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Second Bi-annual Report “Fair Trial Rights in Cambodia”



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ABOUT THE CAMBODIAN CENTER FOR HUMAN RIGHTS

This report on 'Fair Trial Rights in Cambodia' is an output of the Cambodian Trial Monitoring Project implemented by the Cambodian Center for Human Rights ("CCHR"). CCHR's vision is of a non-violent Kingdom of Cambodia, in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy and share the benefits of Cambodia's development. CCHR desires rule of law rather than impunity; strong institutions rather than strong men; and a pluralistic society in which variety is harnessed and celebrated rather than ignored or punished. CCHR's logo shows a white bird flying out of a circle of blue sky - this symbolizes Cambodia's claim for freedom. To realize its vision, CCHR works to promote and protect democracy and respect for human rights - primarily civil and political rights - throughout Cambodia. For more information, please visit www.cchrcambodia.org.

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DEFINITIONS

“Bar Association”	The Bar Association of the Kingdom of Cambodia
“Cambodia”	Kingdom of Cambodia
“CAT”	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
“CCHR”	Cambodian Center for Human Rights
“CCPC”	Code of Criminal Procedure of the Kingdom of Cambodia
“Checklist”	The checklist used by CCHR trial monitors to record trial data when monitoring trials
“Checklist Guidance”	Comprehensive guidance notes to help CCHR Trial Monitors understand each question in the Checklist
“CLJR”	The Royal Government of Cambodia’s Council for Legal and Judicial Reform
“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
“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
“First Bi-annual Report”	Report presenting data collected during the First Reporting Period
“First Reporting Period”	The reporting period for the Report of August 10 to December 31, 2009
“ICCPR”	International Covenant on Civil and Political Rights
“Kandal Court”	Kandal Provincial Court of First Instance
“Model Court Project”	A collaborative project aiming to improve the fairness and efficiency of trials in four courts – Phnom Penh, Kandal, Kompong Cham, and BanteayMeanchey – with the aim of providing a positive model for the court system throughout Cambodia
“Model Court Standards”	A set of court standards for fairness and efficiency compiled in conjunction with the Cambodian Model Court Project
“MOJ”	Ministry of Justice
“NGO”	Non-governmental Organization
“NPM”	National Preventive Mechanism
“ODIHR”	Office for Democratic Institutions and Human Rights
“OPCAT”	The Optional Protocol to the Convention Against Torture
“OSCE”	Organization for Security and Co-operation in Europe
“Penal Code”	The Penal Code of the Kingdom of Cambodia, 2009
“Phnom Penh Court”	Phnom Penh Capital Court of First Instance
“PRAJ”	Program on Rights and Justice
“Project”	Cambodian Trial Monitoring Project
“Report”	This biannual report on ‘Fair Trial Rights in Cambodia’
“RGC”	Royal Government of Cambodia
“Second Reporting Period”	The reporting period for the Report of January 1 to June 30, 2010.
“Trial Monitors”	CCHR trial monitors
“UDHR”	Universal Declaration of Human Rights
“UN”	United Nations
“UNBPIJ”	United Nations Basic Principles on the Independence of the Judiciary
“UNBPRL”	United Nations Basic Principles on the Role of Lawyers
“UNTAC”	United Nations Transitional Authority in Cambodia
“UNTAC Law”	Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992
“USAID”	United States Agency for International Development

EXECUTIVE SUMMARY

This report is an output of the Cambodian Trial Monitoring Project (the “Project”), implemented by the Cambodian Center for Human Rights (“CCHR”). The purpose of the Project is to act as an independent and impartial monitor of criminal trials in Cambodia, and to collect data that can be analyzed to identify strengths and weaknesses in the justice system. The Project is integrated into and supports wider efforts by the Royal Government of Cambodia and international donors to strengthen and reform the justice system.

This is the second bi-annual report from the Project and follows the release of the Project’s first bi-annual report (the “First Bi-annual Report”), in July 2010. This report presents data collected from the monitoring of 532 criminal trials at Phnom Penh Capital Court of First Instance (the “Phnom Penh Court”) and Kandal Provincial Court of First Instance (the “Kandal Court”) between January 1 and June 30, 2010 (the “Second Reporting Period”). It also provides analysis of the data, and recommendations to improve adherence to fair trial rights.

Legal Framework

The Constitution of the Kingdom of Cambodia (the “Constitution”) guarantees the independence of the judiciary as well as the right to be presumed innocent until proven guilty. The Code of Criminal Procedure of the Kingdom of Cambodia (the “CCPC”) sets out procedures for the investigation and hearing of criminal offences and includes provisions setting out the rights of accused persons. The Penal Code of the Kingdom of Cambodia (the “Penal Code”), promulgated in 2009, sets out classes of offenses, principles of criminal responsibility and principles of sentencing. Cambodia is also bound by the international instruments to which it is a party. The Universal Declaration of Human Rights (the “UDHR”) and the International Covenant on Civil and Political Rights (the “ICCPR”) both guarantee the right to a fair and public hearing by an independent and impartial tribunal.

Methodology

Trial monitors from CCHR attend criminal trials at the Phnom Penh and Kandal Courts on a daily basis, using a trial monitoring checklist comprised of approximately 50 questions as a tool to measure adherence to fair trial rights at each trial. The data that is collected is intended to serve as a reference for discussion about court practices and broader legal and judicial reform.

Following the publication of each bi-annual report, Project staff seek meetings with representatives of the monitored courts as well as other justice sector organizations, bodies and institutions to which recommendations are addressed. The meetings serve as a basis for an exchange of ideas and provide insight into the challenges faced by those working to strengthen the justice system. The purpose of dialogue meetings is to promote the implementation of the recommendations set out in the bi-annual reports.

The data in this report is compared to the data collected between August 10 and December 31, 2009 (the “First Reporting Period”) for the purpose of identifying trends in adherence to fair trial rights at the two monitored courts. Positive trends were not expected specifically as a result of the recommendations made in the First Bi-annual Report due to the timing of its release – at the conclusion of the Second Reporting Period – and the consequent lack of influence on data collected during that period. Dialogue with stakeholders following the



release of the First Bi-annual Report indicated a positive and constructive attitude from most institutions and a willingness to consider the recommendations made.

Data Summary

Judges at the Phnom Penh and Kandal Court appear to be doing a good job of adhering to fair trial standards in a number of areas. Trial monitors again observed no instances in which the public were blocked from attending a trial. Though during the Second Reporting Period neither court posted public notices giving the time and location of trials, the Phnom Penh Court has since begun posting such notices, an encouraging development.

The rate of legal representation for those charged with felonies rose from 95% to 97%. This reflects adherence to Article 301 of the CCPC in the vast majority of trials, a success for both of the monitored courts. The majority of judges (95%) stated the charges filed against the accused, though the percentage of trials in which the judge stated the relevant law declined from 85% of trials in the First Reporting Period to 59% of trials in the Second Reporting Period.

The handling of evidence and witnesses by the court also remained a positive area. There was an increase in the number of trials in which evidence was presented from 77% to 96%. Both courts also appeared to provide fair opportunities to both parties to present and examine evidence and witnesses.

There were no observed instances in which the trial judge also appeared to have acted as an investigating judge on the same case. The percentage of trials in which the judge appeared to speak to another person during deliberation – taken as an indication of the potential for outside influence on the verdict – declined from 16% to 6%. During dialogue based on recommendations from the First Bi-Annual Report, judges at the Phnom Penh Court noted that it was sometimes necessary for court clerks to bring documents to deliberation rooms and therefore confer with judges during deliberation. This observation that was noted for future reporting and will result in an amendment to the relevant checklist question to take this into account.

Despite these positive achievements there also remained areas of concern. The overall rate of pre-trial detention between the two courts showed a small decrease from 88% to 84%. This rate is still regarded as excessive given the statutory presumption against pre-trial detention in the CCPC and the fact that in over half of the monitored trials the accused was charged with a misdemeanor. There were 18 trials in which the accused person was held in pre-trial detention for a period exceeding statutory limits. Again, a high percentage of these persons (72%) were charged with misdemeanors.

Despite legal representation of the accused in most trials involving felony charges, the overall rate of legal representation for all accused persons dropped from 68% to 59%. Almost three quarters (74%) of individuals charged with a misdemeanor appeared without legal representation, suggesting greater access to legal aid is still required.

The percentage of trials in which judges used mobile phones while presiding over a trial remained the same at 28%. Judges at the Phnom Penh Court noted that the use of mobile phones in court was often a matter of expediting other cases through issuing instructions and granting approval for investigative action. While this may be the purpose of the majority of phone calls, access to justice in one trial should not be compromised in order to expedite another investigation. Messages for judges could be collected by other court staff while judges are in court and responded to at the conclusion of the trial.



Analysis – Presumption of Innocence

In the 338 trials monitored at Phnom Penh Court in which an accused appeared before the court (38 hearings were conducted *in absentia*), the accused appeared in prison uniform in 314 – or 93% – of the trials, compromising their right to appear before the court with the appearance and dignity of a free and innocent citizen. Four percent of those appearing before the Kandal Court appeared in prison uniform. Prior to an appearance in court, all defendants should be provided with the clothing worn when placed in pre-trial detention or, if prison authorities have lost or discarded this clothing, detainees should be provided with a reasonable opportunity to seek the delivery of alternative clothing from their friends or family. Judges at the courts monitored rarely made statements about the guilt or innocence of the accused prior to delivering a verdict, an encouraging finding.

Analysis – Right not to be compelled to confess guilt

Confessions were presented by the prosecution as evidence in 206 trials in the Phnom Penh Court and 83 trials in the Kandal Court. Of the trials in which a confession was presented as evidence in the Phnom Penh Court there were indications (such as an allegation from the defendant) that the confession may have resulted from threats or other psychological pressure in 27 – or 13% – of the trials, and indications that the confession may have resulted from pressure in the form of violence or torture in 34 – or 16% – of trials. Of the trials in which a confession was presented as evidence in the Kandal Court there were indications that the confession may have resulted from threats or other psychological pressure in only one trial, and indications that the confession may have resulted from pressure in the form of violence or torture in one further trial.

Five complementary approaches are recommended to combat ongoing allegations of improper conduct by police and other law enforcement personnel. These are: continued education and training for those involved in conducting interrogations; enforcement of safeguards against abuse and torture during detention and interrogation; the establishment of independent investigatory bodies and complaints mechanisms and the prompt and impartial investigation of all allegations of torture or other misconduct; the introduction of a “zero-tolerance” policy resulting in the prosecution of all law enforcement officers for which there is evidence of misconduct; and a move to a more cautious approach to the acceptance of confessions as evidence at trial, supported by increased use of supervised or recorded interrogations.

Analysis - Juvenile justice

Despite legislative provision for differentiated treatment of juveniles during the criminal justice process, the data collected during the Second Reporting Period revealed that there is a gap between the principles set out in international and national law and the application of the law by the courts. Ninety seven percent of juveniles tried for criminal offences at the Phnom Penh Court were held in pre-trial detention. Alarming, this exceeds the overall rate of pre-trial detention. Five of the six juveniles tried at the Kandal Court were held in pre-trial detention. There were no indications in any of the trials monitored involving juveniles that the judge had considered a non-custodial sentence, though one accused was acquitted in recognition of their age.

In light of the legislative framework, this data may indicate a lack of supporting social and judicial resources and structures. While the law creates a presumption that juveniles will not be detained pending trial and should not receive custodial sentences, alternatives such as judicial supervision and community service require adequate procedures and resources to ensure that the individuals are monitored and court-ordered rehabilitative measures



are adhered to. A cooperative approach in this area, with government working in partnership with donors, NGOs and private organizations, is recommended to ensure the development of an effective juvenile justice process that focuses on ensuring that young people who break the law receive adequate support to become constructive members of society.

Conclusion

The data from the 532 trials monitored during the Second Reporting Period again showed mixed results. The rate of legal representation in trials involving felony charges edged closer to the 100% required by law. There were very few instances in which judges made statements that showed a lack of understanding of the presumption of innocence and the handling of evidence and witnesses by the court remained a positive area, with fair opportunities for presentation and examination afforded to both sides. However, concerns remain in relation to high levels of pre-trial detention and low levels of legal representation for those charged with misdemeanors. Judges continue to use mobile phones in court. Allegations of police misconduct, including threats and the use of violence or torture continued to affect a small number of trials.

The recommendations in this Report, addressed to a number of different bodies and institutions, again highlight the interconnectedness of the justice system. Though monitoring of trials takes place in the court room, improved adherence to many of the rights analyzed in this report will require the cooperation, support and leadership of other groups, such as law enforcement agencies, prison authorities and NGOs. This is where the value of the Project lies – in collecting objective data that can provide a basis for open discussions and dialogue between a range of different stakeholders. Working together these organizations can help develop the Cambodian justice system to ensure that it is fair and provides equal justice to all.



1. INTRODUCTION

The right to a fair trial is a universally recognized human right, enshrined in international law in both the Universal Declaration of Human Rights (the “UDHR”)¹ and the International Covenant on Civil and Political Rights (the “ICCPR”).² Fair trial rights are guaranteed in the Constitution of the Kingdom of Cambodia (the “Constitution”)³ and, through various individual provisions, in other domestic law.⁴ The right to a fair trial is made up of a number of more specific individual rights, including pre-trial rights, which, when recognized and provided for, together ensure that a person charged with a criminal offense is treated fairly while the state determines their guilt or innocence.

Fair trials are essential to protect the rights of both the accused and victims to have all evidence tested thoroughly by an independent and impartial court and to ensure the proper administration of justice. Recognition and provision for fair trial rights and due process prevents arbitrary and unjust interference with the lives of citizens, the misuse of political or state power or the application of “summary justice”. As a general principle, regardless of the nature of the alleged offense, all accused persons must be given a genuine opportunity to answer charges; present and challenge evidence; examine and cross-examine witnesses and do so in a neutral and dignified setting.

Fair trial rights apply to those accused of all criminal offences, no matter how shocking or abhorrent the alleged offense and no matter how strong the evidence available to the prosecution appears to be. This principle is underscored in Cambodia today by the investigation and prosecution of senior members of the Khmer Rouge and those allegedly most responsible for breaches of international and domestic law during the Khmer Rouge regime. In the first verdict delivered by the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”), the Trial Chamber explicitly recognized a breach of the fair trial rights of the accused, KaingGuekEav, alias Duch, who was illegally detained by the Cambodian Military Court between May 10, 1999, and July 30, 2007.⁵ This breach of the rights of the accused was cited as a contributing factor in mitigation of the final sentence (reduced by five years in total), setting a strong precedent for the universal recognition of fair trial rights throughout the Cambodian justice system.⁶

THE LEGAL FRAMEWORK

Cambodia is a party to the major international human rights instruments, including the UDHR and the ICCPR. These instruments guarantee that individuals charged with a criminal offense are entitled to a fair and public hearing by an independent and impartial tribunal⁷ and have the right to be presumed innocent until proven guilty according to law.⁸ The UDHR and ICCPR are also incorporated into the domestic legal system – Article 31 of the Constitution states that Cambodia “*shall recognize and respect human rights as stipulated in the ...covenants and conventions related to human rights.*” This was confirmed by a decision of the Constitutional Council dated July 10,

¹United Nations General Assembly, *Universal Declaration of Human Rights*, December 10, 1948, Article 10.

²United Nations General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966, Article 14.

³Article 31 of the Constitution guarantees fair trial rights through its incorporation of the UDHR and other international covenants and conventions, which include the ICCPR. Articles 38 and 128 of the Constitution also guarantee various fair trial rights.

⁴The Code of Criminal Procedure of the Kingdom of Cambodia sets out a number of procedural rights that help ensure a fair trial. For example, Article 300 states that the accused may be assisted by a lawyer of their own choosing.

⁵*Prosecutor v KaingGuekEav alias Duch*, Judgement, Case File/Dossier No. 001/18-07-2007/ECCC/TC, July 26, 2010, para 632.

⁶See also: Cambodian Center for Human Rights, *The Duch Trial: A Good Example for the Cambodian Courts*, Press Release, July 26, 2010. Available at www.cchrcambodia.org

⁷Article 10 of the UDHR; Article 14(1) of the ICCPR.

⁸Article 11(1) of the UDHR; Article 14(2) of the ICCPR.



2007, which stated that “international conventions that Cambodia has recognized” form part of the law which trial judges must consider.⁹

The Constitution provides a number of guarantees that together provide the basic framework for fair trials. Article 31 guarantees: “Every Khmer citizen shall be equal before the law”. Article 38 sets out the rights of Khmer citizens: “Any case of doubt shall be resolved in favor of the accused. The accused shall be considered innocent until the court has finally judged on the case. Every citizen shall enjoy the right to defense through judicial recourse.” Article 128 guarantees that the judiciary shall be “an independent power” and shall “guarantee and uphold impartiality and protect the rights and freedoms of citizens.”

Cambodia’s criminal procedure was codified in 2007 with the introduction of the Code of Criminal Procedure of the Kingdom of Cambodia (the “CCPC”), which replaced sections of the Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (the “UNTAC Law”). The CCPC sets out in detail the legal procedures for investigating and prosecuting criminal offences, as well as the rights of victims and those charged with a criminal offense. At the Opening of the Conference on the Dissemination of the Criminal Procedure Code, Prime Minister Hun Sun explained the origins of the CCPC: “In accordance with the Cambodian legal custom and culture that originated from Romano-Germanic System (Civil Law System), this Criminal Code Procedure is based on the main principles of existing Criminal System Procedure to ensure the continuity of judicial and relevant institutions in dealing with the present criminal cases.”¹⁰

The Prime Minister noted that the provisions of the CCPC clarified the respective powers of the various bodies of the court, and how they interrelate: “Clearly, according to this Criminal Code Procedure, the prosecuting body is still in charge of initiating formal accusations in criminal cases and the investigating judges remain in charge of investigating and collecting evidences before forwarding to trial judges who will try the defendant.”¹¹

In 2009 the Penal Code of the Kingdom of Cambodia (the “Penal Code”) was promulgated, a comprehensive law setting out classes of offense, principles of criminal responsibility, principles of sentencing, the territorial jurisdiction of the courts and an extensive array of new criminal offenses. The general provisions contained in Book 1 of the Penal Code were in force during the Reporting Period.¹² The full Penal Code, including provisions creating new offenses, was in force as of December 10, 2010 in Phnom Penh and December 20, 2010 in the remainder of the country.¹³

THE POLICY CONTEXT

The functioning of the justice system has been amongst the major human rights concerns in Cambodia for some time, central as it is to the protection and enforcement of other rights, and to broader economic and social progress. In 2008, the Royal Government of Cambodia (the “RGC”) placed good governance, including legal and judicial reform, at the center of its primary policy platform, the Rectangular Strategy for Growth, Employment,

⁹ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, dated July 10, 2007.

¹⁰ Hun Sen, Address at the Opening of the Conference on the Dissemination of the Criminal Procedure Code, Hotel Le Royal, Phnom Penh, August 13, 2007.

¹¹ Ibid.

¹² Article 672 of the Penal Code: “Except the general provisions of Book 1 (General Provisions) of the present code, which shall be immediately effective after this code comes into effect, other provisions shall be applicable in one year after this code comes into effect.”

¹³ Ibid. See also Article 93 of the Constitution: “Any law approved by the assembly and finally reviewed by the Senate and signed by the King for its promulgation shall go into effect in Phnom Penh ten days after its signing and throughout the country twenty days after its signing.”



Equity and Efficiency, Phase II.¹⁴ Good governance is identified in the Rectangular Strategy as “*the most important prerequisite to ensure socio-economic development with sustainability, equity and social justice.*”¹⁵

Legal and judicial reform in Cambodia is guided by the Legal and Judicial Reform Strategy approved by the Council of Ministers of the RGC on June 20, 2003.¹⁶ The Strategy identifies four guiding principles from the provisions of the Constitution to guide such reform – the rights of individuals, liberal democracy, the separation of powers and the rule of law.¹⁷ Recognizing the rights of Cambodian citizens under both the Constitution and international law, the Strategy states: “*Upholding the rights of the individual as they are enshrined in the Constitution and in the body of international laws is perceived as essential in enabling the citizens of Cambodia to act as agents of their economic, social, cultural and religious interests and to inspire in them the ability and confidence to use the opportunities available to them.*”¹⁸ The Strategy sets out seven strategic objectives (see inset box), which form the basis of a Legal and Judicial Reform Action Plan, approved in 2005.¹⁹

The purpose of the Cambodian Center for Human Rights (“CCHR”) Trial Monitoring Project (the “Project”) is to act as an independent and impartial monitor of criminal trials in Cambodia, and to collect data that can be analyzed to identify strengths and weaknesses in the justice system. By drawing attention to the areas in the trial process that require the greatest attention and making practical recommendations to the relevant justice sector institutions, CCHR supports efforts to strengthen and reform the justice system for the benefit of all Cambodians. The Project is integrated into and supports wider efforts by the RGC and international donors to strengthen and reform the justice system, including the Cambodian Model Court Project²⁰ and the second phase of the Program on Rights and Justice funded by the United States Agency for International Development (“USAID”).

Legal and Judicial Reform Strategy of the Kingdom of Cambodia, 2003:

Strategic Objectives

1. Improve the protection of personal rights and freedoms
2. Modernization of the legislative framework
3. Provide better access to legal and judicial information
4. Enhance quality of legal processes and related services
5. Strengthen judicial services
6. Introduce alternative dispute resolution methods
7. Strengthen legal and judicial sector institutions to fulfill their mandates.

¹⁴ Hun Sen, Address on Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase II, First Cabinet Meeting of the Fourth Legislature of the National Assembly, Office of the Council of Ministers, Phnom Penh, September 26, 2008

¹⁵Ibid., p 11.

¹⁶ Council for Legal and Judicial Reform, *Legal and Judicial Reform* (Phnom Penh: CLJR, 2003).

¹⁷Ibid. p 3.

¹⁸Ibid. p 7.

¹⁹ Council for Legal and Judicial Reform, *Plan of Action for Implementing the Legal and Judicial Reform Strategy*, Adopted by the Royal Government of Cambodia at the Plenary Session on April 29, 2005.

²⁰The Model Court Project is managed by the General Secretariat for the CLJR and the Ministry of Justice in partnership with the Danish Institute for Human Rights, the Danish International Development Agency and AusAid. It seeks to improve the fairness and efficiency of trials in four courts – Phnom Penh Court, Kandal Court, Kampong Cham Provincial Court of First Instance and BanteayMeanchey Provincial Court of First Instance – with the aim of providing a positive model for the court system throughout Cambodia. The fairness and efficiency of hearings at the four courts are assessed against a set of international and national standards: the Model Court Standards.



PURPOSE, AUDIENCE AND SCOPE OF THE REPORT

This is the second bi-annual Report on Fair Trial Rights in Cambodia produced by the Project (the “Second Bi-Annual Report”). The first bi-annual report was released on July 14, 2010 (the “First Bi-annual Report”). The objectives of the Project are to monitor criminal trials in Cambodia to assess their fairness against international and Cambodian standards, to develop practical recommendations to improve respect and provision for fair trial rights, and to use the data and findings contained in bi-annual reports as the basis for dialogue with the courts monitored and other justice sector stakeholders. The information presented in this report serves as a reference from which to implement reform, and the data and recommendations will be shared with the intended audience of the Report – the Cambodian judiciary and other justice sector stakeholders – for discussion. In December 2010, before the Report was finalized, a Khmer version of the draft was sent to the respective Presidents of the Phnom Penh Capital Court (the “Phnom Penh Court”) and the Kandal Provincial Court (the “Kandal Court”) to seek feedback, comments and additional recommendations.

The structure of the Report is as follows. Section 2 sets out the methodology followed when collecting data and preparing this report. In Section 3, Data and Findings, the data collected between January 1 and June 30, 2010 (the “Second Reporting Period”) is presented alongside the data collected between August 10 and December 31, 2009 (the “First Reporting Period”) for the purpose of identifying trends in adherence to fair trial rights. In Section 4, Analysis, the data collected in relation to three fair trial issues is analyzed in depth and recommendations are provided. As the First Bi-annual Report was released at the conclusion of the Second Reporting Period, the recommendations made in that report cannot be expected to have influenced the data collected during that period. Therefore, apart from some brief notes incorporating feedback from dialogue, this report refrains from providing any in-depth analysis of the impact of those recommendations and the subsequent dialogue (ongoing at the time of writing). These issues will be considered in more detail in subsequent reports.



2. METHODOLOGY

The Project is implemented by the CCHR as part of its Policy and Advocacy Program. The Project is implemented and the Report written following the methodology set out in this chapter. It is hoped that this methodology can be shared and discussed with other organizations seeking to monitor trials in Cambodia, so as to enable increased collaboration in this field and facilitate constructive dialogue between all stakeholders seeking to improve respect for fair trial rights in Cambodia.

TIME FRAME AND LOCATION

This report presents and analyzes data from 532 criminal trials monitored at the Phnom Penh Court and the Kandal Court during the Second Reporting Period. The monitoring of the Phnom Penh Court and the Kandal Court by the CCHR began on August 10, 2009. The First Bi-annual Report, covering 199 trials monitored during the First Reporting Period, was released on July 14, 2010. The Phnom Penh Court was selected for the purposes of the Project because, as the court of the capital city and the largest and most populated urban area in Cambodia, its activities are more wide ranging, its conduct is more widely reported and its influence is greater than other first instance courts in Cambodia. The Kandal Court was selected for its proximity to Phnom Penh, the large number of judges presiding there and the availability of three courtrooms for trial monitoring. Importantly, both the Phnom Penh Court and the Kandal Court are ‘Model Courts’: two of four courts that are the focus of the Model Court Project.

FOCUS OF THE TRIAL MONITORING

The monitoring of trials focuses on certain fair trial rights due to their relevance in the Cambodian context. In order to determine which rights would be considered, the CCHR relied on external resources such as reports and studies on fair trial rights in Cambodia and on the Cambodian judicial system.²¹ Neither positive nor negative inferences should be made from the omission of other fair trial rights within this Report.

The following rights were selected for monitoring purposes:

- Right to a public hearing;
- Right to be tried without undue delay;
- Right to understand the nature of the charge;
- Right to an explanation of rights owed to the accused;
- 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 be tried by an independent and impartial tribunal;
- Evidence rights (including the right to call and examine witnesses);
- Right to full disclosure of evidence for the preparation of the defense;

²¹For example: International Commission of Jurists, *ICJ's Comments on the Initial Report of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights* (Geneva: International Commission of Jurists, April 2009); Richard Blue and Robert Underwood, *Evaluation of the Program on Rights and Justice ("PRAJ"): Final Report* (Washington DC: United States Agency for International Development (USAID), January 2008); and NGO Working Group, *Parallel Report on Cambodia 2009* (Phnom Penh: NGO Working Group, April 2009).



- Right against self-incrimination (not to confess guilt as a result of coercion or inducement);
- Prohibition against retroactive application of penal legislation (being tried for an offense that was not an offense at the time it was committed); and
- Rights of Juveniles.

INFRASTRUCTURE

In order to effectively and efficiently record relevant trial data, the CCHR designed a trial monitoring checklist (the “Checklist”) for use in court by the CCHR trial monitors (the “Trial Monitors”) (Appendix I). This checklist is tailor-made for the Cambodian context and includes approximately 50 questions, the answers to which indicate whether fair trial rights have been adhered to. Most questions have three possible answers: yes (“Y”), no (“N”) and either not applicable (“N/A”) or information unavailable (“I/U”). The Trial Monitors monitored adherence to fair trial rights throughout the trial as a whole, rather than monitoring fair trial rights for each individual accused. Consequently, for a question such as question 3(a) – was there pre-trial detention? – where more than one accused appeared in the same trial, the Trial Monitors answered “no” only if none of the accused were placed in pre-trial detention.

The Checklist has been revised and amended following both the First Reporting Period and Second Reporting Period to incorporate lessons learned during trial monitoring, analysis of data, and dialogue with justice sector stakeholders. The CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles (Appendix II). With consideration as to the brevity of the Checklist, the CCHR compiled comprehensive guidance notes (the “Checklist Guidance”) to ensure uniform interpretation of each Checklist question and understanding of the legal basis and purpose of each question. This Checklist Guidance is vital for ensuring comprehensive understanding of each question and serves to ensure consistency amongst Trial Monitors, present and future. Another tool, which outlines the relevant national and international law underpinning each question in the Checklist – the “Law Bank” (Appendix III) – was provided to the Trial Monitors to enable easy reference to the relevant international and national laws underpinning each of the fair trial rights monitored.

The CCHR is committed to the basic international principles applicable to trial monitoring²² and has devised a code of conduct for our monitors, outlining the obligations of non-interference, objectivity and confidentiality to which our Trial Monitors are bound (the “Code of Conduct”) (Appendix IV).

PERSONNEL AND TRAINING

The Project team is currently comprised of four experienced Trial Monitors, each possessing legal qualifications. As noted above, the Trial Monitors are bound by the Code of Conduct. The Trial Monitoring Team is supported by both national and international legal consultants. Before the monitoring of trials began, the Trial Monitors participated in a thorough practical and theoretical training program that included training on:

- Trial monitoring and the use of the Checklist;
- The Code of Conduct and the importance of impartiality, non-interference; confidentiality and professionalism;

²²See: Amnesty International, *Amnesty International Fair Trial Manual* (London: Amnesty International Publications, 1998), AI Index POL 30/02/98; Jelena Pejic and Vanessa Lesnie, *What is a Fair Trial: A Basic Guide to Legal Standards and Practice* (New York: Lawyers Committee for Human Rights, 2000); Organization for Security and Co-operation in Europe (OSCE)/ Office for Democratic Institutions and Human Rights (ODIHR), *Trial Monitoring: A Reference Manual for Practitioners* (Poland: OSCE/ODIHR, 2008); Bárbara Oliveira and Linda Besharaty-Movaed, *International Commission of Jurists Trial Observation Manual* (Geneva: International Commission of Jurists, 2002).



- Fair trial standards in international and Cambodian law; and
- The Model Court Standards.

Trial Monitors spend most days in court monitoring criminal trials and have therefore acquired an intimate knowledge of the criminal justice process as it is regularly applied in Cambodia. The Trial Monitors have developed positive and constructive relationships with staff at the courts monitored, supporting the Project's goal of working in partnership with the courts and other justice sector stakeholders to promote greater recognition of and provision for fair trial rights.

MONITORING PROCEDURE

For the purposes of the Project, two Trial Monitors are assigned to Phnom Penh Court and two are assigned to Kandal Court, enabling the Trial Monitors to become familiar with the court to which they are assigned and to build relationships with judges and court staff therein. The CCHR randomly monitors criminal trials at the two courts, without regard to the nature of the charges in any particular case. The aim is to produce objective data and an arbitrary sample of trials.

For each trial attended, data is recorded directly on the Checklist. The information sought is limited to the trial process itself and therefore no additional interviews or dialogue took place, with the exception of efforts made to record verdicts that were handed down after the trial.

DATABASE

After each trial the data from the Checklist is entered into the CCHR Trial Monitoring Database (the "Database").²³ The Database reflects the questions within the Checklist and was constructed using Microsoft Visual Basic. In addition to storing the data extracted from the checklists, the Database is designed to analyze the stored data, for example, flagging pre-trial detention periods that exceed statutory limits. As the Project proceeds, the Database will be developed further. Over time, the Database will contain an extensive catalogue of data and become an invaluable resource for the CCHR and other organizations working to promote fair trials in Cambodia.

ANALYSIS AND DIALOGUE

The CCHR analyzes the trial data recorded in the database, and identifies positive developments as well as areas for concern arising at trial. The data is based on the answers the Trial Monitors have given to the questions in the Checklist. Data is presented in bi-annual reports and compared to data collected during previous reporting periods to identify trends in the practices of the courts. Each bi-annual report contains an in-depth analysis of a sub-set of the fair trial rights monitored. The purpose of this analysis is to enable CCHR to identify strengths and weaknesses in the practices of the courts and develop corresponding recommendations to the courts and other justice sector stakeholders for ways in which recognition and provision for fair trial rights in criminal trials can be improved.

The purpose of the Project is to provide objective data to serve as a reference for improvements in court practices and broader legal and judicial reform. Final drafts of the Bi-Annual Reports are sent to the Presidents of the courts monitored for comments and recommendations prior to final publication. Once published, CCHR

²³The Database is to be made available online for public access on the CCHR website: www.cchrcambodia.org.



distributes bi-annual reports to relevant stakeholders along with offers for meetings or presentations to provide further explanation of the data, analysis and recommendations. Project staff also request specific meetings with representatives of the courts monitored as well as other justice sector organizations, bodies and institutions to which recommendations are addressed. The meetings serve as a basis for an exchange of ideas and provide insight into the challenges faced by those working to strengthen the justice system. The purpose of dialogue meetings is to promote the implementation of the recommendations set out in the bi-annual reports or alternative measures that will address the concerns behind the recommendations.

CCHR requested dialogue meetings with the following organizations, bodies and institutions following the publication of the First Bi-Annual Report:

- Ministry of Justice
- Council for Legal and Judicial Reform
- Phnom Penh Court
- Kandal Court
- Appeal Court of the Kingdom of Cambodia
- Supreme Court of the Kingdom of Cambodia
- Bar Association
- National Police Department
- Community Legal Education Center
- Cambodian Defenders Project
- Legal Aid Cambodia

The targets for dialogue are likely to differ slightly between reporting periods, reflecting the organizations, bodies and institutions towards which recommendations are addressed in each report. One of the challenges of the Project is engaging successfully with a broad range of stakeholders. In this regard, CCHR is appreciative of the positive and constructive discussions it has been able to participate in with those stakeholders that have been willing to engage with the Project.



3. DATA

During the Second Reporting Period the Trial Monitors monitored 532 trials in total at the Phnom Penh and Kandal Courts. This section sets out the ‘raw’ data recorded by the Trial Monitors on the Checklist during the monitoring of each trial. The data from the Second Reporting Period is presented alongside the data from the First Reporting Period for the purpose of comparison and analyzing trends in the practices of the Courts.

FIGURE 1: TRIALS MONITORED

Phnom Penh Court				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Number of Trials	142		376	
Felony	84	59	190	51
Misdemeanor	58	41	186	49
Kandal Court				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Number of Trials	57		156	
Felony	21	37	55	35
Misdemeanor	36	63	101	65

Figure 1 shows the number and location of criminal trials monitored by the Trial Monitors during the Second Reporting Period, and the nature of the charge at each trial. Article 46 of the Penal Code defines a felony as any offense for which the minimum penalty is imprisonment for five years or more. A misdemeanor is defined in Article 47 as any offense for which the penalty is imprisonment for a term of more than six days and less than or equal to five years. A petty offense is defined as any offense where the penalty is a fine or less than or equal to six days imprisonment.²⁴As noted above, the trials were chosen for monitoring on the basis of court schedules alone, with no consideration given to the nature of the charges. The trials monitored therefore represent an arbitrary cross section of cases before the courts monitored. The data collected from the monitoring of 532 trials during the Second Reporting Period represents a significantly larger sample than the data collected in the 199 trials monitored during the First Reporting Period, increasing the representative nature of the data.

²⁴Article 48 of the Penal Code.



RIGHT TO A PUBLIC HEARING

Everyone has the right to have their guilt or innocence determined in a public trial,²⁵ except in certain exceptional circumstances.²⁶ The right to a public hearing involves a number of elements: trials should generally be open to the public and conducted orally; information on the venue and date of the trial should be made available to the public; and there should be adequate facilities for public attendance.²⁷ Moreover, Article 317 of the CCPC states that in all trials the judgment must be announced in a public session.²⁸

Public hearings ensure that the administration of justice is transparent and that the judiciary remains accountable to the public for the decisions and judgments they make. For the parties involved in a trial, public scrutiny provides a check against arbitrary decision-making and abuse of power, procedural violations, including inequality in the treatment of parties, and interference and influence from external parties. When a legal system is operating in accordance with law and ethical principles, public hearings also engender confidence in the ability of the State to deliver justice.

FIGURE 2: RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public notice board outside the courtroom?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	5	3	0	0
No	194	97	532	100
2(b) Were members of the public obstructed from entering or dismissed from the courtroom?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	199	100	532	100

The data for question 2(a) indicates that neither of the monitored courts posted public notices giving details of the time and location of hearings during the Reporting Period. The right to a public hearing was one of the rights that received closer analysis in the First Report, although as the Report was released at the conclusion of the Second Reporting Period, the courts did not have a chance to respond to the recommendations made by the CCHR in

²⁵ Article 316 of the CCPC; Article 10 of the UDHR; Article 14(1) of the ICCPR.

²⁶ Article 316 of the CCPC states that the court may order a complete or partial in-camera hearing if it considers that a public hearing will cause significant damage to public order or morality, but a written explanation of such a decision must be included alongside the judgement on the merits of the case. Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial for reasons of "morals, public order (*ordre public*) or national security in a democratic society", where publicity would prejudice the interests of justice or where the interest of the private lives of the parties so requires.

²⁷ United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (CCPR/C/GC/32), August 23, 2007, para. 28.

²⁸ Article 14(1) of the ICCPR also states that judgments rendered in a criminal trial or any suit of law must be made public except where the interests of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.



that Report. However, at the time of writing the Phnom Penh Court has introduced a policy of posting such details to a public notice board on a regular basis, a welcome development.

The data for question 2(b) reflects no change from the First Reporting Period. On no occasion did the Trial Monitors observe members of the public being obstructed from entering the courtroom or being dismissed from the courtroom. The data for this question must be read with the caveat that, once inside the courtroom for the commencement of the trial, the Trial Monitors ability to observe obstruction of the public is limited. However, despite this limitation, it is encouraging that the Trial Monitors did not directly observe any person being excluded from a trial through either refusal of entry or ejection from the court room.

RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY

There is a presumption in both Cambodian and international law against pre-trial detention: when charged with an offence, release pending trial should be considered as the default option as a matter of principle, and pre-trial detention considered as a last resort.²⁹ Article 205 of the CCPC sets out a limited number of justifications for ordering pre-trial detention.

If the state detains an individual charged with an offense there is a duty to bring the matter to trial as soon as possible in order to set out evidence against the accused, allow the accused to address the prosecution evidence and present evidence of their own, and to determine guilt or innocence. The right to be tried without undue delay is enshrined in international law³⁰ and specific maximum terms of pre-trial detention are set out in Cambodian law.³¹ CCHR monitors both the prevalence of pre-trial detention and the duration that detainees have been held in pre-trial detention.

FIGURE 3: PRE-TRIAL DETENTION

3(b) Was there pre-trial detention?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	176	88	446	84
No	7	4	8	1.5
I/U	16	8	2	0.3
N/A	-	-	76	14.2
Total	199	100%	532	100%

²⁹ Article 203 of the CCPC states: "In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section." Article 9(3) of the ICCPR states: "It shall not be the general rule that persons awaiting trial shall be detained in custody."

³⁰ Article 9(3) of the ICCPR states that anyone who is arrested or detained on a criminal charge must be brought promptly before a judge or other judicial power and is entitled to trial within a reasonable time or to release. Principle 38 of the UNBPIJ states: "A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial".

³¹ Articles 208 and 209 (adults) and 213 and 114 (juveniles) of the CCPC. Article 38 of the Constitution states that the detention of any person shall not take place except in accordance with the law.



Question 3(b) records the prevalence of pre-trial detention resulting from the arrest of the accused. The Checklist used in the Second Reporting Period therefore included the additional option of “N/A”, for cases where there was no arrest and therefore no pre-trial detention – the accused person was summonsed to appear before the court having remained at liberty at all stages prior to the hearing. As a result of this new methodology, the Trial Monitors indicated “No” for this question only in trials in which the accused had been arrested and released on bail (which occurred in only 1.5% of cases).

The data for question 3(b) indicates that pre-trial detention has remained prevalent throughout the Reporting Period. There was a small decrease in the percentage of cases in which the accused person was held in pre-trial detention. However, given the statutory presumption against pre-trial detention, the overall rate remained high at 84%. Article 223 of the CCPC provides for an alternative to pre-trial detention in judicial supervision, less intrusive measure than pre-trial detention.

There were a number of trials monitored in which the pre-trial detention preceding the hearing exceeded statutory limits. Figure 4 below sets out the information from the 18 trials in which an accused was held beyond statutory limits. Although these 18 trials represent only 3.3% of the 532 trials monitored, a half percentage point drop from the First Reporting Period, this illegal detention remains cause for concern.

FIGURE 4: UNLAWFUL PRE-TRIAL DETENTION (EXCEEDING STATUTORY LIMITS)

N°	Trial	Charge	Maximum days of legal pre-trial detention	Days spent in pre-trial detention	Days exceeding statutory limits	Sentence (prior to any credit for PTD)	Credit for time already spent in PTD
2nd Reporting Period							
1	PP/04-01-10	Law on Aggravating Circumstances of Felonies – Robbery (Felony)	682	784	102	5 years	Yes
2	PP/05-01-10	Law on Aggravating Circumstances of Felonies – Robbery (Felony)	682	1018	336	5 years	Yes
3	PP/26-04-10	Law on Aggravating Circumstances of Felonies – Robbery (Felony)	682	1013	331	5 years	Yes



N°	Trial	Charge	Maximum days of legal pre-trial detention	Days spent in pre-trial detention	Days exceeding statutory limits	Sentence (prior to any credit for PTD)	Credit for time already spent in PTD
4	PP/02-02-10	Law on Aggravating Circumstances of Felonies – Robbery (Felony)	682	1082	400	7 years	Yes
5	PP/04-05-10	UNTAC Law – Fraud (Misdemeanor)	310	588	278	1 year	Yes
6	PP/06-05-10	UNTAC Law – Forgery (Misdemeanor)	310	1158	848	7 months	Yes
7	PP/26-01-10	UNTAC Law - Breach of trust (Misdemeanor)	310	350	40	4 years	Yes
8	KD/28-06-10	Law on Aggravating Circumstances of Felonies – Robbery (Felony)	682	872	190	6 years	I/U
9	KD/19-03-10	UNTAC Law – Battery (Misdemeanor)	310	374	64	14 months	Yes
10	KD/31-03-10	UNTAC Law – Wrongful damage to property (Misdemeanor)	310	365	55	1 year	Yes
11	KD/12-05-10	UNTAC Law – Theft (Misdemeanor)	310	595	285	1 year	Yes
12	KD/24-06-10	UNTAC Law – Battery (Misdemeanor)	310	426	116	13 months	Yes



N°	Trial	Charge	Maximum days of legal pre-trial detention	Days spent in pre-trial detention	Days exceeding statutory limits	Sentence (prior to any credit for PTD)	Credit for time already spent in PTD
13	KD/04-06-10	UNTAC Law – Battery (Misdemeanor)	310	452	142	15 months	Yes
14	KD/07-06-10	UNTAC Law – Theft (Misdemeanor)	310	461	151	18 months	Yes
15	KD/17-06-10	Law on the Control of Drugs – Drug trafficking (Misdemeanor)	310	377	67	2 years	I/U
16	KD/28-05-10	UNTAC Law – Theft (Misdemeanor)	310	712	402	21 months	Yes
17	KD/03-03-10	UNTAC Law – Battery (Misdemeanor)	310	379	69	13 months (juvenile)	I/U
18	KD/22-01-10	Law on the Management of weapons - Illegal use of weapons (Misdemeanor)	310	374	64	8 months	Yes

The statutory limits on pre-trial detention in Figure 4 were calculated according to Articles 208 and 209 of the CCPC, which set out the maximum legal duration for provisional detention for both felonies and misdemeanors. Article 249 of the CCPC also provides for an additional four months of detention in anticipation of a trial following the closing of an investigation. This additional period has also been taken into account. The maximum period of detention for a felony is 22 months (or 682 days). The maximum for a misdemeanor is 10 months (or 331 days).

It is particularly concerning that of the 18 trials in which pre-trial detention prior to the hearing exceeded statutory limits, 13 involved misdemeanor charges. Though there will be a number of competing factors for the courts to assess, and decisions should be made on a case-by-case basis, the reasons for provisional detention set out in Article 205 of the CCPC are rarely likely to apply to those charged with non-violent offences such as fraud, forgery and breach of trust and such persons should, therefore, generally be released pending their hearing. In one trial, the accused was charged with forgery of a private, commercial or bank document under article 50 of the UNTAC law, which carries a maximum sentence of five years imprisonment. The accused was held in pre-trial detention for over three years pending trial. The eventual sentence was seven months imprisonment,



meaning the individual was detained for an additional two years and five months beyond the term of their final sentence.

As noted in the introduction to this report, the ECCC set a strong precedent in its first verdict, reducing the final sentence of the accused, KaingGuekEav, alias Duch, in acknowledgement of illegal pre-trial detention.

RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Accused persons have the right to understand the nature of the offense with which they are being charged.³²This includes the criminal offense they are alleged to have committed and the facts giving rise to the accusation. This information must be provided to a suspect in a language he or she understands.³³

FIGURE 5: RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

4(a) Did the Judge announce the case to be heard?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	196	98	493	93
No	3	2	39	7
4(b) Did the Judge state the charge?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	198	99	503	95
No	1	1	29	5
4(c) Did the Judge state the relevant law?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	169	85	313	59
No	30	15	219	41

³²Articles 97 and 325 of the CCPC; Article 14(3)(a) & (f) of the ICCPR.

³³Article 330 of the CCPC; Article 14(3)(f) of the ICCPR



4(d) Did the Judge state the parties involved?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	196	98	443	83
No	3	2	89	17
4(e) Did the Judge state the date and location that the alleged offense occurred?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	197	99	398	75
No	2	1	134	25
4(f) IF required, was an interpreter provided?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	18	3
No	0	0	1	1
N/A	199	100	513	96
4(g) If required, was provision made for disabilities?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	1	0.5	1	1
N/A	198	99.5	531	99

The judge announced the case to be heard and the charge facing the accused in 93% and 95% of trials monitored during the Second Reporting Period, representing slight decreases from the First Reporting Period. There were significant decreases in the percentage of trials in which the judge stated the relevant law, the parties involved, and the date and location of the alleged offense. In the one trial in which an interpreter was required but not provided, the accused was a Belgian national who could speak and understand a limited amount of Khmer but had great difficulty following proceedings. In the one trial in which adequate provision was not made for disabilities, the accused was very old and could not hear the trial proceedings clearly. Despite this obvious hearing difficulty the judge did not use the microphone.



EXPLANATION OF RIGHTS

In order to exercise one's rights, one must know that they exist. In recognition of the large number of trials in which individuals charged with a misdemeanor appear before a court without a lawyer capable of informing them of their basic rights at trial, CCHR monitors whether judges inform accused of a number of basic rights. Certain rights may require an explanation, particularly where they are legalistic in nature. The trial monitoring data distinguishes between informing the accused of a right and providing an explanation of a right. Fifty four trials were held with the accused *in absentia*; data for question 5 of the Checklist was therefore not recorded for these trials.

FIGURE 6: EXPLANATION OF RIGHTS

5(a) Did the Judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
I	108	54	354	67
I&E	75	38	51	9
Neither	12	6	73	14
N/A	4	2	54	10
5(b) Did the Judge inform (I) and explain (E) to the accused their right to silence?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
I	74	37	80	15
I&E	38	19	11	2
Neither	83	42	387	73
N/A	4	2	54	10
5(c) Did the Judge inform (I) and explain (E) to the accused their right not to self-incriminate?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
I	104	52	139	26
I&E	51	26	9	2
Neither	40	20	330	62
N/A	4	2	54	10



5(d) Did the Judge inform (I) and explain (E) to the accused their right to change the judge?

Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
I	121	61	281	53
I&E	63	32	39	7
Neither	11	5	158	30
N/A	4	2	54	10

5(e) Did the Judge inform (I) and explain (E) to the accused their right to have the last word?

Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
I	121	61	337	63
I&E	67	34	40	8
Neither	7	3	101	19
N/A	4	2	54	10

A distinction is drawn in questions 5(b) and (c) between the right to remain silent at trial – the right to refrain from testifying or answering any question – and the right not to self-incriminate. The latter is a more specific right, which focuses on the right not to be compelled to confess guilt or to make incriminatory statements.

Judges either informed or informed and explained to the accused their basic rights in a significantly lower percentage of trials than in the First Reporting Period. This data is analyzed in more detail in the Analysis section.

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

An individual facing a criminal charge must be provided with adequate time and facilities to answer the charge against them.³⁴What constitutes ‘adequate’ time will depend on – amongst other things – the nature of the charge and the complexity of the case. There is an obligation to grant reasonable requests for adjournment, in particular, when the accused is charged with a serious criminal offense and additional time for preparation of the defense is needed.³⁵The facilities owed to an accused under this right include access to documents and other evidence which the accused requires to prepare their case, as well as the opportunity to engage and communicate with counsel.

³⁴Article 14(3) (b) of the ICCPR; Article 8 of the UNBPRL.

³⁵Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 913/2000: Chan v. Guyana* (CCPR/C/85/D/913/2000), January 23, 2006, para. 6.3; Human Rights Committee, *Admissibility: Communication No. 594/1992: Phillip v. Trinidad and Tobago* (CCPR/C/56/D/594/1992), March 15, 1996, para. 6.8.



FIGURE 7: RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

6(a) Was there anything to suggest that the defense lawyer was assigned on the day of the trial? ³⁶			
Data	2 nd Reporting Period		
	N ^o	%	
Yes	8	1.5	
No	524	98.5	

Question 6(a) indicated whether there was anything said by the judge, court clerk or lawyers to suggest that the defense lawyer had been assigned to the case on the day of the trial. There were only 8 trials in which it appeared that the defense lawyer had been appointed on the day of the trial and therefore may have had inadequate time and facilities to prepare a defense.

RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

All persons accused of an offense have the right to be present at their trial and to defend themselves in person or through legal representation of their own choosing.³⁷ The assistance of a lawyer is compulsory under Cambodian law where the case involves a felony or where the accused is a minor.³⁸ Legal procedures and the workings of a law court can be foreign and intimidating to those accused of an offense. To enable a fair trial it is vital to ensure that those accused of offenses have the opportunity to employ an expert advocate with the ability to explain the charges against them and their rights, guide them through the trial process, and represent and defend their interests in court.

FIGURE 8: RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

7(a) Was the accused represented by a lawyer?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	135	68	312	59
No	64	32	220	41
In Felony Trial: 7(a) Was the accused represented by a lawyer?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	100	95	238	97
No	5	5	7	3

³⁶ Question 6(a) was not included in the Checklist in its present form during the First Reporting Period.

³⁷ Article 14(3)(d) of the ICCPR; Article 300 of the CCPC.

³⁸ Article 301 of the CCPC.



In Misdemeanor Trial: 7(a) Was the accused represented by a lawyer?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	35	37	74	26
No	59	63	213	74
7(c) Was the accused excluded at any stage of the trial?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	3	2	1	0.2
No	192	96	477	89.6
N/A	4	2	54	10.2

As stated above, there were 54 trials in which the accused was tried *in absentia* representing 10% of the total trials monitored. This is an increase from the 2% of trials in which the accused was tried *in absentia* during the First Reporting Period. Further, there were 31 trials in which the accused was tried in absentia without a lawyer present to represent them and present a defense.

There was a decrease in the overall percentage of trials in which defendants appeared with legal representation from 68% during the First Reporting Period to 59% during the Second Reporting Period. However, the percentage of trials in which defendants appeared with a lawyer when charged with a felony remained high, and in fact increased from the First Reporting Period, from 95% to 97%. This reflects adherence to Article 301 of the CCPC in the vast majority of cases, a success for both of the monitored courts. In dialogue with judges and a prosecutor at the Phnom Penh Court, Prosecutor Hing Bun Chea suggested that those few instances in which an accused charged with a felony appears without legal representation can result from accused persons refusing to be represented, lawyers failing to appear without prior notification, and pressure to try accused who have been detained for a long time.³⁹ The percentage of trials involving defendants charged with misdemeanors who appeared with legal representation decreased from 37% to 26%.

PRESUMPTION OF INNOCENCE

Everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law.⁴⁰ This is a fundamental fair trial right recognized universally. It requires careful attention by those involved at all stages of the criminal justice system. The data in Figure 9 indicates whether the accused may have been treated as guilty prior to the verdict and/or where factors may have influenced the judge to presume guilt.

³⁹ Dialogue meeting with Judge Chain Sinath, Judge Seng Neang and Prosecutor Hing Bun Chea, Phnom Penh Court, July 29, 2010.

⁴⁰ Article 11(1) of the UDHR; Article 14(2) of the ICCPR; Article 38 of the Constitution. Article. 38: "Any case of doubt, it shall be resolved in favor of the accused. The accused shall be considered innocent until the court has judged finally on the case."



FIGURE 9: PRESUMPTION OF INNOCENCE

8(a) Did the accused appear in prison uniform?⁴¹				
Data	2nd Reporting Period			
	N ^o		%	
Yes	318		60	
No	160		30	
N/A	54		10	
8(b) Was the accused handcuffed throughout the trial?				
Data	1st Reporting Period		2nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	195	98	478	90
N/A	4	2	54	10
8(c) Were statements made by the Judge about the guilt/ innocence of the accused before the verdict was delivered?				
Data	1st Reporting Period		2nd Reporting Period	
	N ^o	%	N ^o	%
Yes	20	10	5	1
No	179	90	527	99
8(d) Was there anything to suggest that the Judge discriminated against the accused because of their personal characteristics?				
Data	1st Reporting Period		2nd Reporting Period	
	N ^o	%	N ^o	%
Yes	11	6	1	0.18
No	188	94	531	99.82

The data for question 8(a) indicates that defendants appeared before the court in prison uniform in more than half of the trials monitored. This is potentially prejudicial to the interests of those defendants as the wearing of a prison uniform implies guilt. The data for question 8(b) indicates that there were no instances in either reporting period in which a defendant appeared before the court in handcuffs. Defendants at trial should generally not

⁴¹ Question 8(a) was not included in the Checklist in its present form during the First Reporting Period.



appear in handcuffs unless it is strictly required for security purposes, as this creates the impression that the individual is guilty and a dangerous criminal. The data in this area is encouraging across the two reporting periods and indicates that this is not a practice used by the courts monitored.

In relation to 8(c) there were 5 trials in which the judge was observed to have made a statement about the guilt or innocence of the accused prior to delivering the verdict. This represents less than 1 percent of the total trials monitored during the Second Reporting Period and represents a decline from 10 percent from the First Reporting Period, another positive finding. On the first occasion that a judge began his questioning of the accused by asking, “*At this age you stole someone’s property?*” On the second occasion the judge told the accused, “*Even if you try to say anything, you would still [end up] in prison.*” On the third occasion the judge called the accused a liar, claiming: “*A thief is always a liar.*” On the fourth occasion, the judge when commenting on the offenders antecedents, told the accused: “*Your profession is theft.*” On the fifth occasion the judge asked the accused to briefly describe the circumstances of “*the offense*”, assuming that the accused had in fact committed an offense.

In relation to 8 (d) the judge was heard to remark “*The accused should be considered guilty because he has mental problems.*”

FIGURE 10: INFERENCE OF GUILT

9(e) Was there anything to suggest that the Judge drew an inference of guilt from the silence of the accused?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	3	2	0	0
No	196	98	91	17
N/A	0	0	441	83

An amendment to the checklist between reporting periods led to a noticeable difference in the data for question 9(e). The checklist used during the Second Reporting Period included the option “N/A”, which was selected when the judge had not informed the accused of their right to silence during the trial or when the accused was tried *in absentia*. There were no instances in which the judge appeared to draw an inference of guilt from the silence of the accused.

INDEPENDENCE, IMPARTIALITY AND PROFESSIONALISM OF THE JUDGE

The right to be tried by an independent and impartial tribunal is so fundamental that the Human Rights Committee has stated that it “is an absolute right that may suffer no exception.”⁴² The fairness of any judicial system relies on the independence and impartiality of the arbitrating body. Judicial independence requires decision-making to be transparent, well-reasoned, and based on sound criteria such as legislation, jurisprudence, judicial guidelines and codes of ethics. In order to maintain such independence, political considerations, personal interests and relationships must not be allowed to influence judicial decision-making.

⁴²Human Rights Committee, *Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 263/1987: M. Gonzalez del Rio v. Peru* (CCPR/C/46/D/263/1987), October 28, 1992, para. 5.2.



FIGURE 11: INDEPENDENCE AND IMPARTIALITY OF THE JUDGE

9(a) Did the Judge play any other role in the court proceedings?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	199	100	532	100

9(c) Was there anything to suggest that any partyspoke to the Judge during deliberation?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	32	16	34	6
No	167	84	498	94

Articles 55 and 288 of the CCPC prohibit a trial judge from sitting in adjudication of a case in which they have also acted as investigating judge, prosecutor or deputy prosecutor. There were no trials in which the trial judge had also acted in another role on the same case. This finding was the same during the First Reporting Period.

The data for question 9(c) indicates a reduction in the percentage of trials in which a party to proceedings or the court clerk appeared to speak to the judge during deliberation. Representatives of the Project met with staff from the Phnom Penh Court on July 29, 2010 to discuss the findings and recommendations of the First Bi-annual Report. In response to the data and recommendations made in relation to question 9(c), judges noted that the Phnom Penh Court has separate deliberation rooms for use by judges during deliberation. They suggested that aside from clerks, who were sometimes required to bring documents to the deliberation room for the judge to consider, no other parties were admitted to the deliberation room before the judge delivered the verdict. For future monitoring, question 9(c) will be amended to distinguish between instances in which the person entering the deliberation room or speaking to the judge is a court clerk or other assistant, and instances in which that person is a party to the proceedings, including the prosecutor.

Monitoring of judges' use of mobile phones during hearings began midway through the First Reporting Period, after Trial Monitors observed that this was a common practice. Data was therefore collected for only 60 of the 199 trials monitored.

FIGURE 12: JUDGES' USE OF MOBILE PHONES

18. Did the judge answer a mobile telephone during the hearing?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	17	28	151	28
No	43	72	381	72



The data for question 18 indicates that mobile phone use remained reasonably common in the Second Reporting Period, with the same percentage of trials in which a judge answered a mobile phone. This practice raises concerns about whether a judge who is answering or speaking on a phone is paying sufficient attention to the arguments of the parties and the evidence being presented. As was discussed in the First Bi-annual Report, use of mobile telephones in court may also influence public perceptions of the court by raising concerns that judges are open to influence from external parties during proceedings.

In response to the data and recommendations relating to mobile phone use during hearings, the staff from Phnom Penh Court indicated that judges needed to remain accessible during hearings because they are often acting as investigating judges on other cases and need to be contacted by judicial police for approval of investigatory actions. While this may be the purpose of the majority of phone calls, access to justice in one trial should not be compromised in order to expedite another investigation. Messages for judges could be collected by other court staff while judges are in court and responded to at the conclusion of the trial.

EVIDENCE RIGHTS (INCLUDING THE RIGHT TO CALL AND EXAMINE WITNESSES)

The right to a fair trial is also linked to equality of arms – the principle by which everyone who is a party to proceedings must have a reasonable opportunity to present their case to the court under conditions which do not place them at a substantial disadvantage vis-à-vis their opponent.⁴³ As the court is required to make its decision on the basis of evidence alone, all parties must have equal opportunity to present evidence in support of their case.⁴⁴ Evidence is usually provided in one or more of three ways: (1) by witness testimony (such as a statement from a person who saw what happened), (2) by presentation of documents (such as a land title certificate), and/or (3) by physical evidence (such as a bloodied weapon).

FIGURE 13: EVIDENCE

10(a) Was evidence presented?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	153	77	512	96
No	46	13	20	4
10(b) Was there anything to suggest that any party was not given the opportunity to present evidence?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	3	2	3	1
No	196	98	529	99

⁴³Article 14(3)(e) ICCPR.

⁴⁴Article 334 of the CCPC.



The data for question 10(a) indicates that evidence was presented in a higher proportion of trials in the Second Reporting Period than in the first, a positive trend. There remained few cases – 1% overall – in which it appeared that a party was denied the opportunity to present evidence. Data relating to the type of evidence presented in each of the courts monitored will be analyzed more closely in the Analysis section.

Related to the principle of equality of arms is the right of each party to proceedings to call witnesses in support of their case and to examine witnesses called by the other parties to the proceedings.⁴⁵The accused has the right to call and examine witnesses on his behalf under the same conditions as witnesses against him.⁴⁶The right should not be read as an unqualified right to force witnesses' attendance or as a right to call an indeterminate number of witnesses. Article 322 of the CCPC indicates that witnesses should retreat to a waiting room until called upon to testify and should not be able to see or hear anything taking place in the courtroom prior to giving testimony. While in the waiting room, witnesses are not allowed to communicate with one another.⁴⁷ These provisions aim to avoid witnesses adapting or doctoring testimony to suit developments in the proceedings.

FIGURE 14: RIGHT TO CALL AND EXAMINE WITNESSES

11(a) Was there anything to suggest that any party was not given the opportunity to summon witnesses?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	4	2	1	0.18
No	195	98	531	99.82
11(b) Was there anything to suggest that any party was not given the opportunity to examine witnesses?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	3	0.6
No	58	29	79	14.4
N/A	141	71	450	85
11(c) Were the witnesses present in the courtroom before they were questioned?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	10	5	28	5
No	48	24	54	10

⁴⁵ Article 14(3)(e) of the ICCPR ; Article 298, 324 and 326 of the CCPC.

⁴⁶ Article 14(3)(e) ICCPR.

⁴⁷ Article 322 of the CCPC



N/A	141	71	450	85
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There remained very few cases – less than 1% overall – in the Second Reporting Period in which there was an indication that one of the parties was not given the opportunity to summon witnesses. Witnesses appeared in 82 of the 532 trials monitored (15%). Of these 82 trials, there were four trials in which there was an indication that one party was not given the opportunity to examine witnesses, in breach of Article 14(3)(e) of the ICCPR. In 28 of the 82 trials in which witnesses gave testimony, the witnesses were present in the courtroom prior to being questioned.

In relation to 11(a) the accused wanted the civil party that had filed the complaint to be present at court so that he could challenge their evidence on which the claim was based; the judge refused to acknowledge that the defendant wanted to summon the civil party as a witness.

In relation to 11(b), in the first instance of the accused not being allowed to question a witness, the defense lawyer had an application to cross-examine the witness rejected by the judge. On the second occasion when the attorney of the accused requested to interview a defense witness, the application was turned down and the witness was ordered to leave the courtroom. On the third occasion the judge called a witness to give testimony, questioned him and then released him without giving the defense or prosecution an opportunity to examine the witness.

RIGHT TO FULL DISCLOSURE OF EVIDENCE

The right to full disclosure of evidence is the right of all parties to have access to all documents and to be made aware of all evidence relevant to the trial. The fundamental document is the case file, prepared by the investigating judge and containing the indictment that is sent to the trial court president for the fixing of a date for trial. This dossier contains all of the evidence gathered and the conclusions made by the investigating judge. The investigating judge has an obligation to collect both inculpatory and exculpatory evidence during his or her investigation.⁴⁸ The right of full disclosure for the preparation of the defense includes the right of the lawyer for a defendant to examine the evidence against his client (under the supervision of the court clerk).⁴⁹

FIGURE 15: RIGHT TO FULL DISCLOSURE OF EVIDENCE

12(a) Was there anything to suggest that the same evidence was not available to both sides?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	3	2	4	1
No	196	98	528	99

⁴⁸Article 127 of the CCPC.

⁴⁹Article 319 of the CCPC; Article 14(3)(b) of the ICCPR.



There were four trials in which there was an indication that the same evidence was not available to both sides. This represented approximately 1% of the total trials monitored during the Second Reporting Period and is comparable to the data from the First Reporting Period. The first 3 trials in which this was the case were substantially based on documentary evidence that the court was not physically in possession of, namely: the contract at the centre of a theft dispute; the contract at the centre of a land dispute; and an allegedly forged document that was the basis of a forgery charge. The fourth case concerned a violation of forestry laws in which a key part of the defense case, a letter sent to the Forestry Administration Office, was not received by the civil party, the prosecutor or the judge.

RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

The right not to be compelled to confess guilt encompasses the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. It implies that no direct or indirect physical or psychological pressure should be inflicted on the accused by the investigating or judicial authorities in order to secure a confession of guilt.

FIGURE 16: RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

13(a) Was there anything to suggest a confession was extracted from the accused through coercion?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	6	3	28	5
No	112	56	261	50
N/A	81	41	243	45
13(b) Was there anything to suggest a confession was extracted from the accused though the use of violence or torture?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	10	5	35	7
No	108	54	254	48
N/A	81	41	243	45

For the purposes of questions 13(a) and 13(b), coercion was defined as improper psychological pressure such as threats, while question 13(b) was used to monitor whether there was anything to indicate that the accused had been pressured to confess to a crime through the application of violence or torture. This interpretation was consistent between reporting periods. The reason for the inference was noted by the Trial Monitors and included, for example, specific allegations of improper treatment from the accused and observable signs of physical abuse. It should be noted that the data in this question is speculative as it is impossible for Trial Monitors to conclusively determine whether allegations made by an accused in court are genuine, for example.



There were 289 trials in which a confession was presented as evidence against the accused, 54% of the total trials monitored during the Second Reporting Period. This is a slight reduction from the First Reporting Period, in which a confession was presented as evidence in 59% of trials, although the reliance on confessions for convictions remains high.

Of the 289 trials in which a confession was presented as evidence there were indications that the confession may have resulted from threats or other psychological pressure in 28 – or 10% – of the trials, and indications that the confession may have resulted from pressure in the form of violence or torture in 35 – or 12% – of trials. Both of these figures represent increases from the First Reporting Period, where the corresponding figures were 5% and 8%, respectively. This data is examined more closely in the Analysis section.

PROHIBITION AGAINST RETROACTIVE APPLICATION OF CRIMINAL LAW

A fundamental principle of criminal law is that no one can be found guilty of a criminal offence for an act or omission that did not constitute a criminal offense at the time the alleged action or omission took place. Similarly, a heavier penalty may not 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 a lighter penalty, the lighter penalty shall apply. The prohibition against retroactive application of criminal law is provided for in international law by Article 11(2) of the UDHR and Article 15 of the ICCPR and reflected in Cambodian law in Article 3 of the Penal Code.

FIGURE 17: PROHIBITION AGAINST RETROACTIVE APPLICATION OF PENAL LEGISLATION

15(a) Was there anything to suggest that the offense was not an offense under national or international law at the time it was committed?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	199	100	532	100

There were no instances in which a law or penalty was retroactively applied. The introduction of the Penal Code may cause some confusion in this regard with the introduction of a range of new offenses and penalties. Article 10 states that new provisions of the Penal Code that provide for less severe penalties for existing offenses are applicable immediately upon promulgation of the law. However, new provisions providing for more severe penalties are only applicable to offenses committed after the relevant provisions come into effect.⁵⁰

⁵⁰ Article 672 of the Penal Code states: “Except the general provisions of book 1 (General Provisions) of the present code which shall be immediately effective after this code comes into effect, other provisions shall be applicable in one year after this code comes into effect.” Article 93 of the Constitution states that laws come into effect in Phnom Penh 10 days after promulgation and throughout the rest of the country 20 days after promulgation. Therefore, new offenses and more severe penalties for existing offenses are applicable only after the remainder of the Penal Code is in force from December 10, 2010 in Phnom Penh and December 20, throughout the rest of the country.



TRIALS INVOLVING JUVENILES

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 additional protections in recognition of their age, maturity, and intellectual development

FIGURE 18: TRIALS INVOLVING A JUVENILE ACCUSED

Data	1 st Reporting Period		2 nd Reporting Period	
	N°	%	N°	%
Number of Trials	26		46	
Felony	16	62	33	72
Misdemeanor	10	38	13	28

In the second Reporting Period, 46 of the 532 trials monitored involved juvenile accused – 9% of the total trials monitored. Of those juvenile accused, 45 were represented by a lawyer and one appeared without legal representation.

JUVENILES – PRIVACY

Criminal trials involving adults should generally be held in public in order to provide for the right to a public hearing. However, when a trial involves a juvenile it is legitimate to restrict those who attend the trial in order to protect the privacy of the juvenile and avoid stigmatization.⁵¹

FIGURE 19: JUVENILES – PRIVACY

2(a) Notice of the hearing was posted on a public board				
Data	1 st Reporting Period		2 nd Reporting Period	
	N°	%	N°	%
Yes	0	0	0	0
No	26	100	46	100
2(b) Were members of the public obstructed from entering or dismissed from the courtroom?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N°	%	N°	%
Yes	0	0	0	0

⁵¹Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial where the interest of the private lives of the parties so requires. See also, Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice* (CRC/C/GC/10), April 25, 2007, paras 65 – 66.



No	26	100	46	100
4(c) Was there a screen to protect the juvenile from testifying in public?				
Data	1st Reporting Period		2nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	26	100	46	100

The data for questions 2(a) and (b) of the juvenile checklist indicate that the monitored courts have not restricted entry to trials involving juveniles and it is likely, therefore, that they have failed to consider the privacy of the juveniles tried. In trials involving both adult and juvenile accused there is a legitimate interest in ensuring that the alleged adult co-offender(s) have their right to a public hearing provided for. In such instances the privacy of an alleged juvenile offender may be provided for through the use of a screen to protect the privacy of the juvenile during questioning and testimony. There were no trials in which the court made use of a screen to protect the privacy of the accused when testifying in public.

JUVENILES – PRE-TRIAL DETENTION

Even more so than is the case with adults, international standards discourage the pre-trial detention of juveniles. In most cases, the best interests of the child are protected by not separating them from their parents.⁵² Detention of juveniles should be avoided whenever possible and used as a measure of last resort for the shortest appropriate period of time.⁵³ Articles 10(2)(b) and 10(3) of the ICCPR state that accused juveniles shall be segregated from adults, brought as quickly as possible for adjudication and accorded treatment appropriate to their age and status.

FIGURE 20: JUVENILES – PRE-TRIAL DETENTION

2(b) Was there pre-trial detention?				
Data	1st Reporting Period		2nd Reporting Period	
	N ^o	%	N ^o	%
Yes	17	65	44	96
No	7	27	1	2
I/U	0	0	0	0
N/A (no arrest)	2	8	1	2

⁵²Article 9 of the Convention on the Rights of the Child (“CRC”).

⁵³ Article 37(b) of the CRC.



3(a) If held in pre-trial detention, was there anything to suggest that the accused was not separated from adults?

Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	18	69	44	96
N/A	8	31	2	4

Of the 46 trials monitored during the Second Reporting Period that involved a juvenile accused, the juvenile was detained in pre-trial detention in 96% of cases. This is a rise from the First Reporting Period when 65% of juvenile accused were held in pre-trial detention. This figure is of particular concern for two reasons. Firstly, in 13 of the trials the juvenile was charged with a misdemeanor. Secondly, the rate of pre-trial detention was *higher* in trials involving juvenile accused than overall.

Both Cambodian law and international law and standards specifically provide that in the exceptional cases in which juveniles are detained in pre-trial detention, they should be separated from adults.⁵⁴ This is because juveniles are particularly vulnerable to violence and sexual exploitation and to prevent interaction with adult criminals, which might reduce the likelihood of successful rehabilitation.⁵⁵ There were no instances in which there was an indication (complaint from defense) that a juvenile had not been separated from adults during pre-trial detention.

JUVENILES – SENTENCING

The best interests of the child are to be a primary consideration when ordering or imposing penalties on juveniles found to have infringed the criminal law.⁵⁶ Penalties must be proportionate to the gravity and circumstances of the offense, and the age, diminished culpability, circumstances and needs of the young person, as well as the objective of promoting their rehabilitation and reintegration for the long-term benefit of society.⁵⁷ Imprisonment of juveniles found to have infringed the criminal law is to be considered a measure of last resort to be employed only in exceptional cases.⁵⁸

⁵⁴Article 166 of the Penal Code provides for the segregation of minors detained in prison: “*The jailed minors are detained in the special quarters, separated from the adults.*” See also, Article 37(c) of the CRC and Rule 13.4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 on November 29, 1985.

⁵⁵ Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para. 85.

⁵⁶Article 3(1) of the CRC. See also, Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, paras 10 and 71.

⁵⁷Article 40(1) of the CRC. See also, Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para. 71.

⁵⁸ Article 37(b) of the CRC.



FIGURE 21: JUVENILES – SENTENCING

4(d) Was there anything to suggest that the Judge considered imposing a non-custodial sentence before imposing a custodial sentence?				
Data	1 st Reporting Period		2 nd Reporting Period	
	N ^o	%	N ^o	%
Yes	0	0	0	0
No	20	77	45	98
N/A	6	23	1	2

In one trial the judge acquitted the accused juvenile citing their age and the Convention on the Rights of the Child, an encouraging decision. There was no indication that the judge considered a non-custodial sentence in any of the other 45 trials involving juveniles in the Second Reporting Period. The above issues are discussed more thoroughly in the analysis section.



4. ANALYSIS

This section of the Report sets out the CCHR's analysis of the data collected in three areas relating to fair trial rights –the presumption of innocence; the right to protection from self-incrimination; and the presentation of evidence – as well as the treatment of juvenile accused. CCHR provides in-depth analysis and recommendations for a limited number of the fair trial rights for which data is collected in each reporting period. This is to ensure that the analysis provided has depth and is presented in a manageable and useable form for use in dialogue with the judiciary and other stakeholders. This follows the approach established in the First Bi-annual Report, in which four different rights were analyzed – the right to be tried by an independent and impartial tribunal; the right to a public hearing; the right to legal representation and to be present at trial; and pre-trial detention and the right to be tried without undue delay.

PRESUMPTION OF INNOCENCE

Everyone charged with a criminal offense has the right to be presumed innocent until proven guilty according to law.⁵⁹ This is a fundamental individual right recognized universally. It requires careful attention by those involved at all stages of the criminal justice system.

All public authorities and officials, including judges, should refrain from prejudging the outcome of a trial. Pre-trial detention should not be implemented as a punishment for those charged with crimes, and should not be ordered on the basis of an extra-judicial assessment of guilt.⁶⁰ Refusal of bail does not affect the presumption of innocence.⁶¹ The conduct of the trial should reflect the presumption of innocence - the judge should allow the accused person a genuine opportunity to be heard. Care should also be taken to ensure that attributes of guilt such as prison uniforms or handcuffs are not unnecessarily borne by the accused during the trial, as they might consciously or unconsciously affect the courts perception of the guilt or innocence of the accused.⁶²

The CCHR monitors recognition of the presumption of innocence by authorities in two ways. Firstly, by observing whether the accused appears before the court in prison uniform or handcuffs, both of which are prejudicial as they imply that the accused is guilty of a crime before evidence has been presented by both sides and guilt or innocence has been determined by an impartial court. Second, the Trial Monitors observe whether any statements are made by the judge prior to delivering the verdict, which indicate that he or she may have prejudged the outcome of the case and is not open to considering the evidence and testimony of all parties.

Legal Basis

The right to be presumed innocent until proven guilty according to law is an absolute right that can never be derogated from, restricted or limited.⁶³ This right is enshrined in international law in both Article 11(1) of the UDHR and Article 14(2) of the ICCPR.

⁵⁹ Article 11(1) of the UDHR; Article 14(2) of the ICCPR; Article 38 of the Constitution.

⁶⁰ The legitimate reasons for pre-trial detention are set out in Article 205 of the CCPC.

⁶¹ United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 30.

⁶² *Ibid.*

⁶³ United Nations Human Rights Committee, *General Comment No. 29: States of Emergency (CCPR/C/21/Rev.1/Add.11)*, August 31, 2001, para. 11; United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 6.



The presumption of innocence is also set out in the Constitution in Article 38, which states: “Any case of doubt shall be resolved in favor of the accused. The accused shall be considered innocent until the court has judged finally on the case.” Article 351 of the CCPC states: “The accused always has the benefit of the doubt.” Article 333 of the CPCC states: “Even if the accused is absent, the court shall seek the truth, listen to the answers of the other parties and witnesses, and examine the exhibits.”

The 1998 Proclamation on Administration of Civilian Prisons provides that “[p]risoners who are required to appear before a court shall be given the opportunity to wear their own clothes, provided that the clothing is clean and suitable.”⁶⁴ The Human Rights Committee has also stated that defendants should not be “presented to the court in a manner indicating that they may be dangerous criminals.”⁶⁵

Data

Of the 532 trials monitored, there were no instances in which the accused appeared before the court in handcuffs. This is commendable. Although there may be rare instances in which security concerns necessitate that the accused is restrained, this will not generally be the case.

The data for question 8(a) indicates that in the 338 trials monitored at Phnom Penh Court in which an accused appeared before the court (38 hearings were conducted *in absentia*), the accused appeared in prison uniform in 314 – or 93% – of the trials. Conversely, of the 140 trials monitored at the Kandal Court in which an accused was present (16 hearings were conducted *in absentia*) in only four – or 3% – of the trials did the accused appear in prison uniform.

The presumption of innocence requires that defendants appear before the court in neutral civilian clothing. Every defendant is entitled to be brought before a court with the appearance and dignity of a free and innocent person. When a defendant is forced to attend a hearing in prison attire, the implication that the defendant is a guilty criminal risks affecting, consciously or unconsciously, the judgment of the presiding judge or judges, the manner in which proceedings are conducted and, ultimately, the outcome of the case.

The frequency with which defendants are appearing before the Phnom Penh Court in prison uniform risks compromising the presumption of innocence in the majority of criminal trials conducted at that Court. This issue is linked to high levels of pre-trial detention. Rule 43(1) of the United Nations Standard Minimum Rules for the treatment of prisoners suggests that “clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody.”⁶⁶ All those who have been detained in pre-trial detention should, therefore, be able to wear their own clothing to court or, if prison authorities have lost or discarded the clothing they wore before being detained, should be provided with a reasonable opportunity to seek the delivery of alternative clothing from their friends or family prior to appearing before the court.⁶⁷

⁶⁴ Ministry of Interior, Proclamation on Administration of Civilian Prisons - No. 217, March 31, 1998, Article 4(5)F and 4(8)E. See also, Prison Procedure No. 23, Article 4.1.1.

⁶⁵ United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 30.

⁶⁶ United Nations, Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 43(1).

⁶⁷ United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rule 17(3) and 43(1). See also, Amnesty International, *Amnesty International Fair Trial Manual* (London: Amnesty International Publications, 1998), AI Index POL 30/02/98, p 104.

The data for question 8(c) indicates that judges at the courts monitored rarely made statements about the guilt or innocence of the accused prior to delivering a verdict, an encouraging finding. The number of trials in which such statements were observed represented roughly 1% of the trials monitored in each court. The Data section of this report also indicates that there was a decline in the observation of such statements at the two courts from approximately 10% in the First Reporting Period, to 1% in the Second Reporting Period. Case Study 1, though not representative of the general trend, provides an example of the nature of the statements made in the few trials in which the judge's comments did indicate a failure to recognize the presumption of innocence.

Case Study 1: Statements about guilt of the accused made prior to delivery of the verdict

Court: Phnom Penh Court

Date monitored: May 11, 2010

The accused was charged with organized crime under Article 36 of the UNTAC Law. The alleged facts were as follows. On December 19, 2008, the accused rode his motorbike with two other unidentified men, leaving from a hotel at SangkatKakab, Khan Deungkor, Phnom Penh toward PurChentong. The police stopped the three men, who then tried to escape. One of the unidentified men used a pistol to fire on the police and the two unidentified men escaped, leaving the accused at the site where he was arrested by the police.

At the hearing, the judge warned the accused that despite his attempt to present a defense he would still go to prison. The judge said "even though you try to say something else you will still be in prison." Hearing this statement, the accused, who had been attempting to defend himself against the charge, seemed disappointed and fearful, and immediately ceased presenting a defense through debating with the court. It appeared from the judge's statement during the hearing that the judge had decided that prison was unavoidable for the accused, and that consideration would not be given to his testimony.

RECOMMENDATIONS

- **Detention facilities servicing the Phnom Penh and Kandal Courts** should ensure that prisoners who are required to appear before a court shall be given the opportunity to wear their own clothes in accordance with Article 4(5)(F) of the Proclamation on the Administration of Civil Prisons. Prior to an appearance in court, all defendants should be provided with the clothing worn when placed in pre-trial detention or, if prison authorities have lost or discarded this clothing, detainees should be provided with a reasonable opportunity to seek the delivery of alternative clothing from their friends or family.



RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

The right not to be compelled to confess guilt encompasses the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. It implies that no direct or indirect physical or psychological pressure should be inflicted on the accused by the investigating or judicial authorities in order to secure a confession of guilt. This right is linked to the right to remain silent. Physical abuse, torture and other cruel inhuman or degrading treatment are morally indefensible when used against accused persons in all circumstances. Moreover, when used to extract a confession, such treatment also tends to provide unreliable evidence.

Legal Basis

Torture is explicitly outlawed in three core international human rights instruments, the UDHR, the ICCPR and the Convention against Torture (the “CAT”). Article 5 of the UDHR and Article 7 of the ICCPR state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The CAT states that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”⁶⁸ and “ensure that all acts of torture are offences under its criminal law.”⁶⁹ The CAT also imposes an obligation on all State parties to proceed to a “prompt and impartial” investigation whenever there are reasonable grounds to believe that an act of torture has been committed within its jurisdiction.⁷⁰ Article 15 provides that all State Parties shall ensure any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.

Article 38 of the Constitution provides the following protections and guarantees: “The law guarantees 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. Persons who commit, participate or conspire in such acts shall be punished according to the law. Confessions obtained by physical or mental force shall not be admissible as evidence.”

Article 321 of the CCPC states: “Declarations given under physical or mental duress shall have no evidentiary value.” Torture has been explicitly outlawed in the Penal Code. The offense of Murder with Torture, Cruel Act or Rape is punishable by a penalty of life imprisonment.⁷¹ Article 210 also outlaws Torture and Barbarous Acts. While there is no definition of “torture” or “barbarous acts” within the Penal Code, Cambodia’s 2010 submission to the Committee against Torture noted that both Article 31 of the Constitution and Article 9 of the Penal Code explicitly recognize that international conventions which Cambodia has ratified are applicable in Cambodia, including the Convention against Torture which Cambodia acceded to on October 15, 1992.⁷² The definition of torture in Article 1(1) of the CAT is therefore impliedly recognized in Cambodian law.

Torture or barbarous acts are punishable by a term of imprisonment of between seven and 15 years or between 10 and 20 years when carried out by a government official, either civilian or military, in carrying out their functions or during the performance of their functions.⁷³

⁶⁸Article 2(1) of the CAT.

⁶⁹Article 4(1) of the CAT.

⁷⁰Article 12 of the CAT.

⁷¹Article 205 of the Penal Code.

⁷²Committee against Torture, *Consideration of reports submitted by State parties under article 19 of the Convention: Cambodia (CAT/C/KHM/2)*, February 2, 2010, para. 1.

⁷³Article 210 and 213 of the Penal Code.



Data

For the purposes of questions 13(a) and 13(b), coercion was defined as improper psychological pressure such as threats, while question 13(b) was used to monitor whether there was anything to indicate that the accused had been pressured through the application of violence or torture. The reason for the observation was noted by the Trial Monitors, for example, specific allegations of improper treatment from the accused or observable signs of physical abuse. It should be noted that the data in this question does not provide conclusive evidence as to whether such improper conduct took place, as it impossible for Trial Monitors to conclusively determine whether allegations made by an accused in court are genuine.

Confessions were presented by the prosecution as evidence in 206 trials in Phnom Penh Court and 83 trials in Kandal Court. Of the trials in which a confession was presented as evidence in the Phnom Penh Court there were indications that the confession may have resulted from threats or other psychological pressure in 27 – or 13% – of the trials, and indications that the confession may have resulted from pressure in the form of violence or torture in 34 – or 16% – of trials. Of the trials in which a confession was presented as evidence in the Kandal Court there were indications that the confession may have resulted from threats or other psychological pressure in one trial, and indications that the confession may have resulted from pressure in the form of violence or torture in one further trial.

There are five complementary approaches that can be implemented concurrently to reduce both the number of incidents in which threats, violence or torture are used in interrogations, and the number of allegations of such conduct, which erode trust in police and the wider justice system. The first of these is to continue to provide education and training to law enforcement personnel about non-coercive interrogation techniques and the illegality and consequences of the use of improper techniques. The second is to ensure strict compliance with existing detention and interrogation procedure and strengthen these safeguards through amendments to the relevant provisions of the CCPC. The third is the establishment of independent investigatory bodies and complaints mechanisms and the prompt and impartial investigation of all allegations of torture or other misconduct. The fourth is to prevent impunity for those guilty of misconduct against detainees by ensuring all perpetrators are prosecuted in accordance with the law. The fifth is for courts to rule confessions inadmissible where there is a real danger that they have resulted from improper conduct during the course of an interrogation.

Education and training

According to Cambodia's initial report to the Committee against Torture, submitted in 2002, over 45,000 national police were trained on human rights between 1995 and 2001 through collaborations between the Ministry of Interior, the Cambodia Office of OHCHR, and human rights NGOs, ADHOC, LICADHO, and Vigilance. A syllabus was reportedly prepared in cooperation with the Cambodia Office of OHCHR and delivered during training courses lasting four days.⁷⁴

It is important that such training continues for national police as well as military personnel, prison officers and all other authorities with judicial police powers, to ensure new and recent recruits continue to receive education and training. Training should include instruction on the correct legal procedure for detention and interrogation and non-coercive interrogation methods. It is also necessary to specifically address provisions of the Penal Code that explicitly outlaw torture and the consequences of conviction.

⁷⁴ Committee against Torture, *Consideration of reports submitted by State Parties under article 19 of the Convention: Initial reports of States parties due in 1993: Addendum: Cambodia (CAT/C/21/Add.5)*, January 17, 2003, para. 101.



Safeguards during detention and interrogation

The CCPC sets out the procedure for arrest and detention of suspects. To be effective, education and training in correct procedure must be accompanied by monitoring and enforcement of that procedure. Enforcement of Article 96 – 102 of the CCPC can help reduce the likelihood of abuse and torture by ensuring detention periods do not exceed 48 hours following arrest⁷⁵ and allowing detainees to communicate with a legal representative.⁷⁶

Article 98 provides that a detainee may request to speak to a lawyer or other person after a period of detention of 24 hours; the selected person may speak to the detainee for 30 minutes. As presently drafted, Article 98 creates a dangerous 24 hour period in which an accused may be unaware of their legal rights and be at risk of being threatened, intimidated, or mistreated. This provision should be amended to allow those arrested and detained to be able to request a meeting with a legal representative at any stage of their detention and to communicate with a legal representative as soon as practically possible. The 30 minute time limit also appears to be unreasonably brief and should be either extended or removed entirely through amendment.

Article 145 of the CCPC states that: “*A charged person can be interrogated only in the presence of his lawyer.*” However, this provision relates only to interrogation by an investigating judge after the accused is charged. There is no similar protection at the stage of detention by judicial police. The amendment to Articles 98 of the CCPC suggested above would allow a detained person to request the presence of a lawyer should the judicial police or others seek to interrogate them during their initial detention following arrest.

Audio or video recordings of interrogations could also be used to reduce the use of threats, violence and torture to elicit a confession, though this may be beyond the current resource capacity of many police offices and courts in Cambodia. Such an approach would also help combat any false allegations that confessions resulted from improper duress.

Prompt and impartial investigation of all complaints

The Committee against Torture has recommended that Cambodia establish an independent body competent to deal with complaints against the police and other law enforcement personnel.⁷⁷ According to Cambodia’s 2009 report to the Committee against Torture, the current procedures for filing a complaint against police officers or prison officials are to either submit a complaint to the Ministry of Interior if the complaint concerns performance while on duty, or to submit a complaint to the court where the complaint concerns the alleged commission of an offense.⁷⁸

On March 30, 2007 Cambodia ratified the Optional Protocol to the Convention against Torture (the “OPCAT”). The OPCAT obliges State Parties to establish an independent National Preventive Mechanism (“NPM”) for the national prevention of torture within one year of the Protocol entering into force or of their ratification or

⁷⁵ Article 96 of the CCPC states: “the maximum duration of any police custody is 48 (forty eight) hours.” However, with the authorization of the Prosecutor the judicial police may extend detention for a further 24 hours as an “exceptional measure” where the accused is charged with a felony and there is evidence pointing to their guilt.

⁷⁶ Article 98 of the CCPC provides that after 24 hours a detainee “may request to speak with a lawyer or any other person who is selected by the detainee, provided that the selected person is not involved in the same offense.”

⁷⁷ Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: Cambodia* (CAT/C/CR/31/7), February 5, 2004, para. 7.

⁷⁸ Committee against Torture, *Consideration of reports submitted by State Parties under article 19 of the Convention: Cambodia* (CAT/C/KHM/2), February 2, 2010, para. 75.



accession to the Protocol.⁷⁹ The specific mandate of such an NPM, as outlined by the OPCAT, is intended to be as follows:

- (a) to regularly examine the treatment of persons detained by the state with a view to strengthening their protection against torture;
- (b) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment; and
- (c) to submit proposals and observations concerning existing or draft legislation⁸⁰

Cambodia's 2009 report to the Committee against Torture reported that such a mechanism had been created by a Prime-Ministerial sub-decree on August 7, 2009.⁸¹ However, the reported mechanism, which consists of a committee of 13 employees of government ministries under the Chairmanship of the Ministry of Interior, does not meet the requirements of Articles 17 and 18 of the OPCAT.

Article 18 of the OPCAT states that the National Preventive Mechanism must be both functionally independent and staffed by independent personnel, including experts with the required capabilities and professional knowledge. According to a guidance note released by the OHCHR Cambodia office, a basic requirement of the NPM is, therefore, that it must be independent of the government, meaning it must not be under the authority of any government ministry or other institution and should not employ personnel who also work for government ministries or institutions.⁸² To ensure that a credible independent mechanism exists to receive and investigate complaints of torture and other misconduct, Cambodia should establish a National Preventive Mechanism that meets the requirements of the OPCAT as soon as possible.

There is also an individual complaints mechanism under the CAT. Article 22 states that a State Party to the CAT may at any time declare that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of torture or other cruel, inhuman or degrading treatment or punishment. Cambodia has not yet made the required declaration to grant the Committee against Torture jurisdiction to accept individual complaints. In order to demonstrate a genuine commitment to the eradication of the practice of torture in Cambodia, the RGC should immediately submit the required declaration.

Prosecution of all perpetrators

As noted above, Article 210 of the Penal Code creates the specific offense of torture or barbarous acts. Article 213 stipulates a harsher sanction for such acts carried out by government officials in the course of their functions. These provisions are in effect as of December 10, 2010 in Phnom Penh and December 20, throughout the rest of the country and clearly provide the legal basis for prosecutions of improper conduct by law enforcement personnel. Prosecutions must be pursued whenever there is credible evidence against an individual or group of individuals. Such grave breaches of international and national law cannot be settled by claiming that perpetrators have been internally disciplined. All citizens must be equal before the law as Article 31 of the Constitution guarantees.

⁷⁹Article 17 of the Optional Protocol to the Convention against Torture.

⁸⁰Article 19 of the Optional Protocol to the Convention against Torture.

⁸¹ Committee against Torture, *Consideration of reports submitted by State Parties under article 19 of the Convention: Cambodia (CAT/C/KHM/2)*, February 2, 2010, para. 97.

⁸²Office of the High Commissioner for Human Rights, Cambodia, *Info Note 5: OPCAT – National Preventive Mechanism*, April 2008, p 1. Available at: http://cambodia.ohchr.org/WebDOCs/DocInfoNotes/004_InfoNoteE.pdf



Treatment of evidence

Judges should exercise extreme caution when considering any confession that is alleged to have been tendered as the result of improper coercive pressure. The Constitution and CCPC both explicitly provide that confessions that have resulted from duress must not be accorded any evidential value.⁸³

As noted with concern by the Special Representative for Human Rights in Cambodia in a 2008 report,⁸⁴ prior to the enactment of the CCPC, Article 24(3) of the UNTAC Law provided that a confession alone could not serve as the basis for conviction. The guilt of the accused needed to be corroborated by other evidence. This provision was likely intended to avoid over-reliance on confessions and the associated risks of fake confessions tendered under pressure from police or other authorities. In 37 of the 376 trials monitored at the Phnom Penh Court and 20 of the 156 trials monitored at the Kandal Court, the only inculpatory evidence presented was the confession of the accused.

Where other evidence is available the trial judge should consider ruling a contested confession inadmissible and considering only the other evidence. Where there is no corroborating evidence to support a confession that has been withdrawn and is alleged to have resulted from improper duress, the trial judge should order an acquittal. Taking a cautious approach towards admitting contested confessions encourages the use of correct interrogation techniques, and de-incentivizes the use of violence, torture and other improper conduct. Those engaging in such behavior will not only risk prosecution, conviction and imprisonment, but the extracted confession will be likely to be dismissed as evidence at court.

Case Study 2: Alleged use of violence to compel accused to confess

Court: Phnom Penh Court

Date monitored: May 11, 2010

The accused was charged with the illegal distribution of drugs. He was arrested while allegedly purchasing 29 packets of drugs (Ma Tekok) at a drugs seller's house on December 9, 2009, in Phnom Penh. At the trial, the accused complained many times that he had been beaten while he was held in police custody in an attempt to extract a confession. The judge paid little attention to the defendant's complaints and loudly reprimanded the accused for lying and attempting to use such allegations as a "trick" to hide his wrongful act. The judge noted that the accused had no evidence to support his allegations. After being reprimanded by the judge the accused immediately ceased to speak, and bowed his head.

In circumstances such as these where the accused alleged that the authorities sought to elicit a confession through physical duress, the judge should advise the accused of their right to make a formal complaint. If the accused has confessed to the offense and alleges that their confession was a result of physical duress, the judge should carefully consider whether the confession is admissible evidence in light of Article 321 of the CCPC and Article 38 of the Constitution.

⁸³Article 38 of the Constitution and Article 321 of the CCPC.

⁸⁴Special Representative for Human Rights in Cambodia, *Technical Assistance and Capacity-Building: Report of the Special Representative of the Secretary General for Human Rights in Cambodia, YashGhai (A/HRC/7/42)*, February 29, 2008, p 7.



RECOMMENDATIONS

- The **Ministry of Interior** should continue providing training to national police (including judicial police) and prison officers about acceptable non-coercive interrogation techniques and the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment. The training should be provided in partnership with external organizations such as the OHCHR and human rights NGOs and utilize the syllabus already developed in collaboration with the OHCHR.
- The **RGC** should amend Articles 96 and 98 of the CCPC to allow those arrested and detained to request a meeting with a legal representative at any stage of their detention and to communicate with a legal representative as soon as practically possible. The 30 minute time limit on such communications should be either extended or removed entirely from Article 98.
- The **RGC** should amend the CCPC to include a requirement that all interrogations and any resulting confessions are video-taped and provide additional resources to enable this to take place.
- Pending the introduction of the above legislative amendment, **judicial police and investigating judges** should ensure that all interrogations and any resulting confessions are either video-taped or conducted in the presence of the lawyer of the accused.
- The **RGC** should expedite progress towards establishing a National Preventive Mechanism to investigate complaints, including allegations of torture, against police, prison officers, and other law enforcement personnel, to monitor detention facilities, and to make recommendations to the government. The NPM should be established in accordance with Articles 17 and 18 of the OPCAT, which require an institution or mechanism independent of the government.
- The **RGC** should provide the required declaration to grant the Committee against Torture jurisdiction under Article 22 of the CAT to receive and consider complaints from or on behalf of individuals who claim to be victims of torture or other cruel, inhuman or degrading treatment or punishment.
- The **RGC and prosecutors** should introduce a zero tolerance policy towards torture and improper conduct by law enforcement personnel – all allegations of improper conduct must be promptly and impartially investigated. Acts of torture should result in prosecution of those responsible and suspension from duties pending the outcome.
- If a confession is not video-taped or conducted in the presence of a lawyer, and the accused later contests its validity, alleging improper conduct, **trial judges** should rule that the confession is inadmissible as evidence.



RIGHTS OF JUVENILE ACCUSED

Under international human rights law, a “juvenile” is generally regarded as any person under the age of 18.⁸⁵ 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 additional protections in recognition of their age, maturity, and intellectual development. The primary purpose of juvenile justice should be to rehabilitate and reintegrate the offender towards becoming a constructive member of society. The Committee on the Rights of the Child has summarized the considerations:

“Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.”⁸⁶

Legal Basis

The ICCPR and Convention on the Rights of the Child (the “CRC”) set out specific provisions for the treatment of juveniles in criminal justice proceedings and are supported by a number of international rules and guidelines.⁸⁷ In Cambodia, Articles 31 and 48 of the Constitution explicitly recognize the CRC and guarantee that the State shall protect the rights of children, while the statutory framework also makes provision for differentiated treatment of juveniles in a number of important areas.

The general approach

The CRC provides that states must establish laws and procedures that set a minimum age below which children will be presumed not to have the capacity to infringe the penal law.⁸⁸ Article 38 of the Penal Code states that the legal age of criminal responsibility in Cambodia is 18 years of age. Cambodian law therefore recognizes juveniles, or minors, as persons younger than 18 years of age.

Persons below 14 years of age when a criminal offense was allegedly committed cannot be prosecuted or tried by the courts. Juveniles between 14 and 18 years of age remain subject to the criminal law but they are not to be ascribed full criminal responsibility except in exceptional circumstances. Article 39 of the Penal Code creates a presumption against conviction of juveniles, stating: “*minors who commit an offense are subject to the measures of surveillance, education, protection and assistance. However, the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offense or the personality of the minor justify in doing so.*”

Article 3(1) of the CRC states that the best interests of the child must be a primary consideration in all actions concerning children, including those undertaken by courts of law, administrative or legislative bodies. Most

⁸⁵ Article 1 of the Convention on the Rights of the Child; Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para. 36.

⁸⁶ Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para 10.

⁸⁷ United Nations General Assembly, Declaration on the Rights of the Child, Adopted by the UN General Assembly on November 20, 1959; United Nations General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), adopted by General Assembly resolution 45/112 on December 14, 1990; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 on November 29, 1985.

⁸⁸ Article 40(3)(a) of the CRC.



international standards encourage states to establish separate or specialized procedures and institutions for handling cases in which children are accused of or found guilty of having committed a criminal offence.⁸⁹

Article 40(1) of the CRC provides that State parties will recognize the right of every child accused of a criminal offense “to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

Detention

When juveniles are detained, their cases should be given high priority and handled as quickly as possible to ensure that the period of pre-trial detention is as short as possible. States must also establish a minimum age below which a child may not be deprived of their liberty.⁹⁰ Article 96 of the CCPC states that a minor who is less than 14 years old may not be placed in police custody. It also sets out the maximum detention periods for minors between 14 years and 18 years old, which are less than those of adults and, unlike those of adults, cannot be extended. Article 100 states that when a detained person is a minor, the judicial police officer must notify by all means the parents, legal guardian, legal representative, or any person who is responsible for that minor.

Article 203 of the CCPC creates a statutory presumption against pre-trial detention for all charged persons regardless of their age, stating: “*In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this Article.*” Article 212 of the CCPC states that a minor under 14 years may not be temporarily detained in pre-trial detention. 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 a decision on the issue. Article 166 of the Penal Code provides for the segregation of minors detained in prison: “*The jailed minors are detained in the special quarters, separated from the adults. They are subjected to a special and individualized regime that canvasses a place for education and professional training.*” The Committee on the Rights of the Child has noted that “(t)here is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate.”⁹¹

Trial

Wherever appropriate, consideration should be given to dealing with a juvenile offender without resorting to a formal trial, provided that human rights and legal safeguards, such as the presumption of innocence, are fully respected. Measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling, community service or educational programmes, should be considered.⁹² The Penal Code creates a statutory presumption in favour of such alternatives to incarceration for juveniles in Article 39.

In criminal proceedings involving juveniles special care should be taken to ensure that the juvenile is informed directly of the charges against them. Throughout the entire judicial process juveniles have the right to be represented by legal counsel and receive any other appropriate assistance, through their parents or legal

⁸⁹ Article 40(3)(b) of the CRC, for example, provides that State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children accused of having infringed the penal law.

⁹⁰ United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (A/RES/45/113), December 14, 1990, Rule 11(a).

⁹¹ Committee on the Rights of the Child, *General Comment No. 10: Children's rights in juvenile justice*, para. 85.

⁹² Article 40(3)(b) of the CRC; United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 44.



guardians, in the preparation and presentation of their defence. Children capable of forming their own views are to be provided an opportunity to express their views in any judicial proceedings pertaining to them, either directly, or through a representative.⁹³ To protect the privacy of children, trials and hearings involving juveniles should generally be closed to the public and press.⁹⁴

Judgments

Article 14(1) of the ICCPR specifically states that judgments can be withheld from public disclosure “*where the interest of juvenile persons otherwise require.*” Considerations in maintaining the privacy of an accused juvenile include avoiding stigmatization from the community and enhancing prospects for rehabilitation.

Sentencing

The Committee on the Rights of the Child has noted that “*a decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child.*”⁹⁵ The Committee emphasized that the competent authorities – in most States the office of the public prosecutor – should continuously explore the possibilities of alternatives to a court conviction. The performance of alternative measures such as undertaking vocational training or attending an educational institution – should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.⁹⁶ Such alternative measures are provided for in Articles 39 - 41 of the Penal Code.

Any penalty imposed on a juvenile should be proportionate to the gravity and circumstances of the offense, and the age, diminished culpability, circumstances and needs of the young person, as well as the objective of promoting their rehabilitation and reintegration for the long-term benefit of society.⁹⁷ As stated above Article 39 of the Penal Code creates a statutory presumption against the conviction and imprisonment of minors unless “*the circumstances of the offense or the personality of the minor justify*” a criminal conviction. Articles 160 – 165 of the Penal Code specifically govern the penalties applicable to minors. Maximum fines and periods of imprisonment are reduced by half for juveniles⁹⁸ and provisions on recidivism applicable to adults do not apply.⁹⁹ Article 165 sets out a range of specific obligations which the court may impose on juveniles as the result of probationary suspended sentences.

Data and analysis

Age of criminal responsibility

Of the 376 trials monitored at the Phnom Penh Court, 40 involved juveniles (approximately 11%). The majority of these trials (80%) involved felony charges. Two of the trials involved an accused that was below the minimum age of criminal responsibility at the time the alleged offense was committed. The verdict for one of these trials

⁹³ Article 12 of the CRC.

⁹⁴ Article 14(1) of the ICCPR provides that the press and public may be excluded from all or parts of a trial where the interest of the private lives of the parties so requires. See also, Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, paras 65 – 66.

⁹⁵ Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para 68.

⁹⁶ *Ibid.*

⁹⁷ Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice*, para 71.

⁹⁸ Article 160 of the Penal Code.

⁹⁹ Article 163 of the Penal Code.



was delayed and Trial Monitors were unable to obtain information on sentencing. In the other trial the juvenile accused was eventually acquitted in recognition of their age at the time of the alleged offense, but not before having been detained for 5 months in pre-trial detention. Six of the 156 trials (4%) monitored at Kandal Court involved a juvenile accused. The majority of these trials (80%) involved misdemeanor charges. All juveniles tried at the Kandal Court were between 14 and 18 years of age at the time the offense was alleged to have been committed.

Pre-trial detention of juveniles

Juveniles were held in pre-trial detention prior to all but one of the 40 trials monitored at Phnom Penh Court involving a juvenile accused. This exceeds the general rate of pre-trial detention observed in all trials at the two courts during the Second Reporting Period. It is particularly concerning given both the presumption against pre-trial detention in Article 203 of the Penal Code and requirements of international law and standards which state that the detention of juveniles prior to trial “shall be used only as a measure of last resort”¹⁰⁰ and that “all efforts shall be made to apply alternative measures.”¹⁰¹ In only one monitored trial had the accused been arrested but later released pending trial.

Juveniles had been held in pre-trial detention in five of the six trials monitored at Kandal Court involving a juvenile accused. In the other trial the accused had not been arrested and was summonsed to appear at trial. It should be noted that the majority of juveniles involved in trials monitored at the Phnom Penh Court, were charged with felonies, while the majority of those before the Kandal Court were charged with misdemeanors.

There were no instances in the 46 trials monitored involving juveniles in which the accused or the defense noted that the accused had not been separated from adults during pre-trial detention.

Non-custodial sentences for juveniles.

Trial Monitors were able to obtain information about the verdict and sentence in 30 of the 46 trials monitored involving juveniles. In one of these trials the juvenile accused was acquitted in recognition of their age. There was nothing to suggest that the judge considered a non-custodial sentence in any of the other 29 trials – the juvenile accused were found guilty and sentenced to imprisonment. Two further cases were reinvestigated, while information about the verdict and sentence was unavailable in 14 of the trials.

Article 39 of the Penal Code creates a statutory presumption against conviction and imprisonment of juveniles, stating that minors who commit offences are “subject to measures of surveillance, education, protection and assistance.” The court may pronounce a criminal conviction against a minor “if the circumstance of the offense or the personality of the minor justify in doing so,” however, the default option is that criminal prosecution will not be pursued, and other non-custodial responses will be pursued.

These non-custodial responses are set out in Articles 40 and 41 and include the following:

- handing-over of the minor to his/her parents; his/her guardian; to a person who has guardianship role or to another person who is trustworthy;
- handing-over of the minor to a social service agency charged with the handling of minors;

¹⁰⁰ Article 37(b) of the CRC.

¹⁰¹ United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 17; United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, Rule 13.



- handing-over of the minor to a private organization that has the qualification to receive them;
- handing-over of the minor to a specialized hospital or institution;
- placement of the minor under the judicial protection.

Article 165 also sets out obligations that may be imposed on minors in probationary suspended sentences, including obligations to attend schooling or professional training. Article 98 provides for an order of community service in substitution for the principal penalty. These statutory responses to criminal offending by minors should be applied in all but exceptional cases in which the requirements of Article 39 are met. Valid considerations include the likelihood of reoffending, potential for rehabilitation, and danger posed to the community. The response to the offense must be proportionate – most misdemeanor offences committed by juvenile accused should result in non-custodial responses that aim to prevent a reoccurrence of offending. Such responses, however, are dependent on the strengthening of social services provided by both the state and private organizations and NGOs.

In light of a legislative framework that provides for differentiated treatment of juveniles, the data in this section may indicate a lack of social and judicial resources and structures to support the court in implementing legislation. For example, while the law creates a presumption that juveniles will not be detained pending trial and should not receive custodial sentences, alternatives such as judicial supervision and community service require adequate procedures and resources to ensure that the individuals are monitored and court-ordered rehabilitative measures are adhered to. A cooperative approach in this area, with government working in partnership with donors, NGOs and private organizations, is recommended to ensure the development of an effective juvenile justice process that focuses on ensuring that young persons who break the law receive adequate support to become constructive members of society.

Case Study 3: Sentencing of juvenile accused

Court: Phnom Penh Capital Court

Date monitored: March 29, 2010

The trial involved three accused, one of whom was a juvenile. The accused were charged with robbery. It was alleged that they stole 5000 riel and a mobile phone from the victim while they were riding their motorbike on October 6, 2009, around 12:30 AM. The victim filed a complaint to the police. The accused were arrested on October 24, 2009. The two adult accused were sentenced to six years imprisonment; the juvenile accused was sentenced to 3 years imprisonment.

The sentencing of the juvenile in this trial reflects the provisions of Article 68 of the UNTAC Law, which provides that the youth of a convicted person is an attenuating circumstance. Article 68(2) states that the punishments set out in the UNTAC Law shall be reduced by half when applied to any person under the age of 18. The decision is therefore correct based on these legal principles.

However, the sentencing principles set out in the UNTAC Law are arguably superseded by those provided for in Book 1 of the Penal Code. Article 10 states that new provisions which provide for less severe sentences are immediately applicable, which would activate the statutory presumption against criminal conviction of juveniles in Article 39. Sentencing a juvenile to three years of imprisonment for the theft of a mobile phone and 5000 riel does not appear to be proportionate to the gravity of the offense and the youth of the accused, and does not appear to promote the rehabilitation of the juvenile offender.



Case Study 4: Acquittal of juvenile accused

Court: Phnom Penh Capital Court

Date monitored: January 14, 2010

On August 23, 2009, three persons were charged with robbery under Article 6 of the Law on Aggravating Circumstances of Felonies. One of the accused was a juvenile (14 years old). However, when the police arrested him he said he was 18 years old. All three accused denied that they committed the robbery and stated that they did not know where this crime happened. The judge cited the civil party statement, which stated that the three accused had entered his house and stolen his property. The judge asked, "Did you commit that crime in Sangkat Teok Thla, Khan Sen Sok?" The accused said that they did not commit the crime and knew nothing about it. When the verdict was announced, the accused juvenile, who had already been detained for five months in pre-trial detention, was acquitted. The judge cited the CRC and a birth certificate submitted as evidence. The other two accused were convicted and sentenced to five years imprisonment.

This is a commendable example of a judge recognizing that the accused was below the age of criminal responsibility and responding accordingly.



RECOMMENDATIONS

- The **Ministry of Justice** should partner with the Royal Academy for Judicial Professions, Royal School of Judges and Prosecutors, Bar Association of the Kingdom of Cambodia, and external organizations such as the OHCHR and/or NGOs to provide training to lawyers and judges on the implications of the provisions affecting juveniles in the new Penal Code, particularly the presumption against criminal conviction and imprisonment in Article 39 and the non-custodial alternatives to imprisonment.
- The **Ministry of Justice and Ministry of Education, Youth and Sport** should develop processes and programs that provide alternative responses to youth offending and allow Prosecutors and Investigating Judges to divert juvenile offenders away from the formal criminal justice system.
- **NGOs and private organizations** should seek to partner with **courts, the Ministry of Justice, and the Ministry of Education, Youth and Sport** to provide support and rehabilitation services for youth who have infringed the criminal law, providing realistic and viable alternatives to criminal prosecution and imprisonment.
- **Investigating judges** should ensure that the provisions of national and international law, which create a strong presumption against pre-trial detention of juveniles, are adhered to. Pre-trial detention of juveniles should take place only in exceptional circumstances, as a measure of last resort, and for the shortest appropriate period of time.
- **Judges** should ensure that the imprisonment of juveniles is a last resort and instead utilize the new sentencing provisions of the Penal Code by imposing non-custodial sentences such as community service, probationary suspended sentences and the surveillance, education, protection and assistance measures applicable under Article 39 of the Penal Code and set out under Article 40.
- **Judges** should take care to preserve the privacy of juvenile defendants in judgments.
- In order to protect the privacy of juvenile accused as required by Article 40(2)(vii) of the CRC, **Prosecutors** should ask for, and **trial judges** should order, closed hearings in all trials involving only juvenile defendants unless there are other circumstances that would make such a decision inappropriate.
- The **Ministry of Interior** should build new detention facilities to ensure that all juvenile detainees are detained in specialist facilities that separate them from adult detainees as required by Article 166 of the Penal Code, Article 10(2)(b) of the ICCPR and Article 37(c) of the CRC.
- **The Ministry of Interior** should ensure that such facilities provide rehabilitative programs, including education and vocational training, such as those cited in Cambodia's 2009 report to the Committee against Torture.



5. CONCLUSION

The data from the 532 trials monitored during the Second Reporting Period again showed mixed results. There was a reduction in the number of trials in which the issue of adequate time and facilities was raised by the defense and the rate of legal representation in trials involving felony charges edged closer to the 100% required by law. There were very few instances in which judges made statements that showed a lack of understanding of the presumption of innocence and the handling of evidence and witnesses by the court remained a positive area, with fair opportunities for presentation and examination afforded to both sides. However, major concerns remain in relation to high levels of pre-trial detention and low levels of legal representation for those charged with misdemeanors. Judges continue to use mobile phones in court, conduct that may, nevertheless, be linked to high case loads and genuine efforts to expedite investigations and trials in other cases. Allegations of police misconduct including threats and the use of violence and torture continued to affect a small but significant number of trials.

The full Penal Code will be in force during the next reporting period and is likely to have a major impact on the criminal justice system. There will be a far greater variety of criminal offences available to prosecutors and investigating judges. As set out in this report, provisions in the new Penal Code explicitly outlaw the use of torture and other “barbarous acts” by government authorities and create a new presumption against the criminal conviction of juvenile offenders. It will be important for all judges and lawyers to quickly familiarize themselves with the details of the new law and begin implementing its provisions from December 10 in Phnom Penh and December 20 throughout the rest of the country, when the remainder of the law comes into effect.

The recommendations in this Report, addressed to a number of different bodies and institutions, again highlight the interconnectedness of the justice system. Though monitoring of trials takes place in the court room, improved adherence to many of the rights analyzed in this report will require the cooperation, support and leadership of other groups, such as law enforcement agencies, prison authorities and NGOs. This is where the value of the Project lies – in collecting objective data that can provide a basis for open discussions and dialogue between a range of different stakeholders. Working together these organizations can help develop the Cambodian justice system to ensure that it is fair and provides equal justice to all.

Cambodian Center for Human Rights

December 2010

Phnom Penh



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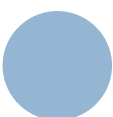
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7. APPENDICES

APPENDIX I: TRIAL MONITORING CHECKLIST

GENERAL INFORMATION			
1(a) Date of Trial:			
1(b) Monitors:			
1(c) Court:	PPC <input type="checkbox"/>	KPC <input type="checkbox"/>	OTHER <input type="checkbox"/>
1(d) Judge:	1st	2nd	3rd
1(e) Clerk:			
1(f) Charge:	Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/>		
	Details ¹⁰² :		
	Relevant Law:		
1(g) Are any of the accused juveniles?	Yes <input type="checkbox"/> If yes please complete Juvenile Annex		No <input type="checkbox"/>

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

RIGHT TO BE TRIED WITHOUT DELAY	
3(a) Date of arrest:	
3(b) Was there pre-trial detention?	Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/>
	If yes, did pre-trial detention last until trial?
	Yes <input type="checkbox"/> No <input type="checkbox"/>
If no, what date did pre-trial detention finish?	

RIGHT TO UNDERSTAND NATURE OF CHARGE		
4(a) Did the Judge announce the case to be heard?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4(b) Did the Judge state the charge?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4(c) Did the Judge state the relevant law?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4(d) Did the Judge state the parties involved?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

¹⁰² If human trafficking please see Annex II: Human Trafficking Trial



4(e) Did the Judge state the date and location that the alleged offense occurred?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4(f) If required, was an interpreter provided?	Yes <input type="checkbox"/>	No <input type="checkbox"/> N/A <input type="checkbox"/>
4(g) If required, were provisions made for disabilities?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	
	If yes, type of provision? Hearing <input type="checkbox"/> Vision <input type="checkbox"/> Other <input type="checkbox"/>	

EXPLANATION OF RIGHTS

5(a) Did the Judge inform (I) and explain (E) to the accused their right to legal representation or to self defense?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
5(b) Did the Judge inform (I) and explain (E) to the accused their right to silence?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
5(c) Did the Judge inform (I) and explain (E) to the accused their right not to self incriminate?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
5(d) Did the Judge inform (I) and explain (E) to the accused their right to change the judge?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>
5(e) Did the Judge inform (I) and explain (E) to the accused their right to have the last word?	I only <input type="checkbox"/>	I and E <input type="checkbox"/>	Neither I nor E <input type="checkbox"/>

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE DEFENSE

6(a) Was there anything to suggest that the defense lawyer was assigned on the day of the trial?	Comment:
--	----------

RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

7(a) Was the accused represented by a lawyer?	Yes <input type="checkbox"/> No <input type="checkbox"/>
7(b) Was there more than one accused?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, was there a conflict between the statements of the accused? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, were the accused represented by different lawyers? Yes <input type="checkbox"/> No <input type="checkbox"/>
7(c) Was the accused excluded at any stage of the trial?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:

PRESUMPTION OF INNOCENCE

8(a) If the accused was held in pre-trial detention, did they appear before the court in prison uniform?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
8(b) Was the accused handcuffed throughout the trial?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, was there a good reason?



	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Comment
8(c) Were statements made by the Judge about the guilt / innocence of the accused before the verdict was delivered?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
8(d) Was there anything to suggest that the judge discriminated against the accused because of their personal characteristics?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	If yes, which characteristic?
	Age <input type="checkbox"/>
	Gender <input type="checkbox"/>
	Profession <input type="checkbox"/>
Marital Status <input type="checkbox"/>	
Nationality <input type="checkbox"/>	
Ethnicity <input type="checkbox"/>	
Religion <input type="checkbox"/>	
Family Name <input type="checkbox"/>	
Other <input type="checkbox"/> Details:	

INDEPENDENCE / IMPARTIALITY OF THE JUDGE

9(a) Did the Judge play any other role in the court proceedings?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> IJ <input type="checkbox"/>
9(b) Was there anything to suggest that the Judge had an interest in the case beyond their usual judicial role?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
9(c) Was there anything to suggest that any party spoke to the Judge during deliberation?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/>
	Comment:
9(d) Was there anything to suggest that the Judge behaved in an intimidating manner towards any party?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/>
	Comment:
9(e) Was there anything to suggest that the Judge drew an inference of guilt from the silence of the accused?	Yes <input type="checkbox"/> No <input type="checkbox"/>
	Comment:



EVIDENCE

10(a) Was evidence presented?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, by which party? <hr/> P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> If yes, what type of evidence was presented? Physical object: <input type="checkbox"/> Documentary: <input type="checkbox"/> Witness Testimony: <input type="checkbox"/> Confession: <input type="checkbox"/> Other: <input type="checkbox"/>
10(b) Was there anything to suggest that any party was not given the opportunity to present evidence?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> Comment:

RIGHT TO CALL AND EXAMINE WITNESSES

11(a) Was there anything to suggest that any party was not given the opportunity to summon witnesses?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> Comment:
11(b) Was there anything to suggest that any party was not given the opportunity to examine witnesses?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> If yes, which party? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> Comment:
11(c) Were the witnesses present in the courtroom before they were examined?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>

RIGHT TO FULL DISCLOSURE

12(a) Was there anything to suggest that the same	Yes <input type="checkbox"/> No <input type="checkbox"/>
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evidence was not available to both sides?	If yes, which party did not have the evidence? P <input type="checkbox"/> D <input type="checkbox"/> CP <input type="checkbox"/> Comment:
---	---

RIGHT NOT TO SELF INCRIMINATE

13(a) Was there anything to indicate a confession was extracted from the accused through coercion?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Comment:
13(b) Was there anything to indicate a confession was extracted from the accused through torture?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Comment:

PROHIBITION AGAINST DOUBLE JEOPARDY

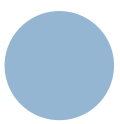
14(a) Was there anything to suggest that the accused has been tried for this offense previously?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
--	--

PROHIBITION AGAINST RETROSPECTIVE PENAL LEGISLATION

15(a) Was there anything to suggest that the offense was not an offense under national law / international law when it was committed?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
---	--

VERDICT I/U

16(a) Date:	
16(b) Was the accused in Pre-trial detention between trial and verdict?	Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A <input type="checkbox"/>
16(c) Type:	Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/>
16(d) Legal Reasoning:	Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> Please Specify:
16(e) Evidential Reasoning:	Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/>



APPENDIX II: JUVENILE CHECKLIST

AGE	
1(a) Age	<14 <input type="checkbox"/> 15-17 <input type="checkbox"/>
1(b) In the case of an accused juvenile found to be less than 14 years old, did the judge order an immediate acquittal of the case??	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Comment:

RIGHT TO BE TRIED WITHOUT UNDUE DELAY	
2(a) Date of Arrest:	
2(b) Was there pre-trial detention?	Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> If yes, did pre-trial detention last until trial? Yes <input type="checkbox"/> No <input type="checkbox"/> If no, what date did pre-trial detention finish?

PRE-TRIAL	
3(a) If held in pre-trial detention, was there anything to suggest that the accused was not separated from other adults?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> Comment:

TRIAL	
4(a) Did the Judge wear less formal clothes?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
4(b) Was there anything to suggest that the juvenile wanted their parents present at the hearing?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes were, the parents present? Yes <input type="checkbox"/> No <input type="checkbox"/>
4(c) Was there a screen to protect the juvenile from testifying in public?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:
4(d) Was there anything to suggest that the Judge considered imposing a non-custodial sentence before imposing a custodial sentence?	Yes <input type="checkbox"/> No <input type="checkbox"/> Comment:



APPENDIX III: LAW BANK

			Criminal Code of Procedure	UNTAC Law	Constitution	Code of Ethics for Judges and Prosecutors	ICCPR	Basic Principles on the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against Torture	Bangalore Principles	Universal Declaration of Human Rights	Model Court Standards	Comments
Right to a public hearing	2(a)	Was notice of the hearing posted on a public notice board outside the courtroom?	Art. 316	X	X	X	Art 14(1)	X	X	X	X	Art 10	X	Specifically referred to as an element contributing to a public hearing in Human Rights Committee General Comment 32.
	2(b)	Were the public obstructed from entering or dismissed from the courtroom?	Art .316	Art. 23	X	X	Art 14(1)	X	X	X	X	Art 10	Standard 11	
Right to be tried without undue delay	3(a)	Date of Arrest?	Book 3, Chapters 3: Police Custody and Book 4, Chapter 3, Section 5: Provisional Detention	Art. 13, 14, 21	Art 38	X	Art 14(3) (c)	X	X	X	X	Art 9	Standard 4, Standard 10	
	3(b)	Was there pre-trial detention?	Art. 13, 14, 21		Art 38	X	Art. 9(3)	X	X	X	X	Art 9	Standard 4, Standard 10	Article 38 of the Constitution refers only to the legality of detention. UDHR refers only to arbitrary detention

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Right to understand the nature of the charge	4(a)	Did the Judge announce the case to be heard?	X	X	X	X	Art 14(3) (a)	X	X	X	X	X	Standard 5 (competent)	
	4(b)	Did the Judge state the charge?	Art 325	X	X	X	X	X	X	X	X	X	Standard 2	
	4(c)	Did the Judge state the relevant law?	X	X	X	X	X	X	X	X	X	X	Standard 5 (competent)	
	4(d)	Did the Judge / Clerk state the parties involved?	Art 322	X	X	X	X	X	X	X	X	X	Standard 5 (competent)	
	4(e)	Did the Judge state the date and location that the alleged offense occurred?	Art 325	X	X	X	Art 14(3) (a)	X	X	X	X	X	Standard 2	
	4(f)	If required, was an interpreter provided?	Art 330	X	X	X	Art 14(3) (f)	X	X	X	Principle 5	X	Standard 2	Art. 330 wording is "may" provide
	4(g)	If required, were provisions made for disabilities?	Art 331	X	X	Art. 7	X	X	X	X		X	Standard 7, 9	

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Explanation of Rights	5(a)	Did the Judge inform (I) and explain (E) to the accused their right to legal representation or to self defense?	Art. 301 (right to legal rep.)	Art.10 (1)		Art. 14(3) (d)	X	Art.1 and 5	X	X	X	Standard 5 (competent)		
	5(b)	Did the Judge inform (I) and explain (E) to the accused their right to silence?	X	X	Art. 128 (Judges should protect the rights and freedoms of citizens)	X	X	X	X	X	X			
	5(c)	Did the Judge inform (I) and explain (E) to the accused their right not to self incriminate?	X	X		Art. 14(3) (g)	X	X	X	X	X	Standard 5 (competent)		
	5(d)	Did the Judge inform (I) and explain (E) to the accused their right to change the judge?	Art. 556 and 557	X		X	X	X	X	X	X	X	Standard 5 (competent)	
	5(e)	Did the Judge inform (I) and explain (E) to the accused their right to have the last word?	Art. 335 (right to last word)	X		X	X	X	X	X	X	X	Standard 2 and 5	

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Right to adequate time and facilities to prepare a defense	6 (a)	Was the issue of adequate time and facilities for preparation raised by the defense?	Art. 149, 304 319	Art.17 (2), Art. 21(2)	X	X	Art 14(3) (b)	X	Art. 8	X	X	X	Standard 2	
Right to legal representation and to be present at trial	7 (a)	Was the accused represented by a lawyer?	Art. 301	Art. 10	Art. 38	X	Art. 14(3) (d)	X	Art. 1, 5, 7	X	X	X	Standard 2	
	7(c)	Was the accused excluded at any stage of the trial?	Art. 300	X	X	X	Art. 14(3) (d)	X	X	X	X	X	Standard 2	

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Presumption of Innocence	8(a)	If the accused was held in pre-trial detention, did they appear before the court in prison uniform?	X	Art. 25	Art. 38	Art. 14(2)	X	X	X	X	Art. 11(1)	Standard 2,9	If the accused is held in pre-trial detention prior to the hearing they should not appear in prison uniform.
	8(b)	Was the accused handcuffed throughout the trial?	X				X	X	X	Standard 2,9		Unless strictly necessary for security reasons, the accused should not appear in handcuffs	
	8(c)	Were statements made by the judge about the guilt/innocence of the accused before the verdict was delivered?	Art. 351				X	X	X	Standard 2, 7, 9			
	8(d)	Was there anything to suggest that the judge discriminated against the accused because of their personal characteristics?	X	Art. 28	Art. 31		Art. 7	X	X	X	X	Standard 7, 8, 9	

		Criminal Code of Procedure	UNTAC Law	Constitution	Code of Ethics for Judges and Prosecutors	ICCPR	Basic Principles on the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against Torture	Bangalore Principles	Universal Declaration of Human Rights	Model Court Standards	Comments	
Independence/Impartiality of the Judge	9(a)	Did the Judge play any other role in the court proceedings?	Arts. 55 and 288	Art.1	Art. 128, 130, 132	Art. 14(1)	Art. 1-7	X	X	Principle 1 and 2.5.2	Art. 10	Standard 7		
	9(b)	Was there anything to suggest that the Judge had an interest in the case beyond their usual judicial role?	X					Art. 2, 3, 8, 11, 12, 14, 17, 20	See all	X		Principle 1 and 2.5.3	Standard 3, 6, 7, 9	
	9(c)	Was there anything to suggest that any party spoke to the Judge during deliberation?	Art. 337					Art. 9	X	X		Principle 1 and 2.4	Standard 3, 7	
	9(d)	Was there anything to suggest that the Judge behaved in an intimidating manner towards a party?	X					Art. 8	X	X		Principle 3.1 and 5	Standard 7	
	9(e)	Was there anything to suggest that the judge drew a negative inference from the silence of the accused?	X					X	X	X		X	Standard 7	

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Evidence	10(a)	Was evidence presented?	Art. 321, 334	Art. 24	X	X	X	X	X	X	X	X	X	
	10(b)	Was there anything to suggest that any party was not given the opportunity to present evidence?	Art. 326 and 334	Art. 24(4)	X	X	Art 14(3) (e)	X	X	X	X	X	Standard 8	
Right to call and examine witnesses	11(a)	Was there anything to suggest that any party was not given the opportunity to summon witnesses?	Art. 298	Art. 24(4), 24(5)	X	X	Art. 14(3) (e)	X	X	X	X	X	Standard 8	
	11(b)	Was there anything to suggest that any party was not given the opportunity to examine witnesses?	Art. 326	Art. 24(1)	X	X	Art. 14(3) (e)	X	X	X	X	X	Standard 8	
	11(c)	Were the witnesses present in the courtroom before they were examined?	Art. 322	X	X	X	X	X	X	X	X	X	X	

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Right to full disclosure	12(a)	Was there anything to suggest that the same evidence was not available to both sides?	Art. 319	X	X	X	X	X	X	X	X	X	X	
Right not to self-incriminate	13(a)	Was there anything to indicate a confession was obtained through coercion?	Art. 321	Art. 12(1), Art. 24(3)	Art. 38	X	Arts. 7 and 14(3)(g)	X	X	X	X	X	X	
	13(b)	Was there anything to indicate a confession was extracted through torture?				X	Arts. 7 and 14(3)(g)	X	X	All	X	Art.5	X	
Double jeopardy	14(a)	Was there anything to suggest that the accused had been tried for this offense previously?	Art. 12	X	X	X	Art. 14(7)	X	X	X	X	X	Standard 9	
Prohibition against retrospective legislation	15(a)	Was there anything to suggest that the offense was not an offense under national or international law at the time it was committed?	X	X	X	X	Art. 15	X	X	X	X	Art. 11(2)	Standard 9	

APPENDIX IV: TRIAL MONITORS CODE OF CONDUCT

Preparation and prerequisites¹⁰³

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;¹⁰⁴
- 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;

¹⁰³ This section will be provided as an additional document and will apply for all trials to be monitored

¹⁰⁴ Attach copy of notification/agreement with relevant court

- 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.