomingly, the percentage of relevant cases where judges informed unrepresented defendants of their right to defend themselves in person or through legal representation reached 80.4% (90 out of 112) in 2023. This is a significant increase compared to 2022, when this figure stood at 43.75%. In the same vein, judges followed the good practice of explaining this right in 66.1% of relevant cases (74 out of 112), up from 16.7% in 2022, which is commendable. Thus, although CCHR is not in a position to classify the right to legal representation as being upheld before the Battambang Appeal Court, it notes with appreciation the efforts made to ensure that unrepresented defendants are made aware of, and understand this right. Further measures should now be taken to ensure that this explanation of rights is done on a systematic basis with a view of increasing defendants' access to legal representation.

In December 2022, the Deputy President of the Court said requests for a lawyer must be submitted to the BAKC through the Ministry of Justice. Although he acknowledged the process could take time, he said all demands are met.⁶² In March 2023, he stated that all felony cases were heard with a lawyer present, unless they were requalified as a misdemeanor by the Court.⁶³

Preah Sihanouk Appeal Court

For the first time, the right to legal representation was consistently upheld before the Preah Sihanouk Appeal Court. The percentage of defendants being represented by a lawyer increased to 83.6% in 2023 (112 out of 134); among this data, 100% of defendants charged with felony offenses (65 out of 65) were represented by a lawyer, in compliance with domestic law. However, 68.6% of those charged with misdemeanor offenses (48 out of 70) and 100% of those charged with a petty offense (1 out of 1) had legal representation. This indicates that 31.4% of individuals facing misdemeanor charges (22 out of 70) proceeded without legal counsel, having agreed to do so based on consultations with the court. Up from 64.4% in 2022, the highest figure among the four target courts during the Reporting Period. Although the lawyer of 51.8% of these defendants (58 out of 112) represented more than one accused, there were only two conflicts of interest, amounting to merely 3.4% of the total. Although this figure is quite low, it is important that judges pay particular attention to identifying instances where a lawyer representing several defendants puts forward a defense that negatively impacts the interests of one of them. In such cases, the hearing should be immediately adjourned, and measures should be taken to facilitate this defendant's access to a different lawyer.

In December 2022, the Court's President acknowledged the existence of shortcomings when it comes to explaining their rights to defendants; and said he would hold a technical meeting to address this issue.⁶⁴ Despite this pledge and the promising progress observed above, CCHR notes with concern that the Court only informed unrepresented defendants of their right to defend themselves in person or through legal representation in 17.4% of the relevant cases monitored in 2023 (4 out of 23). Although this represents a

⁶² On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁶³ On 23 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁶⁴ On 9 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

year-on-year increase of 11.8 percentage points, the fact that less than one in five unrepresented defendants were not reminded of this right is highly problematic. In addition, the Court only followed the good practice of explaining this right in one case, indicating a lack of meaningful progress since 2022, when it had not done so.

In March 2023, Court representatives said the judges fully complied with the Code of Criminal Procedure, which states that legal representation is not mandatory for misdemeanors. However, they still ask defendants in misdemeanor cases whether they want to be represented by a lawyer. If they do, the hearing is postponed until a lawyer is found. The defendant will then have to cover the legal fees.⁶⁵ In November 2023, representatives from the Court and General Prosecution attached to the Court said that some of the unrepresented defendants involved in the cases monitored had already been informed about their right to legal representation during a first appeal hearing. Thus, the judges, did not inform them of this right again in subsequent hearings. The representatives also pointed out that the Code of Criminal Procedure does not contain an obligation to inform defendants of this right, except in immediate appearance cases. They added that, in general, defendants receive this information.⁶⁶

Tboung Khmum Appeal Court

For the second consecutive year, the right to legal representation was not consistently upheld at the Tboung Khmum Appeal Court. Only 44.9% of defendants were represented by a lawyer in the hearings monitored during the Reporting Period (79 out of 176). Among this data, 100% of defendants charged with felony offenses (48 out of 48) were represented by a lawyer in compliance with domestic law. However, only 24.2% of those charged with misdemeanor offenses (30 out of 124) and 25% of those charged with petty offenses (1 out of 4) had legal representation. This indicates that 75.8% of individuals facing misdemeanor charges (94 out of 124) and 75% of those facing petty offense charges (3 out of 4) proceeded without legal counsel, having agreed to do so based on consultations with the court, indicating no improvement since 2022, when this figure stood at 44.2%. This is the lowest figure among the four target courts and a major source of concern, for it casts doubt as to whether defendants who stood trial at this Court were properly informed of this right by the responsible authorities (mostly judicial police officers, investigating judges, and prosecutors) early on in the proceedings. It could also suggest difficulties in accessing legal aid services in some of the remote provinces that fall under the Court's jurisdiction. Although 49.4% of the defendants who benefited from legal representation in 2023 shared a lawyer with other co-accused (39 out of 79), CCHR did not identify any conflict of interest.

Welcomingly, the percentage of relevant cases where judges informed unrepresented defendants of their right to defend themselves in person or through legal representation increased from 74.1% in 2022 to 94.2% in 2023 (49 out of 52). In addition to this promising evolution, judges followed the good practice of explaining this right in 53.8% of relevant cases (28 out of 52), up from 25.9% in 2022. Although CCHR is not in a position to classify the right to legal representation as being consistently upheld before the Tboung Khmum Appeal Court, it notes with appreciation the efforts made to ensure that unrepresented defendants are made aware of this right. Further measures should now be taken to ensure that this is done on a systematic basis and to help defendants access legal representation.

⁶⁵ On 28 March 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁶⁶ On 7 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal to discuss the findings of CCHR's trial monitoring activities.

In September 2023, representatives from the Court pointed out that they fully comply with the CCPC’s provisions on legal representation. They added that they always proceed with the appeal hearing in cases where non-represented defendants facing misdemeanor charges agree for the Court to do so, in line with existing legal provisions.⁶⁷ In August 2024, the Tboung Khmum Court of Appeal affirmed that the judge had informed defendants about their right to legal representation. However, the defendants did not seek legal counsel and permitted the court to proceed with the hearing without a lawyer present. The court clarified that it is not obligated to provide a lawyer, and misdemeanor offenses can be heard without legal representation under domestic law.⁶⁸

4.2. 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,⁶⁹ except in certain 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.⁷¹

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.⁷⁰ 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.⁷² 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.⁷³ 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.⁷⁴

⁶⁷ On 18 September 2023, CCHR’s Fair Trial Rights Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of its trial monitoring activities.

⁶⁸ On 8 August 2024, the CCHR team met with representatives from the Tboung Khmum Court of Appeal and the Office of the General Prosecution attached to this court to present the findings of the report from its trial monitoring

⁶⁹ For more details on this right, see CCHR’s module “The right to a public hearing” (September 2022), <https://tinyurl.com/2c67u8sn>

⁷⁰ UNHRC, General Comment 32, para. 29.

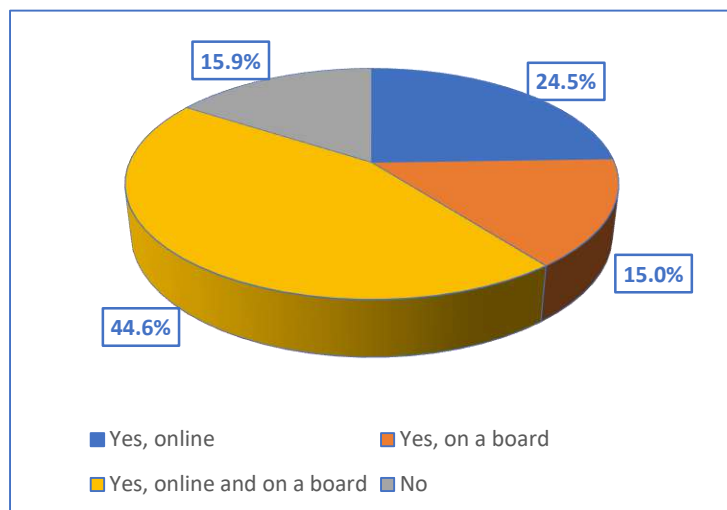
⁷¹ UN Committee on the Rights of the Child (“CRC Committee”), General Comment No. 24 on Children’s Rights in the Child Justice System (18 September 2019) CRC/C/GC/24, para. 67, <https://tinyurl.com/2s4kka66>

⁷² UNHRC, General Comment 32, para. 29.

⁷³ UNHRC, General Comment 32, para. 29.

⁷⁴ 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, <https://tinyurl.com/2nc55r5f>

Figure 8: Percentage of cases for which hearing notices were posted, total⁷⁵



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

Encouragingly, just like in 2022, there was nothing to suggest that members of the public or media were prevented from entering or dismissed from the courtroom in the cases monitored across all courts in 2023.

In addition, hearing notices were posted on a public board outside the courtroom and/or online in 84.1% of the monitored trials (649 out of 772), up from 73.1% in 2022. Despite this commendable progress, CCHR cannot classify this right as being fully respected due to significant disparities between the target courts.

Phnom Penh Appeal Court

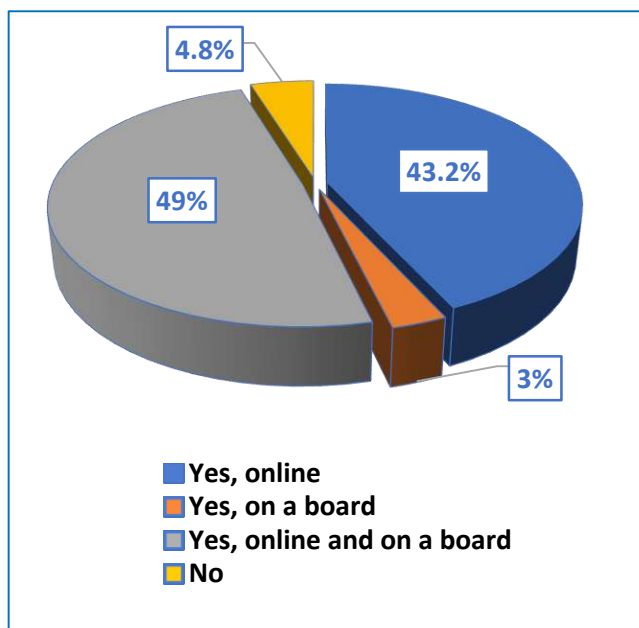
In 2018 and 2019, the Phnom Penh Appeal Court⁷⁶ recognized that there was a lack of hearing notices in relation to the Court's schedule, and informed CCHR that they would take action in order to improve the public's information about and access to hearings. In 2019, the Court stated that displaying the public trial schedule was an administrative matter and not required by law. However, it prioritized this issue and developed a [webpage](#) to post information about upcoming cases, as well as a [hearing schedule](#). The information now made available includes - among other things - the date, time and location of the hearing, the case's file number, the charge(s), and the name of the judge.

Figure 9: Percentage of cases for which hearing notices were posted, Phnom Penh AC⁷⁷

⁷⁵ This data is based on the total number of 772 cases monitored in 2023.

⁷⁶ On 5 April 2018 and 27 August 2019, CCHR's Fair Trial Monitoring Project team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Court of Appeal in order to discuss the findings contained in the 2016/2017 and 2017/2018 reports.

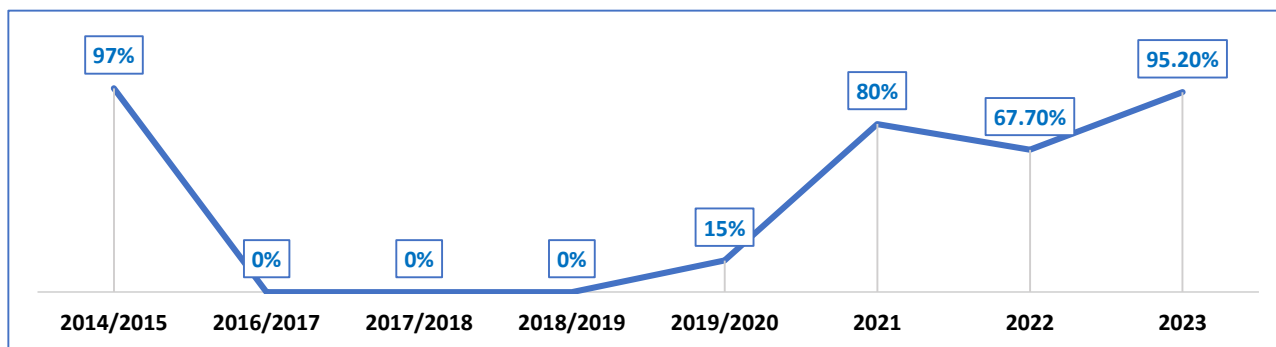
⁷⁷ This data is based on the 336 cases monitored at this court in 2023.



Welcomingly, the Phnom Penh Appeal Court posted notices in 95.2% (320 out of 336) of the cases monitored in 2023, up from 67.7% in 2022. Particularly commendable is the fact that 96.9% of these notices were posted online, compared to 99.4% in 2022. Although the Court has yet to systematically follow the good practice of posting notices both online and on the Court's public board, it still did so in 49% of the monitored cases, up from 20.6% in 2022. These changes are very promising, for they show that the Court's commitment to fully upholding the right to a public hearing has translated into concrete results, as demonstrated in the chart below. Particular attention should now be paid to ensure this progress is not reversed over time.

The Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal stated that they are continuing their efforts to post-hearing schedules both on physical information boards and online (via the Facebook page and website of the Court of Appeal and the General Prosecution) to ensure smoother proceedings.⁷⁸

Figure 10: Evolution of the percentage of cases for which hearing notices were posted outside the courtroom (until 2022) and outside the courtroom or online (from 2022) at the Phnom Penh Appeal Court (2014-2023)⁷⁹



Battambang Appeal Court

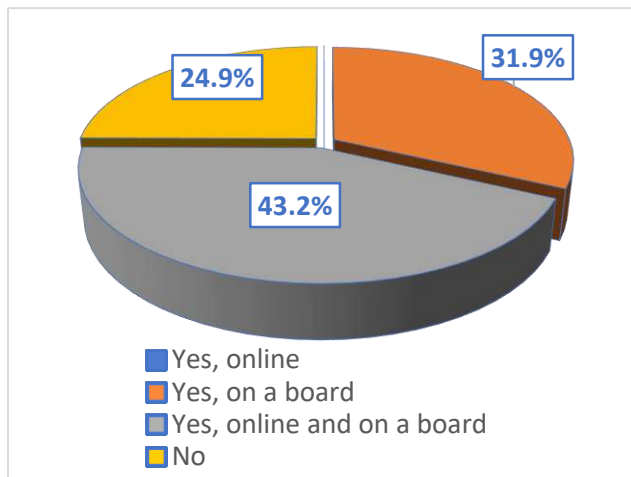
The Battambang Appeal Court only posted notices in 75.1% of the cases monitored in 2023 (181 out of 241), showing a disappointing retrogression compared to 2022, when this figure stood at 93.7%. This year-on-year decrease justifies classifying the right to a public hearing as not being respected by the Court. In December 2022, the Vice President of the Court acknowledged that hearing schedules had not been systematically

⁷⁸ Letter No. 706/24 issued on 01 August 2024 by Phnom Penh Court of Appeal and the Office of the General Prosecution attached to Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

⁷⁹ The data is based on the 128 cases monitored in 2014/2015, the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019, the 203 cases monitored in 2019/2020, the 85 cases monitored in 2021, the 257 cases monitored in 2022; and the 336 cases monitored in 2023.

posted on the Court’s information board and said he would address this issue.⁸⁰ CCHR documented that all the hearing notices the Court posted in 2023 appeared on the board, up from 84.3% in 2022; showing that efforts were made to implement this commitment. In addition, 57.5% of these notices (104 out of 181) were also posted online, up from 29.8% in 2022.

Figure 11: Percentage of cases for which hearing notices were posted, Battambang AC⁸¹



Despite these improvements, the Court only posted notices online in 43.2% of the cases monitored in 2023; a marginal year-on-year increase of 0.5 percentage points. Noteworthy is the fact that, unlike in 2022, the Court never solely posted notices online during the Reporting Period, despite the ease in doing so compared to posting on a public board. It stems from this section that further measures should be taken by the Court to ensure the systematic publication of hearing notices, with a particular focus on taking the necessary steps to make them available online for greater accessibility.

Preah Sihanouk Appeal Court

The Preah Sihanouk Appeal Court failed to post-hearing notices in 78% of the cases monitored in 2022. In December 2022, the President of the Court acknowledged this shortcoming and instructed his colleagues to start posting hearing schedules on the Court’s Facebook page.⁸² Although some progress was observed in 2023, CCHR notes with concern that the Court still failed to post notices in 62.7% of the cases monitored (47 out of 75). Unlike the other target courts, it did not post notices online, exclusively displaying them on a public board. These findings point to the need for increased efforts toward ensuring that hearings are systematically publicized by the Court, including through the use of online platforms. In August 2024, representatives from the Court of Appeal and General Prosecution attached to the Preah Sihanouk Court of Appeal stated that the court never prevents the public from entering the courtroom. They further suggest considering the number of attendees and the frequency of their attendance. In practice, there are not many people attending the courtroom. The representative questioned whether including this point in the report would be useful.⁸³

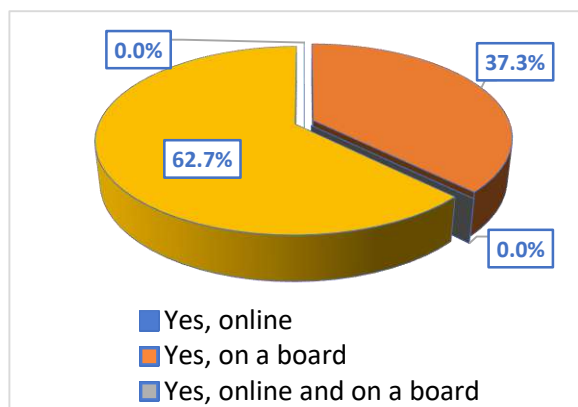
⁸⁰ On 15 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁸¹ This data is based on the 241 cases monitored at this court in 2023.

⁸² On 9 December 2022, CCHR’s Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

⁸³ On 13 August 2024, the CCHR team met with the representatives from the Preah Sihanouk Court of Appeal and the Office of the General Prosecution attached to the Preah Sihanouk Court of Appeal to present the findings of a report from its trial monitoring.

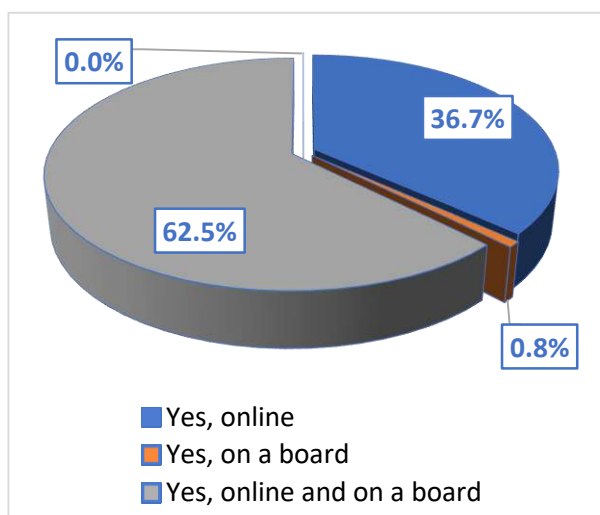
Figure 12: Percentage of cases for which hearing notices were posted, Preah Sihanouk AC⁸⁴



In September 2023, the Preah Sihanouk Appeal Court and General Prosecution attached to the Court noted that the right to a public hearing is about keeping courtrooms open for the public to be able to observe trials, adding that it does not carry an obligation to post hearing schedules online or on a board. Court and Prosecution representatives reiterated this view in November 2023, saying hearing schedules were an administrative matter separate from the role of the Court.⁸⁵

Tboung Khmum Appeal Court

Figure 13: Percentage of cases for which hearing notices were posted, Tboung Khmum AC⁸⁶



Welcomingly, the Tboung Khmum Appeal Court demonstrated a continuous commitment towards publicizing hearings, having posted notices in 100% of the 120 cases monitored in 2023, up from 96.8% in 2022. CCHR's trial monitoring shows that the overwhelming majority of these notices (99.2%) were posted [online](#). However, it should still be noted that the Court only followed the good practice of posting them both online and on a public board in 62.5% of the monitored trials, down from 82.3% in 2022. Despite this slight hiccup, the Tboung Khmum Appeal Court stands out as the only target court that upheld the right to a public hearing in both 2022 and 2023.

4.3. 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

⁸⁴ This data is based on the 75 cases monitored at this court in 2023.

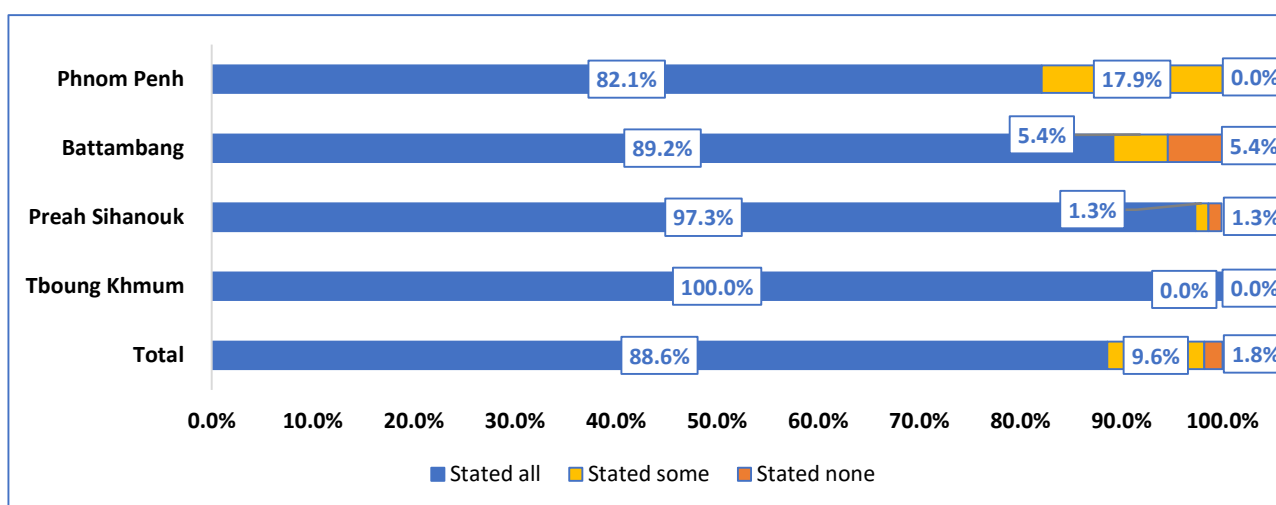
⁸⁵ Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of CCHR's 2022 Annual Report on Fair Trial Rights.

⁸⁶ This data is based on the 120 cases monitored at this court in 2023.

prepare their defense.⁸⁷ 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.⁸⁸

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

Figure 14: Percentage of cases where the judge stated all relevant charges, by target court⁸⁹



Welcomingly, the judges stated all the relevant charges against the defendants in 88.6% (649 out of 772) of the trials monitored in 2023. This is a major improvement compared to 2022, when this figure stood at 59.7%. The percentage of cases where defendants were not informed of the totality of the relevant charges against them decreased from 30.3% in 2022 to 9.6% in 2023; while the percentage of cases where defendants were not informed about the charges against them at all reached 1.8%, down from 10% in 2022. It is also positive that all the target courts provided interpreters to defendants when necessary (39 cases in total).

Overall, and despite some disparities between the target courts, judges consistently stated the date of the offense (91.8% of the trials monitored in 2023, up from 84.3% in 2022), place of the offense (91.2%, up from 82.1%), and the parties involved (97.3%, up from 89.1%). Despite this encouraging evolution towards fully upholding the right to understand the nature and cause of the charges, CCHR notes with concern that judges only stated the relevant law in 69.8% of the trials monitored in 2023. Although this represents a major

⁸⁷ 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://tinyurl.com/5h6ec5vz>

⁸⁸ 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."

⁸⁹ This data is based on the 772 cases that were monitored in 2023.

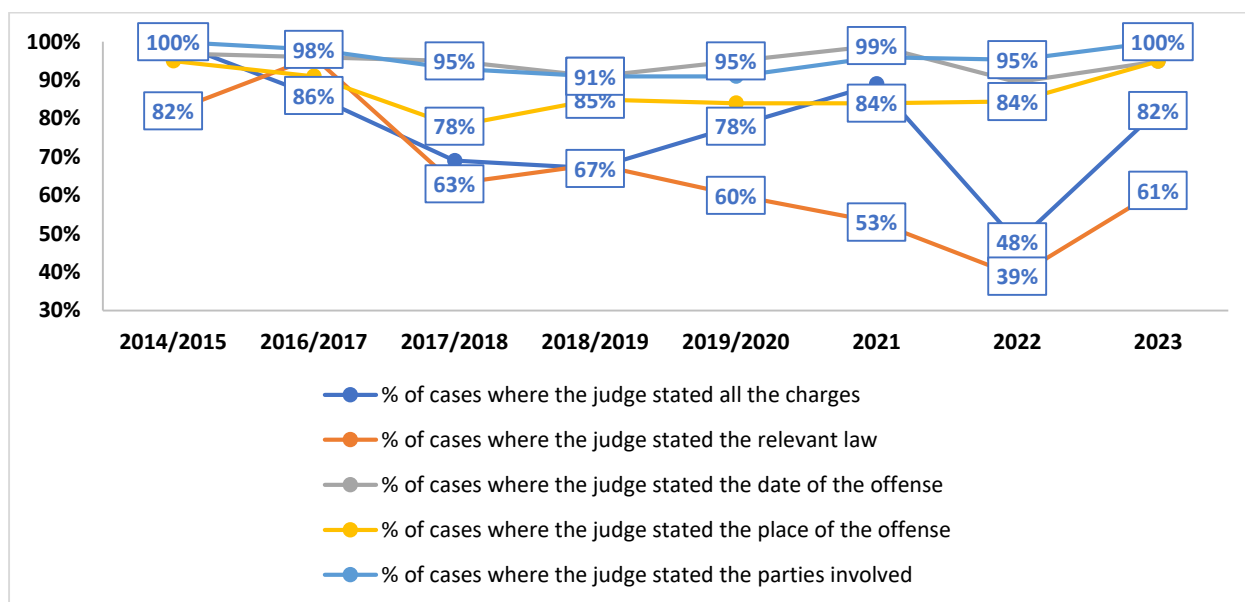
progress compared to 2022, when this figure stood at 48%, all target courts but one still fall short of CCHR's 80% threshold to consider this basic fair trial right as fully upheld.

Phnom Penh Appeal Court

The Phnom Penh Appeal Court informed the defendants of all the relevant charges against them in 82.1% of the cases monitored in 2023 (276 out of 336), a significant improvement compared to 2022 when this figure stood at 47.9%. In addition to this commendable increase, CCHR notes with appreciation that the percentage of cases where defendants were only informed of some of the charges against them dropped from 50.1% in 2022 to 17.9% in 2023. However, the Court still failed to state the relevant law in 38.7% of the cases monitored in 2023 (130 out of 336), slightly down from 38.9% in 2022. This lack of year-on-year progress justifies classifying the right to understand the nature and cause of the charges as not being fully respected. The Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal affirmed that the court will continue to inform the accused about the charges, facts, and rulings to promote greater transparency and understanding.⁹⁰

While this right was previously respected by the Phnom Penh Appeal Court during the 2014/2015 and 2016/2017 reporting periods, it has since been considered as not fully respected. This is due to a failure to consistently maintain an 80% compliance rate for all measured fields, as shown in the chart below. However, CCHR notes with appreciation that 2023 saw the Court return to the compliance levels observed in 2014/2015 and 2016/2017 for all but the field mentioned above. Now that this shortcoming has been duly identified, measures should be taken to duly address it and preserve the progress achieved in 2023 with a view to fully upholding this right.

Figure 15: Evolution of the right to understand the nature and cause of the charge(s) at the Phnom Penh Appeal Court (2014-2023)⁹¹



⁹⁰ Letter No. 706/24 issued on 01 August 2024 by Phnom Penh Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

⁹¹ The data is based on the 128 cases monitored in 2014/2015; the 340 cases monitored in 2016/2017; the 213 cases monitored in 2017/2018; the 239 cases monitored in 2018/2019; the 203 cases monitored in 2019/2020; the 85 cases monitored in 2021; the 257 cases monitored in 2022; and the 336 cases monitored in 2023.

Battambang Appeal Court

The Battambang Appeal Court also showed an improvement towards upholding this right during the Reporting Period as compared to the previous year. It informed the defendants of all the relevant charges against them in 89.2% of the cases monitored in 2023 (215 out of 241), up from 51.7% in 2022. It is also particularly commendable that the percentage of cases where defendants were not informed of the charges against them at all dropped from 32.2% in 2022 to 5.4% in 2023. In the same vein, it stated some of the charges in only 5.4% of the cases monitored in 2023, down from 16.1% in 2022. Although the Court performed significantly better in stating the relevant law in 2023 (64.7% of the monitored trials, up from 26.6% in 2022), more efforts are still needed to uphold the right to understand the nature and cause of the charges.

Preah Sihanouk Appeal Court

The Preah Sihanouk Appeal Court once again performed solidly in respecting the right of defendants to understand the nature of the charges. Judges stated all the relevant charges in 97.3% of the trials monitored in 2023, up from 91.5% in 2022. However, the fact that the Court only stated the relevant law in 76% of the monitored cases is particularly worrisome, given that this figure stood at 89.8% in 2022. This disappointing year-on-year retrogression justifies classifying this right as not being respected by the Court anymore. Particular attention should now be paid to reverse this downward trend and, at the very least, return to the compliance levels observed in 2022.

In September 2023, the Preah Sihanouk Appeal Court and General Prosecution attached to the Court said the accused should be informed of the charges against them by the investigating judge after the release of the Prosecutor's introductory submission; not by the Appeal Court. They pointed out that appeal judges usually read the case file and first instance ruling. They then inform the accused about their rights and the parties to the hearing, before asking which parts of the first instance ruling they appeal against, and why. In general, defendants deny having committed the offense or say the sentence is too severe. Therefore, nothing requires the appeal judge to state and explain the cause and nature of the charges. However, the Court and Prosecution representatives pointed out that they do so if the defendants say they do not understand the charges against them⁹² suggested that CCHR consider limiting its assessment to rights implemented at the Court of Appeal level. They reasoned that some rights are not reiterated by the Court of Appeal because they have already been communicated by the Court of First Instance, and defendants are presumed to understand these rights.⁹³

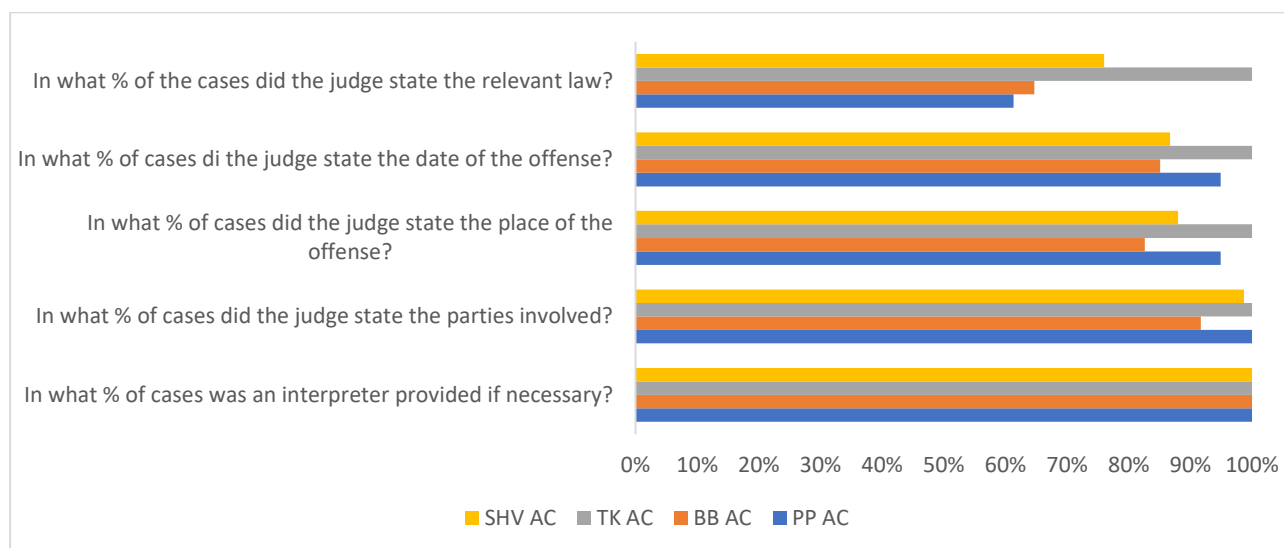
Tboung Khmum Appeal Court

Welcomingly, the Tboung Khmum Appeal Court performed excellently in respecting the right of defendants to understand the nature of the charges, with judges stating all the relevant charges in 100% of the cases monitored in 2023 (120), up from 96.8% in 2022. In addition, the Court systematically stated the place and date of the offense, the parties involved, and the relevant law; beating the already high compliance rates observed in 2022. As a result, it stands out as the only target court that upheld this right in both 2022 and 2023.

⁹² Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of CCHR's 2022 Annual Report on Fair Trial Rights.

⁹³ On 13 August 2024, the CCHR team met with the representatives from Preah Sihanouk Court of Appeal to present the findings of the report from its trial monitoring.

Figure 16: The right to understand the nature and cause of the charge(s), by target court⁹⁴



4.4. Right to be present at trial⁹⁵

International Law	Cambodian Law			
ICCPR	Constitution	CCPC	Law on Juvenile Justice	Law on Prisons ⁹⁶
Article 14(3)(d)	Article 38	Article 300	Articles 6 & 51	Article 62

Trials must be held in the presence of the accused,⁹⁷ 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”⁹⁸ 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.⁹⁹ The right to be present at trial is applicable to appeal proceedings, if they involve questions of both fact and law,¹⁰⁰ 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.¹⁰¹ Cogent justification must be provided for them.¹⁰² The accused must also have unequivocally waived their right to appear at trial.¹⁰³

⁹⁴ This data is based on the 772 cases that were monitored in 2023.

⁹⁵ For more details on this right, see CCHR’s module “The right to be present at trial and the right to defend oneself in person or through legal representation” (September 2022), <https://tinyurl.com/ytxdtkt4>

⁹⁶ Law on Prisons (2011), <https://tinyurl.com/37evch3t>

⁹⁷ ICCPR, Art. 14(3)(d); UNHRC, General Comment 32, para. 36.

⁹⁸ CRC Committee, General Comment 24, para. 63.

⁹⁹ CRC Committee, General Comment 24, para. 56.

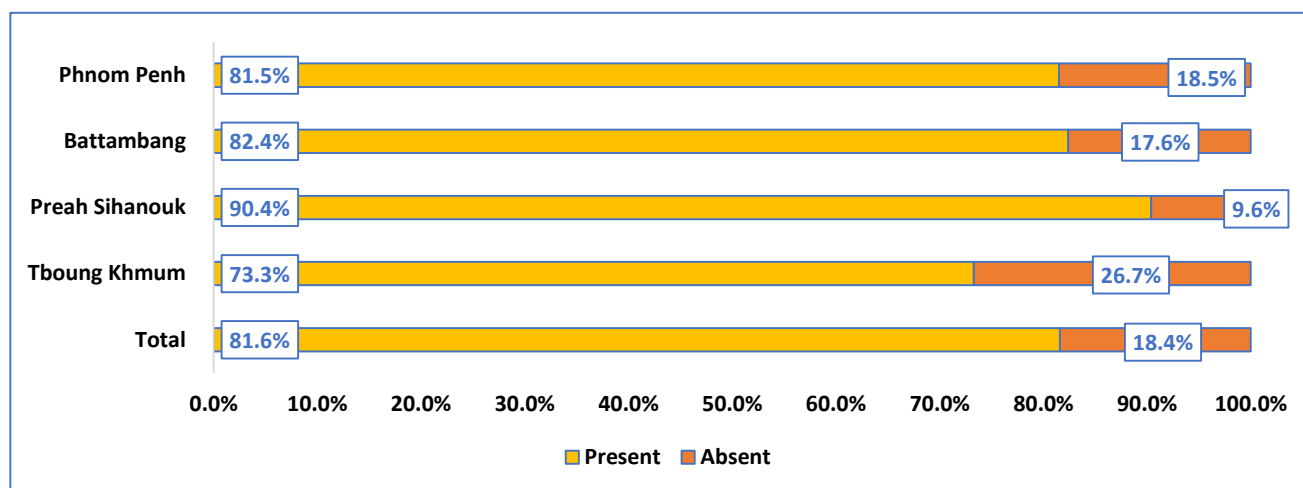
¹⁰⁰ UNHRC, Communication 387/1989, *Karttunen v. Finland* (23 October 1992) CCPR/C/46/D/387/1989, para. 7.3 <https://tinyurl.com/267vaeud>

¹⁰¹ UNHRC, General Comment 32, para. 36.

¹⁰² UNHRC, Communication 016/1977, *Mbenge v. Zaire* (25 March 1983) CCPR/C/18/D/16/1977, para. 14.1, <https://tinyurl.com/2e7vba3k>

¹⁰³ UNHRC, General Comment 32, para. 36.

Figure 17: Percentage of cases where the defendant was present at trial, by target court¹⁰⁴



In 2023, 81.6% (912 out of 1,118) of the defendants involved in the monitored trials were present at their hearings, a slight decrease compared to 2022 when this figure stood at 83.4%. Although there were some disparities between the target courts, CCHR found that three of them upheld the right to be present at trial during the Reporting Period.

Phnom Penh Appeal Court

The Phnom Penh Appeal Court has consistently upheld the right to be present at trial since 2017/2018, and 2023 was no exception. The percentage of defendants who were present at their hearings reached 81.5% (375 out of 460), slightly down from 81.8% in 2022 and 83.1% in 2021. Although this trend points to a certain reversal in the progress made in 2019/2020, when this figure stood at 90.2%, it is nonetheless commendable that the Court has been able to maintain such high compliance levels over time.

During previous Reporting Periods, the absence of the defendant was often due to logistical issues and communication problems between the Court and the places of detention. On many occasions, the transportation of defendants did not occur because either the Court sent information to the wrong correctional centers, or because the centers failed to keep the Court updated about prisoner transfers. This issue needs to be addressed by improving record keeping and communication between the Court and places of detention. The Court also explained that it could hear cases without the presence of the accused if their lawyers are present, if the appeal request is not considered valid, if the appeal request is made by the prosecution, or if the case has been pending before the Court for a long time and a party requests the judges to adjudicate it without the presence of the accused.¹⁰⁵

Figure 18: Evolution of the the percentage of cases where the defendant was present at trial, Phnom Penh Appeal Court (2014-2023)¹⁰⁶

¹⁰⁴ This data is based on the total number of defendants (1,118 individuals) involved in the 772 cases monitored in 2023.

¹⁰⁵ Letter No. 431/21 issued on 12 October 2021 by the Phnom Penh Court of Appeal in response to the findings of CCHR's 2019/2020 Report on Fair Trial Rights.

¹⁰⁶ This data is based on the 129 defendants present at trial out of the 161 defendants involved in the 128 cases monitored in 2014/2015; the 404 defendants present at trial out of the 558 defendants involved in the 340 cases monitored in 2016/2017; the 260 defendants present at trial out of the 315 defendants involved in the 213 cases monitored in 2017/2018; the 284 defendants present at trial out of the 352 defendants involved in the 239 cases monitored in 2018/2019; the 230 defendants present at trial out of the 255 defendants involved in the 203 cases monitored in 2019/2020; the 98 defendants present at trial out of the 118 defendants

Was the defendant present at trial?	Yes	No
2014/2015	79.0%	21.0%
2016/2017	72.4%	27.6%
2017/2018	82.5%	17.5%
2018/2019	80.7%	19.3%
2019/2020	90.2%	9.8%
2021	83.1%	16.9%
2022	81.8%	18.2%
2023	81.5%	18.5%

Battambang Appeal Court

The Battambang Appeal Court upheld the right to be present at trial for the second consecutive year in 2023, with 82.4% of defendants attending their hearings in the cases monitored (285 out of 346), down from 91% in 2022. In light of this slight year-on-year deterioration, particular attention should now be paid to ensure that the Court's achievements are not reversed over time. In December 2022, its Deputy President said the Court takes this issue seriously, as the presence of defendants at hearings is a major component of access to justice. He added that the Court requires all defendants to be present, including those who have requested not to attend.¹⁰⁷

Preah Sihanouk Appeal Court

For the first time, the Preah Sihanouk Appeal Court consistently upheld the right to be present at trial in 2023, with 90.4% of defendants attending their hearings in the cases monitored (123 out of 136). This is the highest figure among the four target courts, and a significant improvement from 2022, when it stood at 74.7%.

Tboung Khmum Appeal Court

Concerningly, the Tboung Khmum Appeal Court failed to uphold the right to be present at trial in 2023, with only 73.3% (129 out of 176) of defendants attending their hearings in the cases monitored. In other words, more than one in four defendants were absent from their trials during the Reporting Period. This is the lowest figure among the four target courts, and a noticeable decrease from 2022 (81.4%), when CCHR classified this right as being upheld by the Court. These findings point to the need for urgent measures to reverse this downward trend and, at the very least, return to the compliance levels observed in 2022. In September 2023, Court and General Prosecution representatives said the right to be present at trial was fundamental. They pointed out that the Court always summons the defendants charged with felonies to appear at their hearing, noting however that some decide to waive this right for various reasons¹⁰⁸ stated that the section regarding the presence of defendants at trials should be considered a positive aspect, not a negative one. They cited

involved in the 85 cases monitored in 2021; the 288 defendants present at trial out of the 352 defendants involved in the 257 cases monitored in 2022; the 375 defendants present at trial out of the 460 defendants involved in the 336 cases monitored in 2023.

¹⁰⁷ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁰⁸ On 18 September 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of its trial monitoring activities.

the court's significant efforts to comply with legal procedures, such as issuing numerous summonses, allowing for trial delays, and conducting trials in absentia when necessary.¹⁰⁹

4.5. Right to be tried without undue delay

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

Article 14(3)(c) of the ICCPR guarantees every individual charged with a criminal offense the right to be tried without undue delay, expeditiousness being an essential aspect of the fairness of a trial.¹¹⁰ As far as adult defendants are concerned, Cambodian law does not contain any provisions on how long Appeal Courts have to hold an appeal hearing once the appeal has been lodged. However, article 57 of the Law on Juvenile Justice states that appeals lodged on behalf of children in conflict with the law shall be heard within three months, unless there is an external obstacle outside the control of the Court. For the purpose of this analysis, CCHR will consider the right to be tried without undue delay as being respected if the hearing took place less than six months after the appeal was received by the target courts.

Figure 19: Time between the reception of the appeal and the appeal hearing in the cases monitored, by target court¹¹¹

Duration	Phnom Penh AC	Battambang AC	Tboung Khmum AC	Preah Sihanouk AC	Total
Less than 6 months	203	221	100	70	594
6 months to 1 year	51	11	14	1	77
>1 to 2 years	34	0	6	0	40
>2 to 3 years	15	0	0	0	15
Over 3 years	25	0	0	0	25
Data not available	8	9	0	4	21
Total	336	241	120	75	772

this occurred in 79.1% of the monitored cases heard by the court lasting less than six months with respect to the right to be tried without undue delay (594 out of 751); showing a 3.3% decrease compared to the previous year. The compliance levels have remained the same in all three target courts as in 2022. However, it should be noted that more trials were monitored in 2023 (+48.2% compared to 2022), and that information on the

¹⁰⁹ On 8 August 2024, the CCHR team met with the representatives from Tboung Khmum Court of Appeal and General Prosecution attached to Tboung Khmum Court of Appeal to present the findings of the report from its trial monitoring.

¹¹⁰ UNHRC, General Comment 32, para. 27.

¹¹¹ This data is based on the 772 cases monitored in 2023.

time between the reception of the appeal and the hearing was available in a greater number of cases (97.3%, compared to 70.83% in 2022).

Phnom Penh Appeal Court

The hearing took place less than six months after the appeal was received in only 61.9% (203 out of 328) of the relevant cases monitored at the Phnom Penh Appeal Court in 2023, a marginal year-on-year increase of 2.4 percentage points and the lowest figure among the four target courts. Particularly concerning is the fact that hearings were held more than one year after the appeal was received in 22.6% of the relevant cases monitored (74 out of 328), slightly up from 22.4% in 2022. Of these, 33.8% took more than three years to come to trial (25 out of 74), up from 15.4% in 2022. Such delays leave defendants in a legal limbo, acting as a hindrance to their rights irrespective of whether they have been placed in pre-trial detention or not. These discouraging findings alongside a lack of year-on-year progress point to the need for further measures to address case backlog, and justify classifying the right to be tried without undue delay as being not fully respected by the Court for the second consecutive year.

Battambang and Preah Sihanouk Appeal Courts

The hearing took place less than six months after the appeal was received in 95.3 % of the relevant cases monitored at the Battambang Appeal Court in 2023 (221 out of 232), down from 96.4% in 2022. A similar year-on-year pattern was observed at the Preah Sihanouk Appeal Court, where this figure reached 98.6% (70 out of 71 cases), an increase compared to the previous year's 92.3%. In July 2024, representatives from the court and General Prosecution attached to the Battambang Court of Appeal noted that the court sometimes processes appeals between six months and one year due to factors such as requests for delays by the accused or defense lawyers, complaints against default judgments, and instances where the accused did not receive court notifications.¹¹² In August 2024, representatives from the Appeal Court and General Prosecution attached to the Preah Sihanouk Appeal Court affirmed that trials for defendants in pre-trial detention are always expedited, with encouragement and support from the Ministry of Justice. However, some cases may experience delays due to factors such as defendants not being in custody, complaints against default judgments, or defendants failing to appear in court despite multiple summonses. These factors contribute to the overall delay in trial proceedings.¹¹³ Although these findings justify classifying the right to be tried without undue delay as being respected by both courts for the second consecutive year, which is commendable, particular attention should now be paid to reversing this downward trend.

Tboung Khmum Appeal Court

The Tboung Khmum Appeal Court continues to consistently uphold the right to be tried without undue delay in 2023, with hearings concluding less than six months after the appeal was received in 83.3% (100 out of 120) of the relevant cases monitored. This figure represents a slight decrease from 2022 (85.5%).

4.6. Right to the presumption of innocence

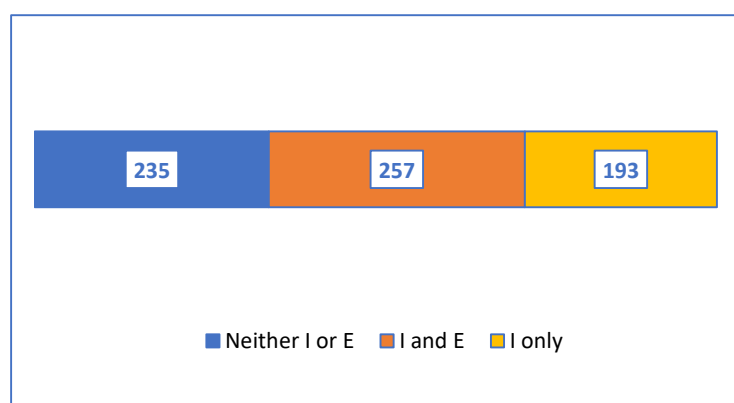
International Law	Cambodian Law	
ICCPR	Constitution	Law on Juvenile Justice

¹¹² On 25 July 2024, the CCHR team met with the representatives from Battambang Court of Appeal and General Prosecution attached to this court to present the findings of the report from its trial monitoring.

¹¹³ On 13 August 2024, the CCHR team met with the representatives from Preah Sihanouk Appeal Court and General Prosecution attached to Preah Sihanouk Appeal Court to present the findings of the report from its trial monitoring.

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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶

Figure 20: Number of relevant cases where the judge informed (I) and explained (E) to defendants their right to remain silent¹¹⁷



The right to remain silent is rooted in the right to the presumption of innocence. Every accused shall therefore be informed of this right, and Cambodian law places this responsibility on investigating judges during the notification of placement under examination.¹¹⁸ However, CCHR encourages appeal judges to systematically follow the good practice of not only informing but also explaining this right to defendants.

In 2023, the judges did so in 37.5% of the relevant cases where the defendants attended the monitored hearing (257 out of 685). This figure represents a promising increase compared to 2022, when it stood at 23.7%. In the same vein, the percentage of relevant cases in which the judges failed to inform or explain this right to the accused decreased from 49.2% in 2022 to 34.3% during the Reporting Period (235 out of 685). All in all, the defendants were at least informed of this right in 65.7% of the relevant cases monitored in 2023 (450 out of 685), up from 49.2% in 2022. Despite this encouraging year-on-year progress, there were significant disparities between the Preah Sihanouk Appeal Court and its counterparts.

CCHR also notes with appreciation that, for the second consecutive year, nothing suggested that the judge drew an inference of guilt from the silence of the defendant. In addition, the overwhelming majority of judges did not make statements about the guilt of the accused prior to the delivery of the verdict. However, it should be noted that this did happen at the Battambang Appeal Court, affecting three defendants (0.9% of total).

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.¹¹⁹

¹¹⁴ OHCHR 'The Right to a Fair Trial (Part I), Chapter 6', p. 219, <https://tinyurl.com/35w2rrm6>; Amnesty International, 'Fair Trial Manual' (2014), p. 125, Section 15.1.

¹¹⁵ UNHRC, General Comment 32, para. 30.

¹¹⁶ For more details, see CCHR's module "The right to the presumption of innocence and the right to remain silent" (September 2022), <https://tinyurl.com/4mj9dmre>

¹¹⁷ This data is based on the 685 monitored cases (out of 772) where the defendant was present at the hearing.

¹¹⁸ CCPC, Art. 143.

¹¹⁹ 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://tinyurl.com/yaebnffc>

International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. It is prejudicial when remand prisoners attend appeal hearings wearing the same prison uniforms as prisoners who have already received a final conviction, as it may influence the judge's decision and the public's perception.

The 2015 UN Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules"),¹²⁰ 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 were permitted to wear their own clothes at all stages of the criminal process until a final conviction was reached. In Cambodia, the issue of defendants appearing in court in prison uniforms falls within the responsibility of the General Department of Prisons.

According to a 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.¹²¹ Defendants should be allowed to appear before the Court with their own clothing or at the very least, in the orange uniform of remand prisoners. However, under no circumstances should those who are yet to receive a final conviction be made to wear the blue uniform at their appeal hearing, as this clearly violates their right to the presumption of innocence.

During the Reporting Period, 36.5% of all the defendants subject to pre-trial detention who attended the monitored hearings (280 out of 768) wore the blue prison uniform for convicts at their hearings. This figure shows a lack of meaningful progress compared to 2022, when it stood at 34.5%, which is worrisome and clearly undermines the right to the presumption of innocence. There were, however, significant disparities between the target courts. All of the remaining defendants appeared stood trial wearing the dark orange uniform. While this is tolerated according to international standards, priority should be given to civilian clothes in order to fully uphold this right. Welcomingly, and for the second consecutive year, no defendants were handcuffed during the monitored hearings.

Figure 21: Respect for the right to the presumption of innocence, by target court¹²²

Duration	Phnom Penh AC			Battambang AC			Tboung Khmum AC			Preah Sihanouk AC		
	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A
Was the defendant handcuffed throughout the hearing?	0	332	128	0	235	111	0	98	78	0	103	33
Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	0	460	0	3	343	0	0	176	0	0	135	0

¹²⁰ UN General Assembly, 'UN Standard Minimum Rules for the Treatment of Prisoners,' Resolution 70/175 (17 December 2015), <https://tinyurl.com/3hrbhupp>

¹²¹ See CCHR's Newsletter 'Prisoners Uniform and Presumption of Innocence' (June 2017), <https://tinyurl.com/yf2th37h>

¹²² This data is based on the total number of defendants (1,118 individuals) involved in the 772 cases monitored. N/A = The defendant was either absent or were not imprisoned.

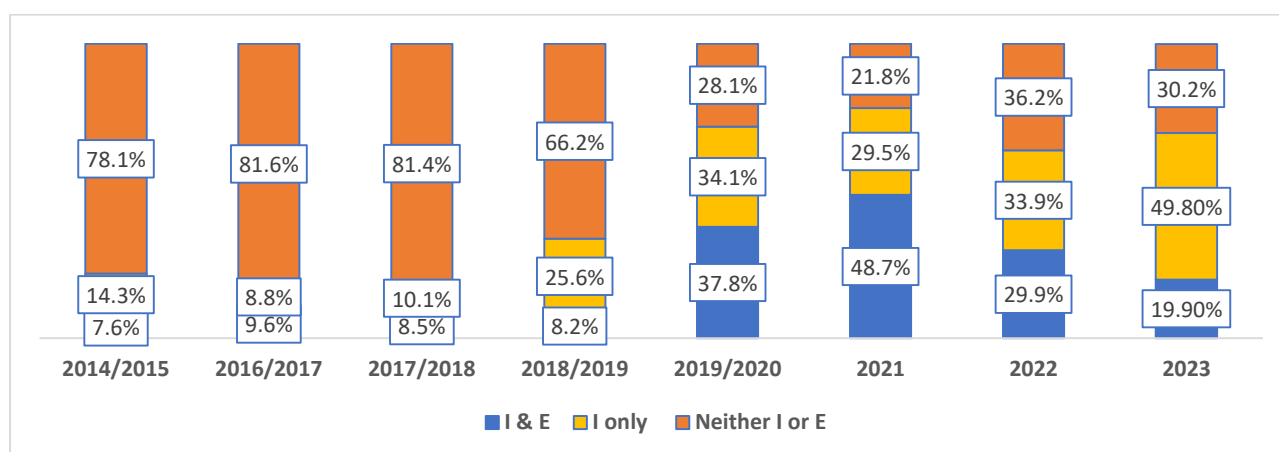
Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant?	0	375	85	0	285	61	0	129	47	0	123	13
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Phnom Penh Appeal Court

The Phnom Penh Appeal Court failed to inform or explain the right to remain silent to defendants in 30.2% of the relevant monitored cases (88 out of 291). This is a slight decrease from 2022, when this figure stood at 36.2%, and remains a significant improvement from the first four reporting periods (see figure 22), which is commendable. However, CCHR deplores that the Court only followed the good practice of explaining this right in 19.9% of relevant cases in 2023, confirming the downward trend observed since this percentage reached 48.7% in 2021—the highest ever recorded at the Court. Measures should therefore be taken to, at the very least, return to that year’s levels.

Court representatives had previously stated that the principle of the presumption of innocence does not require the judges to inform the defendants of their right to remain silent. It added that defendants are nevertheless free to exercise it if they wish.¹²³ In November 2023, representatives from the Court and General Prosecution attached to the Court acknowledged that judges sometimes fail to inform defendants of their right to remain silent. They said the Court will organize a meeting with all the judges and instruct them to do it on a systematic basis.¹²⁴ The Phnom Penh Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal affirmed that the court will review and improve procedures regarding the right to remain silent by ensuring defendants are informed of this right.¹²⁵

Figure 22: Evolution of the percentage of relevant cases where the judge informed (I) and explained (E) to defendants their right to remain silent (2014-2023)¹²⁶



¹²³ Letter No. 431/21 issued on 12 October 2021 by the Phnom Penh Court of Appeal in response to the findings of CCHR’s 2019/2020 Report on Fair Trial Rights.

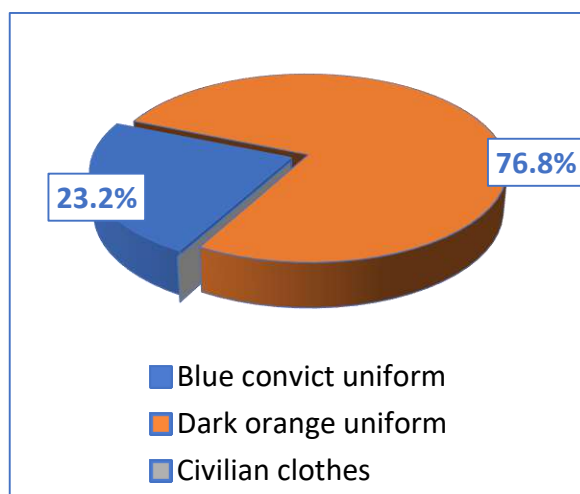
¹²⁴ On 16 November 2023, CCHR representatives met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR’s trial monitoring activities.

¹²⁵ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal in response to the findings of CCHR’s 2023 Annual Report on Fair Trial Rights.

¹²⁶ The data presented in this table is based on the number of cases in which the defendants attended the monitored hearings during each reporting period.

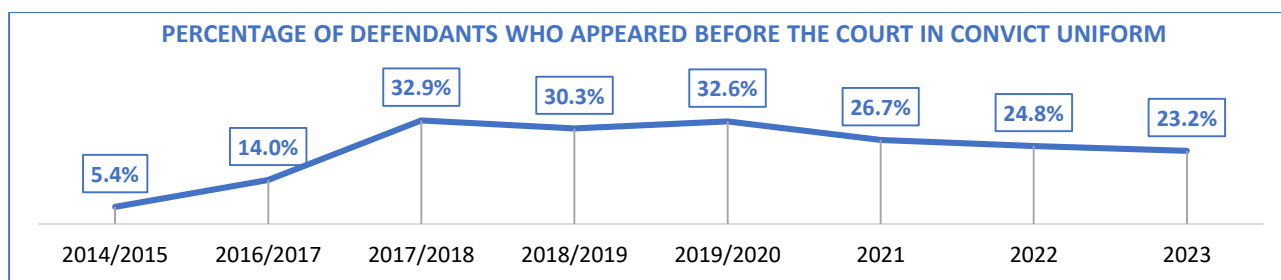
For the sixth consecutive year, the Phnom Penh Appeal Court failed to reach the benchmark set by CCHR, which would classify the right to the presumption of innocence as being respected. Although the percentage of defendants attending their hearings in the blue uniform for convicts slightly gradually decreased from 32.6% in 2019/2020 to 23.2% in 2023 (77 out of 332), these figures still fall short of CCHR's threshold to consider this primary fair trial right as upheld. CCHR deplores that the Court could never return to the compliance rate observed in 2014/2015 when roughly one in 20 defendants attended their hearing in a blue uniform in the relevant cases monitored. The Phnom Penh Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal emphasized that the right to presumption of innocence is a fundamental right of defendants, which the court must respect scrupulously. However, they clarified that it is not a right that the court is explicitly obligated to inform defendants about.¹²⁷

Figure 23: Clothing worn by defendants subject to pre-trial detention before the Phnom Penh Appeal Court¹²⁸



This lack of meaningful progress remains 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. In 2020, Court representatives stated that the question of the defendants' uniform did not fall under their responsibility, adding that they would not interfere with the practice of the General Department of Prisons.¹²⁹ In November 2023, Court and General Prosecution representatives said they had raised this issue with prison authorities, but that the problem still persists. They said they would bring it up once more with the General Department of Prisons.¹³⁰

Figure 24: Percentage of defendants who appeared before the Phnom Penh Appeal Court in convict uniform (2021-2023)¹³¹



¹²⁷ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

¹²⁸ The data presented in this chart is based on the number of defendants subject to pre-trial detention who attended the hearings monitored at the Phnom Penh Appeal Court in 2023 (332).

¹²⁹ 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 CCHR's 2018/2019 Report on Fair Trial Rights.

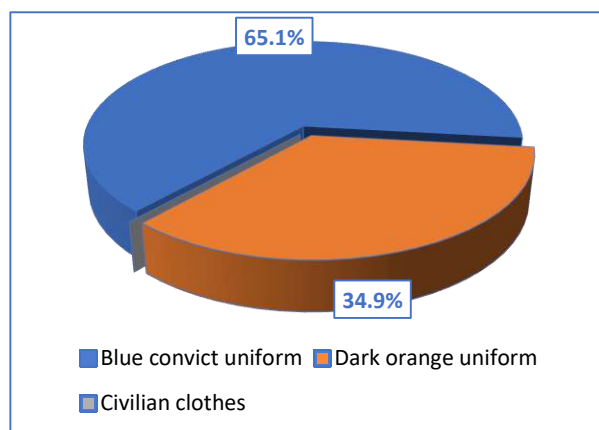
¹³⁰ On 16 November 2023, CCHR team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR's trial monitoring activities.

¹³¹ The data presented in this chart is based on the number of defendants subject to pre-trial detention who attended the hearings monitored at the Phnom Penh Appeal Court during each reporting period.

Battambang Appeal Court

The Battambang Appeal Court achieved great progress when it comes to informing defendants about their right to remain silent during the Reporting Period, failing to do so in only 24.3% of the relevant cases monitored in 2023 (54 out of 222), down from 55.6% in 2022. In addition, it followed the good practice of explaining this right in 70.3% of relevant cases (156 out of 222). This is the highest figure among the target courts and a significant improvement from 2022, when this percentage stood at 21.8%. Measures should now be taken to ensure that this commendable progress is not reverted over time.

Figure 25: Clothing worn by defendants subject to pre-trial detention before the Battambang Appeal Court¹³²



In stark contrast with the encouraging data presented above, CCHR notes with concern that the percentage of imprisoned defendants who wore blue uniforms in the relevant cases monitored reached 65.1% in 2023 (153 out of 235), up from 47.4% in 2022. This figure, the highest observed during the Reporting Period, makes the Battambang Appeal Court the only target court that did not manage to better uphold the right to the presumption of innocence in 2023. The fact that such a high percentage of defendants wore blue uniforms at their hearings is particularly troubling. As mentioned

earlier, this conveys the message that they are guilty prior to the delivery of the verdict, potentially introducing a bias that could influence the trial outcome in their disfavor.

These findings point to the need for urgent measures to reverse this downward trend, and justify classifying this right as not being respected by the Court for the second consecutive year. In December 2022, the Deputy President of the Court noted that he had requested prison officials to bring defendants in their own clothes, but they responded that it was prohibited on security grounds by the General Department of Prisons.¹³³ In August 2023, Court representatives said this matter falls under the exclusive responsibility of the prison authorities.¹³⁴

Preah Sihanouk Appeal Court

Concerningly, the Preah Sihanouk Appeal Court failed to inform the right to remain silent in 86.7% of the relevant cases monitored (65 out of 75), marking a slight deterioration compared to 2022, when this figure stood at an already disappointing 83.3%. In addition, judges only explained this right in 12% of relevant cases (nine out of 75), up from 3.7% in 2022. In March 2023, Court representatives said judges do not need to inform the defendants represented by a lawyer about this right, given that doing so theoretically falls under

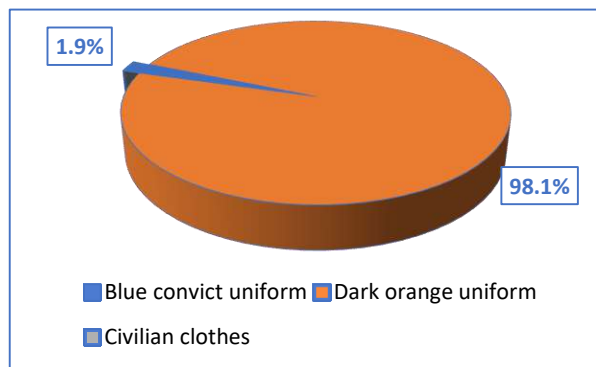
¹³² The data presented in this chart is based on the number of defendants subject to pre-trial detention who attended the hearings monitored at the Battambang Appeal Court in 2023 (235).

¹³³ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹³⁴ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with the representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

the latter's responsibility.¹³⁵ Although CCHR agrees that, at the very least, this right should be systematically explained to unrepresented defendants, it also strongly urges the Court to extend this measure to all the accused to make sure that they fully understand it and do not inadvertently incriminate themselves. In September 2023, Court and General Prosecution representatives acknowledged that judges sometimes fail to inform the accused about the right to remain silent. However, they noted that most defendants understand and exercise it. The representatives also said the Court never coerces a defendant to answer a question and eventually moves to another question if the accused fails to respond.¹³⁶ In August 2024, representatives from the Preah Sihanouk Court of Appeal noted that sometimes the accused, even when wearing a convict uniform, maybe a convict in a separate case, and prison officials have not changed their attire for the current proceedings. A representative from the General Prosecution attached to this court affirmed that this practice does not constitute a procedural error, as it is not explicitly addressed in the law. However, CCHR assessed this practice as potentially inappropriate. Regarding the right to be informed, it was noted that defendants are typically informed of their rights at the Court of First Instance. Additionally, some appeals from defendants involve denials of charges, sentences, or compensation claims from civil parties.¹³⁷

Figure 26: Clothing worn by defendants subject to pre-trial detention before the Preah Sihanouk Appeal Court¹³⁸



Welcomingly, the percentage of defendants who underwent trial wearing blue prison uniforms in the relevant cases monitored reached a mere 1.9% (2 out of 103) during the Reporting Period. This is the lowest figure ever recorded and an even stronger performance than in 2022, when it stood at 20%. As per CCHR's new evaluation methodology, these findings justify classifying the right to the presumption of innocence as being upheld by the Preah Sihanouk Appeal Court for the second consecutive year. CCHR commends the

Court for its commitment to upholding this right and calls on it to now focus on ensuring that defendants can stand trial in civilian attire. In March 2023, Court representatives said they had told prison officials to let defendants wear civilian clothes during hearings,¹³⁹ seemingly to no avail.

Tboung Khmum Appeal Court

The percentage of relevant cases where judges at the Tboung Khmum Appeal Court failed to inform or explain the right to remain silent decreased from 52.8% in 2022 to 28.9% in 2023 (28 out of 97). In addition to this promising evolution, judges explained this right in 35.1% of relevant cases, up from 24.5% in 2022. Thus, despite the persistence of shortcomings, CCHR notes with appreciation the efforts made to ensure that more

¹³⁵ On 28 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹³⁶ Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of CCHR's 2022 Annual Report on Fair Trial Rights.

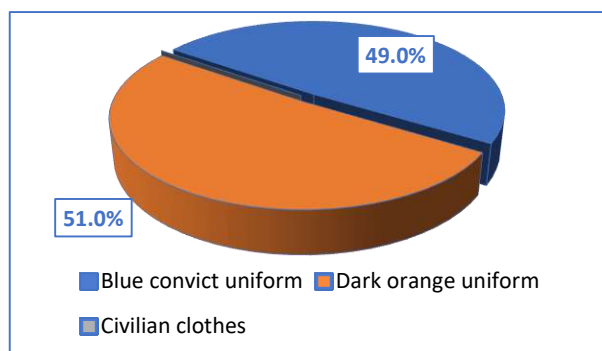
¹³⁷ On 13 August 2024, the CCHR team met with the Preah Sihanouk Court of Appeal and General Prosecution representatives to present the findings of the report on its trial monitoring.

¹³⁸ The data presented in this chart is based on the number of defendants subject to pre-trial detention who attended the hearings monitored at the Preah Sihanouk Appeal Court in 2023 (103).

¹³⁹ On 28 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

defendants are made aware of and understand this right. It now calls on the Court to ensure that this is done on a systematic basis.

Figure 27: Clothing worn by defendants subject to pre-trial detention before the Tboung Khmum Appeal Court¹⁴⁰



On a more negative note, 49% of the imprisoned defendants who attended their trial did so wearing blue uniforms in the relevant cases monitored at the **Tboung Khmum** Appeal Court in 2023 (48 out of 98). While this figure represents a significant and commendable decrease compared to 2022, when it stood at 65.3%, the fact that nearly one in two defendants were still affected by this issue during the Reporting Period is still cause for concern. Although CCHR is still not in a position to classify the right to the presumption of

innocence as being respected by the Court, it hopes that judges will take the necessary measures to consolidate this downward trend with a view of achieving greater respect for this right in 2024.

In November 2023, Court and General Prosecution representatives explained that although judges typically instruct prison officials to let defendants change from the blue uniform ahead of the hearing, this action is often hindered by concerns they might try to escape during the process. They said flight risk could be mitigated if the courtroom had technical standards comparable to those in other countries and stated that they were committed to finding alternative solutions to address this issue effectively.¹⁴¹ In August 2024, representatives from the Tboung Khmum Court of Appeal and the General Prosecution stated that the court had already purchased civilian clothes to replace convict uniforms, but the practice had not yet been implemented.¹⁴²

¹⁴⁰ The data presented in this chart is based on the number of defendants subject to pre-trial detention who attended the hearings monitored at the Tboung Khmum Appeal Court in 2023 (98).

¹⁴¹ On 3 November 2023, CCHR team met with representatives from the Tboung Khum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁴² On 8 August 2024, CCHR representatives met with the Tboung Khmum Court of Appeal and General Prosecution representatives to present the report's findings from its trial monitoring.

5. Fair Trial Rights Not Fully Respected

5.1. Right to liberty

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

Article 9(1) of the ICCPR guarantees everyone freedom from confinement of the body,¹⁴³ meaning not to be physically deprived of their liberty to come and go as they wish.¹⁴⁴ The right to liberty is however not absolute. Individuals can be deprived of their liberty on the basis of criminal charges, such as being placed in police custody, held in pre-trial detention, imprisoned after conviction, etc.¹⁴⁵ 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 law¹⁴⁶ 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.

Cambodian legislation explicitly states that, in principle, an accused shall have freedom,¹⁴⁷ and that pre-trial detention can only be used in “special cases.”¹⁴⁸ It must be necessary to: (1) stop the offense or prevent the offense from happening again; (2) prevent any interferences on witnesses or victims or prevent any collusion between the accused person and the accomplice; (3) maintain evidence or material leads; (4) ensure the accused is kept for the court to decide according to its procedures; (5) protect the security of the accused; and (6) maintain public order to avoid any chaos caused by the offense.¹⁴⁹

Trial monitoring data shows that continued to make extensive use of pre-trial detention, with 2023 seeing an increase in the percentage of defendants affected at three of the four target courts. During the Reporting Period, 75.4% of the accused involved in the monitored cases for which this information is available were subject to this measure (691 out of 917), up from 72.6% in 2022. All of them remained in custody between their appeal hearing and the target courts’ verdict. The fact that more than three in four defendants were held in pre-trial detention testifies to a neglect of the principle of liberty and a blatant misuse of a process designated for special cases. It also amounts to a violation of Cambodia’s obligations under the ICCPR. CCHR also notes with concern that, during the Reporting Period, 18.1% of the defendants who were subject to pre-trial detention and whose date of arrest is known (67 out of 371) had already spent more than two years in custody at the time of their appeal hearing (see figure 29).

¹⁴³ UNHRC, General Comment 35, para. 3.

¹⁴⁴ 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://tinyurl.com/cmkduna9>

¹⁴⁵ UNHRC, General Comment 35, para. 5.

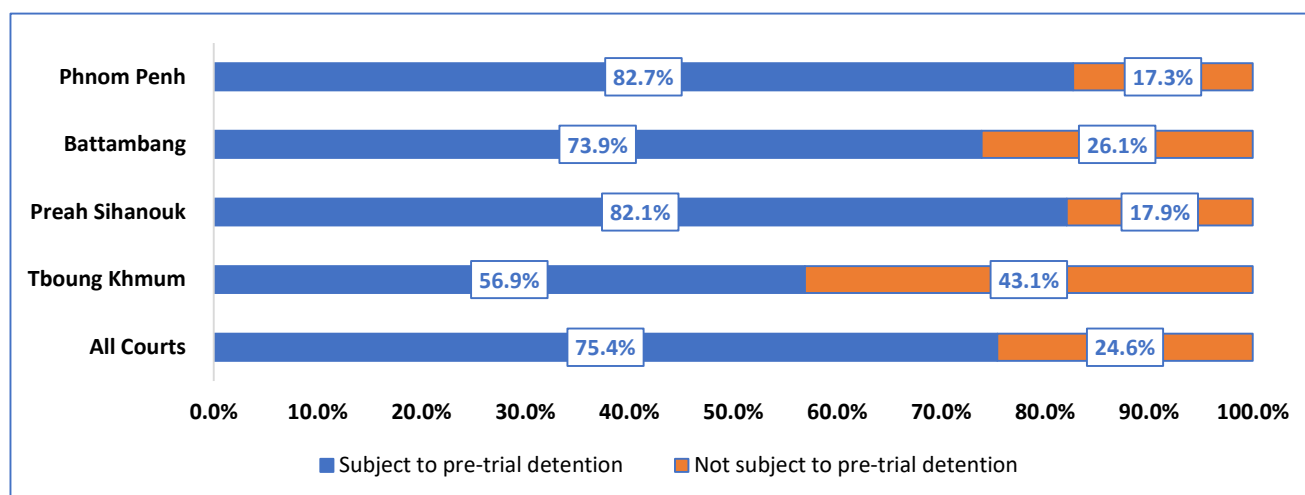
¹⁴⁶ UNHRC, General Comment 35, para.10.

¹⁴⁷ CCPC, Art. 203.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.* Art. 205.

Figure 28: Percentage of defendants subject to pre-trial detention, by target court¹⁵⁰



Concerningly, between the 2022 and 2023 reporting periods, the percentage of defendants who were subject to pre-trial detention ahead of the monitored hearings increased from 75.9% to 82.7% (307 out of 371) at the **Phnom Penh** Appeal Court; from 71.2% to 73.9% (184 out of 249) at the **Battambang** Appeal Court; and from 76.7% to 82.1% at the **Preah Sihanouk** Appeal Court. In August 2023, the **Battambang** Appeal Court said that the cases involving defendants in pre-trial detention were always processed in priority, as exemplified by the figures above. It further noted that this showed the Court's efforts to promote the right to be tried without undue delay.¹⁵¹ In September 2023, the **Preah Sihanouk** Appeal Court and General Prosecution attached to the Court pointed out that pre-trial detention is always a measure of last resort based on the facts and merits of each case, adding that the number of people that are already in pre-trial detention should not be factored in when deciding to impose such a measure.¹⁵² In August 2024, the Preah Sihanouk Court of Appeal and General Prosecution representatives affirmed that the court made decisions to continue in-prison detention or allow bail based on requests from the lawyer or defendant. Conversely, the court did not make any such decisions without a formal request.¹⁵³

By contrast, trial monitoring at the **Tboung Khmum** Appeal Court showed an encouraging year-on-year decrease in the use of pre-trial detention, with 56.9% of the defendants involved in the relevant hearings monitored there being subject to this measure in 2023, down from 61.6% in 2022. This significant difference between this Court and its counterparts suggests that the investigating judges operating within its jurisdiction have a higher tendency to opt for alternatives to pre-trial detention, which is commendable. Despite this positive finding, CCHR is not in a position to classify the right to liberty as being fully upheld within the Tbong Khmum Appeal Court's jurisdiction due to the fact that over half of the defendants who stood trial there

¹⁵⁰ This data is based on the number of defendants involved in cases monitored in 2023 for which information about whether they were subject to pre-trial detention is available (917 out of 1,118).

¹⁵¹ On 29 August 2023, CCHR's Fair Trial Rights Team met with representatives from the Battambang Court of Appeal and General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

¹⁵² Letter No.1919/23 issued on 20 September 2023 by the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in response to the findings of CCHR's 2022 Annual Report on Fair Trial Rights.

¹⁵³ On 13 August 2024, the CCHR team met with the Preah Sihanouk Court of Appeal and Prosecution representatives to present the findings of the report from its trial monitoring.

during the Reporting Period had to wait for their hearing in custody. The same goes for the other target courts' jurisdictions.

It is crucial that the use of pre-trial detention remains the exception and that the right to liberty of the accused, who are innocent until proven guilty, is preserved whenever possible. Should measures to ensure the accused are present at trial or at the execution of judgement when applicable be necessary, less intrusive measures such as judicial supervision should systematically be prioritized.

Figure 29: Total time spent in pre-trial detention at the time of the appeal hearing, by target court¹⁵⁴

Duration	Phnom Penh AC	Battambang AC	Tboung Khmum AC	Preah Sihanouk AC	Total
Less than 1 year	51	24	19	16	110
1 to 2 years	105	32	22	35	194
>2 to 3 years	26	0	4	6	36
>3 to 4 years	28	0	3	0	31
>4 to 5 years	N/A	N/A	N/A	N/A	N/A
More than 5 years	N/A	N/A	N/A	N/A	N/A
Data not available	97	128	51	44	320
Total	307	184	99	101	691

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

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

Article 14(3)(g) of the ICCPR guarantees the right of an individual not to be compelled to confess guilt or to testify against themselves.¹⁵⁵ Firstly, this means that no direct or indirect physical or psychological coercion must be used to compel a suspect or an individual subject to criminal charges to provide evidence against themselves.¹⁵⁶ Secondly, this means that such individuals cannot be compelled to self-incriminate by testifying

¹⁵⁴ This data is based on the number of defendants who were subject to pre-trial detention (691) in the cases that were monitored in 2023.

¹⁵⁵ 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://tinyurl.com/8iy3ynni>

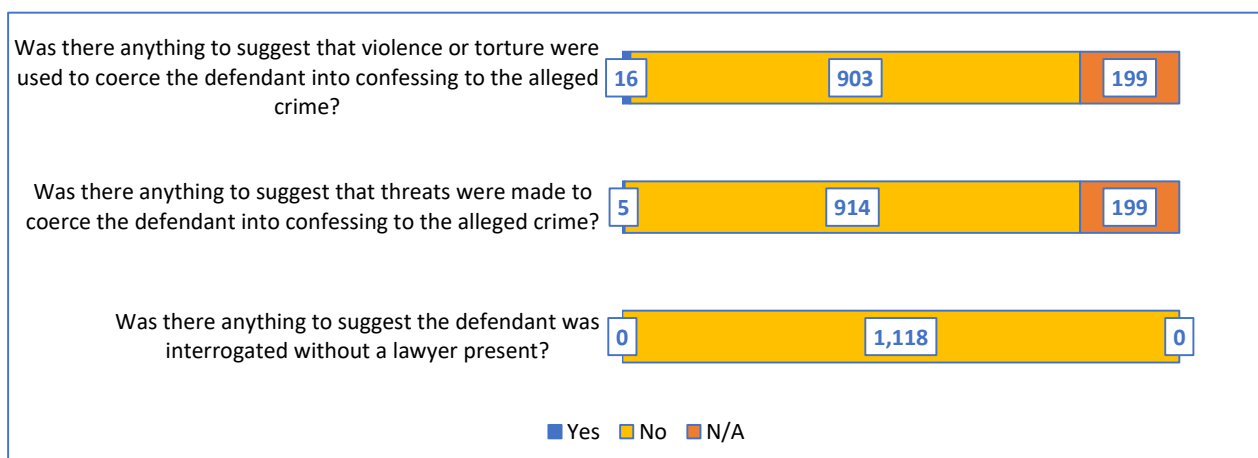
¹⁵⁶ UNHRC, General Comment 32, para. 41; see also UNHRC, Communication 912/2000, *Deolall v. Guyana* (1 November 2004), CCPR/C/82/D/912/2000, para. 5.1, <https://tinyurl.com/9ch8r85e>; UNHRC, Communications 1263/2004 and 1264/2004, *Khuseynova*

against themselves and must enjoy the unfettered right not to provide evidence that could be used against them.¹⁵⁷ 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.¹⁵⁸ In cases involving children in conflict with the law, the law is more general: they must not be compelled to “give testimony.”¹⁵⁹

The right not to be compelled to confess guilt or to testify against oneself encompasses the absolute prohibition of torture and cruel, inhuman, or degrading treatment or punishment as enshrined in Article 5 of the UDHR, Article 7 of the ICCPR, and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), notably in its article 15. Any confession or statement obtained through the use of coercion, torture, or other ill-treatment must be discarded, except if it is used as evidence that coercion, torture, or any other form of ill-treatment occurred.¹⁶⁰ In August 2024, representatives from the Tboung Khmum Court of Appeal and the General Prosecution stated that if a defendant alleges coercion during a confession to judicial police officers, the burden of proof lies with the defendant, not the prosecution. In such cases, the court will summon the relevant parties for questioning.¹⁶¹

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

Figure 30: The right not to be compelled to confess guilt or to testify against oneself¹⁶²



and *Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263–1264/2004, para. 8.3, <https://tinyurl.com/3768t8cd>; ECCC, Kaing Guek Eav alias Duch (Case 001), Trial Chamber, (26 July 2010) para. 360.

¹⁵⁷ ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

¹⁵⁸ ECtHR, *Condron v. the United Kingdom* (2 May 2000) App no. 35718/97, para. 56, <https://tinyurl.com/yc4tphd8>; ECtHR, *Beckles v. the United Kingdom* (8 October 2002) App no 44652/98, para. 58, <https://tinyurl.com/3bw72a74>

¹⁵⁹ CRC, Art. 40(2)(b)(iv).

¹⁶⁰ UNHRC, General Comment 32, para. 41.

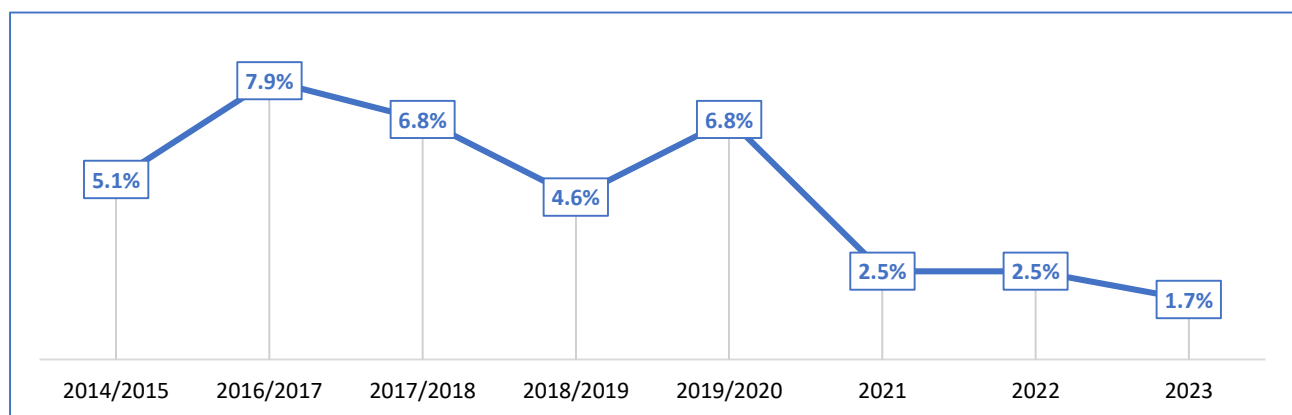
¹⁶¹ On 8 July 2024, the CCHR team met with the Tboung Khum Court of Appeal and General Prosecution representatives to present the report’s findings from its trial monitoring.

¹⁶² This data is based on the total number of defendants (1,118 individuals) involved in the 772 cases monitored. N/A = Neither the defendant nor their lawyer was present, there was therefore no one to raise the issue.

During the Reporting Period, none of the 1,118 defendants insinuated that they had been interrogated without their lawyer being present. This is encouraging, and shows a decrease from 2022 figures, where six such instances were documented. In addition, only five defendants (0.4% of the total) alleged that they were threatened into giving a confession (one at both the **Phnom Penh** and **Tboung Khmum** Appeal Courts, and three at the **Battambang** Appeal Court), down from eleven in 2022 (1.5% of the total).

Concerningly, however, 16 defendants (1.7% of the 919 defendants involved in cases where either the accused or their lawyer attended the monitored hearing) stated that violence or torture was used on them in order to obtain a confession to the alleged offences during the investigations carried out by the judicial police. This is roughly equivalent to the figure documented in 2022 using the same criteria, when 17 defendants (2.5% of that year's relevant total) made such claims, and the lowest percentage ever recorded by CCHR, which is encouraging. Although the percentage of defendants who reported experiencing violence to coerce them into confessing has consistently decreased since 2019/2020, as demonstrated in the chart below, the fact that similar allegations were raised in every single Reporting Period suggests that physical abuse in police custody remains a persistent problem.

Figure 31: Trends in defendants claiming police violence or torture to coerce confessions before the Phnom Penh Appeal Court (2014-2021) and the four target courts (since 2022)¹⁶³



In 2023, most allegations of torture in police custody were raised before the **Preah Sihanouk** Appeal Court (eight defendants, making up 6.3% of the total), followed by the **Phnom Penh** Appeal Court (four defendants, 1% of the total), the **Battambang Appeal Court** (three, 1.1% of the total), and the **Tboung Khmum** Appeal Court (one, 0.7% of the total). Despite these relatively low figures, indications of coercion or abuse 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, and it is widely accepted as a peremptory norm of international law (*jus cogens*).¹⁶⁴

¹⁶³ This data is based on the percentage of defendants who alleged that violence or torture were used to coerce them into confessing to the alleged crime before the Phnom Penh Appeal Court (until 2021); and on the percentage of defendants who alleged the same before the four target courts in cases where either the accused or their lawyer attended the monitored hearing (from 2022 onwards). Given that the Phnom Penh Appeal Court had jurisdiction over the entire country before the three provincial appeal courts began adjudicating cases in April 2020, figures up until the 2019/2020 reporting period can be considered as reflecting national trends. This is also applicable to figures from 2022 onwards, as CCHR started trial monitoring at the three provincial courts that year. The figure for 2021 is provided to avoid gaps in data and only reflects the situation in the provinces under the jurisdiction of the Phnom Penh Appeal Court.

¹⁶⁴ Manfred Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2nd ed, N.P. Engel 2005), p. 157.

International Human Rights Law Terminology:

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

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

Peremptory norm of general international law (*jus cogens*): “A norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹⁶⁵

In August 2023, representatives from the **Battambang** Appeal Court said that, in general, defendants who allege that they faced intimidation or torture in police custody cannot present reliable evidence. Therefore, it is up to the judge to decide whether to take these allegations into account.¹⁶⁶ In November 2023, representatives from the **Phnom Penh** Appeal Court and General Prosecution attached to the Court said that there is no point in raising allegations of violence or torture committed during the police investigation at the appeal hearing stage because requests to nullify investigation proceedings cannot be made once the investigation chamber has adopted its settlement warrant, as per CCPC article 256. However, they said that, although appeal judges pay particular attention to such claims, defendants usually fail to provide enough evidence to back them up.¹⁶⁷

In light of these comments, CCHR feels obligated to recall that, if a defendant alleges a violation of their right not to be compelled to confess guilt, 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.¹⁶⁸ In the absence of any indication that meaningful investigations into the torture allegations raised by defendants were conducted during the Reporting Period, CCHR decided to classify this right as not being fully upheld by the Cambodian justice system for the eighth consecutive year. The fact that more than one in twenty defendants who stood trial at the **Preah Sihanouk** Appeal Court in 2023 claimed that they were abused at the investigation stage is also particularly troubling, for it suggests that this issue is more prevalent in the police stations within its jurisdiction. In August 2024, a representative from the Preah Sihanouk Court of Appeal recounted instances where defendants claimed to have been coerced into confessing by judicial police officers. However, when the court inquired about the identities of these officers, the defendants instead requested a reduction in their sentence. A representative from the Preah Sihanouk General Prosecution emphasized that this report does not delve deeply into criminal procedure but primarily focuses on the rights of the accused.¹⁶⁹

¹⁶⁵ International Law Commission, ‘Report of the International Law Commission on the Work of its Seventy-first Session,’ Supplement No. 10 (A/74/10) (2019), para. 56, <https://tinyurl.com/42tkj27m>

¹⁶⁶ On 29 August 2023, CCHR’s Fair Trial Rights Team met the representatives from the Battambang Court of Appeal and the General Prosecution Office attached to Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

¹⁶⁷ On 16 November 2023, CCHR’s Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR’s trial monitoring activities.

¹⁶⁸ 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://tinyurl.com/3zhujfvk>; 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://tinyurl.com/4ccert5k>

¹⁶⁹ On 13 August 2024, the CCHR team met with the Preah Sihanouk Court of Appeal and General Prosecution representatives to present the report’s findings from its trial monitoring.

5.3. Evidentiary rights

International Law	Cambodian Law	
ICCPR	CCPC	Law on Juvenile Justice
Article 14(3) (e)	Articles 153, 154, 298, 321, 322, 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.¹⁷⁰ 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.¹⁷¹

Welcomingly, in none of the 772 hearings monitored during the Reporting Period did something suggest that the defense was not given the opportunity to call witnesses. This had happened in three cases in 2022, amounting to merely 0.6% of the total. In addition, and for the second consecutive year, nothing suggested that any party was not given the opportunity to present evidence or to view the case file before the hearing; or that the judge based their verdict on evidence that was not in the case file or presented at trial. While this is encouraging, evidentiary rights remain not fully respected for three main reasons.

Firstly, the target courts must ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity). The quality and quantity of the evidence presented and considered during hearings is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should therefore be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence, and forensic evidence. Yet, CCHR notes with concern that prosecutors only presented forensic evidence in one of the hearings monitored in 2023, amounting to a troubling 0.13% of the total. In the same vein, they never presented medical evidence, and in only 7.4% of cases were witnesses called to testify (57 out of 772). This deficiency in presenting varied forms of evidence not only undermines the integrity of judicial proceedings but also risks compromising the fairness and accuracy of verdicts.

Confessions, while potentially valuable pieces of evidence, can be influenced by various factors such as coercion, duress, or even misunderstanding. These factors may lead to inaccuracies in the portrayal of events, jeopardizing the reliability of judicial outcomes. Therefore, it is imperative to adopt a cautious approach and ensure that verdicts are mostly based on other forms of evidences. In 2023, confessions were presented in 87 of the hearings monitored for which the verdict is known. They were relied on by judges as evidence in 21 cases, amounting to 25.9% of the total. This represents a major improvement compared to 2022, when

¹⁷⁰ 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://tinyurl.com/zv93nahs>

¹⁷¹ See e.g. ECHR, *Mirilashvili v. Russia* (11 December 2008), App no. 6291/04, para. 163, <https://tinyurl.com/4kktr8yr>; ECtHR, *Asch v. Austria* (26 April 1991) Series A no. 203, para. 27, <https://tinyurl.com/bdfpm2ah>; ECtHR, *Isgrò v Italy* (19 February 1991) Series A no. 194-A, para. 34, <https://tinyurl.com/39mz7s7h>; ECtHR, *Kostovski v. the Netherlands* (20 November 1989) Series A no. 166, para. 41, <https://tinyurl.com/2e2pbxsh>

this figure stood at 63%. Welcomingly, the **Phnom Penh** Appeal Court resorted to rely on confessions in one-third of relevant cases during the Reporting Period (three out of nine), down from 78.3% in 2022. This figure also decreased year-on-year from 21.4% to 11.1% (seven out of 63) at the **Battambang** Appeal Court, confirming the encouraging performance observed there in 2022. Concerningly, however, the **Preah Sihanouk** Appeal Court continued to rely on confessions in 73.3% of relevant cases (11 out of 15), down from 100% in 2022. The **Tboung Khmum** Appeal Court did not deal with any cases featuring a confession.

Secondly, Cambodian law mandates that summoned experts and witnesses stay in a waiting room prepared for them and from which they cannot see or hear anything in the courtroom before they testify.¹⁷² Although witnesses who have not been formally summoned can initially be in the courtroom during the confrontation, they are to be instructed to stay in the waiting room if the hearing's chairman decides to hear them at the request of a party.¹⁷³ However, in 36.8% of the cases in which witnesses were called (21 of the 57), these were present in the courtroom before they were questioned. Although this is a slight improvement from 2022, when this percentage stood at 41.9%, the fact that this still happened in over one-third of relevant cases is cause for concern, for this practice can lead to a witness's testimony being influenced by the testimony of other witnesses prior to giving evidence. As in other sections, there were disparities between the target courts, though none of the three courts for which enough data is available performed satisfactorily.

Concerningly, both the **Battambang** and the **Tboung Khmum** Appeal Court saw a similar year-on-year increase in the percentage of relevant cases where witnesses were allowed to stay in the courtroom before testifying, from 38.9% to 64.3% (nine out of 14) and from 38.5% to 62.5% (10 out of 16), respectively. In December 2022, the Deputy President of the **Battambang** Appeal Court said that, in some cases, the witness was present in the courtroom because the parties had invited them without informing the judge.¹⁷⁴ In August 2023, representatives from the Court said that they allow witnesses to wait in the courtroom if the accused has already confessed. However, new witnesses and witnesses in drug smuggling cases are not allowed inside the courtroom before they testify.¹⁷⁵ In November 2023, representatives from the **Tboung Khmum** Appeal Court and General Prosecution attached to the Court said that when witnesses happen to be judicial police officers, they are allowed to stay in the courtroom because they are professional officials.¹⁷⁶

Witnesses were absent in the courtroom in the only relevant case monitored at the **Phnom Penh** Appeal Court in 2023. By comparison, this had previously happened in 50% of relevant hearings in 2022 (three out of six). However, due to the limited data available for the Reporting Period, CCHR is not in a position to draw any conclusion for this particular target court. The Phnom Penh Court of Appeal affirmed that it could proceed with the hearing without witnesses except in cases where their presence is deemed necessary.¹⁷⁷ Lastly, the percentage of relevant cases where witnesses were allowed to stay in the courtroom before testifying decreased from 50% in 2022 to 40% in 2023 (two out of five) at the **Preah Sihanouk** Appeal Court.

¹⁷² CCPC, Art. 322.

¹⁷³ CCPC, Art. 324.

¹⁷⁴ On 15 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁷⁵ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

¹⁷⁶ On 3 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal in order to discuss the findings of its trial monitoring activities.

¹⁷⁷ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

In December 2022, its President said that clerks sometimes neglect to call or check whether the parties are present, and thus do not know whether potential witnesses are in the courtroom before testifying.¹⁷⁸ Urgent measures should therefore be taken to address this identified shortcoming.

Lastly, 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 CCPC¹⁷⁹ that allow defense lawyers to examine the case file and make copies do not provide the same access to unrepresented defendants. This poses a potential risk that those defendants are denied access to the evidence against them and are unable to adequately prepare their own defense.

5.4. Right to a reasoned judgment

Cambodian Law
CCPC
Articles 357 & 403

The right to a reasoned judgment¹⁸⁰ 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., the 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,¹⁸¹ 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.¹⁸² Within the Cambodian context, this is respected by both the accused and prosecution being able to petition the Supreme Court to review appeal rulings.

Figure 32: Percentage of monitored hearings where judges provided reasons for the verdict¹⁸³

During the Reporting Period, in 79.9% of the cases monitored by CCHR for which the verdict is known (179 out of 224 cases), the judges failed to provide detailed reasons for their judgment, instead only announcing

¹⁷⁸ On 9 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

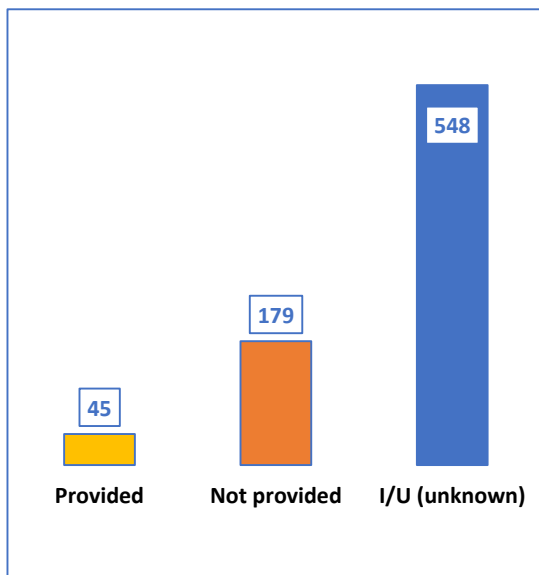
¹⁷⁹ Articles 145, 254, 304, 319, 391, and 428 of the CCPC.

¹⁸⁰ 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://tinyurl.com/5ssncvyy>

¹⁸¹ Amnesty International, 'Fair Trial Manual' (2014) p. 173, Section 24.2.

¹⁸² 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, <https://tinyurl.com/275fa3sr>

¹⁸³ This data is based on the 772 trials monitored in 2023. I/U (unknown) means that the Trial Monitor was not present on the date of the verdict.



the ruling. This figure shows a worrisome lack of progress compared to 2022, when it stood at 80.9%, suggesting that the target courts have yet to fully grasp the importance of this issue and take meaningful action to consistently uphold this right.

This percentage reached 70.4% at the **Phnom Penh** Appeal Court (57 out of 81), down from 81.25% in 2022. Despite this commendable year-on-year decrease, the Court's lack of compliance with 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 2019/2020

saw this figure reach 66.5% before increasing to a staggering 90% in 2021.

In October 2021, the Court said its judges only give the reasons for the verdict if the parties are present, and pointed out that this does not contravene any legal provision.¹⁸⁴ However, in November 2023, Court and General Prosecution representatives said the judges would now briefly state the reasons behind their decision when announcing the judgment so the accused can better understand their case.¹⁸⁵ CCHR welcomes these commitments and will monitor whether they translate into tangible improvements in 2024. The Phnom Penh Court of Appeal and General Prosecution affirmed that they would review and improve the judgment pronouncement procedure by informing the parties of the holding and ruling. Certain limited exceptions exist, including instances where a party is unavailable, time constraints are present, or the case's procedural status necessitates immediate action, such as the expiration of the appeal period.¹⁸⁶

Most alarming are the figures for the **Battambang** and **Preah Sihanouk** Appeal Courts, where judges failed to explain their reasoning in respectively 87.2% (102 out of 117) and 87% (20 out of 23) of cases monitored in 2023 for which the verdict is known. This represents a deterioration in last year's percentages (82.2% and 78.6%, respectively). CCHR hails the necessity for judges to provide reasoning for the verdict and outlines this as a priority area for improvement in the future. In March 2023, the Deputy President of the **Battambang** Appeal Court said the reasons for the verdict are not given if the defendants are absent. However, he pointed out that a full copy of the judgment is always sent to the parties.¹⁸⁷ In July 2024, the Battambang Court of Appeal confirmed that reading the entire holding and ruling in the judgment could be time-consuming, especially in cases where the accused were absent during the pronouncement. Consequently, judges sometimes opted not to read the judgment in detail due to the need to proceed with other cases. However,

¹⁸⁴ 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.

¹⁸⁵ On 16 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of its trial monitoring activities.

¹⁸⁶ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

¹⁸⁷ On 23 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

the court assured that the full judgment would be provided to the defendant. They further added that reading only the ruling does not violate domestic law.¹⁸⁸

CCHR notes with deep preoccupation that, during the Reporting Period, 90.2% of the defendants involved in the cases where a judgment was rendered in the presence of trial monitors were handed down a guilty verdict (276 out of 306). Concerningly, this figure reached 93.6% at the **Phnom Penh** Appeal Court (102 out of 109), showing little improvement compared to 2022, when it stood at 93%. Even more worrisome is the fact that similarly high conviction rates have been observed at the Court since the 2016/2017 Reporting Period. In the same vein, this percentage increased year-on-year from 83.3% to 91.7% (143 out of 156) at the **Battambang** Appeal Court, and from 85% to 86.1% (31 out of 36) at the **Preah Sihanouk** Appeal Court. These high figures, taken together with the lack of a reading of the reasoned decision, creates cause for concern as to whether the accused's fair trial rights were respected, and justifies classifying the right to a reasoned judgment as being not fully respected by these three Courts for the second consecutive year. Representatives from the Preah Sihanouk Court of Appeal and the General Prosecution stated that in cases where the defendant is absent but their defense lawyer is present, the judge consistently reads the holding of the judgment. They further noted that this report seems to focus heavily on criminal procedure at the Court of First Instance.¹⁸⁹

It should be noted that, during the Reporting Period, CCHR could only record three verdicts at the **Tboung Khmum** Appeal Court. Although the judge did provide reasons for these particular verdicts, the lack of data on other cases prevents CCHR from drawing definitive conclusions and assessing whether the Court consistently upheld the right to a reasoned judgment in 2023. The same issue was encountered in 2022, when only one verdict was documented. In September 2023, representatives from the Court said some verdicts were not delivered on the day of the hearing because not all the parties were present.¹⁹⁰ Quite promisingly, none of the three defendants involved in the three cases monitored in 2023 were handed a guilty verdict.

5.5. Professionalism of judges

International Law	Cambodian Law		
ICCPR	Constitution	LSJP	Cambodian Code of Judicial Ethics
Articles 14(1) & 14(5)	Articles 128 & 132	Articles 8, 50 & 77	Articles 2 & 8

Guaranteed by Article 14(1) of the ICCPR, the right to be tried fairly by a competent, and impartial tribunal is a cornerstone of fair trial rights.¹⁹¹ Without respect for this right, all other fair trial rights become superfluous. Indeed, a tribunal that is not competent, and impartial is incapable of discharging its duty to ensure fair trials

¹⁸⁸ On 25 July 2024, the CCHR team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to this court to present the report's findings from its trial monitoring.

¹⁸⁹ On 13 August 2024, the CCHR team met with the Preah Sihanouk Court of Appeal and the General Prosecution representatives to present the findings of a report from its trial monitoring.

¹⁹⁰ On 18 September 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal to discuss the findings of its trial monitoring activities.

¹⁹¹ 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://tinyurl.com/3s3n2489>

and to properly administer justice. Judges must therefore convey an image of professionalism at all times to appear competent, 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 provide fair justice to the parties. The Courts are therefore encouraged to dedicate adequate time to hearing cases in order to ensure that they are properly and thoroughly adjudicated, and that all the fair trial rights of the defendants are fully respected.

During the Reporting Period, and for the second consecutive year, none of the prosecutors or the judges made discriminatory comments towards any party, including the defendants. However, CCHR notes that there were eight instances of judges using inappropriate words during the hearing—seven at the **Phnom Penh** Appeal Court and one at the **Battambang** Appeal Court—and two instances of prosecutors doing the same—one each at the **Phnom Penh** and **Battambang** Appeal Court. Although these figures amount to merely 1% and 0.3% of the total cases monitored in 2023, respectively, particular attention should be paid to avoiding such occurrences. In November 2023, representatives from the **Phnom Penh** Appeal Court and General Prosecution attached to the Court acknowledged that the use of improper words during trial could have detrimental effects on the pursuit of justice and agreed to discuss the issue further in an internal meeting.¹⁹² The General Prosecution stated that they will review instances where judges and prosecutors may have used improper language during hearings and will take steps to address such behavior in the future.¹⁹³

Welcomingly, judges only answered their mobile phones during the hearing in four monitored trials, a mere 0.5% of the total, down from 1% in 2022. Two of these instances took place at the **Phnom Penh** Appeal Court, while the other two happened at the **Battambang** and **Preah Sihanouk** Appeal Courts. In all four cases, the judges responded briefly before hanging up. In August 2023, representatives from the **Battambang** Appeal Court said they were taking measures to prevent such cases from happening.¹⁹⁴ In November 2023, Court and General Prosecution Representatives reiterated that phone conversations were not acceptable during trials and agreed to raise this issue with both judges and prosecutors.¹⁹⁵

Despite the positive findings presented above, CCHR cannot classify the right to be tried by a competent, independent, and impartial tribunal due to the fact that the majority of the hearings monitored were relatively short, raising concerns over the thoroughness with which the cases were examined by the judges, especially regarding the most severe offenses. As per the Human Rights Committee's guidelines, the right to have one's conviction reviewed by a higher tribunal imposes on the State party a duty to review *substantively*, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for *due consideration* of the nature of the case. Before deciding whether there is sufficient

¹⁹² On 16 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR's trial monitoring activities.

¹⁹³ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

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

¹⁹⁵ On 31 October 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

incriminating evidence to justify a finding of guilt, higher courts must look at the allegations against the defendant in *great detail* and consider the evidence submitted at the trial and referred to in the appeal.¹⁹⁶

Yet, CCHR notes with concern that 70.6% of the trials monitored during the Reporting Period lasted 30 minutes or less (545 out of 772), up from 68.5% in 2022. 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 cases. While there are no set standards regarding the length of trials, hearings that last less than 30 minutes, especially when they concern offenses punishable with imprisonment, can hardly provide an enabling environment in which the parties can fully exhaust their cases and the judges can substantially review the case. As in other sections, there were significant disparities between the Courts.

Hearings tended to be much shorter at the **Phnom Penh** Appeal Court, lasting 30 minutes or less in 81.5% of the cases monitored in 2023 (274 out of 336). This figure shows a total absence of progress compared to 2022, when it stood at 81.3%. Concerningly, 33.2% of the hearings that lasted 15 minutes or less during the Reporting Period concerned felonies. In November 2023, Court and General Prosecution representatives said hearings tend to be shorter when there is only one accused, when the defendant is absent or has already confessed to the crime, or when there is enough corroborative evidence to reach a decision without much debate.¹⁹⁷ The Phnom Penh Court of Appeal affirmed that hearings lasting 15 minutes or less were based on the case status, such as non-compliant appeal complaints, appeal withdrawals, absence of parties, or misdemeanor offenses.¹⁹⁸ In the same vein, 78% of the hearings monitored at the **Battambang** Appeal Court lasted 30 minutes or less, up from 72% in 2022. In addition to this lack of year-on-year progress, just over a fifth of the hearings that lasted 15 minutes or less during the Reporting Period concerned felonies (25 out of 118). In August 2023, Court representatives said some hearings were short because the accused had already confessed to the offense or was absent.¹⁹⁹

While the two other target courts fared better in comparison, their disappointing performance is still cause for concern. Firstly, the percentage of monitored hearings that lasted 30 minutes or less at the **Preah Sihanouk** Appeal Court increased from 44.1% in 2022 to 54.7% in 2023 (41 out of 75); with 31.6% of the hearings that lasted 15 minutes or less concerning felonies (6 out of 19). Representatives from the Preah Sihanouk Court of Appeal and General Prosecution explained that some cases were brief due to the defendant having already confessed or appealing solely for a sentence reduction, leaving no points for debate.²⁰⁰ Secondly, while only 35% of the hearings monitored at the **Tboung Khmum** Appeal Court lasted 30 minutes or less in 2023 (42 out of 120), this figure still represents a slight increase compared to 2022, when it stood at 33.9%. However, CCHR notes with appreciation that only one felony hearing lasted 15 minutes or less, amounting to 16.7% of the total. In November 2023, Court and General Prosecution Representatives said some hearings were short because some parties were not present in the courtroom.

¹⁹⁶ UNHRC General Comment 32, para. 32.

¹⁹⁷ On 16 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of CCHR's trial monitoring activities.

¹⁹⁸ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

¹⁹⁹ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

²⁰⁰ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

However, they stressed that hearings tend to be longer when parties are present and witnessed are called to testify.²⁰¹

Figure 33: Length of monitored hearings, by target court²⁰²

Overall

Hearing Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	93	92	70	38	293
Misdemeanor	229	121	85	32	467
Petty Offense	5	5	1	1	12
Total	327	218	156	71	772
Total in %	43%	28%	20%	9%	100%

Phnom Penh Appeal Court

Hearing Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	61	51	21	12	145
Misdemeanor	120	37	22	7	186
Petty Offense	3	2	0	0	5
Total	184	90	43	19	336
Total in %	54%	27%	13%	6%	100%

Battambang Appeal Court

Hearing Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	25	28	22	5	80
Misdemeanor	91	41	20	5	157
Petty Offense	2	1	1	0	4
Total	118	70	43	10	241
Total in %	49%	29%	18%	4%	100%

Preah Sihanouk Appeal Court

Hearing Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	6	5	8	13	32
Misdemeanor	13	16	7	6	42
Petty Offense	0	1	0	0	1
Total	19	22	15	19	75
Total in %	25%	30%	20%	25%	100%

Tboung Khmum Appeal Court

Hearing Length	15 mins or less	16 - 30 mins	31 mins – 1h	More than 1h	Total
Felony	1	8	19	8	36
Misdemeanor	5	27	36	14	82

²⁰¹ On 3 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Tboung Khmum Court of Appeal and the General Prosecution attached to the Tboung Khmum Court of Appeal in order to discuss the findings of its trial monitoring activities.

²⁰² This data is based on the hearing length recorded for the 772 cases monitored in 2023.

Petty Offense	0	1	0	1	2
Total	6	36	55	23	120
Total in %	5%	30%	46%	19%	100%

5.6. Rights of Children in Conflict with the Law

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

International law guarantees children - individuals below the age of 18²⁰³ - 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.²⁰⁴

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,²⁰⁵ which are supported by several international rules and guidelines.²⁰⁶ They translate by the particular necessity for State Parties to establish laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having infringed criminal law. In particular, States shall establish a minimum age of criminal responsibility under which children shall be presumed not to have the capacity to infringe criminal law.²⁰⁷

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.²⁰⁸ However, State parties are required to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings, “whenever appropriate.”²⁰⁹ Further, a variety of dispositions, such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs, and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.²¹⁰ Cambodian law further provides 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.

²⁰³ CRC, Art. 1.

²⁰⁴ For more details on these rights, see CCHR’s module “The Rights of Children in Conflict with the Law” (September 2022), <https://tinyurl.com/mu5d5sd6>

²⁰⁵ 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.

²⁰⁶ For example, the 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.

²⁰⁷ CRC, Art. 40(3).

²⁰⁸ CRC Committee, General Comment No. 24, para. 21.

²⁰⁹ CRC, Art. 40 (3); CRC Committee, General Comment No. 24, para. 13.

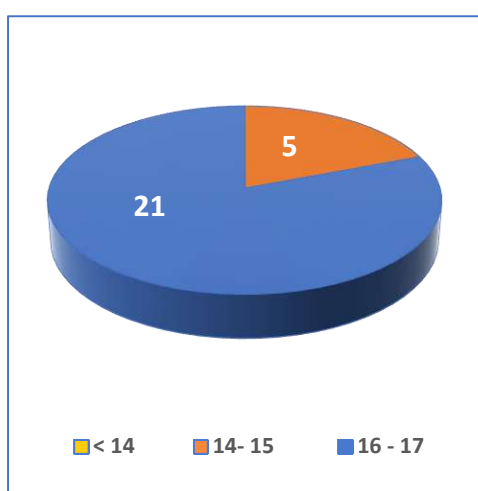
²¹⁰ CRC, Art. 40 (4).

Criminal Responsibility of Children

Internationally, the most common minimum age is 14 years old.²¹¹ Cambodian law has set the age of criminal responsibility at the same age,²¹² which means that no child under this age at the time of the alleged offense should be tried by a court. Competent authorities must seek evidence to determine the age of a child suspected of having committed an offense as promptly as possible, including looking for birth certificates or documents certifying birth or using any other reliable means accepted by the judiciary to determine their age in the absence of birth documentation. Any doubt as to the age of a child must be resolved in their favor.²¹³

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.

Figure 34: Age of child defendants at the time of the alleged offense²¹⁴



In 2023, 26 of the 1,118 defendants involved in the cases monitored were children at the time of the alleged offense; all of them boys. Welcomingly, and for the second consecutive year, none were under the age of criminal responsibility, while five were aged 14-15 (19.2%) and 21 were aged 16-17 (80.8%). Seven of these children in conflict with the law appeared before the **Phnom Penh Appeal Court**, including one who was aged 14-15 when the alleged offense was committed. Seventeen stood trial at the **Battambang Appeal Court**, including three who were aged 14-15 at the time of the alleged offense. The last two, one of which was aged 14-15 when the alleged offense took place, stood trial at the **Preah Sihanouk Appeal Court**.

Rights to Liberty and to the Presumption of Innocence

Pre-trial detention should not be used in cases involving child defendants, except in the most serious cases, and even then only after community placement has been carefully considered.²¹⁵ The Law on Juvenile Justice clearly states that pre-trial detention of child defendants is a measure of *last resort*,²¹⁶ and that appeal courts shall consider releasing children awaiting trial in detention to protect their best interest.²¹⁷ Despite these provisions, CCHR's trial monitoring shows a quasi-systematic use of pre-trial detention in cases involving children in conflict with the law. In 2023, 80.8% of the child defendants involved in the monitored cases (21 out of 26) were subject to this measure, showing little improvement since 2022, when this figure stood at 88.5% (23 out of 26). In addition, 91.7% of the children in conflict with the law who were held in pre-trial detention and whose date of arrest is known (11 out of 12) had spent between one and two years in custody at the time of their appeal hearing in the cases monitored in 2023.

²¹¹ CRC Committee, General Comment No. 24, para. 21.

²¹² Cambodian Criminal Code, Art.38 and Law on Juvenile Justice, Art.7.

²¹³ Law on Juvenile Justice, Art.7.

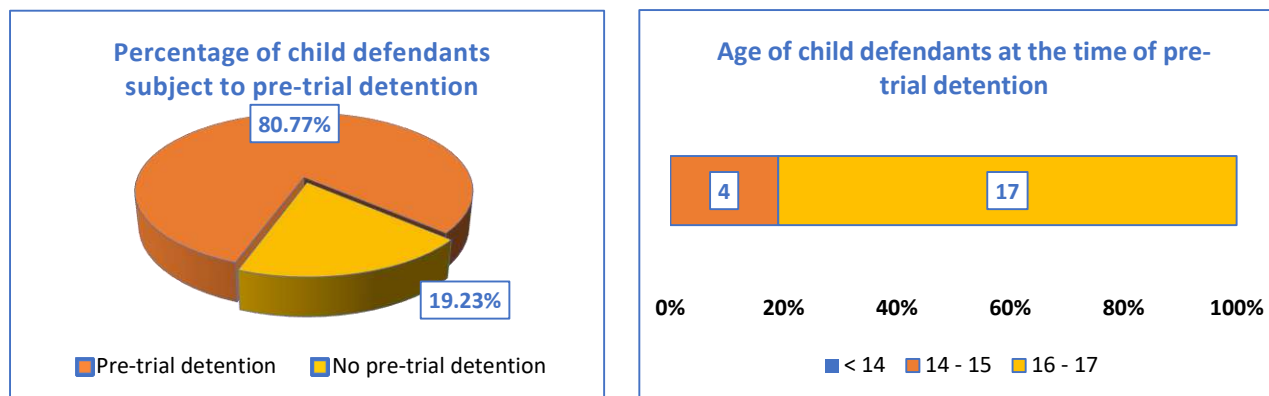
²¹⁴ This data based on the 26 children in conflict with the law involved in the 772 cases monitored in 2023.

²¹⁵ CRC Committee, General Comment No. 24, para. 86.

²¹⁶ Law on Juvenile Justice, Art.39.

²¹⁷ Law on Juvenile Justice, Art.57.

Figure 35: Use of pre-trial detention in cases involving children in conflict with the law, 2023²¹⁸



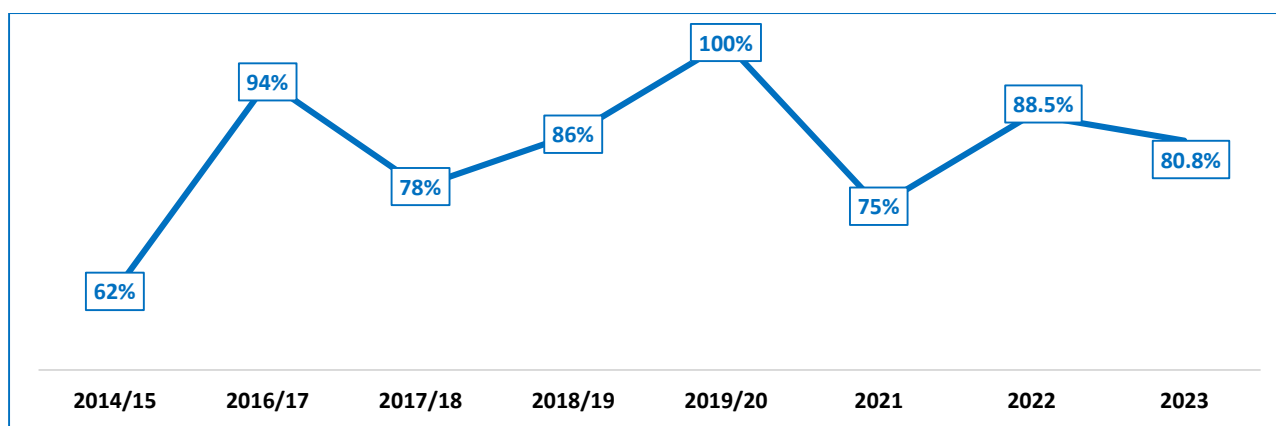
CCHR notes with concern that the Cambodian judiciary’s compliance with the right to liberty of child defendants has dramatically decreased since 2014/2015, when 62% of the children in conflict with the law involved in the hearings monitored at the Phnom Penh Appeal Court—which back then had jurisdiction over the entire country—were subject to pre-trial detention. These findings suggest that the entry into force of the Law on Juvenile Justice in 2016 brought no actual improvement when it comes to safeguarding this right, and that appeal courts seldom opt for releasing children awaiting trial in custody. Also particularly troubling is the fact that every single child defendant who was acquitted in first instance was kept in detention after the Prosecution appealed the ruling in the relevant cases monitored during the Reporting Period (six out of six).

For the second consecutive year, all of the detained children in conflict with the law who attended their appeal hearings (14 out of 14) did so wearing a prison uniform in the cases monitored. Welcomingly, none of these defendants appeared in the blue uniform for convicts. This is a significant improvement compared to 2022, when 28.6% of them did, and a major step towards better upholding the right to the presumption of innocence. Particular attention should now be paid to ensure that this progress is not reversed over time. Recognizing that appearing for trial in any form of prison uniform can be a traumatic experience for a child, and bearing in mind the necessity to fully protect the best interest of child defendants at all stages of the proceedings, CCHR also recommends that the target courts and the General Department of Prisons go the extra mile by systematically allowing children to attend their hearings in civilian attire.

Figure 36: Percentage of child defendants who were subject to pre-trial detention at the Phnom Penh Appeal Court (2014-2021) and the four target courts (from 2022)²¹⁹

²¹⁸ This data based on the total number of children in conflict with the law (26 individuals) involved in the 772 cases monitored in 2023.

²¹⁹ This data is based on the number of children in conflict with the law involved in the cases monitored during each reporting period. Given that the Phnom Penh Appeal Court had jurisdiction over the entire country before the three provincial appeal courts began adjudicating cases in April 2020, figures up until the 2019/2020 reporting period can be considered as reflecting national trends. This is also applicable to figures from 2022 onwards, as CCHR started trial monitoring at the three provincial courts that year. The figure for 2021 is provided to avoid gaps in data and only reflects the situation in the provinces under the jurisdiction of the Phnom Penh Appeal Court.



Concerningly, 85.7% of the child defendants involved in the hearings monitored at the **Phnom Penh** Appeal Court in 2023 (six out of seven) were held in pre-trial detention, up from 83.3% in 2022 (five out of six). This indicates a complete reversal of the limited progress observed in 2021, when this figure stood at 75%. CCHR's trial monitoring showed a similar evolution at the **Preah Sihanouk** Appeal Court, where this percentage increased from 80% in 2022 (four out of five) to 100% in 2023 (two out of two). The **Battambang** Appeal Court seemingly fared better in comparison, with this figure decreasing from 93.3% in 2022 (14 out of 15) to 76.5% in 2023 (13 out of 17). It should be noted that the limited number of hearings involving children in conflict with the law monitored in 2022 and 2023 does not allow CCHR to confidently draw definitive conclusions about recent trends. However, the data gathered so far clearly indicates that pre-trial detention has consistently been the norm rather than the exception in such cases. This blatant misuse of a *last resort* measure violates both Cambodia's international human rights obligations and the spirit of the Law on Juvenile Justice.

The best interests of the child must be the primary consideration when ordering or imposing penalties upon children found to have infringed criminal law.²²⁰ 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.²²¹ Domestic laws should provide for different non-custodial measures and expressly prioritize their use,²²² and the Law on Juvenile Justice does establish a diversion scheme for child offenders as an alternative to incarceration.²²³ During the Reporting Period, judges considered imposing a non-prison sentence for only 27.3% of the child defendants involved in the monitored hearings for whom the verdict is known (three out of 11), up from 8.3% in 2022 (one out of 12).

Interestingly, and for the second consecutive year, all these cases happened at the **Battambang** Appeal Court, where this figure increased from 10% in 2022 (one out of 10) to 42.9% in 2023 (three out of seven). Although these findings do suggest that this particular target court is moving towards a greater use of alternatives to incarceration, the limited data pool available prevents CCHR from drawing conclusions at this stage. In 2019, the **Phnom Penh** Appeal Court had previously raised the fact that the implementation of the

²²⁰ CRC, Art. 3(1); *see also* CRC Committee, General Comment No. 24, paras 76.

²²¹ CRC, Art. 37(b); *see also* CRC Committee, General Comment No. 24, paras, 73, 82-95.

²²² CRC Committee, General Comment No. 24, para. 73.

²²³ Criminal Code, Art. 40 and Law on Juvenile Justice, Chapter X.

diversion scheme for child offenders was not possible due to a lack of mechanisms in place to support it.²²⁴ The fact that judges at both the **Phnom Penh** and **Preah Sihanouk** Appeal Courts did not consider imposing a non-prison sentence in cases involving child defendants in both 2022 and 2023 suggests that such mechanisms have yet to be established in their respective jurisdictions.

Right to be tried without undue delay

The Law on Juvenile Justice states that appeal courts must give the *highest priority* to cases involving children in conflict with the law, especially those where defendants are in pre-trial detention. Appeals should be heard within three months of being lodged, unless there is an external obstacle beyond the Court's control.²²⁵ The primary aim of these provisions is to ensure swift and fair justice for juveniles involved in legal proceedings. By prioritizing these cases and establishing a timeline for appeal hearings, the Law on Juvenile Justice aims to prevent unnecessary delays that could negatively impact the rights and well-being of child defendants, especially those subject to pre-trial detention.

For the purpose of this analysis, CCHR will follow the guideline set by the Law and consider the right to be tried without undue delay as being respected if the hearing took place within three months after the appeal was received by the appeal courts. Encouragingly, in 2023, this standard was met for 80% of the child defendants involved in the hearings monitored, where such data was available (16 out of 20).

However, it is disconcerting to note that at the **Phnom Penh** Appeal Court, this percentage drops to 57.1% (4 out of 7), representing the lowest performance among the three target courts. CCHR also expresses deep concern over two specific cases it monitored, where the duration between the reception of the appeal and the hearing far exceeded acceptable limits. In one instance, the process spanned one year, ten months, and ten days; though it should be noted that this particular defendant was not held in pre-trial detention pending his appeal hearing. In another, it extended for an alarming three years, five months, and twelve days, indicative of a distressing trend toward significant delays in justice delivery for some of the cases monitored at this court.

By contrast, the two other target courts demonstrated commendable adherence to the right to be tried without undue delay. In the case of the **Battambang** Appeal Court, this commitment was evidenced by hearings taking place within the prescribed three-month timeframe for 90.9% of the children in conflict with the law involved in the cases monitored (10 out of 11). In the singular instance where this was not achieved, it is notable that the defendant was not held in pretrial detention pending their appeal hearing, indicating a somewhat different circumstance from the other cases monitored. Similarly, the **Preah Sihanouk** Appeal Court achieved a perfect record, with hearings held within three months for both juveniles involved in the cases monitored there. Although the limited data pool available prevents CCHR from drawing definitive conclusions for the **Preah Sihanouk** Appeal Court, these figures underscore a positive trend towards expeditious justice delivery for child defendants in these jurisdictions, reflecting a commitment to upholding this fundamental right.

Segregation of child detainees in prison

International standards on child justice mandate that children deprived of liberty be separated from adults and held in separate facilities staffed by appropriately trained personnel and operating according to child-

²²⁴ On 27 August 2019, CCHR had a meeting with the President, all Vice Presidents, the General Prosecutor, one judge and the General Administrative Secretariat of the Phnom Penh Court of Appeal to discuss the findings of its 2017/2018 Annual Report on Fair Trial Rights.

²²⁵ Law on Juvenile Justice, Art.57.

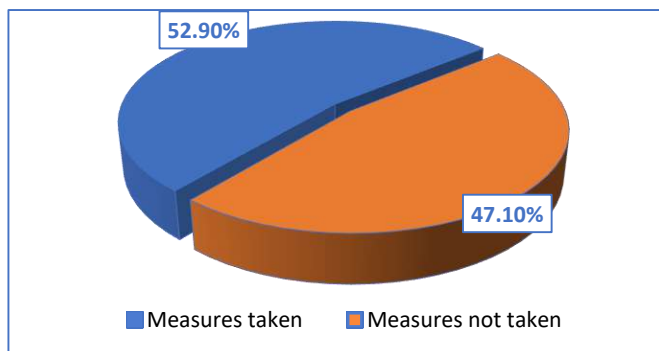
friendly policies and practices. Exceptions can only be made if they are in the best interest of the detained child.²²⁶ The Law on Juvenile Justice states that children deprived of liberty shall be separated from adults and held in Youth Rehabilitation Centers manned by staff who received appropriate training on child psychology, child welfare, national and international child rights standards, and treatment of detained children. It further stipulates that juveniles in pre-trial detention shall be separated from convicted child offenders.²²⁷ Welcomingly, and for the second consecutive year, nothing indicated that the children in conflict with the law involved in the relevant cases monitored in 2023 were detained alongside 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,²²⁸ from the initial contact with law enforcement until the final decision or, if sentenced, the release from supervision, custody or deprivation of liberty. The underlying rationale is to avoid the harm caused by undue publicity or libel.²²⁹ Therefore, the rule should be that child justice hearings are to be conducted behind closed doors.²³⁰ In the Cambodian context, the Law on Juvenile Justice clearly states that the cross-examination and pronouncement of judgment shall be conducted in closed court for cases involving children in conflict with the law.²³¹

The privacy of children in conflict with the law or child victims may further be protected by placing them 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.²³² 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.²³³ This should be ensured even once the defendant has reached the age of 18.²³⁴

Figure 37: Percentage of cases where measures were taken to protect the privacy of child defendants²³⁵



In 2023, the judges took measures (closed hearings) to protect the privacy of the child defendants in 52.9% of the monitored cases where the latter attended the hearing (9 out of 17). This slight decline from 54.5% in 2022 (12 out of 22) suggests a lack of concerted and meaningful action to address the shortcomings identified in previous reporting periods. There were, however, significant disparities between the target courts.

²²⁶ CRC Committee, General Comment No. 24, paras. 92 and 93.

²²⁷ CCPC, Chapters XIII & XIV.

²²⁸ CRC, Art. 40(2)(vii); *see also* CRC, Art. 16 and 40(1); CRC Committee, General Comment No. 24, para. 66.

²²⁹ CRC Committee, General Comment No. 24, para. 70.

²³⁰ CRC Committee, General Comment No. 24, para. 67.

²³¹ Law on Juvenile Justice, art.47.

²³² CRC Committee, General Comment No. 24, para. 67.

²³³ CRC Committee, General Comment No. 24, para. 67.

²³⁴ CRC Committee, General Comment No. 24, para. 70.

²³⁵ This data based on the 26 children in conflict with the law involved in the 772 cases monitored in 2023.

Concerningly, closed hearings were conducted in only 33.3% of the relevant cases monitored at the **Phnom Penh** Appeal Court (two out of six). Although this is a significant improvement from 2022 and 2021, when no such measures were taken, the fact that two in three child defendants did not benefit from such arrangements remains a cause for concern. This question was extensively discussed with the Court in August 2019, when it refuted similar negative findings and mentioned the installation of video conferencing technology donated by UNICEF to better protect the privacy of children. It also suggested that CCHR record and report judges who do not fully uphold the fair trial rights and right to privacy of child defendants to the President of the Court.²³⁶

In November 2023, representatives from the Phnom Penh Appeal Court stated that, in principle, they always conduct closed hearings in cases involving children in conflict with the law. However, due to the large volume of cases handled by judges, they often encounter difficulties discerning between those involving adults and those involving children, resulting in some cases involving child defendants being inadvertently heard in public hearings. The Court said it will amend its schedule to distinguish between types of accused (for example, children and adults) with a view to facilitating smooth proceedings, minimizing confusion, and preventing such occurrences in the future. It also pledged to improve respect for the rights of children in conflict with the law, with a particular focus on the systematic use of closed hearings.²³⁷ The Phnom Penh Court of Appeal and the General Prosecutor stated that they will review and implement internal indication for their officials to enhance the effectiveness of trials involving children in conflict with the law, ensuring compliance with relevant legislation.²³⁸ CCHR welcomes these commitments and hopes they will translate into tangible improvements in 2024.

The **Battambang** Appeal Court fared much better in comparison: it conducted closed hearings in 77.8% of the relevant cases monitored during the Reporting Period (seven out of nine), down from 85.7% in 2022 (12 out of 14). While the slight year-on-year regression may be attributed to the limited number of cases monitored in 2023, it underscores the necessity for implementing measures to bolster these high compliance rates further and ensure that cases involving child defendants are consistently heard in closed courts. In March 2023, representatives from the Court said the judges usually proceed with closed hearings in cases involving children in conflict with the law, but noted that they did not have enough privacy screens.²³⁹ In August 2023, they said they were taking measures to strengthen the protection of the privacy of children in conflict with the law.²⁴⁰

By contrast, the **Preah Sihanouk** Appeal Court did not conduct closed hearings in the two relevant cases monitored in 2023, making it the only target court in that case during the Reporting Period. Although the lack of data on other cases prevents CCHR from drawing definitive conclusions, this figure echoes findings from 2022, when no measures were taken to protect the privacy of child defendants in the three relevant hearings monitored, and points to the need for urgent action to turn the tide. In December 2022, Court

²³⁶ On 27 August 2019, CCHR had a meeting with the President, all Vice Presidents, the General Prosecutor, one judge and the General Administrative Secretariat of the Phnom Penh Court of Appeal to discuss the findings of its 2017/2018 Annual Report on Fair Trial Rights.

²³⁷ On 16 November 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Phnom Penh Court of Appeal and the General Prosecution attached to the Phnom Penh Court of Appeal to discuss the findings of its trial monitoring activities.

²³⁸ Letter No. 706/24 issued on 01 August 2024 by the Phnom Penh Court of Appeal and General Prosecution attached to the Phnom Penh Court of Appeal in response to the findings of CCHR's 2023 Annual Report on Fair Trial Rights.

²³⁹ On 23 March 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal in order to discuss the findings of its trial monitoring activities.

²⁴⁰ On 29 August 2023, CCHR's Fair Trial Monitoring Team met with representatives from the Battambang Court of Appeal and the General Prosecution attached to the Battambang Court of Appeal to discuss the findings of its trial monitoring activities.

representatives said that, in cases of rape or indecent assault, the judge usually proceeds with closed hearings and uses screens to protect the privacy of child victims. However, they noted that this depends on the decision of the judge, as it is not a legal requirement.²⁴¹ In March 2023, Court officials noted that they lacked equipment such as screens to protect the privacy of juveniles during hearings.²⁴²

Lastly, CCHR notes with appreciation that, for the second consecutive year, the **Tboung Khmum Appeal Court** conducted closed hearings for all the cases involving children in conflict with the law in 2023. This suggests that the Court has strong mechanisms in place to systematically protect their right to privacy, which is praiseworthy. However, since CCHR trial monitors were barred from attending these closed hearings, they could not assess whether the other rights mentioned in this section were consistently upheld.

Conclusion

While steps have been taken to uphold the rights of children in conflict with the law, the persistence of certain challenges underscores that not all aspects of these rights are being adequately respected by the courts. Of particular concern are the widespread use of pre-trial detention in cases involving child defendants, the inconsistent application of measures to protect their privacy during hearings, and delays in delivering justice at the Phnom Penh Appeal Court. These shortcomings must be promptly addressed to ensure that children are afforded fair and equitable treatment throughout the judicial process.

²⁴¹ On 9 December 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

²⁴² On 28 March 2022, CCHR's Fair Trial Monitoring Team met with representatives from the Preah Sihanouk Court of Appeal and the General Prosecution attached to the Preah Sihanouk Court of Appeal in order to discuss the findings of its trial monitoring activities.

6. Conclusion and Recommendations

Although trial monitoring data showed encouraging year-on-year progress in some areas, CCHR notes with concern that the four courts have yet to uphold most of the fair trial rights identified in this report. Particularly concerning are the judiciary's over-reliance on pre-trial detention, including in cases involving children in conflict with the law; the persistence of torture allegations in police custody; and the lack of compliance with the right to a reasoned judgment.

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. Others can easily be improved by training judges and lawyers in the implementation of fair trial rights. By taking immediate measures to address these concerns, the Courts could set a precedent, serve as an example to Courts of First Instance and, as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

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,²⁴³ in accordance with UN SDG 16.3.2 to ensure that pre-trial detention remains the exception and the right to liberty remains the rule.

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

²⁴³ SRSHRC, End of Mission Statement (14 March 2018), p. 4

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

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

6.4. Recommendations Regarding the Right to a Public Hearing

- 6.4.1 The Courts and the MoJ should ensure that daily schedules of all hearings are posted online and on information boards outside the courtroom at least 24 hours prior to the hearing, and continue to guarantee public access to courtrooms in all but exceptional cases, which would include that of children. When such information is published online or on the information board, the name of children should not be spelled out, but instead they should be referred to by their initials, to protect their privacy.

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

- 6.5.1 The judges of the Courts should inform the defendant of the charges against them and provide relevant information such as the date, location, parties involved and the applicable law. This is particularly important in cases where charges may have been changed or amended since the initial arrest/charge. The judges should take particular care to ensure they are stating the relevant law and location of the offence.
- 6.5.2 The judges of the Courts should provide a comprehensive explanation of the accused's trial rights.
- 6.5.3 The judges of the Courts 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

- 6.6.1 The Courts and the General Department of Prisons should consult and coordinate with each other to address any logistical and communication issues as soon as possible regarding the locations of defendants.
- 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 make sure that the Courts give the information regarding the date and time of the appeal hearings to the correct correctional center in which the defendant is detained.
- 6.6.3 The judges of the Courts should postpone any hearing if the defendant is not present, even if they are represented by a lawyer, unless they have formally waived their right to be present.

- 6.6.4 The Courts should ensure that, where a lawyer is representing several defendants in a trial, there is not an inappropriate conflict of interest.
- 7.6.5 The judges of the Courts should inform and explain to the accused their right to legal representation if they do not appear represented.
- 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 court buildings.

6.7. Recommendations Regarding the Right to the Presumption of Innocence

- 6.7.1 The judges of the Courts must unequivocally inform the defendant of their right to be presumed innocent until a final verdict 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 it 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 Courts should allow those accused who are brought to court wearing a convict uniform to change into civilian clothes 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, including a complete ban on the use of mobile phones during hearings. Judges should also ensure that they allocate sufficient time to hear cases to ensure that they are adjudicated in a proper and thorough manner.

6.9. Recommendations Regarding Evidentiary Rights

- 6.9.1 The judges of the Courts should inform the defendants of their right to present evidence in the same conditions as the evidence presented against them.
- 6.9.2 The judges of the Courts should order witnesses to leave the courtroom and not return until they are called to testify as a way to ensure that witnesses are not influenced by other evidence and testimony presented during the trial.
- 6.9.3 The judges of the Courts should carefully assess whether the evidence presented to them establishes beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, they must be acquitted.
- 6.9.4 The MoJ should develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,²⁴⁴ and ensure that all judges are trained accordingly.

²⁴⁴ 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'; ECCC, Supreme Court Chamber (23 November 2016), Case File/Dossier N° 002/19-09-2007-ECCC/SC, <https://tinyurl.com/3xyz4wz>

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,²⁴⁵ 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 Courts should speed up and strengthen the implementation of the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 6.11.2 The judges of the Courts should follow the best practice of the ECCC and allow children in conflict with the law to appear in court wearing civilian clothing, at all stages of the criminal procedure.
- 6.11.3 The judges of the Courts should limit pre-trial detention of children in conflict with the law to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect their rights, including separating them from adult detainees.
- 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 Courts should examine and make use of non-custodial measures for children in conflict with the law, and implement a set of sentencing guidelines for children who are recognized as having infringed criminal law that focus firmly on reintegration rather than punishment alone and on the best interests of the child.
- 6.11.6 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.
- 6.11.7 The MoJ 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.
- 6.11.8 The MoJ should review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on the child justice system, including, the Beijing Rules, the UNICEF guidance for legislative reform on juvenile justice,²⁴⁶ the UNICEF implementation handbook for the Convention on the Rights of the Child,²⁴⁷ and the UNICEF law reform and implementation of the Convention on the Rights of the Child report.²⁴⁸

²⁴⁵ See esp. 'Appeal Judgement', ECC, Supreme Court Chamber (23 November 2016), Case File/Dossier N° 002/19-09-2007-ECCC/SC, <https://tinyurl.com/2amb8t57>

²⁴⁶ UNICEF, 'Guidance for Legislative Reform on Juvenile Justice' (2011) <https://tinyurl.com/3y34324u>

²⁴⁷ UNICEF, 'Implementation Handbook for the Convention on the Rights of the Child' (2007), p. 107, <https://tinyurl.com/yc3c7v8x>

²⁴⁸ UNICEF, 'Law Reform and Implementation of the Convention on the Rights of the Child' (2007), p. 87, <https://tinyurl.com/3u3x2dh8>