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Cambodian Center for Human Rights

November 2021

Fair Trial Rights in Cambodia
Monitoring at the Court of Appeal
Annual Report (1 November 2019 - 31 December 2020)



Cambodian Center for Human Rights (CCHR)

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

CCHR’s vision is of a 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.

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This Report and the previous “Fair Trial Rights in Cambodia” reports can be found on CCHR’s Trial Monitoring Database at www.tmp.sithi.org and www.cchrcambodia.org, and at the Cambodian Human Rights Portal, www.sithi.org.

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Acronyms

BAKC	The Bar Association of the Kingdom of Cambodia
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CCPC	Code of Criminal Procedure of the Kingdom of Cambodia
CHRC	Cambodian Human Rights Committee
Checklist	The checklist used by CCHR Trial Monitors to record trial data when monitoring trials
Checklist Guidance	Comprehensive guidance notes to help CCHR Trial Monitors understand each question in the Checklist
Code of Conduct	A document outlining the obligations of non-interference, objectivity and confidentiality to which CCHR Trial Monitors are bound
Constitution	The Constitution of the Kingdom of Cambodia
Court	The Phnom Penh Court of Appeal of the Kingdom of Cambodia
CRC	Convention on the Rights of the Child
Database	The database in which CCHR Trial Monitors store trial data recorded on checklists
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
I/U	Information Unknown
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
N/A	Non-Applicable
NSDP	National Strategic Development Plan
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Criminal Code	The Criminal Code of the Kingdom of Cambodia
Project	CCHR Trial Monitoring Project
Reporting Period	1 November 2017 and 31 October 2018
RGC	Royal Government of Cambodia
Trial Monitor	CCHR trial monitor
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children’s Emergency Fund
UNSRSHRC	United Nations Special Rapporteur on the Situation of Human Rights in Cambodia
UNTAC	United Nations Transitional Authority in Cambodia

Executive Summary

The functioning of the criminal justice system in the Kingdom of Cambodia leaves room for improvement. Criticisms of the system are myriad and include, amongst others, a lack of independence, insufficient access to legal representation, prison overcrowding, excessive use of pretrial detention and the use of the judiciary to target critical voices.

The Royal Government of Cambodia (“RGC”) has demonstrated a commitment to addressing some of these criticisms, and 2020 witnessed a number of improvements in terms of the judicial system in Cambodia. Efforts made included the establishment of three new Courts of Appeal in the provinces of Tboung Khmum, Battambang and Preah Sihanouk¹ in a bid to improve access to justice throughout the country, measures taken to improve access to legal aid in remote areas,² and efforts to reduce prison overcrowding.³

Between 1 November 2019 and 31 December 2020 (the “Reporting Period”), CCHR’s Fair Trial Rights Project (the “Project”) monitored 203 criminal trials at the Court of Appeal (the “Court”) in order to assess the Court’s adherence to fair trial rights as set out in international and Cambodian law. This Report presents and analyzes the data collected during the Reporting Period, and, in doing so, aims to contribute to transparency, accountability and positive change in Cambodia.

The Report is structured as follows:

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

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

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

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

2014-2020: Evolution of fair trial rights protection: Presents the evolution of the protection, or lack thereof, of fair trial rights. Some have been consistently upheld since 2014, some have gone from being protected to not being fully upheld, and others have been consistently violated since 2014.

¹ Voun Dara, ‘Regional appeal courts set in motion’ (*Phnom Penh Post*, 4 March 2020) <https://www.phnompenhpost.com/national/regional-appeal-courts-set-motion>

² Khann Chanvirak, ‘Ministry plans to deploy lawyers at local levels to help resolve issues’ (*Khmer Times*, 14 October 2020) <https://www.khmertimeskh.com/50772904/ministry-plans-to-deploy-lawyers-at-local-levels-to-help-resolve-issues/>

³ Ry Sochan, ‘Kheng says detainee cases should be given priority’ (*Khmer Times*, 11 August 2020) <https://www.khmertimeskh.com/50753633/kheng-says-detainee-cases-should-be-given-priority/>; Taing Vida, ‘Six-month campaign to speed up cases: Justice Ministry’ (*Khmer Times*, 27 March 2020) <https://www.khmertimeskh.com/706199/six-month-campaign-to-speed-up-cases-justice-ministry/>

Conclusions and Recommendations: Contains recommendations addressed to various bodies of the judiciary and institutions, including the RGC, the Ministry of Justice (“MoJ”), the Ministry of Interior (“Mol”), law enforcement authorities, and prison authorities.

The Report finds that a number of key fair trial rights were guaranteed before the Court – including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare one’s defense, and the right to a public judgment. In addition, the Court consistently upheld the protections against double jeopardy and against non-retroactivity.

Fair Trial Rights Protected by the Court
• Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense
• Right to a public judgment
• Prohibition against retroactive application of criminal law
• Protection against double jeopardy

Regrettably, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The right not to be compelled to confess guilt has been classified as being not fully respected due to the remaining high number of defendants who claim they have been subjected to violence or torture to force them into confessing the alleged crime (17 defendants out of 255). The fundamental right to a public hearing is not fully respected, as only 31 of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom. Further, the right to understand the nature and cause of the charges continues to be considered not fully respected, since the percentage of cases where the defendants were informed of the nature and cause of the charges, while improving since last year’s monitoring, was not sufficient (only 67.4% in 2018/2019 and 78.3% in this Reporting Period). The right to have legal representation was not always respected: about 28% of defendants were not represented by a lawyer.

Further, in 15 out of the cases monitored by CCHR, the judges failed to inform the accused about their right to legal representation, which is a concerning trend. Similarly, the presumption of innocence remains not fully respected, with judges failing to inform 25.6% of the defendants about their right to remain silent and 28.2% of defendants appearing in court in the same prison uniform as convicts. Last but not least, the rights of juvenile defendants, who are entitled to special protection under international human rights law and Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy.

Fair Trial Rights not fully respected at the Court
• Right not to be compelled to confess guilt
• Right to a public hearing
• Right to understand the nature and cause of the charges
• Right to legal representation and to be present at trial
• Right to a reasoned judgment

- **Right to presumption of innocence**

- **Evidentiary rights**

- **Rights of juveniles**

The Report compares this year’s data with that of 2014/2015, 2016/2017, 2017/2018, and 2018/19 in order to identify trends and analyze the evolution of fair trial rights in the Kingdom.⁴ While the majority of the findings are similar, two points emerge.

First, the right to understand the nature and cause of the charges, which CCHR found was protected in 2014/2015 and 2016/2017, moved to the “not fully respected” section in 2017/2018 and 2018/2019. This year’s monitoring revealed this right remains not fully respected: while the judge stated all the relevant charges against all the defendants in 78.3% of cases, which is a notable increase compared to 67.4% in 2018/2019, CCHR noticed a decrease in the percentage of cases in which the judge stated the relevant law, the place of the offense and the parties involved compared to the previous reporting period.

Second, the right not to be compelled to confess guilt (also known as the protection against self-incrimination), after having been considered as protected in 2017/2018, was re-classified as not fully respected in 2018/2019 when 4.3% of defendants alleged that their confession had been obtained through violence or torture. During the 2019/2020 Reporting Period, this rate was higher again, with 6.6% of defendants alleging their confession had been obtained through violence or torture. This is highly problematic and such cases must be immediately and thoroughly investigated by the competent authorities.

Several key fair trial rights have been consistently upheld by the Court since 2014, including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare a defense, the right to a public judgment, the non-retroactive application of the law and the prohibition against double jeopardy. Regrettably, a certain number of rights have been consistently not fully respected since 2014, such as the right to a public hearing, the right to a reasoned judgment, evidentiary rights and the rights of juveniles.

The Report ends with key thematic recommendations for the Court to address the shortcomings identified in the Report and improve respect for fair trial rights throughout Cambodia, including:

- Following the best practices of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), such as establishing a framework in which judges are obligated to inform and explain the legal and evidential reasons behind their verdict, allowing defendants to appear in court wearing their own clothing at all stages of the criminal procedure, and training judges on fair trial rights;
- Developing a form listing all information which a judge must give to a defendant, including key charge information such as the date and location of the alleged offense, the parties involved and applicable law; their right to be presumed innocent; and their right to legal representation;
- Maintaining and generalizing its practice of posting daily schedules of hearings on the information boards outside the courtroom at least 24 hours prior to the hearing, and of posting information pertaining to the hearings on its webpage;
- Investigating allegations that a confession was not given freely;
- Ensuring the burden of proof is always placed on the correct party, namely the prosecution, particularly where it is alleged a statement of confession was obtained under duress;

⁴ CCHR’s Fair Trial Rights monitoring Project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for this period.

- Developing clear guidelines regarding the presentation and evaluation of evidence;
- Ensuring that judgments rendered are in writing include the relevant law and key evidence on which they rely; and
- Strengthening and speeding up the implementation of the Law on Juvenile Justice, particularly regarding privacy and alternatives to detention.

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

1. Introduction

1.1. The Right to a Fair Trial

The right to a fair trial forms a key component of respect for the rule of law and ensures the proper administration of justice. The right is internationally recognized and enshrined in international law by the United Nations Universal Declaration on Human Rights (“UDHR”) and the United Nations International Covenant on Civil and Political Rights (“ICCPR”) amongst other instruments.⁵ The right to a fair trial is also guaranteed in Cambodia by the Constitution of the Kingdom of Cambodia (“Constitution”), as further elaborated in other domestic laws such as the Code of Criminal Procedure of the Kingdom of Cambodia (“CCPC”) and the Law on Juvenile Justice.

1.1.1. The right to a fair trial under international law

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

The UDHR⁶ and the ICCPR⁷ both guarantee the right to a fair and public hearing by an independent and impartial tribunal. The ICCPR further elaborates on the various components of a fair trial, which includes, but are not limited to, the following rights and principles: the right to a public hearing,⁸ the presumption of innocence,⁹ the right to be tried without undue delay,¹⁰ the right to understand the nature and cause of the charge,¹¹ the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare a defense,¹² the right to legal representation,¹³ the protection against self-incrimination (not to confess guilt as a result of coercion or inducement),¹⁴ and the right to appeal to a higher court on grounds of fact and law.¹⁵

Article 10 of the UDHR

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

⁵ See also American Convention on Human Rights (22 November 1969) Art. 8; African Charter on Human and Peoples Rights (27 June 1981) Art. 7; European Convention on Human Rights (4 November 1950) Art. 6; European Charter of Fundamental Rights of the European Union (7 December 2000) Art. 47-50.

⁶ United Nations General Assembly ‘Universal Declaration of Human Rights’ (“UDHR”) (10 December 1948) Art. 10, www.un.org/en/universal-declaration-human-rights/index.html

⁷ United Nations General Assembly ‘International Covenant on Civil and Political Rights’ (“ICCPR”) (16 December 1966) Art. 14 (1) www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

⁸ ICCPR, Art. 14 (1).

⁹ ICCPR, Art. 14 (2).

¹⁰ ICCPR, Art. 14 (3) (c).

¹¹ ICCPR, Art. 14 (3) (a).

¹² ICCPR, Art. 14 (3) (b).

¹³ ICCPR, Art. 14 (3) (d).

¹⁴ ICCPR, Art. 14 (3) (g).

¹⁵ ICCPR, Art. 14 (5).

Cambodia acceded to the ICCPR in 1992, and Article 31 of the Constitution directly incorporates international human rights obligations into Cambodian domestic law.¹⁶ 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 2007.¹⁷

1.1.2. The right to a fair trial under Cambodian law

The right to a fair trial is protected in Cambodia, through general and specific provisions set out in a number of legal instruments. The basic framework for a fair trial is provided for by the Constitution which guarantees the following rights for Khmer citizens:

- There shall be no physical abuse against any individual;
- The prosecution, arrest, or detention of any person shall not be done except in accordance with the law;
- Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited; and persons who commit, participate or conspire in such acts shall be punished according to the law;
- Confessions obtained through physical or mental force shall not be admitted as evidence of guilt;
- Any reasonable doubt that arises shall be resolved in favor of the accused;
- The accused shall be considered innocent until the court has finally decided on the case; and
- Every citizen shall enjoy the right to defense through judicial recourse.

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

The CCPC, adopted in 2007,¹⁸ establishes in detail how suspects should be treated. It sets out the roles and responsibilities of judges, prosecutors and defense counsel; from the initiation of an investigation to the time of arrest and throughout the entire criminal process until the final appeal. The Criminal Code of the Kingdom of Cambodia (“Criminal Code”), which was promulgated in 2009 and came into force in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing.¹⁹

Additionally, the three fundamental laws pertaining to judiciary, namely the Law on the Organization of the Court,²⁰ Law on the Statute of Judges and Prosecutors,²¹ and the Law on the Organization and Function of the Supreme Council of Magistracy,²² adopted in 2014, aim to ensure the independence of the judiciary power, and to protect the rights and freedom of Cambodian citizens. Regrettably, these laws, which were drafted without any prior publication or consultation with civil society, the public or other stakeholders, have been criticized for weakening the separation of powers and the independence of the judiciary. They effectively

¹⁶ Constitution, Art. 31: ‘*The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights, www.sithi.org/temp.php?url=law_detail.php&lg=&id=222. The updated version of the Constitution, as last amended in February 2018, is not yet available online.*

¹⁷ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007) p. 2, www.ccc.gov.kh/detail_info_en.php?txtID=453.

¹⁸ The CCPC replaced sections of the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period (1992) (“UNTAC Law”). It is available here: http://sithi.org/temp.php?url=law_detail.php&id=190.

¹⁹ ‘The Criminal Code’ http://sithi.org/temp.php?url=law_detail.php&id=154.

²⁰ ‘The Law on the Organization of the Court’ (2014) <http://www.arbitrationcouncil.org/uploads/433e3-01.-law-on-the-org-of-the-courts-english.pdf>.

²¹ ‘The Law on the Statute of Judges and Prosecutors’ (2014) http://www.sithi.org/judicial/docs/Judicial_Laws/Draft_Law_on_the_Statute_of_Judges_and_Prosecutors_NA_Eng.pdf

²² ‘The Law on the Organization and Function of the Supreme Council of Magistracy’ (2014) http://www.sithi.org/admin/upload/law/03_Draft_Law_on_the_Organization_and_Functioning_of_the_Supreme_Council_of_Magistracy_English.pdf

give the executive direct control over the judiciary by increasing the level of influence of the MoJ over judges and prosecutors, through its involvement over judicial budgets, appointments, promotions, tenure and removal.²³

Finally, the Law on Juvenile Justice, adopted in July 2016 and came into force in January 2017,²⁴ sets out the norms and procedures in dealing with minors who commit criminal offences.²⁵ The law needs to be strictly applied in order to safeguard the rights and best interests of the minor.

In June 2003, the Council of Ministers of the RGC also approved the Legal and Judicial Reform Strategy (“Strategy”).²⁶ It identifies four guiding principles, emanating from the Constitution, to guide legal and judicial reform: the rights of individuals, the principle of liberal democracy, the separation of powers, and the rule of law. The Strategy also sets out seven strategic objectives,²⁷ which formed the basis of a Legal and Judicial Reform in a National Strategic Development Plan (“NSDP”) for 2014-2018.²⁸ The first of these objectives was the improvement of the protection of fundamental rights and freedoms.

The RGC released a new NSDP for 2019-2023 in mid-2019, outlining the RGC’s key priorities, which include promoting the justice service by improving effective work of law enforcement officials, strengthening the public’s trust in the judiciary section, and fighting injustice.²⁹ The 2019-2023 NSDP also announced the MoJ will continue implementing its Legal and Judicial Reform.

Furthermore, in May 2017, the Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice initiated a 100 Days Campaign aimed to assess the performance and efficiency of courts.³⁰

²³ CCHR, Destination Justice and ADHOC, ‘Joint Submission to the Human Rights Council of the United Nations Third Universal Periodic Review of the Kingdom of Cambodia, Access to Justice in Cambodia’, JST7 - Joint Submission 7 (12 July 2018) Section 2 www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKHStakeholdersInfoS32.aspx (“Access to Justice UPR Submissions, (12 July 2018)”); CCHR, ‘Legal Analysis, Three Draft Laws Relating to the Judiciary’ (May 2014) [https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf); OHCHR Cambodia ‘Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards’ (May 2014) <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20status%20of%20J%20and%20P.%20ENG%20May%202014%20final.pdf>; OHCHR Cambodia ‘Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards’ (May 2014) <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20SCM%20Draft%20law.%20ENG%20May%202014%20final.pdf>; OHCHR Cambodia ‘Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards’ (May 2014) <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/OHCHR%20comments%20on%20draft%20Law%20on%20org%20of%20courts.%20ENG%20May%202014%20final.pdf>.

²⁴ ‘Law on Juvenile Justice’ (2016) www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf

²⁵ UNICEF, ‘Q&A on the newly adopted Juvenile Justice Law in Cambodia’ (19 September 2016) <http://unicefcambodia.blogspot.com/2016/09/q-on-newly-adopted-juvenile-justice-law.html>

²⁶ Cambodian Rehabilitation and Development Board (“CRBD”) and Council for the Development of Cambodia (“CDC”), ‘Government’s Policy Performance’ (2004) www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.html, para. 16

²⁷ The objectives are: 1) Improvement of the protection of fundamental rights and freedoms; 2) Modernization of the legislative framework; 3) Provision of better access to legal and judicial information; 4) Enhancement of the quality of legal processes and related services; 5) Strengthening of judicial services, i.e. judicial power and prosecutorial services; 6) Introduction of alternative dispute resolution mechanisms; 7) Strengthening of legal and judicial sector institutions to fulfill their mandates; CDC and CRBD ‘Government’s Policy Performance’ (2004) www.cdc-crdb.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_02_1.htm, para. 15-24

²⁸ Council for Legal and Judicial Reform, ‘Plan of Action for Implementing the Legal and Judicial Reform Strategy’ (29 April 2005); RGC, ‘National Strategic Development Plan 2014-2018’ pp. 9-12, paras 2.11 to 2.23, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/genericdocument/wcms_364549.pdf (translation). The original version is available at http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf

²⁹ Ministry of Planning, ‘National Strategic Development Plan 2019-2023’, <http://www.mop.gov.kh/DocumentEN/NSDP%202019-2023%20in%20English.pdf>, p. 205-206, para 4.21(7)

³⁰ Permanent Secretariat of the Committee for Legal and Judicial Reform of Ministry of Justice ‘Notification on 100 Days Campaign to Assess the Performance and Efficiency of Courts’ (12 May 2017) www.facebook.com/334873460054405/photos/a.336969683178116/654031978138550/?type=3&theater (only available in

The campaign aimed to update strategies and reform the justice system to make it more reliable, precise and applicable, and to improve the image of the courts as well as the trust and confidence of the public. As of September 2017, the first phase of the process was completed, and the preliminary results showed three main challenges: planning and strategy, human and financial resources, and communications between courts and the public.³¹ The second phase started in September 2017; however since then no further update on the process was made publicly available.³²

The Courts and relevant Ministries have made a number of announcements in recent times which could lead to noticeable improvements to the situation of those facing injustice in the Kingdom:

- Yearly training for judges and prosecutors on technical skills, professional ethics and international human rights law.³³
- The building of a new juvenile detention center for inmates below 18 years of age, in Kandal province, Kandal Stung district, which will be the first of its kind in the country.³⁴ Construction started in February 2020, with an estimated completion date in early 2021.³⁵
- The development of a nationwide legal aid policy, to provide legal representation to marginalized groups in rural areas of Cambodia.³⁶
- The creation of “lawyer rooms” to be included in all courtrooms throughout the country, wherein those without the financial means can consult with a lawyer free of charge.³⁷
- The establishment of three regional appeal courts in Battambang, Tbong Khmum and Preah Sihanouk provinces, the plan to build four more,³⁸ and plans to fully train and deploy judges to regional Courts of Appeal.³⁹ All three new regional appeal courts started holding trials in 2020.⁴⁰
- The creation of four new courtrooms at the Phnom Penh Municipal Court to speed up cases.⁴¹

Khmer); Nachemson Andrew and Niem Chheng ‘Ministry to undertake its own study of courts’ (*Phnom Penh Post*, 15 May 2017) www.phnompenhpost.com/national/ministry-undertake-its-own-study-courts

³¹ ‘Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies’ (*Vayo Fm*, 9 September 2017) <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>

³² ‘Officials: the Ministry of Justice 100 days preliminary results found three major deficiencies’ (*Vayo Fm*, 9 September 2017) <http://vayofm.com/news/detail/80228-555917756.html?option=tem&textid=49040>

³³ RGC, ‘National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Cambodia’ (15 November 2018) UN Doc. A/HR/WG.6/32/KHM/1, para. 19, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/00/PDF/G1834100.pdf?OpenElement> (“RGC Report for the 3rd Cycle of the UPR (15 November 2018)”).

³⁴ Voun Dara, ‘Juvenile rehab center in Kandal breaks ground’ (*Phnom Penh Post*, 20 February 2020) www.phnompenhpost.com/national/juvenile-rehab-centre-kandal-breaks-ground

³⁵ ‘First juvenile rehabilitation center to open soon’ (*Khmer Times*, 8 May 2020) www.khmertimeskh.com/721320/first-juvenile-rehabilitation-centre-to-open-soon/

³⁶ Voun Dara, ‘Legal policy on marginalized groups finished by gov’t, EU’ (*Phnom Penh Post*, 3 September 2018) www.phnompenhpost.com/national/legal-policy-marginalised-groups-finished-govt-eu; UN Special Rapporteur on the situation of human rights in Cambodia, ‘End of Mission Statement’ (8 November 2018) p. 4, para. 2 https://cambodia.ohchr.org/sites/default/files/presstatementsource/181108%20ENG_END%20OF%20MISSION%20STATEMENT.pdf (“SRSHRC, End of Mission Statement (8 November 2018)”); UN Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’ (15 August 2018) A/HRC/36/61, para. 79 http://cambodia.ohchr.org/sites/default/files/Annual-reports/Annual%20Report%202018%20of%20SR%20-%20A_HRC_39_73_EN.pdf (“Report of the Special Rapporteur on the situation of human rights in Cambodia (15 August 2018)”).

³⁷ RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 18B

³⁸ ‘Three new appeals courts are scheduled to be completed in 2019’ (*Construction Property*, 6 July 2018) www.construction-property.com/khread-news-1240/ (Khmer only).

³⁹ Report of the Special Rapporteur on the situation of human rights in Cambodia (15 August 2018) para. 81.

⁴⁰ Sen Davis, ‘Preah Sihanouk Appeal Court in full service’ (*Khmer Times*, 7 September 2020) www.khmertimeskh.com/50761092/preah-sihanouk-appeal-court-in-full-service/.

⁴¹ Voun Dara, ‘Municipal court set to clear backlog with four new courtrooms’ (*Phnom Penh Post*, 31 May 2020) www.phnompenhpost.com/national/municipal-court-set-clear-backlog-four-new-courtrooms

- The publication of 44 verdicts from civil cases by the MoJ, to use as court precedents for lawyers and the public, with the promise to continue publishing civil and criminal verdicts.⁴²
- The creation of a MoJ campaign to clear court case backlog throughout Cambodia in order to ease prison overcrowding. As of 31 December 2020, the Justice Minister stated that 35,100 cases, representing 89% of the total pending cases, had been cleared.⁴³
- The plan, by the Ministry of Interior, to deploy lawyers through the Bar Association of the Kingdom of Cambodia (“BAKC”) at district and provincial police posts throughout the country to aid in the resolution of local issues with renewed focus on offering legal assistance to juvenile detainees.⁴⁴
- The study of the possibility to insert the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”).⁴⁵
- The preparation of a draft law setting out minimum standards in connection to gender-based violence.⁴⁶
- The formation, by the Cambodian Human Rights Committee (“CHRC”), of a legal aid group to defend the poor whose rights have been violated,⁴⁷ and the creation of a legal aid hotline in order to promote access to justice.⁴⁸
- The speeding up of the court process for women detainees awaiting trial.⁴⁹
- The prioritization, by the RGC, of the judicial reform, as peace and stability cannot be sustained without social justice and a fair and just judiciary system.⁵⁰

More generally, the RGC undertook certain measures to continue reforming the justice system, including by undertaking capacity building, improving independence and impartiality of the courts and the separation of powers, and increasing respect for individual rights, to “gain more trust from the public”.⁵¹ As noted above,

⁴² Niem Chheng, ‘Courts’ decisions now published as reference source’ (*Phnom Penh Post*, 4 January 2021) www.phnompenhpost.com/national/courts-decisions-now-published-reference-source

⁴³ Voun Dara, ‘Justice ministry: 89% of court case backlog cleared’ (*Phnom Penh Post*, 31 December 2020) www.phnompenhpost.com/national/justice-ministry-89-cent-court-case-backlog-cleared

⁴⁴ Khan Chanvirak, ‘Ministry plans to deploy lawyers at local levels to help resolve issues’ (*Khmer Times*, 14 October 2020) www.khmertimeskh.com/50772904/ministry-plans-to-deploy-lawyers-at-local-levels-to-help-resolve-issues/

⁴⁵ RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 42.

⁴⁶ ជំនុំជោគជាតិ, ‘សង្គមស៊ីវិលពិភាក្សាលើសេចក្តីព្រាងច្បាប់ជួយទៅដល់ស្ត្រីនិងកុមារីរងគ្រោះដោយអំពើហិង្សា’ មានសំឡេង (translation: ‘Civil Society Discusses Draft Laws to Address Violent Women and Girls’) (*Women’s Media Center of Cambodia*, 13 June 2018) <https://wmc.org.kh/ngo-women/> (only available in Khmer).

⁴⁷ Niem Chheng, ‘CHRC to form legal assistance team’ (*Phnom Penh Post*, 7 August 2019) www.phnompenhpost.com/national/chrc-form-legal-assistance-team.

⁴⁸ Soth Koemsoeun, ‘Human rights committee’s legal hotline receives praise’ (*Phnom Penh Post*, 4 December 2019) www.phnompenhpost.com/national/human-rights-committees-legal-hotline-receives-praise.

⁴⁹ Niem Chheng, ‘PM: Speed up trial for over 20,000 women in detention’ (*Phnom Penh Post*, 17 February 2020) www.phnompenhpost.com/national/pm-speed-trial-over-20000-women-detention.

⁵⁰ ‘No Pain, No Gain: Hun Sen opens a new reform chapter for Cambodia’ (*Khmer Times*, 4 September 2019) www.khmertimeskh.com/639844/no-pain-no-gain-hun-sen-opens-a-new-reform-chapter-for-cambodia/; Niem Chheng, ‘Ministry of Justice vows to improve’ (*Phnom Penh Post*, 28 July 2020) www.phnompenhpost.com/national/ministry-justice-vows-improve.

⁵¹ RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 74; UN Human Rights Council, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’ (31 July 2019) A/HRC/42/31, para. 30, <https://cambodia.ohchr.org/sites/default/files/Ohchr-report/Role%20and%20achievements%20of%20the%20Office.pdf> (“OHCHR, Annual Report (31 July 2019)”).

the RGC also improved funding for and access to legal aid⁵² and launched the Strategic and Operational Plan for Implementation of Juvenile Justice Law.⁵³

However, a number of concerns remain over the judicial system and the administration of justice. These concerns include - but are not limited to - the extensive use of pre-trial detention and the resulting overcrowding of Cambodian prisons which, in June 2020, were operating at more than 300% of capacity.⁵⁴ Allegations of lack of independence and impartiality of the judiciary are common,⁵⁵ as are claims that impunity remains rampant in Cambodia.⁵⁶ Limited access to legal aid,⁵⁷ as well as limited access to courts in rural areas,⁵⁸ are additional shortcomings of the judicial system. Further, the lack of women in the judiciary,⁵⁹ the fact that access to justice remains a challenge for persons with disabilities, whether victims or offenders,⁶⁰ and the lack of sufficient protection for children who are victims or witnesses of crimes are causes for concern.⁶¹

The RGC itself recognized that “the implementation of the competent authorities such as judges and prosecutors is generally based on national laws, both in the case proceeding and decision making without considering the substance of the international human rights laws.”⁶²

⁵² OHCHR, Annual Report (31 July 2019) para. 30; UN Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’ (27 August 2019) A/HRC/42/60, para. 66, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/253/48/PDF/G1925348.pdf?OpenElement> (“Report of the Special Rapporteur on the situation of human rights in Cambodia (27 August 2019)”)

⁵³ Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, ‘Juvenile Justice Law Strategic and Operational Plan 2018-2020’ https://www.unicef.org/cambodia/media/456/file/JJLSOP_Eng_0.PDF%20.pdf

⁵⁴ UN Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’ (24 August 2020) A/HRC/45/51, para. 41, [https://cambodia.ohchr.org/sites/default/files/Annual-reports/A_HRC_45_51_AEV%20\(1\).pdf](https://cambodia.ohchr.org/sites/default/files/Annual-reports/A_HRC_45_51_AEV%20(1).pdf) (“Report of the Special Rapporteur on the situation of human rights in Cambodia (24 August 2020)”)

⁵⁵ Access to Justice UPR Submissions (12 July 2018) Section 2; Report of the Special Rapporteur on the situation of human rights in Cambodia (27 August 2019) para. 58.

⁵⁶ Access to Justice UPR Submissions (12 July 2018) Section 2.3; Report of the Special Rapporteur on the situation of human rights in Cambodia (27 August 2019) para. 58.

⁵⁷ Access to Justice UPR Submissions (12 July 2018) Section 3; OHCHR, Annual Report (31 July 2019) para. 30; Report of the Special Rapporteur on the situation of human rights in Cambodia (27 August 2019) para. 66.

⁵⁸ Access to Justice UPR Submissions (12 July 2018) Section 4.3.; Report of the Special Rapporteur on the situation of human rights in Cambodia (27 August 2019) para. 66.

⁵⁹ Leonie Kijewski and Yon Sineat, ‘In Cambodia’s courts, it’s a man’s world – with the effects felt by female employees and victims alike’ (*Phnom Penh Post*, 23 February 2018) <https://www.phnompenhpost.com/national-post-depth/cambodias-courts-its-mans-world-effects-felt-female-employees-and-victims-alike>

⁶⁰ United Nations Development Programme, ‘Practical Guideline on Legal Aid for Persons with Disabilities in Criminal Justice: Guidance for Persons with Disabilities, Disabled People’s Organizations, and Lawyers in Cambodia’ (2020) p. 4, <https://www.kh.undp.org/content/cambodia/en/home/library/practical-guideline-on-legal-aid-for-persons-with-disabilitiesen.html>

⁶¹ SRSRHC, ‘Assessing protection of those at risk of being left behind’ (2 September 2019) para. 33.

⁶² RGC Report for the 3rd Cycle of the UPR (15 November 2018) para. 70.

1.2. Scope and Methodology

Figure 1: Overview of cases monitored by CCHR (2017-2020)

	Overview of monitored cases			
	2017/2018	2018/2019	2019/2020	Total
Number of cases	213	239	203	655
Number of defendants	315	352	255	922
Felonies	99	89	93	281
Misdemeanors	111	150	110	371
Petty offenses	3	0	0	3
Juveniles (defendants)	9	22	15	46
Women (defendants)	36	47	19	102

Throughout the Reporting Period, CCHR’s Trial Monitors usually attend criminal trials at the Court on a daily basis. However, during the 2019/2020 Reporting Period, there have been periods during which the courts have stopped hearing trials in response to governmental COVID-19 directives. Further, due to COVID-19 safety requirements and courtroom crowding, trial monitors were sometimes prevented from attending and monitoring trials. Trial monitors were nevertheless able to monitor 203 trials. This sample size is significant enough to compare to previous years. Monitors use a specifically designed trial-monitoring checklist (the “Checklist”) that includes more than 70 questions focusing on a number of key fair trial rights including the following:⁶³

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

⁶³ CCHR ‘Appeal Hearing Monitoring Checklist’ <http://tmp.sithi.org/index.php?p=detail&id=96&l=en>

- Rights of juveniles.

In an effort to sustain constructive engagement, CCHR introduced and explained the Checklist and its trial monitoring activities to representatives of the Court. CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles. With consideration of the brevity of the Checklist, CCHR had compiled comprehensive guidance notes (“Checklist Guidance”)⁶⁴ to provide an understanding of the legal basis and purpose of each question, and ensure a uniform interpretation of each question. The Trial Monitors were also provided with a legal framework document which outlines the relevant national and international laws underpinning each question in the Checklist.

CCHR paid particular attention to the fact that the right to appeal⁶⁵ 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 sentence⁶⁶; it must provide “a full evaluation of evidence and the conduct of trial.”⁶⁷

Finally, CCHR is committed to the international principles applicable to trial monitoring⁶⁸ and has devised a code of conduct (the “Code of Conduct”) for its Trial Monitors.⁶⁹ The Code of Conduct outlines the obligations of non-interference, objectivity, and confidentiality by which the Trial Monitor is bound.

CCHR’s trial monitoring at the Court did not target specific trials. The trials to be monitored were randomly selected, on the basis of the court’s schedules, to ensure that the data collection process remained unbiased and representative. When the Trial Monitors observed a trial, the information was recorded directly onto the Checklist. The data gathered was limited to the trial process itself, no additional interviews or dialogues took place; except where the Trial Monitor made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but adjourned to a later date. After each trial, the data gathered was entered into the CCHR Trial Monitoring Database (the “Database”).⁷⁰

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

CCHR has always ensured that the Court of Appeal is given the opportunity to provide its inputs on the findings of CCHR’s trial monitoring before publication. Hence, a final draft of the present Report was sent to

⁶⁴ CCHR, ‘Guidance Notes for CCHR Appeal Court Monitoring Checklist’ <http://tmp.sithi.org/index.php?p=detail&id=97&l=en>

⁶⁵ ICCPR, Art. 14 (5); CCPC, Art. 375.

⁶⁶ UN Human Rights Committee, ‘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, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsrdB0H1I5979OVGGB%2BWPAXhrjOXNTTvKgFHbxAcZSvX1OsJj/iyRmVA4iiMvUt2NIGKqgg2nh1qOE2hX5xoGtKE2v2YSQVV1Rv5NitNbSYwp> (“UN Human Rights Committee, General Comment No. 32”)

⁶⁷ UN Human Rights Committee, 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, <http://juris.ohchr.org/Search/Details/833>

⁶⁸ Amnesty International ‘Fair Trial Manual’ (1998) <https://www.amnesty.org/en/documents/POL30/002/1998/en/>; Lawyers Committee for Human Rights ‘What is a Fair Trial: A Basic Guide to Legal Standards and Practice’ (2000) https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf; Organization for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights ‘Trial Monitoring: A Reference Manual for Practitioners’ (2008) <http://bit.ly/2CVLX77>; International Commission of Jurists ‘Trial Observation Monitoring’ (2002) <https://www.osce.org/odihr/94216>.

⁶⁹ CCHR, ‘CCHR Trial Monitoring Code of Conduct’ <http://tmp.sithi.org/index.php?p=detail&id=60&l=en>

⁷⁰ CCHR, ‘CCHR Trial Monitoring Database’ http://tmp.sithi.org/data/advanced_search/search.php?appeal=1&l=en#go

the President of the Court on 9 July 2021 for review, comments, and recommendations. CCHR received the Court of Appeal's inputs by letter No. 432/21 issued on 12 October 2021. Those inputs have been incorporated into the present Report. Once published, Project staff will request specific meetings with representatives of the Court and with other justice sector organizations, bodies and institutions to which recommendations will be addressed. These meetings will serve as a basis for an exchange of ideas, to provide insight into the challenges faced by those working to strengthen the justice system, and to promote the fair trial rights.

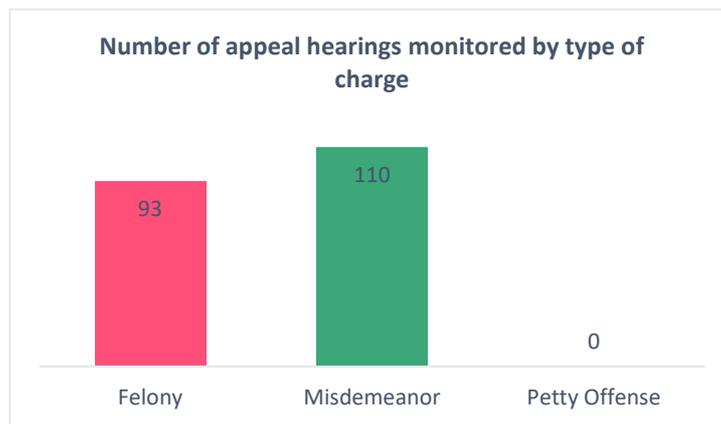
2. Overview

This section of the Report sets out the raw data recorded on the checklist from the 203 trials monitored at the Court between 1 November 2019 and December 2020, which will be evaluated throughout the Report.

Figure 2: Overview of cases monitored by CCHR in 2019/2020



Figure 3: Appeal hearings monitored – felonies, misdemeanors and petty offenses⁷¹



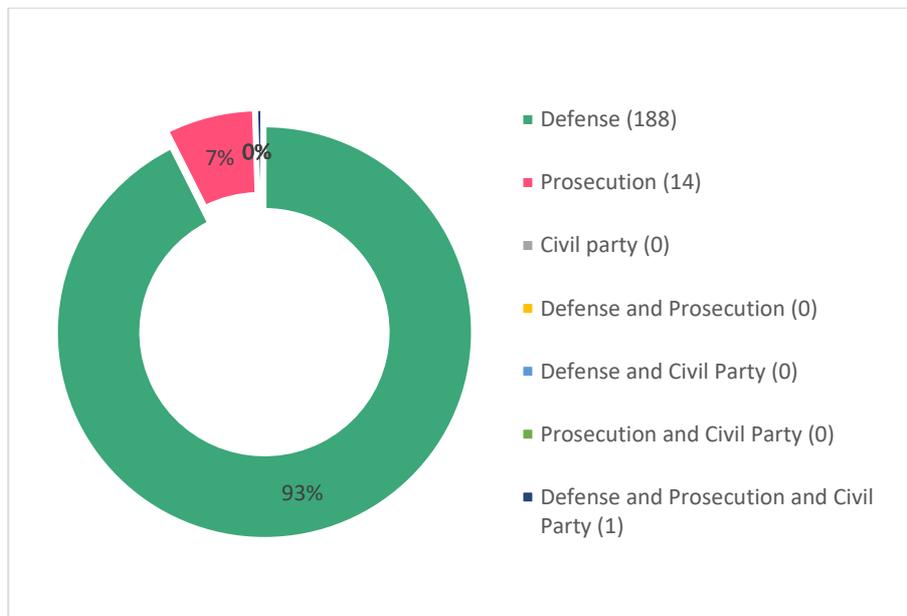
Article 46 of the Criminal Code defines a felony as any offense for which the maximum penalty is imprisonment of more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum penalty is imprisonment for more than six days and less than or equal to five years. According to Article 48, a petty offense is one for which the maximum sentence of imprisonment incurred is six days or less, or, punishable solely by a fine.⁷² As demonstrated by Figure 3, the majority of cases monitored by the project concern misdemeanor offences.

Figure 4: Party bringing the appeal⁷³

⁷¹ This data is based on the total number of cases monitored (203).

⁷² Criminal Code, Art. 48.

⁷³ This data is based on the total number of cases monitored (203).



A judgment issued by a Court of First Instance may be appealed by the Royal Prosecutor of the Court of First Instance, the General Prosecutor attached to the Court of Appeal, the convicted person, and the civil party or civil defendant (both regarding the civil matter).⁷⁴ Figure 3 shows that the vast majority of appeals (90%) were filed by the defense.

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

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

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

⁷⁴ CCPC, Art. 375.

3. Fair Trial Rights Upheld

Fair Trial Rights Protected by the Court
<ul style="list-style-type: none"> • Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare a defense
<ul style="list-style-type: none"> • Right to a public judgment
<ul style="list-style-type: none"> • Prohibition against retroactive application of criminal law
<ul style="list-style-type: none"> • Protection against double jeopardy

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

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

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,⁷⁵ 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.⁷⁶

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.⁷⁷ In particular, this includes access to all materials that the prosecution plans to present in court and those that are exculpatory.⁷⁸ At the appeal stage this also means that, in order to effectively exercise their right to appeal, the defendant should have access to a duly reasoned, written first instance judgment and the transcripts of the trial, in order to prepare their case.⁷⁹

In addition, accused persons must have adequate time and facilities to communicate with counsel of their own choosing. This provision ensures respect for the principle of equality of arms, and requires that the accused is granted access to a lawyer promptly.⁸⁰ Further, facilities enabling confidential communications between the accused and their counsel must be made available.⁸¹

It was suggested in only **1 case** that the defendant’s lawyer was assigned on the day of the appeal. This means the pre-trial right to speak with a lawyer was likely respected for **71%** of defendants.

The issue of adequate time and facilities to prepare a defence was raised for only **2 of 183** defendants. This means this right was likely respected for **71.3%** of defendants.



While the monitoring of the appeal hearing did not provide CCHR with all the requisite information to assess whether or not the accused had sufficient time and adequate facilities to prepare their defense and to communicate with a lawyer, from the information that is available to CCHR, it is very positive to note that the great majority of monitored cases indicated that these rights were respected. CCHR found that only one defendant (0.4% of defendants) had their lawyer assigned to them on the day of the appeal, and that most were given a lawyer early on in proceedings. This constitutes a decrease compared to the last two years, as 2% of defendants in 2018/2019 and 5% of defendants in 2017/2018 were assigned a lawyer on the day of the appeal. In addition, in only two instances did a defendant’s lawyer raise the issue of lack of adequate preparation.

3.2. Right to a public judgment

Sources in Cambodian and International Law

⁷⁵ UN Human Rights Committee, General Comment 32, para. 32.

⁷⁶ UN Human Rights Committee, General Comment 32, para. 32.

⁷⁷ UN Human Rights Committee, General Comment 32, para. 33.

⁷⁸ UN Human Rights Committee, General Comment 32, para. 33.

⁷⁹ UN Human Rights Committee, General Comment 32, para. 49; *See i.e.* UN Human Rights Committee, Communication No. 1797/2008, *Mennen v. The Netherlands* (27 July 2010), CCPR/C/99/D/1797/2008, paras 8.2.-8.4, <http://hrlibrary.umn.edu/undocs/1797-2008.html>

⁸⁰ UN Human Rights Committee, General Comment 32, para. 34.

⁸¹ UN Human Rights Committee, General Comment 32, para. 34.

ICCPR Article 14(1)	"[...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."
CCPC Article 317	"In all cases, the court shall announce the judgment during a public session."
Law on the Organization of the Court Article 7	"[...] In all cases, a judgment shall be announced publicly [...]"

Under Article 14(1), even when the public is excluded from a trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public.⁸² There are only a few exceptions to this rule, such as when the interest of juvenile persons requires the judgment not to be made public (see Section 4.8. Rights of Juveniles).⁸³

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

The RGC's NSDP for 2014-2018 aimed to introduce "court register data by information system" and enhance "access to judicial information, including on court decisions and proceedings, periodic administrative reports and administrative information regarding pending cases, including status and scheduling information".⁸⁴ This is echoed in the 2019-2023 NSDP which provides for the establishment of a "new system for case register management".⁸⁵ In practice however, while some efforts have been made, for instance to make court hearing schedules available, key information - in particular court decisions - remains largely unavailable. In 2019, it was also announced by the MoJ that it would create a data center in Phnom Penh in order to facilitate data collection and analysis from the Court of First Instance.⁸⁶ However, there have been no updates since then.

While the Constitutional Council regularly publishes its decisions,⁸⁷ those from other courts are largely impossible to access. However, in early January 2021, the MoJ's spokesperson, Chin Malin, announced "the start of the publication of verdicts", including in criminal cases.⁸⁸ This is a welcome development as the lack of transparency surrounding judicial decisions makes applying legal precedent impossible, and hinders lawyers from mounting effective legal defenses.

⁸² UN Human Rights Committee, General Comment 32, para. 29.

⁸³ UN Human Rights Committee, General Comment 32, para. 29.

⁸⁴ RGC 'National Strategic Development Plan' (2014-2018) para. 2.16 http://cdc-crdb.gov.kh/cdc/documents/NSDP_2014-2018.pdf

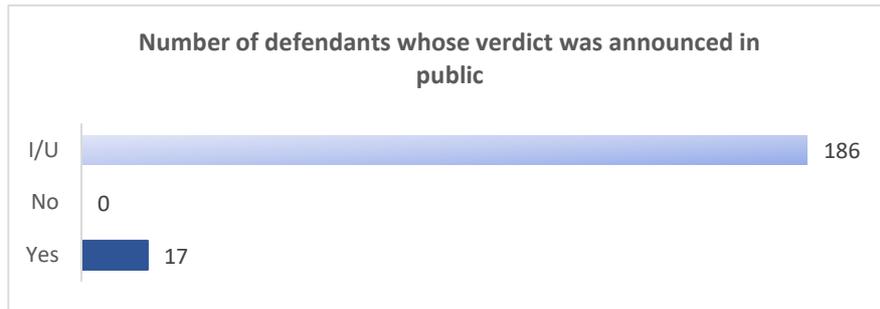
⁸⁵ RGC 'National Strategic Development Plan' (2019-2023) pp. 126-127, para. 4.26 <http://www.mop.gov.kh/DocumentEN/NSDP%202019-2023%20in%20English.pdf>

⁸⁶ OHCHR '2019 Annual Report of the UN OHCHR Secretary General' para. 35 <https://cambodia.ohchr.org/sites/default/files/Ohchr-report/Role%20and%20achievements%20of%20the%20Office.pdf>

⁸⁷ 'Constitutional Council of Cambodia', Website, <http://www.ccc.gov.kh>

⁸⁸ Niem Chheng, 'Courts' decisions now published as reference source' (*Phnom Penh Post*, 4 January 2021) <https://www.phnompenhpost.com/national/courts-decisions-now-published-reference-source>

Figure 5: The right to a public judgment⁸⁹



In all the cases for which the information was available (17), the right to a public judgment was respected.

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

Sources in Cambodian and International Law	
UDHR Article 11(2)	“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”
ICCPR Article 15	“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”
Criminal Code Article 3	“Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred.”
Criminal Code Article 10	“A new provision which prescribes a lighter penalty shall be applicable immediately. However, final judgments shall be enforced regardless of the severity of the relevant penalties. A new provision which prescribes a heavier penalty shall be applicable only to acts committed after the provision came into force.”

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

⁸⁹ This data is based on the total number of 203 cases monitored. I/U refers to cases where the information was not available, or cases that were not followed up because the Trial Monitor was not present at the date of verdict delivery.

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

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



In none of the 203 trials monitored did anything indicate that the law under which the defendant was charged was not in force on the date the offense was allegedly committed. CCHR’s findings therefore show that the protection against non-retroactivity of the law is protected. Welcomingly, this trend has been constant since 2014.

3.4. Protection against double jeopardy

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

Article 14(7) of the ICCPR contains the principle of *ne bis in idem* and establishes the right of a person not to be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and the penal procedure of each country.⁹⁰ This prohibition does not prohibit the retrial of an individual after a higher court quashes a conviction, nor the resumption of a criminal trial if justified by “exceptional circumstances”, such as the discovery of new evidence.⁹¹ There are a number of benefits of having this finality, both to the individual accused and the society as a whole, including legal certainty and avoidance of wasting of legal resources.

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



It is encouraging to note that none of the 255 defendants involved in the 203 cases monitored by CCHR had already been tried and sentenced for the same offense in the past. The protection against double jeopardy is therefore guaranteed. Notably, this trend has been constant since 2014.

⁹⁰ UN Human Rights Committee, General Comment 32, para. 54.

⁹¹ UN Human Rights Committee, General Comment 32, para. 56.

4. Fair Trial Rights Not Fully Respected

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

- The right not to be compelled to confess guilt;
- The right to a public hearing;
- The right to understand the nature and cause of the charge(s);
- The right to legal representation and to be present at trial;
- The right to the presumption of innocence;
- The right to a reasoned judgment;
- Evidentiary rights; and
- The rights of juveniles.

4.1. The right not to be compelled to confess guilt

Sources in Cambodian and International Law	
UDHR Article 5	“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
ICCPR Article 14(3)(g) Article 7	“In the determination of any criminal charge against him, everyone shall be entitled not to be compelled to testify against himself or to confess guilt.” “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment [...]”
Constitution Article 38	“The law prohibits all physical abuse of any individual. The law protects the life, honor and dignity of citizens [...]”
CCPC Article 145	“[...] A charged person can be interrogated only in the presence of his lawyer. However, if the lawyer was properly summoned but does not show up on the specified date and time, the investigating judge can question the charged person without the presence of his lawyer. The absence of the lawyer shall be noted in the written record of the charged person’s interrogation [...]”
CCPC Article 321	“[...] A confession shall be considered by the court in the same manner as other evidence. Declaration given under physical or mental duress shall have no evidentiary value [...]”
Law on Juvenile Justice Article 5	“All persons performing any function concerning minors shall ensure the observance of the following principles: [...] Shall prohibit torture, corporal punishment, or other physical or mental treatments which is cruel, inhumane, or degrading to minors [...]”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right not to be forced to give testimony against him/herself [...]”

Article 14(3)(g) of the ICCPR guarantees the right of an individual “not to be compelled to testify against himself or to confess guilt.”⁹² This right is twofold: first, the suspect or accused must not be compelled or forced to provide evidence against themselves. In practice, this means when a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.⁹³ This right is therefore closely linked to the internationally recognized prohibition against torture and other cruel, inhuman or degrading punishment, as enshrined in Article 7 of the ICCPR. Should any confession or statement be made through coercion, torture or other ill-treatment, it must be excluded from the evidence, except if used as evidence that coercion, or torture or other treatment prohibited by Article 7 occurred.⁹⁴

Secondly, the suspect/accused cannot be compelled to self-incriminate by testifying against themselves. In other words, the suspect/accused must enjoy the unfettered right not to provide evidence that could be used against them.⁹⁵ 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.⁹⁶ In the case of a juvenile, the law is more general: they must not be compelled to “give testimony”.⁹⁷ This right is also guaranteed under all Articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Article 15,⁹⁸ as the right not to be compelled to confess guilt encompasses the absolute prohibition against torture and cruel, inhuman, or degrading treatment or punishment.

Figure 6: The right not to be compelled to confess guilt⁹⁹

⁹² See also CRC, Art. 40(2)(b)(iv).

⁹³ UN Human Rights Committee General Comment 32, para. 41; see also UN Human Rights Committee, Communication 912/2000, *Deolall v. Guyana* (1 November 2004), CCPR/C/82/D/912/2000, para. 5.1, <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, Communication 1033/2001, *Singarasa v. Sri Lanka* (21 July 2004), CCPR/C/81/D/1033/200, para. 7.4 <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, Communications 1263/2004 and 1264/2004, *Khuseynova and Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263–1264/2004, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>; Extraordinary Chambers in the Courts of Cambodia, Kaing Guek Eav alias Duch (Case 001), Trial Chamber, Judgment (26 July 2010) para. 360 (“the following interrogation techniques [...] inflicted severe physical pain or mental suffering for the purpose of obtaining a confession or of punishment, and constituted torture: severe beating, electrocution, suffocation with plastic bags, water-boarding, puncturing, inserting needles under or removing finger and toe nails, cigarette burns, forcing detainees to pay homage to images of dogs or objects, forced feeding of excrement and urine, direct or indirect threats to torture or kill the detainees or members of their family, the use of humiliating language, plunging detainees’ heads in a water jar and lifting by the hands tied in the back, and one proven instance of rape”).

⁹⁴ UN Human Rights Committee, General Comment 32, para. 41.

⁹⁵ ICCPR, Art. 14(3)(g); see also CRC, Art. 40(2)(b)(iv).

⁹⁶ ECtHR, *Condron v. the United Kingdom* (2 May 2000) App no. 35718/97, para. 56, <http://hudoc.echr.coe.int/eng?i=001-58798>;

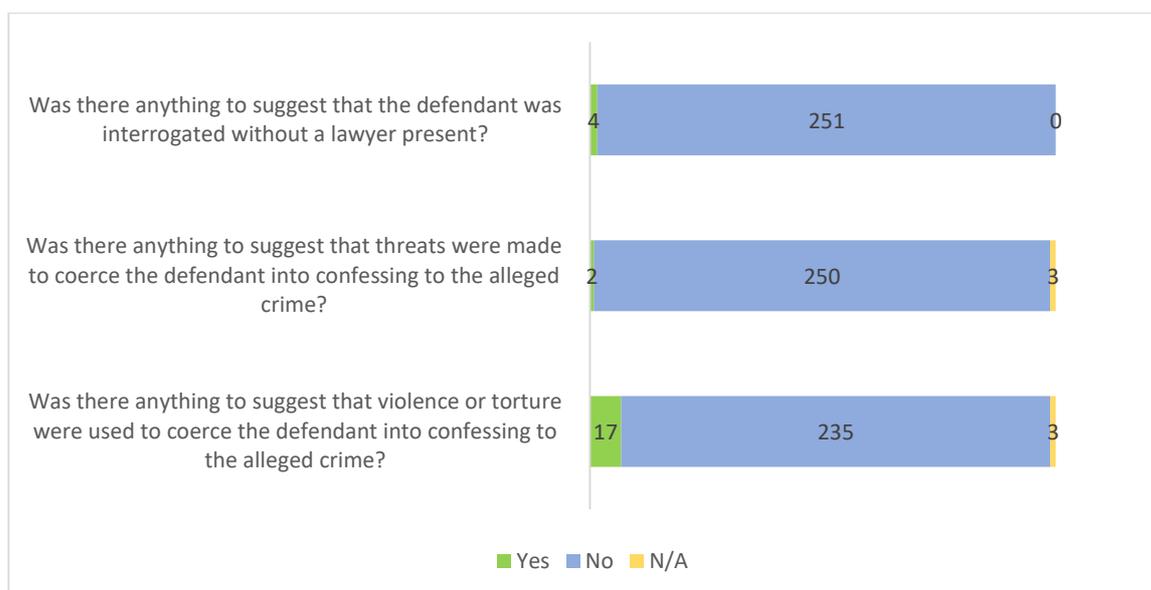
ECtHR, *Beckles v. the United Kingdom* (8 October 2002) App no 44652/98, para. 58, <http://hudoc.echr.coe.int/eng?i=001-60672>

⁹⁷ CRC, Art. 40(2)(b)(iv).

⁹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Art. 15: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

<http://cambodia.ohchr.org/sites/default/files/Treaty/CAT-EN.pdf>

⁹⁹ This data is based on the total number of defendants (255 individuals) involved in the 203 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, four of the 255 defendants insinuated that they had been interrogated without their lawyer being present. Two individuals alleged that they were threatened into giving a confession, while 17 individuals (6.7%) stated that violence or torture was used on them in order to obtain a confession to the alleged crimes during the investigations carried out by the judicial police. This trend represents a slight increase in comparison to the 2018/2019 reporting period, which is highly concerning as it shows that no significant improvement was made despite this issue being raised to the Court.

International Human Rights Law Terminology:

- *Non-derogable right*: A right whose application cannot be suspended by government in circumstances of “state of emergency” under Article 4 ICCPR.
- *Absolute right*: A right to which no restrictions are allowed.
- *Peremptory norm of general international law (jus cogens)*: “[A] norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹⁰⁰

While the number of cases in which there were indications of coercion or torture during interrogations (either psychological or physical) are small in number, it is nevertheless a matter of serious concern. The prohibition of torture has indeed a special status in international human rights law. Not only is it a non-derogable right, it is also an absolute right. It is widely accepted that the prohibition of torture is a peremptory norm of international law (*jus cogens*).¹⁰¹

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

¹⁰⁰ International Law Commission ‘Report of the International Law Commission on the Work of its Seventy-first Session’ Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 10 (A/74/10) (2019) para. 56, <https://legal.un.org/ilc/reports/2019/>

¹⁰¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary* (2nd edn, N.P. Engel 2005), p. 157.

In its letter to CCHR, the Court of Appeal stated that in some cases, the defendants denied the confessions they made at earlier stages, arguing that they were coerced into confessing their guilt through intimidation, violence, or pressure. However, the Court highlighted that none of the defendants provided evidence of such coercion or violence and they had not denied these confessions with judicial police, prosecutor, investigating judge, or during the first instance hearing. In the absence of evidence, the Court considered that the defendants’ denial of their previous confessions was not reasonable and that there were no valid reasons to refuse to admit their confessions as evidence and no need to reinvestigate the cases.¹⁰²

4.2. Right to a public hearing

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

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances. Amongst the reasons that could prompt the court to order a complete or partial in camera hearing are the risk that a public hearing could cause “significant damage” to public order, national security or morality, the interest of the private lives of the parties (notably in some sexual assault cases), or the presence of a juvenile defendant¹⁰⁴ (see 4.8. Rights of Juveniles). Only in exceptional circumstances prescribed by law can all or part of the public be excluded. 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.¹⁰⁵ The right to a public hearing also involves an obligation on courts to make

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.¹⁰³ Only in a very few cases (ex: if required by the interests of juveniles) can exceptions be made to this last safeguard.

¹⁰² 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.

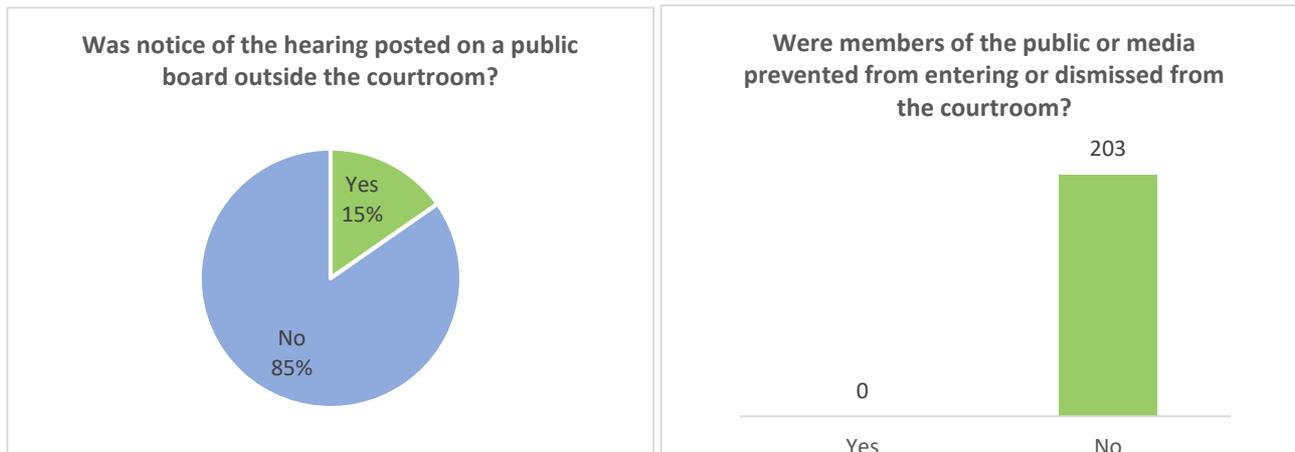
¹⁰³ UN Human Rights Committee, General Comment 32, para. 29.

¹⁰⁴ UN Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the child justice system (18 September 2019) CRC/C/GC/24, para. 67, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9JUMtGkA4> (“UN Committee on the Rights of the Child, General Comment No. 24”)

¹⁰⁵ UN Human Rights Committee, General Comment 32, para. 29.

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.¹⁰⁶

Figure 7: The right to a public hearing¹⁰⁷



Hearing notices, displaying the date, location and starting time of a hearing, and strategically placed outside courtrooms, are one way of promoting public hearings by informing the public, who should be allowed access to the courtrooms in which trials are taking place. In 2017 and 2018, the Court¹⁰⁸ recognized that there was a lack of hearing notices in relation to the Court’s schedule, and informed CCHR that they would take action in order to improve the public’s information about and access to hearings. In 2019, the Court stated that displaying the public trial schedule was an administrative issue and not required by law. However, the Court has prioritized this issue and has developed a [webpage](#) to post information about upcoming cases, as well as a [hearing schedule](#). The information now made available includes - among others - the date, time and location of the hearing, the case’s file number, the charge(s) and the name of the judge. During the Reporting Period, hearing notices were posted outside the courtroom for only 31 (15%) out of the 203 monitored trials. This represents an improvement from the 2018/2019 reporting period, where hearing notices were not posted for any of the 239 monitored trials. However, the lack of hearing notices has been a constant issue since 2014, and it is essential that concrete steps are taken to remedy this deficiency for all hearings at the Court for the right to a public hearing to be considered fully respected.

In relation to hearings remaining open to the public and the media, it is welcome to note that during this reporting period, the public or media was not prevented or dismissed from entering the courtroom for all 203 (100%) of the monitored trials.

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

Sources in Cambodian and International Law	
ICCPR Article 14(3)(a)	“In the determination of any criminal charge against him, everyone shall be entitled to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”

¹⁰⁶ UN Human Rights Committee, General Comment 32, para. 28; UN Human Rights Committee, Communication No. 215/1986, *Van Meurs v. The Netherlands* (23 July 1990) CCPR/C/39/D/215/1986, para. 6.2, <http://juris.ohchr.org/Search/Details/311>

¹⁰⁷ This data is based on the 203 cases that were monitored.

¹⁰⁸ On 5 April 2018 and 27 August 2019, CCHR’s Fair Trial Monitoring Project team met with the Court of Appeal in order to discuss the findings contained in the 2016/2017 and 2017/2018 reports.

ICCPR Article 14(3)(f)	“In the determination of any criminal charge against him, everyone shall be entitled to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”
CCPC Article 322	“The court clerk shall call the names of the accused, civil parties, civil defendants, victims, witnesses and experts and verify the identity of those persons.”
CCPC Article 325	“The presiding judge shall inform the accused of the charges he is accused of.”
CCPC Article 330	“If necessary, the presiding judge may seek the assistance of an interpreter/translator.”
CCPC Article 331	“When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person cannot read or is illiterate, the presiding judge shall call on an interpreter/translator for him under the conditions stated in Article 330 [...] The presiding judge may call on any person who is able to communicate with the deaf and mute person.”
CCPC Article 396	“[T]he rules that apply to hearings of the Court of First Instance shall also apply to the Court of Appeal.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to refuse to answer questions with or without the presence of a lawyer [...] The right to be informed of the charge(s) [...]”
Law on Juvenile Justice Article 51	“At the commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights: The rights at trial as stipulated in Article 6 (procedural right of minor) of this law [...].”

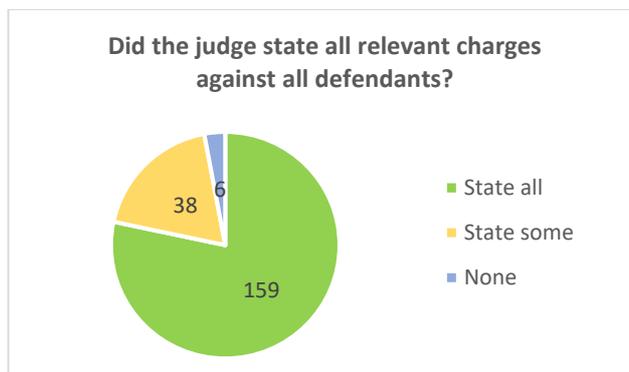
Those accused of criminal offenses must be informed “promptly” of the nature of the offense with which they have been charged. Judges have the obligation to provide an adequate explanation and to make sure that the accused understands the nature and cause of the charge(s) against them. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive information to a lawyer, in cases where the accused person is legally represented. To comply with obligations under Article 14 of the ICCPR, 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.¹⁰⁹

It should be noted that CCHR’s trial monitors collect data at the commencement of a trial, at a time the accused should already be well aware of the charges against them as a result of arrest/pre-trial detention procedures. However, it is nonetheless important for judges to remind the accused person of this information

¹⁰⁹ UN Human Rights Committee, General Comment No. 32; *See also* UN Human Rights Committee, 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.”

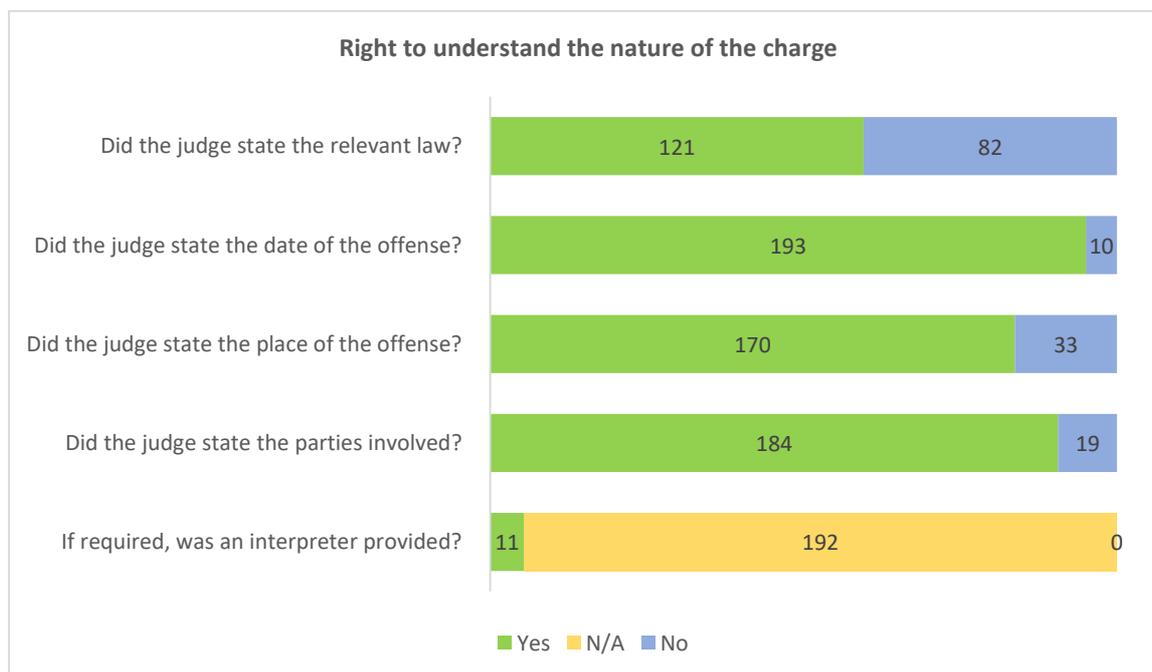
and to ensure that the accused understands the information. This is particularly important in cases where charges may have been changed or amended between the initial arrest/charge and the actual trial.

Figure 8: The right to understand the nature and cause of the charge(s) - Overview¹¹⁰



In the majority of cases (159 out of 203, or 78.3%), the judges did inform the defendants of all relevant charges against them. However, in over one fifth (21.6%) of cases monitored by CCHR during the reporting period, defendants were either not informed of the totality of the relevant charges against them or not informed about charges against them at all, which is worrisome. While this percentage is lower than during the last reporting period, it still represents a significant portion of cases. Therefore, CCHR decided to classify this right as being not fully respected.

Figure 9: The right to understand the nature and cause of the charge(s) - Detail¹¹¹



The figures above show that, in the majority of cases, judges at the Court re-stated the charges, facts, dates and information related to the charges. The right to understand the nature of the charge at the appeal stage of proceedings was therefore largely respected. However, when compared with findings from the monitoring of the 2017/2018 and 2018/2019 reporting periods, respect for this right has only marginally improved as outlined in the table below.

¹¹⁰ This data is based on the 203 cases that were monitored.

¹¹¹ This data is based on the 203 cases that were monitored.

Figure 10: The right to understand the nature and cause of the charge(s) - Evolution¹¹²

	2017/2018	2018/2019	2019/2020
Percentage of cases where the judge stated all the charges	69%	67.4%	78.3%
Percentage of cases where the judge stated the relevant law	63%	68.2%	59.6%
Percentage of cases where the judge stated the date of the offense	94.8%	90.8%	95.1%
Percentage of cases where the judge stated the place of the offense	78.4%	85.4%	83.7%
Percentage of cases where the judge stated the parties involved	92.5%	91.2%	90.6%

During the Reporting Period, the information that was not shared by judges mostly related to the relevant law and the location of the offence. Instances in which judges have failed to state information pertaining to the relevant law and to the place of the offense have declined when compared to the last two reporting periods. Those constitute key details which must be provided to a defendant during a criminal trial. The Court of Appeal stated in its letter to CCHR that the judges read out a summary of the case stating all required information on the relevant parties, including the parties of appeal, as well as on the charges, the facts, the evidence and verdict rendered by the court of first instance and the appeal request, as required by the criminal procedure.¹¹³

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

Sources in Cambodian and International Law	
ICCPR Article 14(3)(d)	“In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”
Constitution Article 38	“Every citizen shall enjoy the right to defense through judicial recourse.”
CCPC Article 143	“When a charged person, who is a minor appears for the first time, he/she “shall always be assisted by a lawyer. If a charged person does not choose a lawyer, the court shall appoint a lawyer according to the Law on the Bar.”
CCPC Article 300	“The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”

¹¹² This data is based on the 213 cases monitored in 2017/2018; the 239 cases monitored in 2018/2019; and the 203 cases monitored in 2019/2020.

¹¹³ 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..

CCPC Article 301	“The assistance of a lawyer is compulsory if (i) the case involves a felony; or (ii) the accused is a minor.”
CCPC Article 389	“An accused in detention shall be transferred without delay by the order of the General Prosecutor to the nearest prison or detention center to the seat of the Court of Appeal.”
Law on Prison Article 62	“Besides prisoners, any transfer of detained persons from one prison to another shall be notified to the Prosecutor of the transferring territorial jurisdiction to the Prosecutor of the receiving territorial jurisdiction or the competent General Prosecutor.” (CCHR’s translation)
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] [t]he right to be assisted by a lawyer [...]”
Law on Juvenile Justice Article 50	“The minor shall be assisted by a lawyer during trial [...]”
Law on Juvenile Justice Article 51	<p>“At commencement of trial, the court shall advise the minor in a language that the minor can understand of the following rights:</p> <ul style="list-style-type: none"> • The rights at trial as stipulated in article 6 (procedural right of minor) of this law • The right to be present at trial • The right to be protected by the court from hostile or inappropriate cross-examination • The right to ask for recusal of the trial judge • The right to have the last word in the trial • The right to appeal.

Being charged with an offense can be a daunting experience and legal procedures can be complex and confusing. It is therefore vital that individuals have the opportunity to retain legal representation. Furthermore, if the accused cannot afford their own counsel, the relevant authorities should provide a lawyer free of charge, if the interests of justice so require.¹¹⁴ The gravity of the offense and the existence of some objective chance to win the appeal are factors that must be taken into account in order to assess whether a lawyer should be provided free of charge in the interests of justice.¹¹⁵ The right to be represented by a lawyer ensures that the accused has an opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against them, explain their rights, guide them through the trial process and represent their interests in court. In Cambodia, it is compulsory for a person to be legally represented if they are accused of a felony offense or if they are a juvenile. While it is not mandatory to be legally represented if the accused committed a misdemeanor offense (unless they are a juvenile), individuals still have the option, if they so wish, to retain a lawyer. In such cases, the burden to retain a lawyer does not rest with the court.

¹¹⁴ ICCPR, Art. 14(3)(d); UN Human Rights Committee, General Comment 32, para. 38.

¹¹⁵ UN Human Rights Committee, General Comment 32, para. 38.

In addition, trials must be held in the presence of the accused,¹¹⁶ as it permits the accused to hear and challenge the case against them, and to present a defense. Regarding juveniles, the hearing should take place in the presence of “legal or other appropriate assistance” and – unless found not to be in the best interests of the child – their parents or legal guardians.¹¹⁷

The right to be present in person is applicable to appeal proceedings, if they involve questions of both fact and law,¹¹⁸ which is the case in Cambodia. While trials *in absentia* are not impermissible under international human rights law, they may be permitted only in exceptional circumstances and when it is in the interests of the proper administration of justice.¹¹⁹ Cogent justification must be provided for them.¹²⁰ Further, the accused must have unequivocally waived their right to appear at trial.¹²¹

In relation to legal representation, the Court of Appeal stated in its letter that the Court does not guarantee access to legal representation to all the defendants who are accused of committing an offense. The Court recalled that legal representation is only mandatory for felony and juvenile cases. For misdemeanor cases, legal representation depends on whether the defendants wish to be represented or not. The Court of Appeal can therefore hear these cases even if the defendants have no legal representation. The Court also reported that appeal judges inform the accused of their right to legal representation.¹²²

Concerning the right to be present at trial, the Court of Appeal explained that the Court can also hear the cases without the presence of the accused if their lawyers are present, if the appeal request is not considered valid, if the appeal request is made by the prosecution or if the case has been pending before the Court for a long time and a party requests the judges to adjudicate the case without the presence of the accused.¹²³

Figure 11: The right to legal representation and to be present at trial¹²⁴

¹¹⁶ ICCPR, Art. 14(3)(d); UN Human Rights Committee, General Comment 32, para. 36.

¹¹⁷ CRC, Art. 40(2)(b)(iii); *see also* UN Human Rights Committee, General Comment 32, para. 42.

¹¹⁸ UN Human Rights Committee, Communication 387/1989, *Karttunen v. Finland* (23 October 1992) CCPR/C/46/D/387/1989, para. 7.3 <http://juris.ohchr.org/Search/Details/402>

¹¹⁹ UN Human Rights Committee, General Comment 32, para. 36.

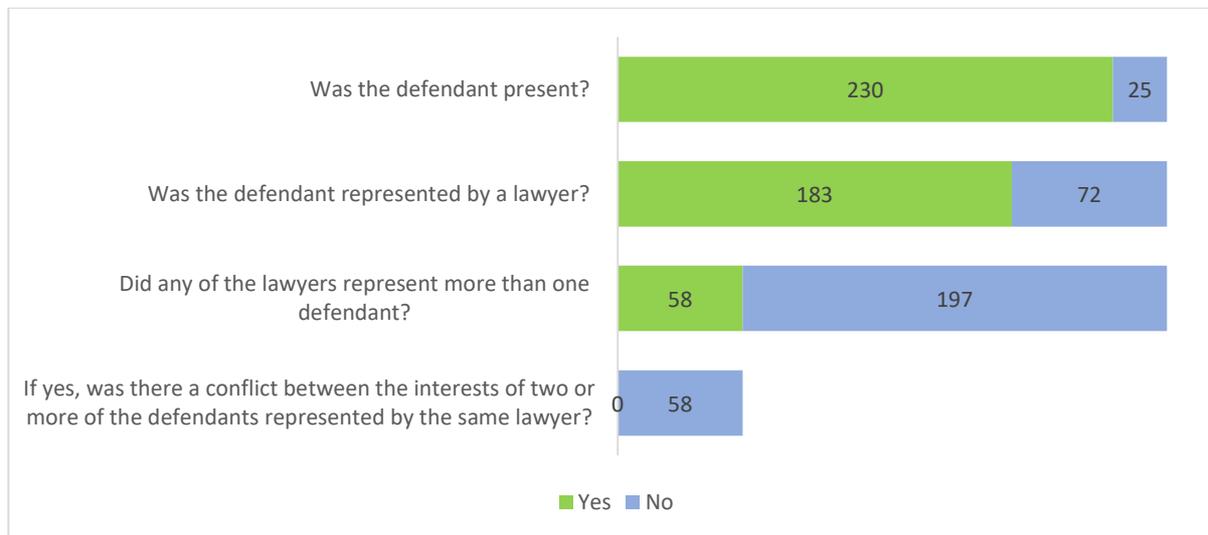
¹²⁰ UN Human Rights Committee, Communication 016/1977, *Mbenge v. Zaire* (25 March 1983) CCPR/C/18/D/16/1977, para. 14.1, <http://juris.ohchr.org/Search/Details/573>

¹²¹ UN Human Rights Committee, General Comment 32, para. 36.

¹²² 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.

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 Report 2019/2020.

¹²⁴ This data is based on the total number of defendants (255 individuals) involved in the 203 cases monitored.



Between 2018/2019 and 2019/2020, the percentage of defendants who were present during the hearing welcomingly increased, from 80.7% to 90.2%. However, the number of defendants represented by a lawyer reduced from 74.4% to 71.7%. It remains concerning that more than a quarter of defendants were not represented by a lawyer.

In light of the fundamental character of the right to be tried in one’s presence and to have a lawyer, the fact that 28.2% of defendants were not represented by a lawyer, and that 9.8% of defendant were not present is cause for serious concern. In April 2018, the Court’s Deputy Presidents¹²⁵ noted that in most cases, the accused’s absence during hearings was due to the lack of transportation from the detention center to the Court, which falls under the responsibility of the prison authorities. In August 2019, the Court stated that while legal representation is always required for felony and juvenile case hearings, in misdemeanor cases the accused does not require legal representation, provided they are not minors¹²⁶.

Further, a lawyer represented more than one accused in 58 cases during the reporting period. Situations in which a lawyer represents multiple accused, while sometimes cost-effective, raise concerns for the individuals’ fair trial rights, for instance when one co-defendant’s defense or version of events is different or contradictory to that of another co-defendant. If the same lawyer represents both defendants, putting forward one’s defense would negatively impact the other, who would then be precluded from having an effective defense and from being adequately represented by counsel. In such cases, a conflict of interest occurs. Each defendant should have a separate lawyer.¹²⁷ It should be noted that during the Reporting Period, CCHR’s trial monitors did not identify a conflict of interest in the cases where a lawyer was representing several defendants.

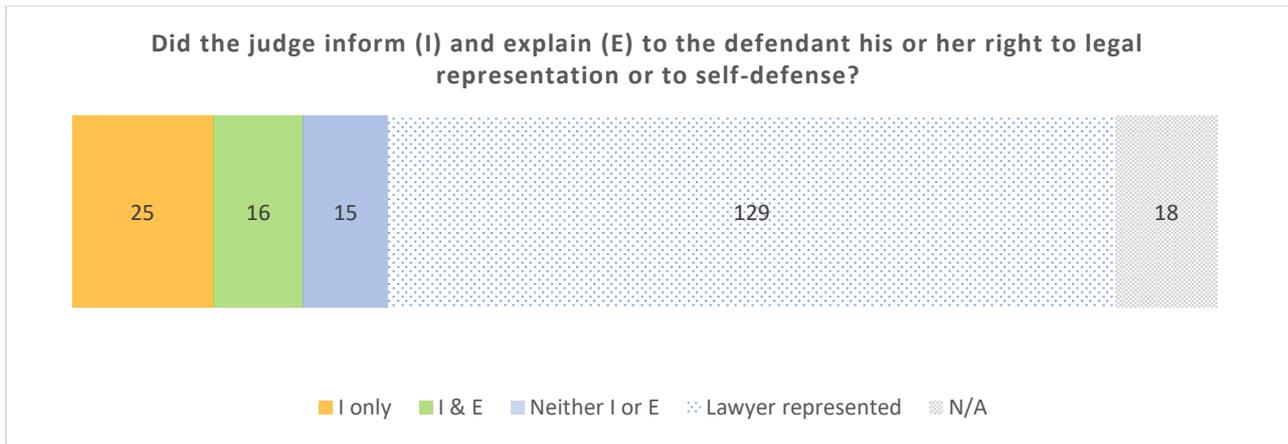
Figure 12: Explanation of rights¹²⁸

¹²⁵ On 5 April 2018, CCHR’s Fair Trial Monitoring Project team met with the Deputy Presidents of the Court of Appeal H.E. Plang Samnang, H.E. Nhoung Thul, as well as with the Deputy General Secretary, Ms. Sreng Soyeth, in order to discuss the findings contained in the 2016/2017 report.

¹²⁶ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and the general administrative secretariat of the Court of appeal in order to discuss the findings of this report.

¹²⁷ See CCHR ‘Guidance Notes for CCHR Appeal Court Monitoring Checklist’, p. 47, <https://sithi.org/tmp/publication/view/2014-01-29-guidance-notes-for-cchr-appeal-court-monitoring-checklist>

¹²⁸ This data is based on the 203 monitored cases. N/A = the defendant was absent.



The fact that in 71.8% of the 203 cases monitored by CCHR the defendants had legal representation shows that individuals’ rights to access to a lawyer have mostly been protected, remaining stable since 2017/2018. However, in 15 out of 203 cases (7.4%) the judges failed to inform and explain to the accused their right to legal representation or the right to represent themselves. This constitutes a minor improvement compared to 2018/2019, when the percentage was 8.4%. Nevertheless, this right remains not fully respected.

In cases where defendants were not present at trial, the absence of the defendant was often due to logistical issues as well as communication problems between the judges and the correctional centers or places of detention. At the start of the Reporting Period, there was only one Court of Appeal for the entire country, which required defendants incarcerated in correctional centers in the provinces to travel to the Court of Appeal in Phnom Penh for the day of their hearing. However, there were many occasions where transportation of defendants did not occur because either the Court sent information to the wrong correctional center, or because correctional centers failed to keep the Court updated about the transfer of detained persons between correctional centers. It is hoped that these logistical problems will be somewhat addressed with the creation of the three regional Appeal Courts which all became operational in 2020. However, this issue needs to be addressed by improving record keeping and communication between the Court and correctional centers.

In relation to right to legal representation, the Court stated in the consultation meeting for the 2018/2019 report that legal representation was mandatory for felony and juvenile cases. For misdemeanor cases, the state does not guarantee the provision of legal aid, but defendants are not banned from hiring lawyers personally. The Court reported they have tried to find legal aid for defendants. There are two rooms for legal consultation between lawyers and their clients at the court, and waiting rooms for defendants, and it is free for lawyers to copy the case files of poor defendants. Moreover, they stated that applying for legal presentation for the poor is difficult as they are required to provide a certificate proving their poor status to the BAKC. Moreover, BAKC has challenges with budget, which means it is often late in responding to applications and providing legal representation. The Court stated that judges ask defendants charged with misdemeanor cases about legal aid if they are unrepresented, but some defendants agree to go ahead with the trial without legal aid.¹²⁹

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 the Report 2018/2019.

4.5. Right to the presumption of innocence

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

The presumption of innocence is a fundamental and universally recognized fair trial right which applies throughout the period of the criminal investigation and trial proceedings, up to and including the end of the final appeal.¹³⁰ 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.¹³¹

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.

More specifically, the presumption of innocence requires that:

- i. The court or tribunal must not predetermine the case before it;
- ii. Guilt beyond reasonable doubt must be proved by the prosecution;
- iii. The treatment of the accused should not be such as to indicate that they are guilty;
- iv. The media should avoid news coverage that undermines the presumption of innocence; and
- v. Public authorities should refrain from making public statements that would undermine this presumption.¹³²

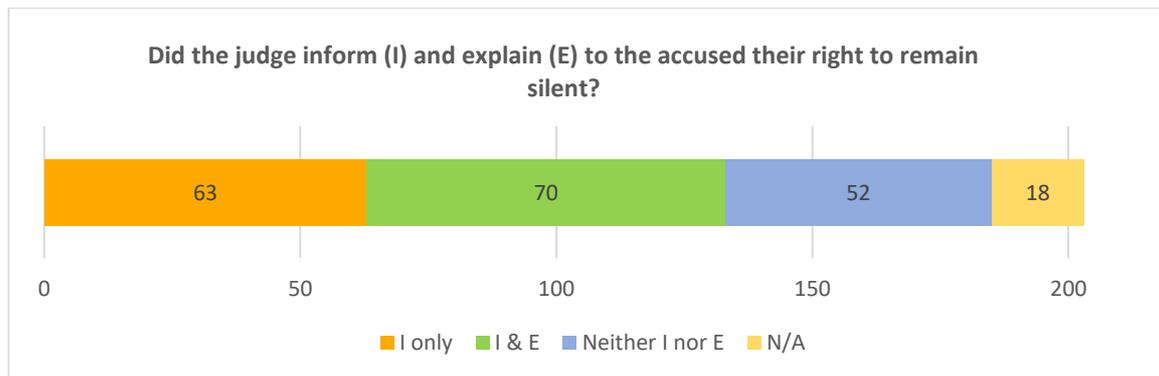
Figure 13: The right to remain silent¹³³

¹³⁰ OHCHR ‘The Right to a Fair Trial (Part I), Chapter 6’, p. 219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>; Amnesty International, ‘Fair Trial Manual’ (1998) p. 125, Section 15.2. <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>

¹³¹ UN Human Rights Committee, General Comment 32, para. 30

¹³² UN Human Rights Committee, General Comment 32, para. 30; ECtHR, *Barberá, Messegue and Jabardo v. Spain* (6 December 1998) Series A no. 146, para. 77, <http://hudoc.echr.coe.int/eng?i=001-57429>

¹³³ The data includes the 185 monitored cases (out of 203) where the defendant was present at the hearing.



The right to remain silent is rooted in the right to the presumption of innocence. In 25.6% of cases, judges failed to inform and explain the right to remain silent to defendants. This represents a significant improvement from the 2018/2019 reporting period, during which judges failed to inform and explain the right in 66% of cases. While this improvement is notable and welcome, the practice of judges informing and explaining the presumption of innocence to *all* defendants, which is intrinsically linked to the presumption of innocence, needs to be implemented as a matter of urgency, as it lies at the core of fair trial rights. In its letter to CCHR, the Court of Appeal stated that the presumption of innocence is a key principle enshrined in international law and domestic law, especially in Article 38 of the Cambodian Constitution, that the judges of the Court must strictly apply. However, this principle does not require the judges to inform the defendants of their right to remain silent. The Court added that defendants are nevertheless free to exercise their right to remain silent if they wish.¹³⁴

The right to be presumed innocent includes an obligation on authorities to ensure that no attributes of guilt are attached to the accused during the trial which might undermine the presumption of innocence.¹³⁵ When the accused person attends trial in a prison uniform,¹³⁶ the presumption of innocence is undermined. This is particularly the case when the uniform makes no distinction between remand and convicted prisoners. When remand prisoners attend court in prison uniforms, they are presented in the same way as prisoners who may have already been convicted. As no distinction is drawn between the two categories of prisoners, this practice has the potential to create speculation as to whether the individual accused is in fact already a convicted offender and, as such, may influence the judge’s decision, but also the public’s perception. Even when accused persons are serving sentences, the fact that they appear before the court in prison uniform is equally prejudicial. The issue of defendants appearing in court in prison uniforms falls within the responsibility of the General Department of Prisons.

International best practices in criminal justice indicate that defendants should be able to wear their own clothing when appearing in court. The United Nations Standard Minimum Rules for the Treatment of Prisoners (“The Nelson Mandela Rules”),¹³⁷ adopted by the UN General Assembly in 2015 and which represent internationally recognized best practices for the treatment of prisoners, state that “an untried

¹³⁴ 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.

¹³⁵ UN Human Rights Committee, General Comment 32, para. 30 [“Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals”]; see also ECtHR, *Samoilă and Cionca v. Romania* (4 March 2008) App no. 33065/03, paras 99-101, [https://hudoc.echr.coe.int/eng#{"fulltext":\["SAMOILA%20AND%20CIONCA"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\[""\],"itemid":\["001-85390"\]}](https://hudoc.echr.coe.int/eng#{)

¹³⁶ This referred to the convicted person’s blue uniform, which, according to the Ministry of Interior’s Prakas, is for convicted persons whose conviction was final. See CCHR’s Fair Trial Rights Newsletter ‘Prisoners Uniform and Presumption of Innocence’ (June 2017) https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf

¹³⁷ UN General Assembly ‘United Nations Standard Minimum Rules for the Treatment of Prisoners’, Resolution 70/175, Annex, (17 December 2015) https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.” In the ECCC, defendants are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction. Therefore, defendants should be allowed to appear before the Court with their own clothing. At the very least, the prison uniform which they wear must be different from that of convicted prisoners. As a result of CCHR’s advocacy, change has slowly been taking place in this regard, with more and more remand prisoners appearing in a uniform of a different color (orange) than the uniform worn by convicted prisoners (blue). Further, in a handful of cases, defendants were able to appear before the court in their own clothing.¹³⁸

Figure 14: The presumption of innocence¹³⁹

	Yes	No	N/A
Did the defendant appear before the court in convict uniform?	72 (28.2%)	149 (58.3%)	34 (13.3%)
Was the defendant handcuffed throughout the hearing?	0 (0%)	221 (86.7%)	34 (13.3%)
Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	2 (0.8%)	253 (99.2%)	0 (0%)
Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant?	1 (0.4%)	229 (89.8%)	25 (9.8%)

The Figure above shows that 72 out of 255 defendants still appeared in court wearing the prison uniform for convicts at their hearings – representing 28.2% of the defendants whose cases were monitored by CCHR. This represents an increase compared to 2018/2019, when 21.9% of the defendants appeared in a convict uniform. Such a practice undermines the presumption of innocence. This is particularly concerning given the high level of advocacy made on this matter, as it has been raised with the Court numerous times in recent years. During the consultation meeting with the Court for the 2018/2019 reporting period, they stated that the uniform of the defendants was not set by their department and they would not interfere with the practice of the prison department.¹⁴⁰

Where defendants appear in the same uniform as prisoners serving their sentence, this significantly undermines their presumption of innocence. It is essential that the practice of allowing defendants to wear their own clothes while appearing in court is generalized. To ensure consistency, the authorities should issue clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgment has not been issued must be allowed to appear in court wearing civilian clothes.

4.6. Evidentiary rights

Sources in Cambodian and International Law

¹³⁸ On 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of First Instance was transported to the Court of Appeal for hearing his appeal against the decision, was in civilian clothes. CNRP former president, Kem Sokha, also appeared in Court wearing his own clothing on 1 February 2018.

¹³⁹ This data is based on the total number of defendants (255 individuals) involved in the 203 cases monitored. N/A = The defendant was either absent or s/he was not imprisoned.

¹⁴⁰ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

ICCPR Article 14(3)(e)	“In the determination of any criminal charge against him, everyone shall be entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”
CCPC Article 153	“The investigating judge may question any person whose response is deemed useful to the revelation of the truth [...] The investigating judge may also arrange a confrontation between the charged person [...] and witnesses.”
CCPC Article 154	“Before the interview, each witness shall swear in accordance with their religion or beliefs that he/she only speaks the truth. The formality of the oath shall be defined in the annex of this Code.”
CCPC Article 298	“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”
CCPC Article 321	“Unless otherwise required by a law, any evidence in criminal cases is freely admissible. The court shall have a free choice to determine the value of the evidence submitted to the court on the ground of its true belief. The decision of the court shall be based only on the evidence which it has in the file or which has been presented at the hearing. A confession shall be submitted to the court for consideration in the same manner as other evidence. Answers given under the physical or mental duress shall have no evidentiary value. Communications between the accused person and his/her lawyers is not admissible as evidence.”
CCPC Article 324	“At the commencement of the trial hearing, each party may request the court to hear witnesses who are present in the court room but who were not properly summoned to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses and instruct them to retreat to the waiting room.”
CCPC Article 326	“[t]he presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful [...] The Royal Prosecutor, the lawyers and all the parties may be authorized to ask questions. All questions shall be asked with the authorization of the presiding judge. Except for questions asked by the Royal Prosecutor and the lawyers, all questions shall be asked through the presiding judge. In case of objection to a question, the presiding judge decides whether the question should be asked.”
CCPC Article 328	“Before answering the questions, each witness shall swear according to their religion or believe that he/she shall only speak the truth.”
CCPC Article 394	“Following his questioning of the accused, the presiding judge shall hear the civil party and the civil defendants in the order he deems useful. Witnesses and experts will be questioned only if the court so orders.”
Law on Juvenile Justice Article 6	“Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] The right to present evidence. The right to request to call and pose question to witnesses [...].”

All the decisions of the Court must be based exclusively upon the evidence presented during the course of the trial. It is therefore essential that each party has the opportunity to present evidence and call witnesses

in support of their case.¹⁴¹ It is equally important that each party is given the opportunity to cross-examine witnesses and to challenge evidence that they do not accept.¹⁴² While the provision of evidence *via* a written statement (that is, not during a court hearing) is not contrary to the rights of the accused, it is only compliant with human rights law if the defendant had the right to challenge and question the witness when that witness made the statement, or at a later stage of the proceedings before the trial itself.¹⁴³ Finally, pursuant to human rights law, when a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion.¹⁴⁴ If the individual alleges a violation of their rights, the burden of proof is on the party that took the statement to demonstrate that it was not done under duress, and not on the defendant to show that it was.¹⁴⁵ Evidence obtained in violation of this right must not be admissible at trial (see 4.1. The right not to be compelled to confess guilt).¹⁴⁶

From the data collected, in all 203 cases monitored, nothing suggested that a party was not given the opportunity to call witnesses. While this is encouraging, evidentiary rights remain not fully respected for two main reasons. First of all, in one out of the two cases in which witnesses were called, witnesses were present in the courtroom before they were questioned. This practice can lead to a witness's testimony being influenced by hearing the testimony of other witnesses prior to giving evidence. A better practice is for witnesses to leave the courtroom and not return until they are called to testify.

In addition, the Court must ensure that the evidence being relied upon is of sufficient probative value (reliability and authenticity), and that all parties have the opportunity to challenge the evidence. The data collected during the trial monitoring activities reveals that the quality of evidence presented is of great concern. Nine confessions were presented during trials as evidence and, amongst these, at four confessions were relied on by the judge as evidence. The quality and quantity of evidence presented and considered during a trial hearing is essential to ensure that individuals are proven guilty beyond reasonable doubt. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as live witnesses, medical evidence and forensic evidence. CCHR's trial monitoring revealed there is no trend of examining this type of evidence at the Court. During the consultation meeting on this Report, the judges of the Court affirmed that they would not ask for evidence

¹⁴¹ CCPC, Art. 334; UN Human Rights Committee, General Comment No. 32, para. 39.

¹⁴² UN Human Rights Committee, General Comment No. 32, paras 13, 39.

¹⁴³ See e.g. ECtHR, *Mirilashvili v. Russia* (11 December 2008), App no. 6291/04, para. 163, <http://hudoc.echr.coe.int/eng?i=001-90099>; ECtHR, *Asch v. Austria* (26 April 1991) Series A no. 203, para. 27, <http://hudoc.echr.coe.int/eng?i=001-57676>; ECtHR, *Isgrò v. Italy* (19 February 1991) Series A no. 194-A, para. 34, <http://hudoc.echr.coe.int/eng?i=001-57653>; ECtHR, *Kostovski v. the Netherlands* (20 November 1989) Series A no. 166, para. 41, <http://hudoc.echr.coe.int/eng?i=001-57615>

¹⁴⁴ UN Human Rights Committee, General Comment 32, para. 41; see also UN Human Rights Committee, Communication 912/2000, *Deollal v. Guyana* (1 November 2004) CCPR/C/82/D/912/2000, para. 5.1 <http://juris.ohchr.org/Search/Details/1149>; UN Human Rights Committee, Communication 1033/2001, *Singarasa v. Sri Lanka* (21 July 2004) CCPR/C/81/D/1033/2001, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, Communications 1263/2004 and 1264/2004, *Khuseynova and Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263-1264/2004, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>

¹⁴⁵ UN Human Rights Committee, General Comment 32, para. 41; see also UN Human Rights Committee, Communication 1033/2001, *Singarasa v. Sri Lanka* (21 July 2004) CCPR/C/81/D/1033/2001, para. 7.4, <http://juris.ohchr.org/Search/Details/1125>; UN Human Rights Committee, Communications 1263/2004 and 1264/2004, *Khuseynova and Butaeva v. Tajikistan* (20 October 2008) CCPR/C/94/D/1263-1264/2004, para. 8.3, <http://juris.ohchr.org/Search/Details/1457>

¹⁴⁶ UN Human Rights Committee, General Comment 32, paras 6, 41; UN Human Rights Committee, 'General Comment No. 29 – Article 4: State of emergency' (31 August 2001) CCPR/C/21/Rev.1/Add.11, para. 7, 15, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTjRO%2Bfud3cPVrcM9YR0iix49nFOsUPO4oTG7R/o7TSsorhtwUUG%2By2PtsIYr5BlDm8DN9shT8B8NpbsC%2B7bODxKR6zdESeXKjilLnNU%2BgQ%3D%3D>

from witnesses who have already testified at previous stages of the trial, and only new witnesses are invited to testify during their hearings.¹⁴⁷

In its letter on the findings of this Report, the Court of Appeal affirmed that each party has the right to present evidence freely at trial. The Court of Appeal explained that judges admitted any evidence that was helpful in seeking the truth and in finding justice and that the decision to admit or exclude evidence was at the discretion of the Court.¹⁴⁸

4.7. Right to a reasoned judgment

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

The right to a reasoned judgment is inherent to the right to a fair trial, and is included in the right to a public judgment. According to international standards, in order to enjoy the effective exercise of the right to have convictions and sentences reviewed by a higher tribunal, a convicted person is entitled to have, within reasonable time, access to a written judgment which is duly reasoned, for all instances of appeal.¹⁴⁹ Within the Cambodian context, this is respected by both the accused and prosecution having the right to appeal an appeal judgment to the Supreme Court.

The CCPC provides that every judgment by the Court of First Instance should have two parts: the grounds for the judgment, meaning “the arguments of facts and laws which lead the court to make decision” and the decision of the court (Art. 357). The judgment must be clear, and the judges must examine “all charges and

¹⁴⁷ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

¹⁴⁸ 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.

¹⁴⁹ UN Human Rights Committee, General Comment No. 32, para. 49; UN Human Rights Committee, Communication No. 320/1988, *V. Francis v. Jamaica* (24 March 1993), GAOR, A/48/40 (vol. II), para. 12.2, <http://hrlibrary.umn.edu/undocs/html/320-1988.html>.

arguments raised during the hearing”. It must also respond to the written conclusions of the parties (Art. 357). Article 403 of the CCPC provides that these provisions equally apply to Appeal Judgments.

In March 2018, the United Nations Special Rapporteur on the situation of Human Rights in Cambodia (“UNSRSHRC”), Rhona Smith, highlighted the importance of this right by calling for “greater transparency in judicial decision-making” and “more consistent decisions on evidence and on the application of the law” in order to promote greater legal certainty and improve public perceptions. She recommended that “plans to make public judgments and legal reasoning should be progressed”.¹⁵⁰

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

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

Having a reasoned judgment is crucial in safeguarding against arbitrariness¹⁵¹ as it compels the judges to explain their decision, and ensures that the person who is convicted knows why, and what, they are being convicted for.

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

In 2014-2015, judges failed to refer to the relevant law when rendering their verdict 80% of the time, and failed to refer to evidence 73% of the time. In cases monitored by CCHR between 1 November 2016 and 31 October 2017, judgments without adequate reasoning were given 67.5% of the time. During the 2017-2018 reporting period, no adequate reasoning was provided in 87.4% of the cases. While an improvement was noted in the last reporting period, when judgments without adequate reasoning were given in only 47.5% of the cases, it unfortunately did not last as this reporting period saw 64.7% of judgments be given without adequate reasoning.

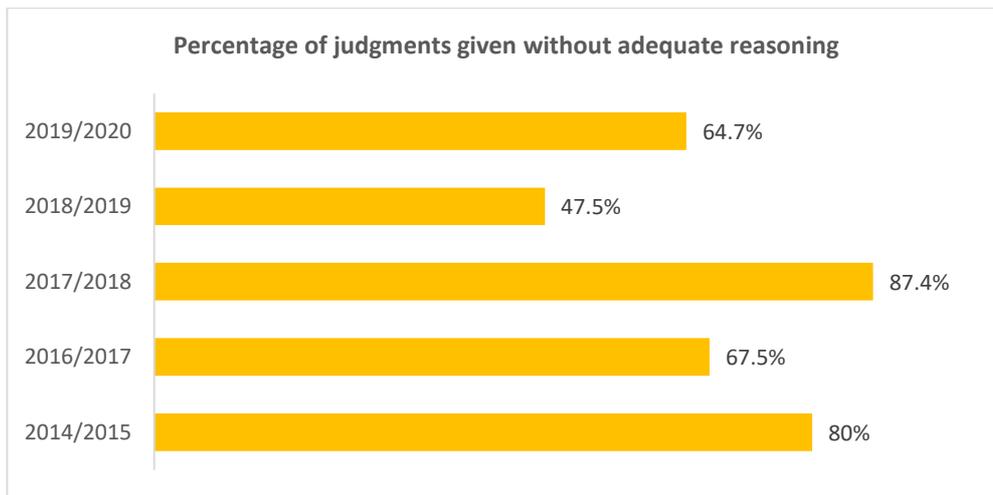
The right to a reasoned judgment therefore remains a not fully respected right. As outlined above, the right to a reasoned judgment is one of the most fundamental fair trial rights. It is essential that more attention is given on this issue, in order to protect fair trial rights in Cambodia.

*Figure 15: Evolution of cases where judgments without adequate reasoning were given (2014-2020)*¹⁵²

¹⁵⁰ UN Special Rapporteur on the situation of human rights in Cambodia, ‘End of Mission Statement’ (14 March 2018), <https://cambodia.ohchr.org/sites/default/files/End%20of%20Mission%20statement%202014%20March%202018.pdf> (“SRSHRC, End of Mission Statement (14 March 2018)”)

¹⁵¹ Amnesty International, ‘Fair Trial Manual’ (1998) p. 174, Section 24.2, <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>

¹⁵² This data is based on the total number of cases for which the trial monitor was present when the judgment was delivered in 2014/2015 (26 cases), 2016/2017 (255 cases), 2017/2018 (95 cases), 2018/2019 (99 cases) and 2019/2020 (18 cases).



CCHR’s Trial Monitor noticed that in all the cases where a judgment was rendered at the time CCHR was monitoring the hearings, the Court handed down a guilty verdict, upholding the decisions of the Courts of First Instance – a trend which has been ongoing since the 2016/2017 reporting period. This, taken together with the lack of a reading of the reasoned decision, creates cause for concern as to whether the accused’s fair trial rights were respected.

In response to this finding, the Court of Appeal stated that the appeal judges announced both the verdict and the full reasoning unless the parties were absent. In this case, the judges only read the verdict. The Court of Appeal further stated that as per the law, judges can read out both the verdict and full reasoning or only the verdict depending on the nature of the cases and time constraints.¹⁵³

4.8. Rights of Juveniles

Sources in Cambodian and International Law	
ICCPR Article 14(1)	ICCPR, Article 14(1): “The Press and the public may be excluded from all or part of a trial [...] when the interests of the private lives of the parties so requires [...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”
CRC Article 40(2)(b)	“States Parties shall, in particular, ensure that [...] [a child has] his or her privacy fully respected at all stages of the proceedings.”
CRC Article 40(4)	“A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training program and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

¹⁵³Letter 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.

Constitution Article 31	“The Kingdom of Cambodia recognizes and respects human rights as stipulated in [...] the covenants and conventions related to [...] children’s rights.”
Constitution Article 48	“The State shall protect the rights of children as stipulated in the Convention on Children.”
CCPC Article 100	“When a detained person is a minor, the judicial police officer shall use all means to notify the parents, legal representatives or any person who is responsible for that minor.”
CCPC Article 212	“A minor under 14 years old may not be temporarily detained. The investigating judge can decide to send the minor temporarily to his guardians or, if there are no guardians, to a Provisional Education and Care Center until the competent judge has made his decision on this issue.”
Criminal Code Article 39	“Minors who committed offences shall be subject to supervision, education, protection and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
Criminal Code Article 40	“Supervisory, educational, protective and assistance measures shall include: returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy; committing the minor to a social service agency which cares for minors; committing the minor to a private organization that is qualified to receive minors; committing the minor to a specialized hospital or institution; placing the minor under judicial protection.”
Law on Juvenile Justice Article 5	“All persons performing any function concerning a minor shall ensure the observance of the following principles: Consider primarily on actions concerning the best interest of minors; in particular, to ensure the minors’ right to life and maximum survival and development [...] Shall be given an opportunity to express their views freely, and their views shall be given weight according to their age, physical development, intelligence, and cognitive development toward their action; Shall address the child in a friendly manner ¹⁵⁴ ; Shall ensure that the arrest, detention or imprisonment of a minor is used only as a measure of last resort and for the shortest period of time [...]”
Law on Juvenile Justice Article 6	<p>“Every minor suspected or accused of having committed an offence shall has the following basic procedural rights:</p> <ul style="list-style-type: none"> • the right to refuse to answer questions with or without the presence of a lawyer • the right not to be forced to give testimony against him/herself • the right to privacy • the right to have medical care and treatment • the right to be informed of the charge • the right to be informed of the arrest to designated representative • the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in Law on the Status of Lawyers from the earliest possible time of procedure

¹⁵⁴ Law on Juvenile Justice, Art. 4 (7).

	<ul style="list-style-type: none"> • the right to have designated representative participate in the case, unless it is contrary to the best interest of the minor • the right to be assisted by pro bono interpreter, if necessary the right to present evidence • the right to request to call and pose question to witnesses • the right to request bail • the right to ask for revision of the court supervision • the right to contact his/her embassy, consulate if a minor is a foreigner • Other rights which stipulated in other legal instruments that are currently in force.”
Law on Juvenile Justice Article 39	“Pre-trial detention is a measure of last resort [...]”
Law on Juvenile Justice Article 47	“The cross-examination and pronouncement of judgment shall be conducted in closed court [...]”
Law on Juvenile Justice Article 48	“[...] Under special circumstances, the minor’s lawyer, social agent or prosecutor may request the court to place the minor behind the screen or use other alternate means of providing testimony.”
Law on Juvenile Justice Article 49	“If the court finds that the minor is below the age of 14 years at the time of commission of the offence, the court shall immediately acquit the minor and immediately release him/her to the custody of designated representative even if there is an appeal made by the prosecutor [...]”
Law on Juvenile Justice Article 54	“Judgment shall be pronounced after the cross examination or at the next trial. In principle, the judgment of the court shall be pronounced in closed court, and in the presence of the minor, designated representative, support person, lawyer, social agent and relevant parties. The judgment may be pronounced without the presence of the minor if it is detrimental to the best interest of the minor.”
Law on Juvenile Justice Article 57	“[...] For the best interest of the minor, while awaiting trial, the Court of Appeal or the Supreme Court shall consider the release of the minor. In the case where the trial is adjourned, the Court of Appeal or Supreme Court shall consider releasing the minor.”

International human rights law recognizes that juveniles involved in criminal proceedings need special protection.

According to the Convention on the Rights of the Child (“CRC”), which defines a child as any individual below the age of 18,¹⁵⁵ State Parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children accused of, or recognized as having, infringed the penal law.¹⁵⁶ In particular:

¹⁵⁵ CRC, Art. 1: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

¹⁵⁶ CRC, Art. 40(3).

- i. States shall establish a minimum age of criminal responsibility under which children shall be presumed not to have the capacity to infringe the penal law.¹⁵⁷ Children who are below that minimum age at the time of the commission of an offence cannot be held responsible in criminal law proceedings.¹⁵⁸ Internationally, the most common minimum age is 14 years old.¹⁵⁹ 14 is also the minimum age set out by Cambodian law.¹⁶⁰
- ii. 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.¹⁶¹ Nevertheless, under the CRC, State parties are required to promote measures for dealing with children without resorting to judicial proceedings, “whenever appropriate and desirable”¹⁶². The measure can either be diversion measures, that is “measures referring children away from the judicial system, any time prior to or during the relevant proceedings” (ex: community service, supervision and guidance by designated officials), or measures in the context of judicial proceedings.¹⁶³

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.¹⁶⁴

Juveniles who are accused of having committed a criminal offense are entitled to all the fair trial rights that apply to adults, as well as to additional protections giving due consideration to their age, maturity, and intellectual development. The ICCPR and the CRC, which entered into force in Cambodia in 1992, set out specific provisions for the treatment of juveniles in criminal justice proceedings.¹⁶⁵ They are supported by a number of international rules and guidelines. As stated above a number of legal provisions in Cambodian law further provide differential treatment provisions for juveniles in a number of important areas. The Law on Juvenile Justice was adopted in 2016 to safeguard the rights and best interests of minors who have committed criminal offences.

Figure 16: Age at the time of the offense¹⁶⁶

¹⁵⁷ CRC, Art. 40(3).

¹⁵⁸ UN Committee on the Rights of the Child, General Comment No. 24, para. 20; *See also* UN Human Rights Committee, General Comment No. 32, para. 43.

¹⁵⁹ UN Committee on the Rights of the Child, General Comment No. 24, para. 21.

¹⁶⁰ Law on Juvenile Justice, Art. 49.

¹⁶¹ UN Committee on the Rights of the Child, General Comment No. 24, para. 21.

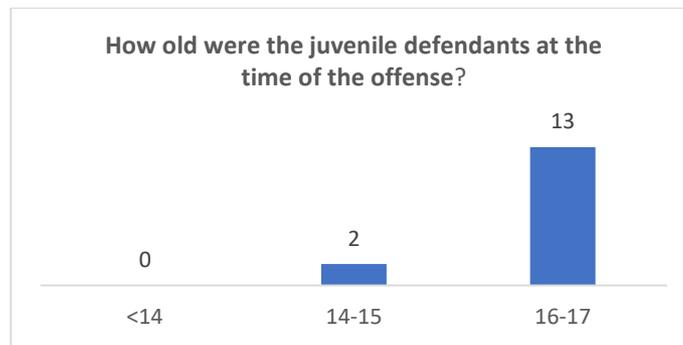
¹⁶² CRC, Art. 40 (3); UN Committee on the Rights of the Child, General Comment No. 24, para. 13.

¹⁶³ CRC, Art. 40 (3); UN Committee on the Rights of the Child, General Comment No. 24, para. 13; *See also* UN Human Rights Committee, General Comment No. 32, para. 44.

¹⁶⁴ CRC, Art. 40 (4).

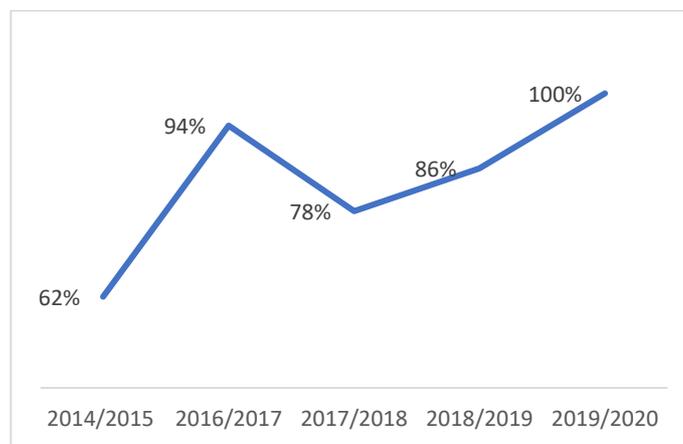
¹⁶⁵ CRC, Art. 40(2); UN Committee on the Rights of the Child, General Comment No. 24, paras 38-71; ICCPR, Art. 14; UN Human Rights Committee, General Comment No. 32, para. 42.

¹⁶⁶ This data based on the total number of juvenile defendants (15 individuals) involved in the 15 cases monitored.



During the Reporting Period, out of the 255 defendants involved in the cases that were monitored, 15 were juveniles at the time of the offense, all of whom were held in detention. Most juvenile defendant parties to cases monitored by CCHR during the Reporting Period were aged 16-17 at the time of the offense (13 out of 15, or 87%), and two defendants (13%) were aged 14-15 at the time of the offense.

Figure 17: Percentage of juveniles held in detention (2014-2020)¹⁶⁷



The best interests of the child must be the primary consideration when ordering or imposing penalties upon juveniles found to have infringed criminal law.¹⁶⁸ Deprivation of liberty of juveniles, 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.¹⁶⁹ The laws should provide for different non-custodial measures and should expressly prioritize the use of such measures.¹⁷⁰ Cambodian law provides for alternative measures to custodial sentences.¹⁷¹ Thus, the figures above give rise to serious concerns and are at odds with both international and domestic law, as pre-trial detention of juvenile appears to be the norm rather than a measure of last resort.

Under human rights law, a juvenile has the right to have their privacy respected at all stages of the proceedings.¹⁷² This includes from initial contact with law enforcement until the final decision or, if

¹⁶⁷ This data is based on the total number of defendants involved in the cases monitored in 2014/2015 (11 juveniles), 2016/2017 (35 juveniles involved in 19 cases monitored), 2017/2018 (9 individuals involved in 8 cases monitored), 2018/2019 (22 juveniles involved in 14 cases monitored), and 2019/2020 (15 juveniles involved in 15 cases monitored).

¹⁶⁸ CRC, Art. 3(1); *see also* UN Committee on the Rights of the Child, General Comment No. 10 on children’s rights in juvenile justice (25 April 2007) CRC/C/GC/10, paras 10, 71, <https://www.refworld.org/docid/4670fca12.html> (“UN Committee on the Rights of the Child, General Comment No. 10”)

¹⁶⁹ CRC, Art. 37(b); *see also* UN Committee on the Rights of the Child, General Comment No. 24, paras 19, 73, 82-95.

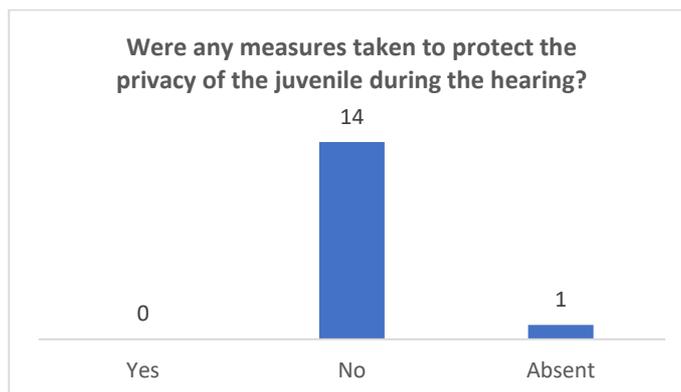
¹⁷⁰ UN Committee on the Rights of the Child, General Comment No. 24, para. 73.

¹⁷¹ Criminal Code, Art. 40.

¹⁷² CRC, Art. 40(2)(vii); *see also* CRC, Art. 16 and 40(1); UN Committee on the Rights of the Child, General Comment No. 24, para. 66.

sentenced, the release from supervision, custody or deprivation of liberty.¹⁷³ The underlying rationale is to avoid the harm caused by undue publicity or libel.¹⁷⁴ Therefore, the rule should be that child justice hearings are to be conducted behind closed doors, with limited exceptions provided for by the law.¹⁷⁵ Juvenile victims' or defendants' privacy may further be protected by placing the minor behind screens or using other alternative means of providing testimony. The use of tools such as video conferencing systems or closed hearings should be considered. If the verdict or the sentence is to be pronounced in public, the identity of the child should not be revealed.¹⁷⁶ 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.¹⁷⁷ This should be ensured even once the child reaches the age of 18.¹⁷⁸

Figure 18: Protection of juveniles' privacy¹⁷⁹



No measures were taken to protect the privacy of the juveniles present at the trials during the reporting period. Further, all trials were open to the public. This is highly problematic, particularly given that the question of the juvenile's right to privacy during criminal trial was extensively discussed with the Court in August 2019, and the Court refuted the negative findings of the report in relation to the rights of juveniles. In support of this they mentioned the recent installation of video conferencing technology donated by UNICEF to better protect the privacy of juveniles. They also suggested that CCHR record and report judges who do not fully uphold fair trial rights in juvenile cases, as well as instances in which privacy is not fully respected during the hearing to the president of the Court. Furthermore, they raised the fact that the implementation of a diversion scheme for juvenile offenders, requiring alternatives to formal prosecution, was not possible due to a lack of mechanisms in place to support such a scheme.¹⁸⁰ It is deeply regrettable that despite such efforts, it appears that the rights of juveniles are still routinely violated at the Court.

In contrast with the monitoring findings, the Court stated during the consultation on the findings of this Report that in cases where there was a juvenile defendant, victim or witness, trials were conducted using

¹⁷³ UN Committee on the Rights of the Child, General Comment No. 10, para. 64.

¹⁷⁴ UN Committee on the Rights of the Child, General Comment No. 24, para. 70.

¹⁷⁵ UN Committee on the Rights of the Child, General Comment No. 24, para. 67.

¹⁷⁶ UN Committee on the Rights of the Child, General Comment No. 24, para. 67.

¹⁷⁷ UN Committee on the Rights of the Child, General Comment No. 24, para. 67.

¹⁷⁸ UN Committee on the Rights of the Child, General Comment No. 24, para. 70.

¹⁷⁹ This data is based on the total number of juvenile defendants (15 individuals) involved in the 15 cases monitored.

¹⁸⁰ On 27 August 2019, CCHR had a meeting with the president, all vice presidents, the general prosecutor, one judge representative and general administrative secretariat of the Court of Appeal in order to discuss the findings of 2017/2018 report.

barriers and video conferencing. They stated that both trials and the delivery of verdicts for juvenile cases were conducted in closed hearings, even if the juvenile cases had adult defendants.¹⁸¹

¹⁸¹ On 13 August 2020, CCHR team met the President and Deputy President of Court of Appeal, the General Prosecutor and Deputy General Prosecutor to Court of Appeal, and the General Secretary and Deputy General Secretary of Court of Appeal in Phnom Penh, to discuss the findings of the Report 2018/2019.

5. 2014-2020: Evolution of Fair Trial Rights Protection

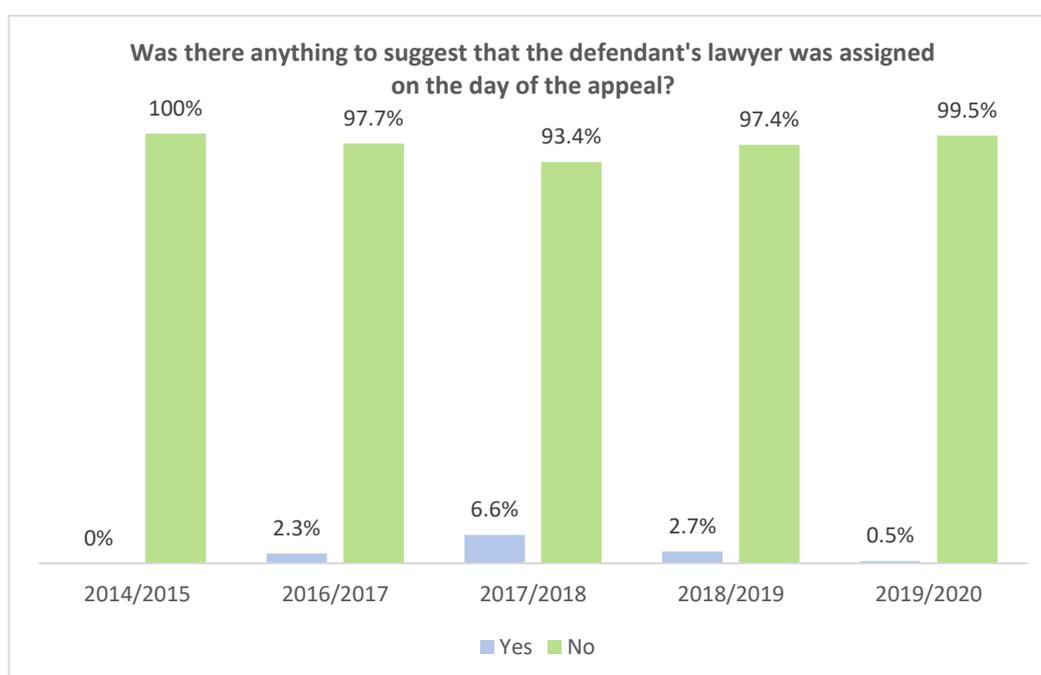
This section outlines key trends in terms of adherence to international fair trial rights standards by the Court during the reporting periods from 2014 until 2020.¹⁸²

5.1. Fair trial rights upheld

Several fair trial rights have been consistently upheld by the Court since 2014.

Pre-trial right to speak with a lawyer and right to adequate time and facilities to prepare the defense. The pre-trial right to speak with a lawyer and the aspects of the right to adequate time and facilities to prepare the defense monitored by CCHR have been consistently respected since 2014. As demonstrated in the table below, in more than 93.7% of the cases monitored, nothing suggested that the defendant's lawyer was assigned on the day of the appeal.¹⁸³ Also, in none of the cases monitored since 2014 was the issue of adequate time and facilities for the preparation of the defense raised by the defense.¹⁸⁴

*Figure 19: Evolution of the pre-trial right to speak with a lawyer (2014-2020)*¹⁸⁵



Right to a public verdict. From 2014 until 2020, the verdict was announced in public for all the monitored cases for which information was available on that point.¹⁸⁶

Prohibition against retroactive application of penal legislation. The principle of non-retroactive application of the law has also been consistently respected. In all the cases monitored by the CCHR from 2014 until 2020,

¹⁸² Note that CCHR's Fair Trial Rights monitoring project was temporarily suspended between 1 July 2015 and 31 October 2016 due to a lack of funding. As a result, no data is available for that period.

¹⁸³ This data is based on the monitored cases in which the defendant was represented by a lawyer: 149 cases (out of 161) in 2014/2015, 443 cases out of 562 in 2016/2017, 241 cases out of 315 in 2017/2018 and 262 cases out of 352 cases in 2018/2019.

¹⁸⁴ This data is based on the monitored cases in which the defendant was present and/or represented by a lawyer: 159 cases (out of 161) in 2014/2015, 444 (out of 562) in 2016/2017, 240 (out of 315) in 2017/2018 and 262 (out of 352) in 2018/2019.

¹⁸⁵ This data is based on the monitored cases in which the defendant was represented by a lawyer: 149 cases (out of 161) in 2014/2015, 443 cases (out of 562) in 2016/2017, 241 cases (out of 315) in 2017/2018, 262 cases (out of 352) in 2018/2019 and 183 cases (out of 203) in 2019/2020.

¹⁸⁶ This data is based on all the cases covered in 2014-2015, 252 cases (out of 341) monitored in 2016-2017, 95 cases (out of 213) monitored in 2017/2018 and 99 cases (out of 239) monitored in 2018/2019.

the law under which the defendant was charged was in force on the date the offence was allegedly committed.¹⁸⁷

Protection against double jeopardy. The principle of *ne bis in idem* has been constantly respected since 2014. Indeed, except for two defendants, there was nothing to suggest that the defendants in the cases monitored from 2014-2020 had been tried and sentenced for the charged offence previously.¹⁸⁸

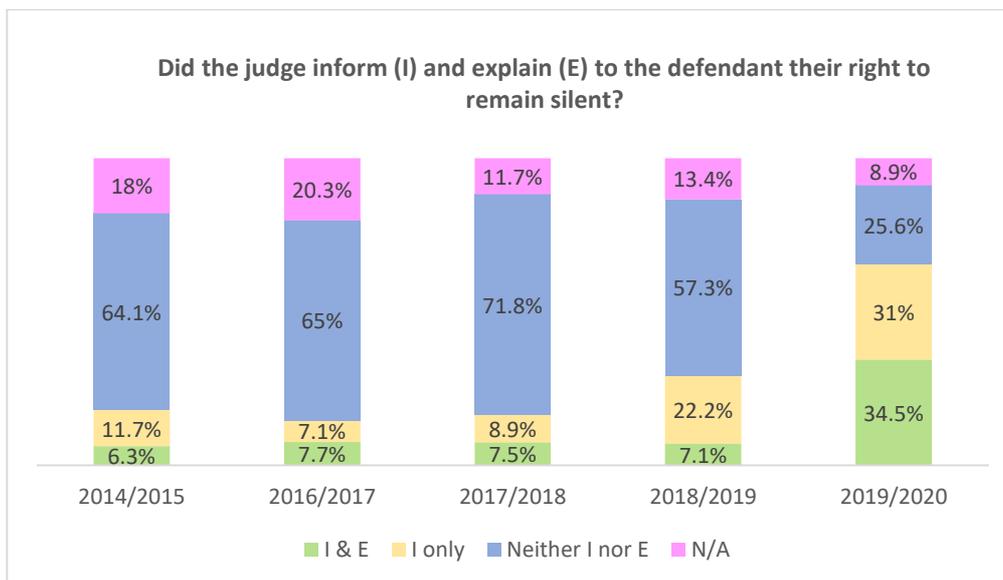
5.2. Fair trial rights not fully respected

Regrettably, a significant number of rights have not been fully respected since 2014. This creates significant cause for concern, particularly given that those issues have been brought to the attention of the authorities on multiple occasions.

5.2.1. Variations: From fair trial rights being upheld to not being fully respected

Right to the presumption of innocence. After being classified as respected for the 2014-2015 reporting period, this right moved to the category of not fully respected rights. While in no case monitored since 2014/2015 did a judge make any statement about the guilt of the defendant prior to the delivery of the verdict, nor was any defendant handcuffed throughout the hearing,¹⁸⁹ there remain several factors justifying this right being classified as being not fully respected. Indeed, in the majority of the cases monitored since 2014, the judge did not inform nor explain to the defendant their right to remain silent. However, it should be noted in the 2019/2020 reporting period, respect for this right by the Court significantly improved.

Figure 20: Information and explanation of the right to remain silent (2014-2020)¹⁹⁰



¹⁸⁷ This data is based on the 161 defendants involved in the 128 cases monitored in 2014-2015, the 558 defendants involved in the 340 cases monitored in 2016-2017, the 315 defendants involved in the 213 cases monitored in 2017-2018 and the 352 defendants involved in the 239 cases monitored in 2018/2019.

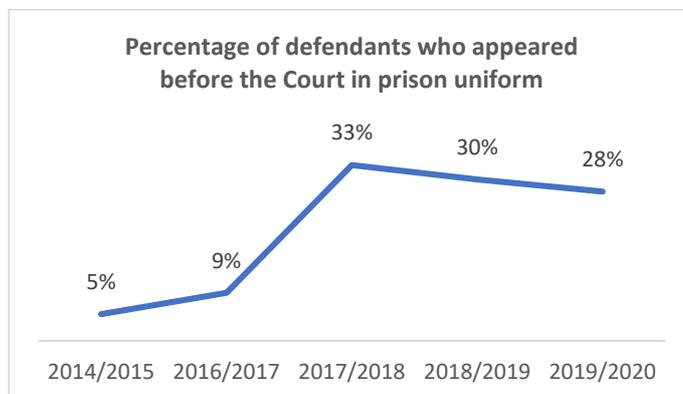
¹⁸⁸ This data is based on the monitored cases in which the defendant was present and/or represented by a lawyer: 159 cases (out of 161) in 2014/2015, 444 (out of 562) in 2016/2017, 240 (out of 315) in 2017/2018 and 262 (out of 352) in 2018/2019. There were indications that one defendant had been tried and sentenced for the charged offence previously in 2016-2017 and 2017-2018.

¹⁸⁹ This data is based on the total number of defendants involved in the monitored cases during each reporting periods: the 161 defendants involved in the 128 cases monitored in 2014-2015, the 558 defendants involved in the 340 cases monitored in 2016-2017, the 315 defendants involved in the 213 cases monitored in 2017-2018 and the 352 defendants involved in the 239 cases monitored in 2018/2019.

¹⁹⁰ 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, and the 203 cases monitored in 2019/2020.

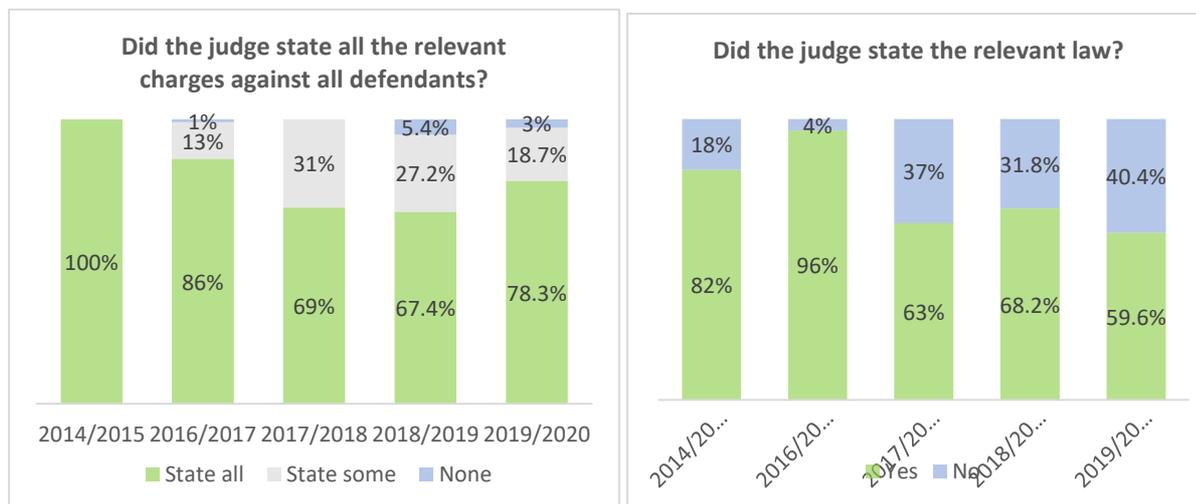
The fact that there has been an increasing number of defendants appearing before the court in prison uniform since 2014 further justifies the right to the presumption of innocence being classified as not fully respected. As demonstrated in the figure below, the data shows that while only 5.4% of defendants appeared before the court in prison uniform in 2014/2015, 28.2% did so in 2019/2020. This represents only a marginal improvement compared to 2018/2019 where this was the case for 30.3% of the defendants.

Figure 21: Percentage of defendants appearing before the court in prison uniform (2014-2020)¹⁹¹



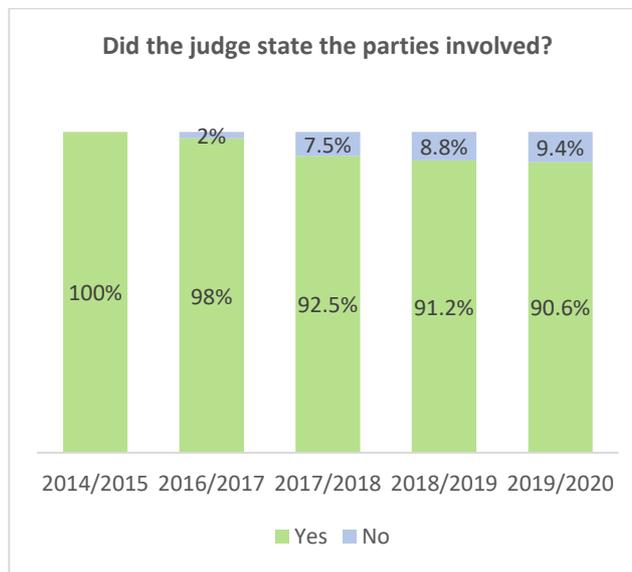
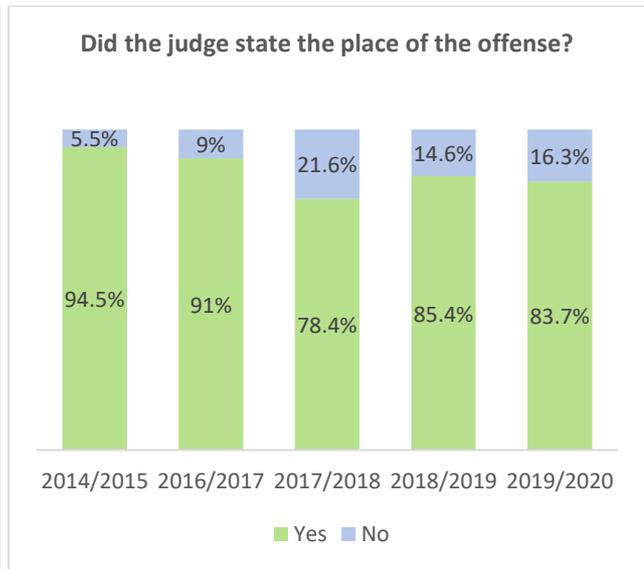
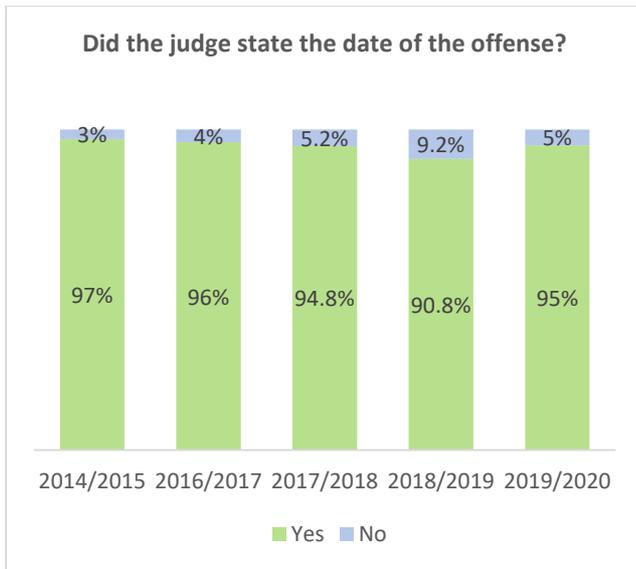
Right to understand the nature and cause of the charges. While being considered respected during the 2014/2015 and 2016/2017 reporting periods, this right has been considered as not fully respected since then. As shown in the figures below, there has been a continued decrease in the percentage of cases in which the judge stated all the relevant charges against all the defendants, the date of the offense or the parties involved. There also remains a noticeable percentage of cases in which the judge did not state the relevant law or the place of the offense.

Figure 22: Evolution of the right to understand the nature and cause of the charge(s) (2014-2020)¹⁹²



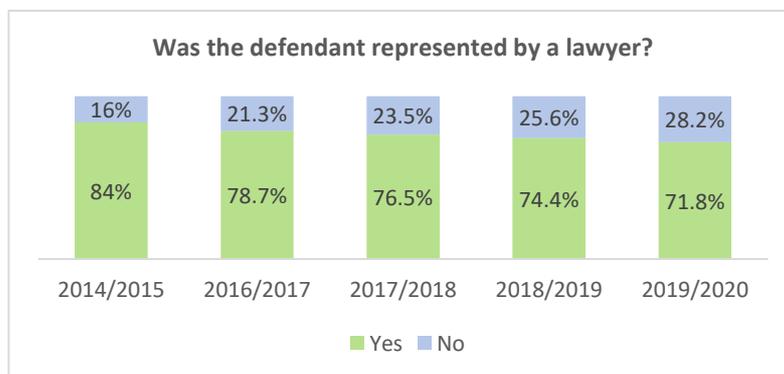
¹⁹¹ This data is based on the number of defendants involved in the monitored cases which were present at the hearing and imprisoned: 129 defendants out of 161 in 2014-2015, 356 defendants out of 558 in 2016/2017, 249 defendants out of 315 in 2017/2018, 254 defendants out of 352 in 2018/2019 and 221 out of 255 in 2019/2020.

¹⁹² The data is based on the 128 cases monitored in 2014/2015 (except for figure 23.a. where the data is based on the 109 cases for which the information is known), the 340 cases monitored in 2016/2017, the 213 cases monitored in 2017/2018, the 239 cases monitored in 2018/2019 and the 203 cases monitored in 2019/2020.



Right to legal representation and to be present at trial. While being classified as being respected in 2014/2015, this right has since then been classified as not being fully respected. As illustrated in the figure below, the percentage of defendants who were represented by a lawyer has been steadily decreasing since 2014-2015.

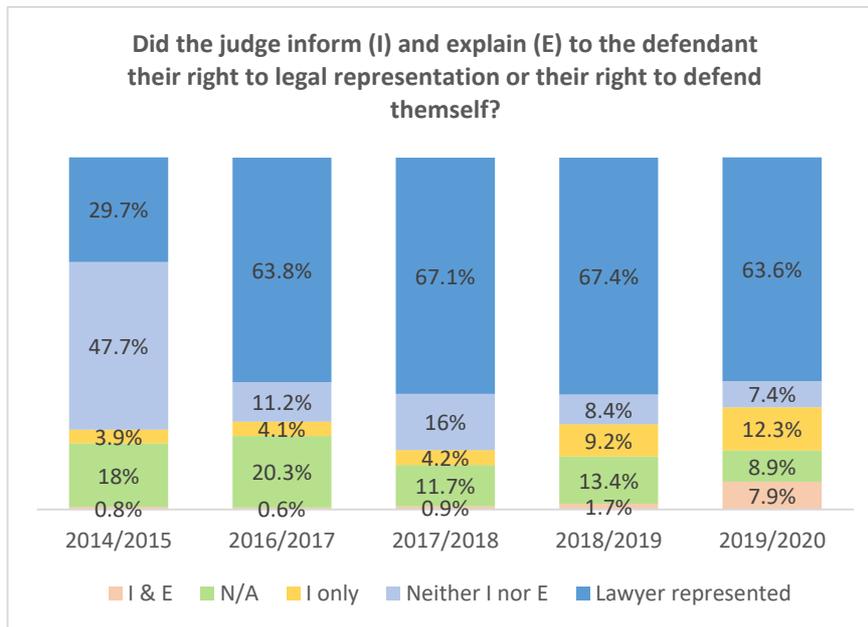
Figure 23: Evolution of the right to legal representation (2014-2020)¹⁹³



¹⁹³ This data is based on the total number of defendants (255 individuals) involved in the 203 cases monitored.

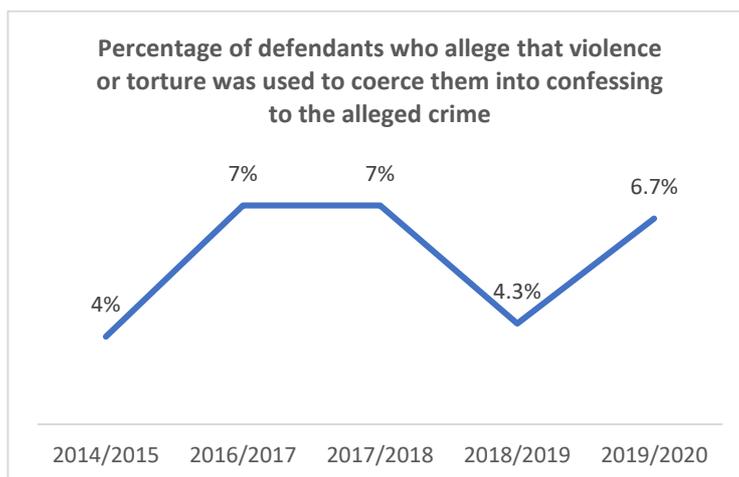
Moreover, in almost none of the cases in which the defendant was present did the judge inform and explain to the defendant their right to legal representation or to defend themselves.

Figure 24: Information and explanation of the right to legal representation or to defend oneself (2014-2020)¹⁹⁴



Right not to be compelled to confess guilt. The right not to be compelled to confess guilt was classified as being respected during the reporting period 2017/2018. As explained above in Section 4.1, while the trend in 2018/2019 shows a slight decrease in comparison to the 2017/2018 reporting period, data collected during the 2019/2020 reporting period reveals that the number of defendants who claim violence or torture was used against them is on the rise again. This, combined to the fact that allegations of threats or violence have been consistently made since 2014 justified classifying this right as being not fully respected.

Figure 25: Evolution of the right not to be compelled to confess guilt (2014-2020)



5.2.2. Fair trial rights consistently not being fully respected since 2014

¹⁹⁴ 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, and the 203 cases monitored in 2019/2020.

Right to a public hearing. It must be commended that, between 2014 and 2020, only in one of the monitored trials were members of the public or media prevented from entering or dismissed from the courtroom. However, the right to a public hearing has been classified as not being fully respected as, since 2016 when CCHR started monitoring notices, in only 31 cases, representing 3.1% of the total number of cases monitored, was there a notice of the hearing posted on a public board outside the room.¹⁹⁵

Right to a reasoned judgment. Respect for the right to a reasoned judgment has remained problematic through all the reporting periods. While a significant improvement was noted in 2018/2019, when judgments without adequate reasoning were given in only 47.5% of cases - compared to 87.4% in 2017/2018 - this improvement was short-lived as this reporting period saw 64.7% of judgments be given without adequate reasoning.

Evidentiary rights. Since 2014, CCHR has consistently expressed concerns about the quality of the evidence presented during trials, which often lacks sufficient probative value. However, since 2016, in only a handful of cases did something suggest that a party was not given the opportunity to call witnesses. While this is a positive finding, CCHR noticed that in the majority of cases in which witnesses were called, they were present in the courtroom before they were questioned. This practice can lead to a witness' testimony being influenced by hearing that of others.

Rights of juveniles. Since 2014, the rights of juvenile defendants, who should be given special protection under international human rights law and Cambodian law, are often ignored: most juveniles were held in pre-hearing detention and in most cases, no measures were taken to protect the juveniles' privacy. Moreover, in none of the monitored cases was there anything to suggest that the judge considered imposing a non-prison sentence.¹⁹⁶

Figure 26: Percentage of juveniles held in pre-trial detention (2014-2020)¹⁹⁷

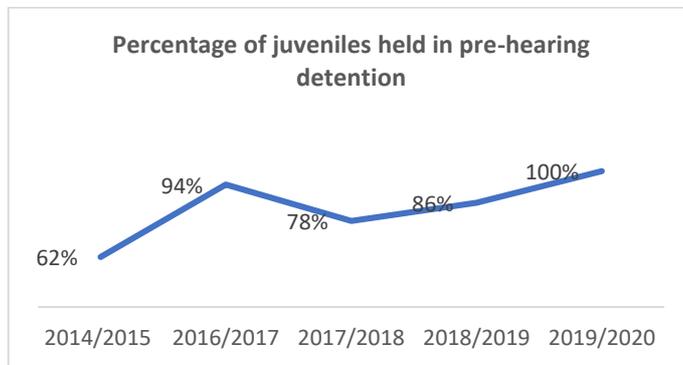


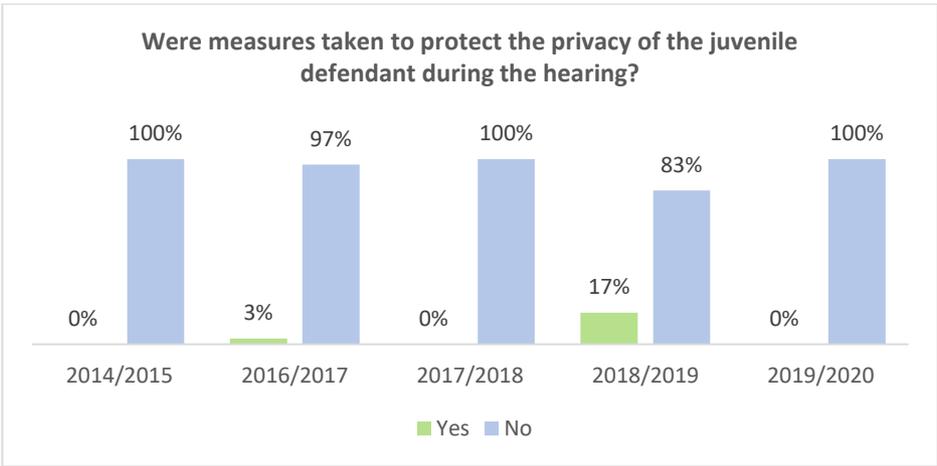
Figure 27: Percentage of cases where measures were taken to protect juveniles' privacy (2014-2020)¹⁹⁸

¹⁹⁵ 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 and the 203 cases monitored in 2019/2020.

¹⁹⁶ This data is based on the number of juvenile defendants for whom the verdict was followed or known: 11 juveniles in 2014/2015, 28 in 2016/2017, three in 2017/2018 and six in 2018/2019.

¹⁹⁷ This data is based on the 11 juvenile defendants involved in the cases monitored on 2014/2015, the 35 juvenile defendants involved in cases monitored in 2016/2017, the nine juvenile defendants involved in the cases monitored in 2017/2018, the 22 juveniles involved in the cases monitored in 2018/2019 and the 15 defendants involved in the cases monitored in 2019/2020.

¹⁹⁸ This data is based on the 11 juvenile defendants involved in the cases monitored on 2014/2015, the 35 juvenile defendants involved in cases monitored in 2016/2017, the nine juvenile defendants involved in the cases monitored in 2017/2018, the 18 juvenile defendants (out of 22) that were present during the appeal hearing in 2018/2019 and the 15 juveniles defendants involved in the cases monitored in 2019/2020.



6. Conclusion

A number of key fair trial rights were guaranteed before the Court– including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare one’s defense, and the right to a public judgment. In addition, the Court consistently upheld the protections against double jeopardy and non-retroactivity.

Regrettably however, the monitoring also uncovered a lack of compliance with some fundamental fair trial rights. The right not to be compelled to confess guilt was not respected during this reporting period, with 17 defendants (out of 255) alleging that violence or torture was used on them in order to obtain a confession to the alleged crime. Even more worrying, despite these allegations, the judges still upheld the guilty verdict. As for the fundamental right to a public hearing, it was not fully respected, as only 31 of the hearings monitored by CCHR (out of 203) had a notice posted on the public board outside the courtroom. Further, the right to understand the nature and cause of the charges remains a right which is not fully respected, given that only in 78.3% of the monitored cases did the judge state all the relevant charges against all the defendants. Similarly to last year, the right to legal representation was not fully respected: 28.2% of the defendants in cases monitored by CCHR were not represented by a lawyer. Moreover, in 7.4% of the cases, the judge failed to inform the defendant of their right to legal representation, a concerning trend.

The right to be presumed innocent is another right that remains not fully respected, although the number of defendants who appeared before the court in convict uniform has steadily decreased since the 2017/2018 reporting period. Last but not least, the rights of juvenile defendants, who should be given special protection under both international human rights law and Cambodian law, are often ignored: no specific measures are put into place to protect the rights of juveniles, particularly their privacy, and there are no indications that the judges consider imposing a non-prison sentence.

It must be noted that while several rights have been consistently protected since 2014, many more have consistently not been fully respected:

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

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

When comparing the findings of the current report with those of the last year, the majority of the findings are similar in terms of which rights are upheld and which are not. However, one particular point stands out. The right not to be compelled to confess guilt, which CCHR found was protected in 2017/2018, moved to the “not fully respected” section in 2018/2019 and remains in this section for the 2019/2020 period, as a regression in the protection of this right was observed. Allegations of violence or torture must be immediately and thoroughly investigated by the competent authorities.

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

7. Recommendations

Overall, most of the issues highlighted in this Report can be addressed through simple, low-cost and quickly implemented measures. For example, improved coordination regarding the transportation of defendants from correctional centers to their hearing, asking witnesses to leave the hearing before they make their statements, and requiring that judges explain their rights to defendants. Others can easily be improved by training judges and lawyers in the implementation of fair trial rights. To that end, CCHR welcomes the establishment of regional appeal courts in Tboung Khmum, Battambang and Sihanoukville which opened in 2020, as this will address some of the issues raised above. By taking immediate measures to address these concerns, the Court could set a precedent, serve as an example to Courts of First Instance and, as such, positively impact the overall quality of the administration of justice in Cambodia and significantly contribute to the strengthening of the rule of law.

7.1. General Recommendations

7.1.1 The MoJ should hold regular meetings on the practical implementation of fair trial rights with the judges of the Courts of Appeal, following the concept of fair trial rights based on national and international standards.

7.1.2 The MoJ should develop a standard form for judgments and send it to all courts to be implemented. The form should set out the following information in order to ensure that the brief report read by the presiding judge is complete:

- The offense(s) with which the defendant is charged and the relevant law(s);
- The date, time, location of the alleged offense and relevant parties;
- The fair trial rights to which the defendant is entitled, as outlined on page 18 of this report.

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

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

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

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

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

7.3. Recommendations Regarding the Right to a Public Hearing

7.3.1 The Court and the MoJ should ensure that daily schedules of all hearings are posted on information boards outside the court room at least 24 hours prior to the hearing, and continue to guarantee

public access to courtrooms in all but exceptional cases, which would include that of juveniles. When such information is published on the information board, the name of juveniles should not be spelled out, but instead they should be referred to by their initials, to protect their privacy.

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

7.4.1 The judges of the Court should inform the defendant of the charges against them and provide relevant information such as the date, location, parties involved and the applicable law. This is particularly important in cases where charges may have been changed or amended since the initial arrest/charge. The judges should take particular care to ensure they are sharing the relevant law and location of the offence, as these are the most frequently missed as per page 34 of this Report.

7.4.2 The judges of the Court should provide a comprehensive explanation of the trial rights of the accused.

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

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

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

7.5.2 The General Department of Prisons must ensure that information on the transfer of detained persons is regularly sent to the General Prosecution to ensure the Court gives the information regarding date and time of the appeal hearings to the correct correctional center, in which the defendant is detained;

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

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

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

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

7.6. Recommendations Regarding the Right to the Presumption of Innocence

7.6.1 The judges of the Court must unequivocally inform the defendant:

- of their right to be presumed innocent until a final judgment is rendered;
- of the fact that the burden of proof is on the prosecutors; and

- that the defendant has the right to remain silent without such silence being used against them.

7.6.2 The MoJ and the MoI shall issue and disseminate clear guidelines highlighting that defendants held in pre-trial detention or those whose trial has started but for whom a final judgement has not been issued must be allowed to appear in court wearing civilian clothes.

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

7.6.4 The judges of the Court should promote the greater use of alternatives to pre-trial detention, including judicial supervision,¹⁹⁹ in accordance with UN SDG 16.3.2.

7.7. Recommendations Regarding Evidentiary Rights

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

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

7.7.3 The judges of the Court must carefully assess whether the evidence presented to them establishes beyond any reasonable doubt that the defendant is guilty. If there is an interpretation of the evidence which is consistent with the innocence of the defendant, they must be acquitted.

7.7.4 The MoJ should develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,²⁰⁰ and ensure that all judges are trained accordingly.

7.8. Recommendations Regarding the Right to a Reasoned Judgment

7.8.1 Ensure that written judgments are made publicly available, with redactions to be applied where necessary to protect the identity of the defendants, victims or witnesses or for any other reason.

7.8.2 Drawing from the practice of the ECCC,²⁰¹ 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.

¹⁹⁹ SRSHRC, End of Mission Statement (14 March 2018), p. 4

²⁰⁰ The practice of the ECCC may prove useful guidance, particularly its internal rules as well as paragraphs 204 to 209 of the case 002/01 Appeal Judgement, see 'Appeal Judgement'; Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber (23 November 2016) Case File / Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/F36_KH.pdf

²⁰¹ See esp. 'Appeal Judgement', Extraordinary Chambers in the Courts of Cambodia, Supreme Court Chamber, 23 November 2016, Case File / Dossier N° 002/19-09-2007-ECCC/SC, https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2016-11-23%2011:55/Case%20002_01%20Appeal%20Judgement.pdf

7.9. Recommendations Regarding the Rights of Juveniles

- 7.9.1 The judges of the Court should speed up and strengthen the implementation of the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing.
- 7.9.2 The judges of the Court should follow the best practice of the ECCC and allow juvenile defendants to appear in court wearing their own clothing, at all stages of the criminal procedure.
- 7.9.3 The judges of the Court should limit pre-trial detention of juveniles to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile's rights.
- 7.9.4 The MoJ should ensure that judges and prosecutors undergo specific training concerning issues relating to juvenile justice.
- 7.9.5 The judges of the Court should examine and make use of alternative sentencing options to custodial sentences for juveniles, and implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone and on the best interests of the minor.
- 7.9.6 The Court should introduce a general rule that child justice hearings should be conducted behind closed doors, with limited exceptions provided by law, in order to respect the privacy of juvenile defendants.
- 7.9.7 In cases involving juvenile defendants that are public, steps should be taken to protect the privacy of the defendant, such as the use of privacy screens. The Court should make use of the video conference system currently available at the Court and ensure staffs are trained accordingly.
- 7.9.8 The MoJ and the MoSVY should implement a diversion scheme; through which a juvenile offender is supported and rehabilitated within the community as an alternative to formal prosecution. This scheme must be implemented for all first time offenders with the exception of the most serious felony offenses.
- 7.9.9 The MoJ shall review the existing legislation, including the laws related to the functioning of the courts, in order to ensure their compliance with international standards on juvenile justice system, including, but not limited to, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"),²⁰² the UNICEF guidance for legislative reform on juvenile justice,²⁰³ the UNICEF implementation handbook for the convention on the rights of the child²⁰⁴ and the UNICEF law reform and implementation of the convention on the rights of the child report.²⁰⁵

²⁰² UNGA, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)' (29 November 1985) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BeijingRules.aspx>

²⁰³ UNICEF, 'Guidance for Legislative Reform on Juvenile Justice' http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf

²⁰⁴ UNICEF, 'Implementation for the Convention on the Rights of the Child', p. 107, https://www.unicef.org/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf

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9. Appendices

Appendix I: Appeal Hearing Monitoring Checklist

A. General Trial Information

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

TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING	
2(a) Was notice of the hearing posted on a public board outside the courtroom?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <input type="checkbox"/> No Reason:

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE	
3(a) Did the judge state all relevant charges against all accused?	<input type="checkbox"/> State all <input type="checkbox"/> State some <input type="checkbox"/> Non
3(b) Did the judge state the relevant law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(c) Did the judge state the date of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3 (d) Did the judge state the place of the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(e) Did the judge state the parties involved?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(f) If required, was an interpreter provided?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
3(g) If required, were provisions made for those with disabilities	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, what disability was provided for?	<input type="checkbox"/> Hearing <input type="checkbox"/> Sight <input type="checkbox"/> Other Comment:

4. EXPLANATION OF RIGHTS N/A <input type="checkbox"/>	
4(a) Did the judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E <input type="checkbox"/> Lawyer Represented
4(b) Did the judge inform (I) and explain (E) to the accused their right not to answer or answer?	<input type="checkbox"/> I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E

5. RIGHT TO CALL AND EXAMINE WITNESSES	
5(a) Was there anything said by any party during	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party?

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

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

6. PRESENTATION OF EVIDENCE:

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

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

6.2 DEFENSE	<input type="checkbox"/> N/A <input type="checkbox"/> Absent
6.2(a) Confession evidence	Was the confession retracted at any stage? Give details. <input type="checkbox"/> Police <input type="checkbox"/> Prosecutor <input type="checkbox"/> Investigating J <input type="checkbox"/> Trial Judge <input type="checkbox"/> N/A Detail:
	Challenge to confession evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail basis of any challenge:
	Response/ ruling to any challenge and reasons given by the judge: <input type="checkbox"/> N/A
6.2(b) Documentary evidence	Summary of Contents: <input type="checkbox"/> N/A

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

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

	Give detail:
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6.4 OBJECTIONS

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

Yes No N/A

Prosecution	Defense	Civil Party

7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

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

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

8(a) Did the judge behave in an intimidating manner towards a party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
	<input type="checkbox"/> Yes <input type="checkbox"/> No

11. VERDICT	
11(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, was the date that the verdict would be delivered announced during the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
11(b) Date of verdict:	_____ <input type="checkbox"/> N/A
11(c) How many judge were present when the verdict was delivered?	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> I/U
11(d) Was the verdict announced in public?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U If no, please comment:
11(e) Summary of judge's reasons for verdict :	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
11(f) Were the lawyers representing the parties presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U
11(e) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial? If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No

TOTAL TIME OF HEARING:

SPECIAL NOTE:

B. Individual Defendant Information

12. CRIMINAL RESPONSIBILITY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
12(a) Was the defendant a juvenile at the time the offense was committed? (Please complete annex 1 for each juvenile accused)	<input type="checkbox"/> Yes <input type="checkbox"/> No				

13. LEGAL BASIS OF CHARGES

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
13(b) Charge against defendant Offense: Relevant law: Relevant article of the law:	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense
6(b) Elements of offence to be proven in order to secure a conviction:					

PRE-TRIAL RIGHTS

14. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
14(a) Date of alleged offence:	Date: _____ <input type="checkbox"/> I/U				
14(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A				
14 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U				
14 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U				
If Yes, what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U				
What date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U				
14 (e) Was there an application for bail?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
If Yes, Summary of defense application and any proposed					

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

15. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
15(a) Was there anything to suggest the defendant was interrogated without a lawyer present? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
15(b) Was there anything to suggest that threats were made to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
15(c) Was there anything to suggest that violence or torture were used to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

16. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
16(a) Was there anything to suggest that the lawyer of the defendant was assigned on the day of the appeal? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

16(b) Was the issue of adequate time and facilities for preparation raised by the defense? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
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TRIAL RIGHTS

17. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
17 (a) Was the defendant present?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
17 (b) Was the defendant represented by a lawyer?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
17(c) Did any of the lawyers represent more than one defendant?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, was there a conflict between the interests of two or more of the defendant represented by the same lawyer	<input type="checkbox"/> Yes <input type="checkbox"/> No				
Details:					

18. PRESUMPTION OF INNOCENCE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
18(a) Did the defendant appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				
18(b) Was the defendant handcuffed throughout the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				
18(c) Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No				

If yes, please provide details:					
18 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				

19. PROHIBITION OF DOUBLE JEOPARDY

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
19(a) Was there anything to suggest that the defendant had been tried and sentenced for this offense previously? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

20. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
20(a) Was the law under which the defendant is charged in force on the date the offense was allegedly committed? If no, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

21. VERDICT I/U

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
21(a) What was the court's ruling?	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
21(b) Did the judge refer to the article of the law under which the defendant had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No				

21(c) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
21 (d) If the defendant confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

22. SENTENCE <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
22(a) Was the defendant sentenced to imprisonment?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
Length: Prison: Probation:					
22(b) Was the defendant ordered to pay a fine? Amount:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
22(c) Was the defendant ordered to pay compensation? Amount:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
22(d) Was there any other alternative sentence? If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

JUVENILE DEFENDANT

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

23(a) Age at the time of the offense	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
23(b) If under the age of 14 at the time of the offense did the judge immediately acquit the juvenile?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				

24. PRE-TRIAL DETENTION

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
24 (b) Was there anything to suggest that the juvenile was not separated from adults? Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A				

25. TRIAL N/A Absent

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
25(a) Were any measures taken to protect the privacy of the juvenile during the hearing? Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
25 (b) Did the judge give the juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No				

26. SENTENCE N/A I/U

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

of the Penal Code when sentencing the juvenile?	<input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A				
26(b) Was there anything to suggest that the judge considered imposing a non-prison sentence? Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No				

Appendix II: Trial Monitors Code of Conduct

Preparation and prerequisites

General Duties

Confidentiality

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

Prior to Implementation of the Trial Monitoring Project

Preliminary assessments

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

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

Notification

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

Prior to Each trial to be monitored

Preliminary Assessments

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

- Whether there are relevant reports on similar trials in Cambodia;
- Which binding international laws and treaties, if any, pertain to the case;

- What are the domestic laws, substantive and procedural, relevant to the case;
- The relevant Constitutional provisions.

Notification

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

Access

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

During the Trial

General

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

Identification

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

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.
- Wear appropriate clothing.
- Arrive promptly at court.
- Maintain a respectful approach during all interactions with court officials and actors.
- Visibly make extensive notes during hearings based on the CCHR checklist, irrespective of whether the trial is being recorded.

- Monitors must be familiar with and fully understand the checklist and guidelines for trial monitoring.
- Ensure the safety and confidentiality of notes.
- Get a neutral party to give introduction to court (only if staying the entire time) to increase visibility.

Impartiality and non-interference

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

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