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Cambodian Center for Human Rights

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

December 2013



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 Program on Rights and Justice (PRAJ)
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ABOUT THE CAMBODIAN CENTER FOR HUMAN RIGHTS

This report on “Fair Trial Rights in Cambodia” (the “Report”) 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 (“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.

ACKNOWLEDGEMENTS

This Report is made possible by the generous support of the United States Agency for International Development (“USAID”) and East West Management Institute (“EWMI”), and by the generous support of the Office of United Nations High Commissioner for Human Rights (“OHCHR”). The contents of this Report are the responsibility of CCHR and do not necessarily reflect the views of USAID, the United States Government, EWMI or OHCHR.

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Should you have any questions or require any further information about this Report, or if you would like to provide any feedback, please email CCHR at info@cchrcambodia.org.

This Report, and all other publications by CCHR, are available online at www.cchrcambodia.org, and also via the CCHR hosted Cambodian Human Rights Portal, www.sithi.org.

All data monitored are available via Trial Monitoring Database, tmp.sithi.org.

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DEFINITIONS

Banteay Meanchey Court	Banteay Meanchey Provincial Court of First Instance
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
EWMI	East West Management Institute
First Bi-annual Report	CCHR Fair Trial Rights in Cambodia First Bi-Annual Report, July 2010
First Reporting Period	The reporting period for the First Bi-Annual Report of 10 August to 31 December 2009
Second Bi-annual Report	CCHR Fair Trial Rights in Cambodia Second Bi-Annual Report, March 2011
Second Reporting Period	The reporting period for the Second Bi-annual Report of 1 January to 30 June 2010

Third Bi-annual Report	CCHR Fair Trial Rights in Cambodia Third Bi-annual Report, January 2012
Third Reporting Period	The reporting period for the Report of 1 July to 31 December 2010
Fourth Bi-annual Report	CCHR Fair Trial Rights in Cambodia Fourth Bi-Annual Report, March 2012
Fourth Reporting Period	The reporting period for the Fourth Bi-Annual Report of 1 January to 30 June 2011
Fifth Bi-Annual Report	CCHR Fair Trial Rights in Cambodia Fifth Bi-Annual Report, November 2012
Fifth Reporting Period	The reporting period for the Fifth Bi-Annual Report of 1 August to 31 December 2011
Sixth Bi-Annual Report	CCHR Fair Trial Rights in Cambodia Sixth Bi-Annual Report, December 2013
Sixth Reporting Period	The reporting period for the Sixth Bi-Annual Report of 1 January to 30 June 2012
ICCPR	International Covenant on Civil and Political Rights
Kandal Court	Kandal Provincial Court of First Instance
LAC	Legal Aid Cambodia
LJR Strategy	Legal and Judicial Reform Strategy
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for 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 City Court of First Instance
PRAJ	Program on Rights and Justice

Project	CCHR Trial Monitoring Project
RAJP	Royal Academy of Judicial Professions
Ratanakiri Court	Ratanakiri Provincial Court of First Instance
Report	This Bi-annual report on “Fair Trial Rights in Cambodia”
RGC	Royal Government of Cambodia
Trial Monitors	CCHR trial monitors
UDHR	Universal Declaration of Human Rights
UN	United Nations
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

The Report is an output of the Cambodian Trial Monitoring Project (the “Project”), implemented by CCHR. It presents and analyzes data collected from the monitoring of 354 trials involving 719 individuals accused of criminal offenses at Phnom Penh Capital City Court of First Instance (the “Phnom Penh Court”), Banteay Meanchey Provincial Court of First Instance (the “Banteay Meanchey Court”) and Ratanakiri Provincial Court of First Instance (the “Ratanakiri Court”) between 1 January 2012 and 30 June 2012 (the “Sixth Reporting Period.”) This is the sixth bi-annual report from the Project.

Trial Monitors from CCHR attend criminal trials at the Phnom Penh, Banteay Meanchey and Ratanakiri Courts on a daily basis, using a trial monitoring checklist comprised of approximately 70 questions as a tool to measure adherence to fair trial rights at each trial and in respect of each individual accused.

To date, CCHR has issued five bi-annual reports. Before publication of each bi-annual report, all monitored courts have been given an opportunity to provide comments responding to the findings during dialogues with Project staff members so as to incorporate those comments into official report. Following publication of each bi-annual report, Project staff members facilitate and participate in 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 these dialogue meetings is to promote and facilitate the implementation of the recommendations set out in the bi-annual reports.

The data in this Report compares the data collected at the Phnom Penh, Banteay Meanchey and Ratanakiri Courts respectively. For the purposes of identifying issues in adherence to fair trial rights, the data for all of the courts are presented together in order to draw comparisons and identify trends.

It is positive to note that there were very few issues during the Sixth Reporting Period relating to adequate time and facilities to prepare a defense. In Phnom Penh Court, there was only one report of the defense lawyer being instructed on the day of trial and only four such cases in Banteay Meanchey Court. There were no such reports at Ratanakiri Court which, overall, did very well in complying with fair trial procedures.

It is also a great achievement that Banteay Meanchey Court appears to have eradicated the practice of prisoners attending court in full prison uniform; in all of the trials monitored at Banteay Meanchey Court, all defendants appeared wearing non-prison issued shirts. However, defendants are still attending court in prison uniform in the majority of cases in both Phnom Penh and Ratanakiri Courts – 83% and 70% of defendants respectively.

Additional positive factors include the absence of any statements by judges at any of the Courts that were monitored regarding the innocence or guilt of an accused before the verdict was delivered,

along with the fact that there was not a single suggestion of any judge having an interest in a case beyond his or her normal judicial role. This adherence to fair trial standards and procedures serves to strengthen respect for the presumption of innocence.

In terms of evidentiary rights, judges are again, on the whole, applying procedures correctly, with only one reported case (at Phnom Penh Court) in which a party was prevented from questioning a witness.

However, the data also reveals a number of areas of concern and suggests that in relation to a number of fair trial standards, little or no progress has been made since the Fifth Reporting Period. While Courts – Ratanakiri in particular, which boasted a 100% compliance rate – generally complied with their obligation to inform the accused of the nature of the charge, judges are still failing to give full explanations to defendants of their rights. For example, not a single judge in any of the trials that were monitored explained to the defendant his right to remain silent. Such failures are of particular concern when levels of legal representation remain low for alleged misdemeanors and when the obligatory 100% rate of representation for alleged felonies has not been met. There were four cases at Banteay Meanchey Court where defendants facing allegations of felony offenses were not legally represented. All defendants accused of felonies at Phnom Penh Court and Ratanakiri Court were legally represented. Levels of representation in misdemeanor cases remain worryingly low with only 33.5% of defendants at Phnom Penh Court represented, and only 21% at Banteay Meanchey Court. Ratanakiri Court fared slightly better with 61% of those accused of misdemeanors being represented.

Levels of pre-trial detention remain high and judges continue to detain individuals in the majority of cases. While there have been some improvements at Banteay Meanchey Court, where there has been a reduction in the use of pre-trial detention, both Phnom Penh and Ratanakiri Courts have seen an increase in the percentage of cases in which pre-trial detention was imposed since the previous reporting period. During the Sixth Reporting Period, CCHR's Trial Monitors identified 16 potential cases of excessive and illegal pre-trial detention.

Disappointingly, judges are continuing to use mobile telephones during trials. At Phnom Penh Court, 19% of judges answered telephones during trials, as did 21% at Banteay Meanchey Court and 17% at Ratanakiri Court. While this represents an incremental improvement overall when comparing the percentage of judges who answered calls in all trials monitored during the Sixth Reporting Period (19%) and in all trials monitored during the Fifth Reporting Period (20%), the continued use of mobile telephones by judges – something that is so easily preventable – does nothing to enhance the image of the courts.

Out of all of the trials that were monitored during the Sixth Reporting Period, there were three occasions, all at Banteay Meanchey Court, where threats had reportedly been used to induce a confession and 24 allegations that some form of physical violence had been used (13 cases from Phnom Penh Court and 11 from Banteay Meanchey Court).

Regarding cases involving juveniles, levels of pre-trial detention remain unacceptably high. There were no cases involving juveniles amongst the trials monitored at Ratanakiri Court; at Phnom Penh

Court, pre-trial detention was used in 92% of cases involving juveniles and in 90% of cases at Banteay Meanchey Court, which worryingly suggests that juveniles are even more likely to be put in pre-trial detention than adults.

Out of all of the juveniles convicted of a criminal offense, each and every one received an immediate custodial sentence. There was only one case where a judge gave any consideration to imposing a non-custodial sentence for a juvenile offender; in that case, the judge imposed a sentence of six months in jail and three years of probation, rather than three years and six months of imprisonment.

The recommendations set out in this Report are addressed to a number of different bodies and institutions. If significant improvements are to be made in terms of adherence to fair trial standards, then it is imperative that all relevant stakeholders work together towards a common goal. Improvements will depend on the cooperation and support of the Royal Government of Cambodia (“RGC”), Ministry of Justice (“MoJ”), law enforcement authorities, prison authorities, as well as non-governmental organizations (“NGOs”) and others involved in legal and judicial reform. It is hoped that the data, analyses and recommendations set out in this Report will help to facilitate increased respect for fair trial rights and help support those working to ensure that the justice system in Cambodia is fair and equal for all.

1. INTRODUCTION

The right to a fair trial is a fundamental and universally recognized human right, enshrined at the highest level of international law by the United Nations General Assembly in both the UDHR¹ and the ICCPR.² Fair trial rights are also guaranteed in the Constitution,³ and through various individual provisions of domestic laws.⁴

The right to a fair trial is comprised of a number of different individual rights, which start with rights relating to pre-trial procedures, such as arrest and interrogation, through to rights in respect of the trial itself, such as the right to a public hearing, as well as broader rights, such as the right to be presumed innocent. Fair trial rights are an essential part of any criminal justice system; they entitle each and every person charged with a criminal offense to be treated fairly and equally while the state determines their guilt or innocence. When implemented correctly, they protect the rights of the accused and the victim, and ensure the proper administration of justice.

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 offenses and includes provisions setting out the rights of accused persons. The Criminal Code of the Kingdom of Cambodia (the “Criminal Code”), which was promulgated in 2009 and came into full force and effect in December 2010, sets out classes of offenses, principles of criminal responsibility and principles of sentencing. Cambodia is also bound by the international agreements 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.

The criminal justice system in Cambodia involves an inquisitorial process. The judiciary is made up of 23 Municipal and Provincial Courts of First Instance, a Military Court, Court of Appeal and Supreme Court. In 2003, the RGC and the United Nations (“UN”) came to an agreement to create the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) to prosecute those with the greatest responsibilities for the atrocities committed by the Khmer Rouge.

The Constitution states that Cambodia “*shall recognize and respect human rights as stipulated in the United Nations Charter, the covenants and conventions related to human rights, women’s rights and children’s rights.*”⁵ The Constitutional Council of Cambodia confirmed the sentiment of the Constitution in its decision on 10 July 2007, which held that “*international conventions that*

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

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

³ Article 31 of the Constitution guarantees fair trial rights through the 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.

⁴ The 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 his/her own choosing.

⁵ Article 31, Constitution of the Kingdom of Cambodia.

Cambodia has recognized” form part of the law to which trial judges must adhere.⁶ Furthermore, Article 128 of the Constitution also provides for the independence and impartiality of the Cambodian judiciary: *“the judicial power shall be an independent power. The judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”* The CCPC, adopted in 2007, consolidated and codified the previous provisions relating to the judiciary and criminal procedure that were set out in the law from the transitional period of government.⁷ The CCPC sets out in detail the procedures that must be adhered to in criminal investigations, trials and appeals.

In December 2010, the Criminal Code came into force, setting out an array of new criminal offenses, classifications of offenses and principles of criminal responsibility, territorial jurisdiction and sentencing.

THE POLICY CONTEXT

In June 2003, the Council of Ministers of the RGC approved the Legal and Judicial Reform Strategy (the “Strategy”).⁸ The Strategy identifies four guiding principles from the provisions of the Constitution to guide legal and judicial reform: the rights of individuals, liberal democracy, the separation of powers, and the rule of law.⁹ The Strategy also sets out seven strategic objectives, which form the basis of the Legal and Judicial Reform Action Plan, which was later approved in 2005.¹⁰

CCHR’s Trial Monitoring Project (the “Project”) has been an independent and impartial monitor of criminal trials in Cambodia since August 2009. In this role, the purpose of the Project is 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 citizens.

PURPOSE, AUDIENCE AND SCOPE OF THE REPORT

This is the sixth bi-annual Report on Fair Trial Rights in Cambodia produced by the Project. Before the Report was finalized and published, a draft was sent to the Presidents of the Phnom Penh Court, the Banteay Meanchey Court and the Ratanakiri Court. The purpose of sending the monitored Courts a draft of the Report was to give them the opportunity to provide feedback and comments on the findings of the report and to allow them to make any additional recommendations.

The first bi-annual (the “First Bi-annual Report”) was published on 14 July 2010; the second bi-annual report (the “Second Bi-annual Report”) was published on 22 March 2011; the third bi-annual report (the “Third Bi-annual Report”) was released on 4 January 2012; the fourth bi-annual report

⁶ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, dated July 10, 2007.

⁷ Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period (the “UNTAC Law”).

⁸ Council for Legal and Judicial Reform, *Legal and Judicial Reform Strategy*, adopted by the RGC at the Plenary Session on April 29, 2005.

⁹ *Ibid.*, p.3.

¹⁰ Council for Legal and Judicial Reform, *Plan of Action for Implementing the Legal and Judicial Reform Strategy*, adopted by the RGC at the Plenary Session on April 29, 2005.

(the “Fourth Bi-annual Report”) was released on 15 August 2012; the fifth bi-annual report (the “Fifth Bi-annual Report”) was released on 15 November 2012.

The structure of this Report is as follows: **Section 2** sets out the methodology followed when collecting data and preparing the Report. **Section 3, (Data and Findings)** sets out the data collected at the three monitored Courts between 1 January 2012 and 30 June 2012 and presents and analyzes the data for the purposes of identifying trends in adherence to fair trial rights. **Section 4, (Conclusion and Recommendations)** makes recommendations in relation to Report’s findings.

The aim of the Report is to provide an analysis of the trends emerging within Cambodia’s criminal courts, draw comparisons to previous Reports in order to gauge how effectively previous recommendations have been implemented, and to create a platform from which further recommendations can be made and improvements implemented.

2. METHODOLOGY

The Project is implemented by CCHR as part of our Policy and Advocacy Program. The Project is implemented and the Report written following the methodology sets out in this chapter. The aim of sharing this methodology with other organizations is to enable increased collaboration in the field of trial monitoring and to facilitate dialogue between all stakeholders seeking to improve respect for and adherence to fair trial rights in Cambodia.

TIME FRAME AND LOCATION

The Report presents and analyzes data from 354 criminal trials involving 719 individual accused. The trials were monitored at the Phnom Penh Court, Banteay Meanchey Court and Ratanakiri Court, during the Sixth Reporting Period (1 January 2012 – 30 June 2012). Phnom Penh Court was selected for the purposes of the Project because it is the Court of the capital city, Cambodia's largest and most densely populated urban area; it has a higher volume of cases than other courts; its conduct is more widely reported; and its influence is generally greater than that of other courts in Cambodia. Phnom Penh Court has been monitored in all of the previous bi-annual Reports in the Fair Trial Rights series.

Monitoring at Banteay Meanchey Court and Ratanakiri Court began on 22 August 2011 in order to diversify the geographical focus of monitoring and to compare trends and practices across courts in different socio-economic locations. Banteay Meanchey Court was selected for its geographical location near the border with active commercial activities. The Court has also played a special role in the RGC's legal and judicial reform strategy. Ratanakiri Court was selected because its geographical location and isolation allows for examination of differences in the practices, if any, of courts situated far away from the capital city. Both the Banteay Meanchey Court and the Ratanakiri Court have previously been monitored by the Project (Banteay Meanchey Court and Ratanakiri Court were monitored in the Fifth Reporting Period).

FOCUS OF THE TRIAL MONITORING

The Project focuses on a number of fair trial rights. To determine which rights would be considered, CCHR relied on external resources such as reports and studies on fair trial rights in Cambodia and on the Cambodian judicial system. Neither positive nor negative inferences should be drawn 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;
- Evidentiary rights (including the right to call and examine witnesses);
- Right to full disclosure of evidence for the preparation of the defense;
- Right against self-incrimination and the right 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

To effectively and efficiently record relevant trial data, CCHR designed a trial-monitoring checklist (the “Checklist”) for use in court by Trial Monitors (Appendix I). This checklist is tailor-made for the Project and includes 78 questions, the answers to which indicate whether fair trial rights have been adhered to by the Courts. Most questions have four possible answers: yes (“Y”), no (“N”), not applicable (“N/A”) or information unknown (“I/U”). CCHR has also developed a one-page annex to the Checklist for use in trials involving juveniles (Annex I). Through the Checklist, Trial Monitors monitor adherence to fair trial rights throughout the trial as a whole and monitor fair trial rights of individual accused. The data provided in the charts in Section 3 shows adherence to fair trial rights as they relate to individual accused, unless stated otherwise.

The Trial Monitors are provided with a Law Bank (Appendix II), which outlines the relevant national and international laws underpinning each question in the Checklist. This tool enables easy reference to the laws related to each of the fair trial rights monitored.

CCHR is committed to the international principles applicable to trial monitoring¹¹ and has devised a code of conduct for its monitors (the “Code of Conduct”) (Appendix III). The Code of Conduct outlines the obligations of non-interference, objectivity and confidentiality to which the Trial Monitors are bound.

Finally, with consideration of the brevity of the Checklist, CCHR has 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. These notes are vital for ensuring comprehensive understanding of each question and serves to ensure consistency among Trial Monitors, present and future. The Checklist Guidance has been made separately available to stakeholders and is available to members of the public upon request.

¹¹ See: Amnesty International, *Amnesty International Fair Trial Manual* (London: Amnesty International Publications, 1998), AI Index POL 30/02/98; Jelena Pejić 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).

PERSONNEL AND TRAINING

During the reporting period, the Project team was comprised of three experienced Trial Monitors with legal qualifications, expertise, and understanding. Both national and international legal consultants support the Trial Monitoring team. As noted above, Trial Monitors must adhere to the Code of Conduct. Before the monitoring of trials begins, the Trial Monitors participate in a thorough practical and theoretical training program that includes training on:

- Trial monitoring and the use of the Checklist;
- The Code of Conduct and the importance of impartiality, non-interference, confidentiality and professionalism; and
- Fair trial standards in international and Cambodian law.

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

During the Sixth Reporting Period, one Trial Monitor was assigned to each of the three Courts monitored. By assigning the monitors to designated Courts, it allows them to become familiar with that Court and to build a rapport with Court staff and judges. Specific trials were not targeted; rather, trials were monitored arbitrarily, based on court schedules, to ensure that the data collection process remained objective. When a Trial Monitor observed a trial, the information was recorded directly onto the Checklist. The information sought was limited to the trial process itself and no additional interviews or dialogues took place, other than where the Trial Monitors made efforts to obtain information relating to trial verdicts that were not handed down on the day of trial, but were adjourned to a later date.

DATABASE

After each trial, the data from the Checklist is entered into the CCHR Trial Monitoring Database (the "Database"). 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. The Database was initially a tool to be used internally by CCHR staff, however on 26 September 2013, it was re-launched as a public database which is accessible to all members of the public via awarded CCHR-hosted Sithi Portal. It is hoped that the Database can now be used, not only as a tool to store and analyze data, but also to raise public awareness regarding fair trial issues and provide information to the public that was not previously available.

ANALYSIS AND DIALOGUE

CCHR analyzes the trial data recorded in the Database, and identifies positive practices 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. Comparative analyses are then drawn to identify trends in the practices of the particular Court, gauge improvements and identify further recommendations. The ultimate purpose of the analysis is to identify the strengths and weaknesses of each Court and to discuss these issues with the Courts and other justice sector stakeholders in order to develop and implement ways to improve the protection of fair trial rights in the Cambodian courts.

The purpose of the Project is to provide objective data to serve as a reference for improvements in court practices as well as 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 distributes bi-annual reports to relevant stakeholders along with requests 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. The outcomes of these dialogues have been used in this Report to help explain the trends and shape the recommendations set out herein.

3. DATA AND EVALUATION

During the Sixth Reporting Period, the Trial Monitors monitored 354 trials in total at the Phnom Penh, Banteay Meanchey and Ratanakiri Courts, involving a total of 719 individual accused.

This section sets out the “raw” data recorded by the Trial Monitors on the Checklist according to each individual right during the monitoring of each trial and evaluates this data. The data collected from each of the Courts is presented alongside each other for the purpose of comparison and analyzing trends in the practices of the Courts. The data included in the tables are in respect of each individual accused, except where otherwise indicated.

FIGURE 1: TRIALS MONITORED

Data	Phnom Penh		Banteay Meanchey		Ratanakiri	
	N ^o	%	N ^o	%	N ^o	%
Felonies	72	39	40	28	7	23
Misdemeanors	111	61	101	72	23	77
Total number of trials	183		141		30*	

*The number of trials monitored at Ratanakiri Court was lower than anticipated due to a significantly lower volume of cases at this court than at the other courts monitored.

Figure 1 above shows the number and location of criminal trials monitored by the Trial Monitors during the Sixth Reporting Period, and separates the charges into two different classifications of offense. Article 46 of the Criminal Code defines a felony as any offense for which the minimum penalty is imprisonment for more than five years. A misdemeanor is defined in Article 47 as any offense for which the maximum 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 a period of imprisonment for a period less than or equal to six days.¹² None of the trials monitored during the Sixth Reporting Period were for petty offenses alone.

FIGURE 2: COMPARISON OF TRIALS MONITORED WITH PREVIOUS REPORTING PERIODS

Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
N ^o of trials	199		532		585		398		463		354	
Felonies	105	53	245	46	275	47	153	38	170	37	119	34
Misdemeanors	94	47	287	54	310	53	245	62	292	63	235	66
Petty Offenses	0	0	0	0	0	0	0	0	1	<1	0	0

¹² Article 48 of the Criminal Code.

While this Report will focus on the data collated during the Sixth Reporting Period, to analyze current levels of adherence to fair trial standards and draw comparisons between different geographical areas, it will also draw comparisons with previous Reporting Periods in order to measure progress over the course of the Project as a whole.

RIGHT TO A PUBLIC HEARING

Sources in Cambodian and International law:

- **Article 14(1) of the ICCPR:** “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]”
- **Article 316 of the CCPC:** “Trial hearings shall be conducted in public.”

Everyone has the right to have their guilt or innocence determined in a public trial, except in certain exceptional circumstances, for example when the court considers that a public hearing will cause “significant damage” to public order or morality.¹³ 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.¹⁴

FIGURE 3: RIGHT TO A PUBLIC HEARING

Was notice of the hearing posted on a public notice board outside the courtroom?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	42	23	52	37	0	0
No	141	77	89	63	30	100
Were members of the public obstructed from entering or dismissed from the courtroom?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	1	1	0	0
No	183	100	140	99	30	100

¹³ 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 judgment 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.

¹⁴United Nations Human Rights Committee, Communication No. 215/1986, *Van Meurs v. The Netherlands*, para. 6.2. Cited in supra Note 12.

In the majority of cases at Phnom Penh and Banteay Meanchey Courts, notices of hearings were not posted; it was similarly disappointing to note that no public notices whatsoever were displayed at Ratanakiri Court. However, in August 2013, CCHR team met with the President of Ratanakiri Court who explained that following his appointment as President in late 2012 he instructed court officials to post the hearing schedule on public notice board.¹⁵ CCHR's Trial Monitoring team was able to verify that public notice was posted during that said visit. The extent to which notice is displayed publicly is yet to be further scrutinized. In a separate meeting at Banteay Meanchey Court in August 2013, Court's representatives highlighted that the Court had significantly improved in publicly posting schedule of hearings following CCHR's previous recommendations.¹⁶

As highlighted in previous reports, simple print-outs of the weekly court list can be displayed in the Court; there is no need for the Court to have a notice board as long as the relevant information is displayed in some form. There was only a single case in which a member of the public was denied access to the courtroom. It is encouraging to note that the right to a public hearing is, on the whole, being upheld.

FIGURE 4: OVERVIEW OF TRENDS IN RIGHTS TO A PUBLIC HEARING

Was a notice of the hearing displayed outside the courtroom?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	5	3	0	0	234	40	195	49	118	25	94	27
No	194	97	532	100	351	60	203	51	345	75	260	73
Were members of the public obstructed from entering or dismissed from the courtroom?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	0	0	0	0	1	0.5	1	0.2	1	0.5
No	199	100	532	100	585	100	397	99.5	462	99.8	353	99.5

After an increase in the number of cases for which public notices was displayed during the Third and Fourth Reporting Periods, the decrease seen during the Fifth Reporting Period regarding the displaying of notifications on public notice boards has been continued into the Sixth Reporting Period. Public access to the courtrooms has been consistently high and it is positive to see that this trend has continued into the Sixth Reporting Period. Trials are being conducted openly and publicly, which represents an essential foundation of a fair trial, particularly given the increase in public interest and participation in legal issues that has been seen in Cambodia lately.

¹⁵ CCHR dialogue with Court President, Sous Lar, and two resident judges, Eak Poliphil and Y Sovann, 27 August 2013.

¹⁶ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY

Sources in Cambodian and international law:

- **Article 38 of the Constitution:** *“The prosecution, arrest or detention of any person shall not be done except in accordance with the law.”*
- **Article 14(3)(c) of the ICCPR:** *“In the determination of any criminal charge against him, everyone shall be entitled to be tried without undue delay.”*
- **Article 9(3) of the ICCPR:** *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”*
- **Article 203 of the CCPC:** *“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 205 of the CCPC:** *“Provisional detention may be ordered when it is necessary to:*
 1. *stop the offense or prevent the offense from happening again;*
 2. *prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices;*
 3. *preserve evidence or exhibits;*
 4. *guarantee the presence of the charged person during the proceedings against him;*
 5. *protect the security of the charged person;*
 6. *preserve public order from any trouble caused by the offense.”*
- **Articles 208-214 of the CCPC: Legal limits of provisional detention**

Adults accused of felony offenses can be provisionally detained for a period of six months. This period can be extended a maximum of two occasions for six months at a time only by order and with proper reasons (Article 208 CCPC).

Adults accused of misdemeanor offenses may be provisionally detained for a period of four months. This period may be extended only once, for a further two months only by order and with proper reasons (Article 209 CCPC).

Juveniles accused of felony offenses may be provisionally detained for a period not exceeding four months where the accused is aged under 16 years old or six months where they are aged 16-18 years old (Article 213 CCPC).

Juveniles accused of misdemeanor offences may be provisionally detained for a period not exceeding two months where the accused is aged under 16 years or four months where they are aged 16-18 years old (Article 214 CCPC).

Detention can be extended beyond these provisional periods by a further four months from the date that the closing order is issued; if the accused is not called to appear before the trial court within these four months he/she must be automatically released (Article 249 CCPC). There is statutory provision to extend this four-month period.

One of the most fundamental fair trial rights is the right to be presumed innocent until proven guilty according to the law. Central to this right is the presumption against pre-trial detention. Only in exceptional circumstances, where there is no other realistic alternative, should a person be held in pre-trial detention. While it is sometimes necessary for the courts to impose pre-trial detention in order to assist in the proper administration of justice and to protect victims and witnesses, the excessive use of pre-trial detention undermines the right of the accused to be presumed innocent until convicted by an impartial and competent tribunal.

FIGURE 5: PRE-TRIAL DETENTION

Was there pre-trial detention?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	281	82	193	58	34	72
No	50	15	129	39	13	28
I/U	10	3	9	3	0	0

Banteay Meanchey Court has significantly lower levels of pre-trial detention compared to Phnom Penh Court or Ratanakiri Court. The level of pre-trial detention at Banteay Meanchey Court in the Sixth Reporting Period represents a slight improvement from 61% in the Fifth Reporting Period to 58% in the Sixth Reporting Period. However, levels of pre-trial detention at Phnom Penh Court and Ratanakiri Court have risen since the previous reporting period, from 76% and 70% respectively to 82% and 72%.

During separate meetings in August 2013, Ratanakiri Court's President¹⁷ and representatives of Banteay Meanchey Court¹⁸ both explained that it would be difficult for them to oversight the accused if they were setting them free as they often have unclear resident addresses or occupations.

During a separate dialogue meeting at the Phnom Penh Court, Court's representatives explained the high level of pre-trial detention during the reporting period as the consequence of the Court giving priority during that period to cases with individuals detained under pre-trial detention. In addition, the Court's representatives stated that according to Articles 204 and 205 of the CCPC investigating judges have the possibility to impose pre-trial detention.¹⁹ However, each of the five previous CCHR's Bi-annual Reports show that pre-trial detention has been used in over 80% of the cases monitored. With such high level of pre-trial detention, it seems doubtful that the law is being properly applied.

¹⁷ CCHR dialogue with Court President, Sous Lar, and two resident judges, Eak Poliphil and Y Sovann, 27 August 2013.

¹⁸ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

¹⁹ CCHR dialogue with two vice presidents, Eung Seang and Kor Vandy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

FIGURE 6: PRE-TRIAL DETENTION EXCEEDING STATUTORY LIMITS

N°	Court and date	Category of charge and maximum lawful period of pre-trial detention	Actual period of pre-trial detention	Period of excessive pre-trial detention	Eventual sentence	Additional comments
1	PPC 10.01.12	Misdemeanor 10 months	21.02.11 - 13.01.12	13 days	2 years imprisonment	N/A
2	RTK 17.01.12	Misdemeanor 10 months	07.08.10 - 31.01.12	7 months, 24 days	1 year imprisonment	Full confession on arrest.
3	PPP 02.02.12	Misdemeanor 10 months	A1: 21.03.11* - 14.02.12 A2: 23.03.11* - 14.02.12	A1: 24 days A2: 22 days	A1: 1 year 6 months imprisonment ; 3 million Riel fine; 10k Riel compensation A2: 1 year 6 months imprisonment ; 3 million Riel fine; 1k Riel compensation	N/A
4	BMC 23.02.12	Misdemeanor 10 months	07.04.11* - 12.03.12	1 month, 5 days	2 years imprisonment	Full confession on arrest.
5	BMC 09.02.12	Misdemeanor 10 months	27.03.11* - 07.03.12	1 month, 10 days	3 years imprisonment	One of the three defendants had made a full confession on arrest.
6	BMC 02.02.12	Misdemeanor 10 months (adults) 8 months (juveniles aged 16-18 years)	01.03.11* - 10.02.12	Adults: 1 month, 9 days Juveniles: 3 months, 9 days	Adults (x3): 2x 3 years imprisonment , 1x 7 years imprisonment Juveniles(x2): 3 years imprisonment	The defendants had initially been charged and tried for a misdemeanor offense; the judges changed the charge when announcing the verdict. As such, the time limits that apply are those for misdemeanor offenses.
7	BMC 13.03.12	Misdemeanor 10 months	13.02.11* - 06.03.12	1 month, 23 days	2 years imprisonment , 6 months	N/A

					imprisonment ; six million Riel fine	
8	BMC 07.03.12	Misdemeanor 10 months	A1 & A2: 07.03.11* - 27.03.12 A3: arrest date/ commenceme nt of pre-trial detention unknown	A1 & A2: 2 months	A1 & A2: 5 years imprisonment A3: 2 months imprisonment	A1 & A3 made full confessions on arrest.
9	PPC 29.05.12	Misdemeanor 10 months	30.05.11* - 07.06.12	2 months, 7 days	2 years imprisonment	During the trial the judge acknowledged that the two defendants had spent a lengthy period of time in detention, explaining that the trial had been halted at one stage to allow further investigations to be carried out.
10	PPC 14.06.12	Felony 22 months	03.08.10* - 29.06.12	26 days	6 years, 6 months imprisonment ; one million Riel fine	N/A
11	BMC 03.05.12	Misdemeanor 10 months	25.06.11* - 03.06.12	1 month, 9 days	2 years imprisonment	N/A
12	BMC 21.05.12	Misdemeanor 10 months	14.01.11* - 05.06.12	6 months, 22 days	1 year imprisonment	N/A
13	BMC 21.05.12	Misdemeanor 10 months	29.06.11* - 09.05.12	10 days	2 years imprisonment	Full confession on arrest.
14	BMC 08.06.12	Misdemeanor 10 months	11.11.11* - 13.06.12	2 days	1 year imprisonment and 1 year probation	N/A
15	BMC 22.05.12	Misdemeanor 10 months	24.04.11* - 08.06.12	3 months, 15 days	I/U	No evidence was presented during the trial.
16	BMC 20.06.12	Misdemeanor 10 months	10.07.11* - 20.06.12	1 month, 10 days	1 year imprisonment and 1 year probation	Full confession on arrest

Date of arrest: in many cases, the date that pre-trial detention commenced was not announced in court, therefore in cases marked (), the date of arrest is taken to be the date that detention commenced.

The maximum permissible period of pre-trial detention represents the maximum potential period possible in each case. Without the precise date of the commencement of pre-trial detention, along with the date that the closing order was issued in each case, it is impossible to make precise calculations. The maximum lawful period of detention is, in reality, variable from case to case. The maximum potential periods in the table above are made up of the maximum period allowed under Articles 208-214 CCPC, along with the additional four month period that is allowed once the closing order in the case has been issued (Article 249 CCPC).

CCHR's Trial Monitors identified 16 cases of excessive and unlawful pre-trial detention. All but one of these cases involved allegations of misdemeanors. In some of the cases, convictions were ultimately based on the confessions of the accused; therefore, the Courts cannot cite reasons such as the preparation and/or gathering of evidence to justify the delays in these cases. The longest excess period of pre-trial detention was for seven months and 24 days and occurred in a case at Ratanakiri Court. The eventual sentence imposed was one year imprisonment.

RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Sources in Cambodian and International law:

- **Article 14(3)(a)** of the **ICCPR**: *The accused is entitled “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”*
- **Article 14(3)(f)** of the **ICCPR**: *“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality [...] To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”*
- **Article 322** of the **CCPC**: *“The court clerk shall call the names of the accused, civil parties, civil defendants, victims, witnesses and experts and verify the identity of those persons.”*
- **Article 325** of the **CCPC**: *“The presiding Judge shall inform the accused of the charges he is accused of.”*
- **Article 330** of the **CCPC**: *“If necessary, the presiding judge may seek the assistance of an interpreter/translator.”*
- **Article 331** of the **CCPC**: *“When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person cannot read or is illiterate, the presiding judge shall call on an interpreter/translator for him under the conditions stated in Article 330 [...] The presiding judge may call on any person who is able to communicate with the deaf and mute person.”*

Those accused of criminal offenses must be informed of the nature of the offense with which they have been charged. Without this essential information, it is impossible to properly prepare a defense or to give comprehensive instructions to a lawyer in cases where the accused person is legally represented. CCHR's Trial Monitors collect data regarding the information conveyed to the accused person at the commencement of the trial. Although this information should have already been given to the accused person during the pre-trial/investigation procedures, it is nevertheless important for judges to remind the accused person of this information before the trial commences. This is particularly the case as sometimes charges may have been changed or amended between the initial arrest/charge and the trial.

FIGURE 7: THE RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Did the judge state the charge?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	181	99	133	94	30	100
No	2	1	8	6	0	0
Did the judge state the relevant law?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	105	57	87	62	30	100
No	78	43	54	38	0	0
Did the judge state the date of the alleged crime?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	148	81	104	74	30	100
No	35	19	37	26	0	0
Did the judge state the location of the alleged crime?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	141	77	98	70	30	100
No	42	33	43	30	0	0

Did the judge state the parties involved?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	161	88	131	94	30	100
No	22	12	10	6	0	0
If required, was an interpreter provided?						
Data	Phnom Penh Court (interpreter required in nine cases)		Banteay Meanchey Court (interpreter required in one case)		Ratanakiri Court (interpreter required in one case)	
	Nº	%	Nº	%	Nº	%
Yes	9	100	1	100	1	100
No	0	0	0	0	0	0
If required, were provisions made for disabilities?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	0	0	0	0
No	0	0	0	0	0	0
N/A	183	100	141	100	30	100

The criminal charge was stated by the judge in almost all cases monitored during the Sixth Reporting Period. CCHR hopes to see further improvements so that a 100% rate can be achieved in all courts. Judges at Phnom Penh and Banteay Meanchey Courts failed to announce the charge in only a small number of cases (only two and eight cases, respectively). There were a significant number of cases in Phnom Penh and Banteay Meanchey Courts where the judges failed to announce either the relevant law, the date of the offense, or the location of the offense. This information is essential if the accused is to be in a position to properly answer the charges against him. More success was seen in Phnom Penh and Banteay Meanchey Courts with regard to stating the relevant parties involved in the case. Ratanakiri Court again boasted a 100% rate of procedural compliance. While Ratanakiri Court achieved a 100% success rate in terms of providing information relating to the charge, it is important to remember that there were far fewer cases monitored at Ratanakiri Court; therefore, a direct comparison with the performance of the other two Courts would be unfair.

There were 12 cases monitored during the Sixth Reporting Period in which an interpreter was required and on each occasion Court staff ensured that this was facilitated. There were no cases during the Sixth Reporting Period that required provisions to be made for individuals with disabilities.

FIGURE 8: OVERALL TRENDS IN THE RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

Did the judge state the charge?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Yes	198	99	503	95	545	93	385	97	420	95	344	97
No	1	1	29	5	40	7	13	3	23	5	10	3
Did the judge state the relevant law?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Yes	169	85	313	59	299	51	277	70	290	63	222	63
No	30	15	219	41	286	49	121	30	173	37	132	37
Did the judge state the date of the alleged crime?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Yes	Data not collected during 1 st and 2 nd reporting periods				417	71	325	82	349	75	282	80
No					168	29	73	18	114	25	72	20
Did the judge state the location of the alleged crime?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Yes	Data not collected during 1 st and 2 nd reporting periods				394	67	315	79	336	73	269	76
No					191	33	83	21	127	27	85	24
Did the judge state the parties involved?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
Yes	196	98	443	83	512	88	360	90	418	90	322	91
No	3	2	89	17	73	12	38	10	45	10	32	9

If required, was an interpreter provided?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	No cases requiring interpreters		18	95	23	96	10	100	10	100	11	100
No			1	5	1	4	0	0	0	0	0	0
If required, were provisions made for disabilities?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	0	0	2	100	1	100	0	0	0	N/A
No	1	100	3	100	0	0	0	0	1	100	0	N/A

The overall trends seen in all Courts monitored since the commencement of the Project are encouraging and show that the Courts are gradually edging towards CCHR's target of 100% compliance. Regarding the judges stating the relevant charge, there has been an improvement from the lowest figure of 93% in the Third Reporting Period to 97% during the Sixth Reporting Period. There has been no change since the Fifth Reporting Period in stating the relevant law; there is, therefore, still room for improvement in this area. There has been an improvement in stating the date of the offense from 75% in the Fifth Reporting Period to 80% in the Sixth Reporting Period. Similarly, in stating the location of the offense, there has been an improvement from 73% to 76% over the same time period. These are incremental improvements, but steps in the right direction nevertheless. There has been a similar gradual improvement in the number of cases in which the judge stated the relevant parties, while the Courts have ensured that interpreters are obtained when required without exception since the Fourth Reporting Period.

EXPLANATION OF RIGHTS

Sources in Cambodian and International law:

- **Article 14(3)(a)** of the **ICCPR**: The accused is entitled *“to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”*
- **Article 325** of the **CCPC**: *“The presiding Judge shall inform the accused of the charges he is accused of.”*

An individual can only exercise his legal rights if he is fully informed of them. CCHR monitors not only whether judges inform the accused person of his or her entitlement to the individual rights set out in the table below, but also whether full explanations of these rights are given by judges. CCHR is also in the process of liaising with Court Presidents with the aim of distributing a poster to be displayed in all courts setting out the basic legal rights to which an individual accused of a criminal offense is entitled.

FIGURE 9: EXPLANATION OF RIGHTS

Did the judge inform (I) and explain (E) to the accused his/her right to legal representation?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
I only	111	61	86	61	9	30
I & E	0	0	12	8	16	53
Neither	68	37	22	16	1	4
N/A	4	2	21	15	4	13
Did the judge inform (I) and explain (E) to the accused his/ her right to remain silent?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
I	37	20	0	0	1	3
I & E	0	0	0	0	0	0
Neither	142	78	120	85	25	83
N/A	4	2	21	15	4	14

It is of some concern that the data collected during the Sixth Reporting Period still show that judges are giving full explanations of rights in only a small number of cases. With regard to the right to be legally represented, not a single judge at the Phnom Penh Court gave an explanation to the accused during any of the trials monitored by CCHR. Similarly, regarding the right to remain silent, not a single judge in any of the trials monitored at any Court gave an explanation to the accused. These statistics are very alarming. If an accused person is not given sufficient information regarding the rights to which he or she is legally entitled, it will be more difficult to properly exercise those rights and easier for those rights to be undermined or violated.

Phnom Penh Court's representatives claimed in a meeting with CCHR in September 2013, that the CCPC does not require penal judges to inform or explain his/her rights to the accused at the hearing. They assert that under Article 143 of the CCPC it is up to the investigating judge to inform the accused of his/her right to legal representation and to remain silent.²⁰ Nonetheless, Article 318 of CCPC states that the presiding judge has to guarantee the free exercise of the right to defense.

²⁰ CCHR dialogue with two vice presidents, Eung Seang and Kor Vandy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

Furthermore, one has to know his rights to be able to exercise them. For instance, CCHR noticed that in a significant number of misdemeanor cases the accused is not represented by a lawyer, proving that it is still necessary for the judges to remind the accused of his/her rights to be legally represented to ensure equality of arms and a fair hearing.

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

Sources in Cambodian and International law:

- **Article 14(3)(b)** of the ICCPR: *“In the determination of any criminal charge against him, everyone shall be entitled to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”*
- **Article 98** of the CCPC: *“After a period of twenty-four hours, from the beginning of police custody has expired, the detainee may request to speak to a lawyer [...]”*
- **Article 319** of the CCPC: *“Before the hearing, the lawyers can examine the case file in the court clerk’s office under the supervision of the court clerk. The lawyer or the secretary of the lawyer may be authorized by the court president to copy documents in the case file at their own cost, under the supervision of the court clerk.”*

Any individual facing criminal charges should be provided with adequate time and facilities to prepare a defense to those charges. The length of time that is “adequate” will depend on the nature and complexity of the charges, the number of charges, and the nature of the evidence, amongst other factors. The necessary facilities to prepare a defense will include access to case documents and evidence, so that the accused is fully aware of the charges against him/her and so that he/she is able to provide full instructions to his/her lawyer.

FIGURE 10: RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

Was there anything to suggest that the lawyer was assigned on the day of trial?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	1	0.3	4	1	0	0
No	340	99.7	327	99	47	100
Was the issue of adequate time and facilities raised by the defense?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	5	1.5	1	0.3	0	0
No	336	98.5	330	99.7	47	100

It is encouraging to note that, in the overwhelming majority of cases, a lack of time and/or facilities to prepare a defense is not an issue. This right forms a fundamental part of a fair trial and it is imperative that those accused of a criminal offense, and their lawyers in cases where the accused person is legally represented, are afforded adequate time and means to properly prepare the case for trial. During the Fifth Reporting Period, all monitored Courts with the exception of Banteay Meanchey Court – where there were four suggestions that the lawyer had been assigned on the day of trial – boasted 100% compliance with these fair trial standards. The data in the Sixth Reporting Period shows that there has been a minimal decline in adherence in the Sixth Reporting Period. Only a very small number of cases raised concerns; as such, CCHR is confident that 100% adherence is achievable again in the future.

In August 2013, representatives of Banteay Meanchey Court explained that the Court itself faces difficulties in seeking lawyers from the Bar Association (long delays to get an answer). In consideration of the accused right to be judged without undue delay, and after already adjourning the hearings a few times, often judges decide to urgently assign lawyers on the day of the hearings.²¹

RIGHT TO LEGAL REPRESENTATION AND TO BE PRESENT AT TRIAL

Sources in Cambodian and International law

- **Article 38 of the Constitution:** *“Every citizen shall enjoy the right to defense through judicial recourse.”*
- **Article 14(3)(d) of the ICCPR:** *“In the determination of any charge against him, everyone shall be entitled: to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”*
- **Article 300 of the CCPC:** *“The accused shall appear in person during the hearings at the court. The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar.”*
- **Article 301 of the CCPC:** *“The assistance of a lawyer is compulsory if (1) The case involves a felony; or (2) The accused is a minor.”*

Being charged with an offense can be a daunting experience; legal procedures can be complex and confusing and it is therefore vital that individuals have the opportunity to retain legal representation. The right to be represented by a lawyer ensures that the accused has an opportunity to obtain expert professional advice from an advocate who has the ability to explain the charges against him/her, explain his/her rights, guide him/her through the trial process and represent his/her interests in court. It is compulsory for a person to be legally represented if he or she is

²¹ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

accused of a felony offense or if he or she is a juvenile. While it is not mandatory to be legally represented if accused of a misdemeanor offense (unless a juvenile), individuals still have the option, if they so wish to retain a lawyer (although in such cases the burden to retain a lawyer does not rest with the court).

FIGURE 11: RIGHT TO LEGAL REPRESENTATION

Was the accused represented by a lawyer? (Both felony and misdemeanor trials)						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	214	63	135	41	32	68
No	127	37	196	59	15	32
Was the accused represented by a lawyer (felony trials)?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	150	100	85	96	9	100
No	0	0	4	4	0	0
Was the accused represented by a lawyer (misdemeanor trials)?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	65	33.5	50	21	23	61
No	127	66.5	192	79	15	39

Given that legal representation in felony trials is mandatory, while the data indicates very high levels of representation, CCHR maintains that this figure should be 100% in all courts. Any felony trial that takes place in the absence of legal representation is being conducted in breach of the CCPC. Ratanakiri Court is setting a positive example by ensuring that the law is adhered to in this regard in every case that CCHR monitored – a continuation of its 100% adherence rate during the Fifth Reporting Period. While this figure is of course encouraging, it should be noted that only nine felony trials were monitored at Ratanakiri Court. Thus, a direct comparison with the other monitored Courts, which have a higher volume of cases, is unfair.

It is disappointing to see that levels of legal representation remain low in misdemeanor cases. There has been a slight increase in the level of representation for misdemeanor cases at Phnom Penh Court, from 33% in the Fifth Reporting Period to 34% in the Sixth Reporting Period. However, both Banteay Meanchey and Ratanakiri Courts have seen a decline in representation rates for misdemeanor offenses from 27% and 77% respectively in the Fifth Reporting Period to 21% to 61% in the Sixth Reporting Period – a particularly sharp drop in rates at Ratanakiri Court.

During separate meetings with the Ratanakiri Court²² and the Phnom Penh Court²³ both Court's representatives responded similarly that legal representation is not mandatory in misdemeanors cases; but depends upon whether the accused requests to be represented by a lawyer. Representatives of Banteay Meanchey Court genuinely explained that the lack of lawyers in provinces is the main challenge faced by the Court in implementing the rights to legal presentation.²⁴

With regard to the right to be present at trial (not reported during the Fifth Reporting Period), the majority of accused persons were present. Absence may be attributed to a variety of factors, including, absconding or a failure by the prison to transport the accused from the remand center to the Court for trial. According to the Ratanakiri Court's President²⁵ and Banteay Meanchey Court's representatives,²⁶ some accused did not attend the trial hearing because they were released from pre-trial detention. However, CCHR was not in a position to verify this information.

FIGURE 12: RIGHT TO BE PRESENT AT TRIAL

Was the accused present? (All trials)						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	314	92	220	66	39	83
No	27	8	111	34	8	17
Was the accused present (felony trials)?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	147	91	43	48	6	67
No	14	9	46	52	3	33
Was the accused present (misdemeanor trials)?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	167	93	177	73	33	87
No	13	7	65	27	5	13

²² CCHR dialogue with Court President, Sous Lar, and two resident judges, Eak Poliphil and Y Sovann, 27 August 2013.

²³ CCHR dialogue with two vice presidents, Eung Seang and Kor Vanndy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

²⁴ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

²⁵ CCHR dialogue with Court President, Sous Lar, and two resident judges, Eak Poliphil and Y Sovann, 27 August 2013.

²⁶ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

PRESUMPTION OF INNOCENCE

Sources in Cambodian and international law:

- **Article 38 of the Constitution:** *“The accused shall be considered innocent until the court has judged finally on the case.”*
- **Article 14(2) of the ICCPR:** *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”*

The presumption of innocence is a fundamental and universally recognized fair trial right. This presumption reflects the principle that the burden of proof lies with the prosecuting body, not the accused, so that the court must be satisfied that the evidence presented has proved the accused’s guilt beyond a reasonable doubt. It is not up to the accused to present evidence to prove that he is innocent.

FIGURE 13: THE PRESUMPTION OF INNOCENCE

Did the accused appear in prison uniform?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N°.	%	N°.	%	N°.	%
Yes	284	83	0	0	33	70
No	30	9	218	66	6	13
N/A	27	8	113	34	8	17
Was the accused handcuffed throughout the trial?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N°.	%	N°.	%	N°.	%
Yes	0	0	0	0	0	0
No	316	92.5	218	66	39	83
N/A	25	7.5	113	34	8	17
Were statements made by the judge about the guilt of the accused prior to the delivery of the verdict?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N°.	%	N°.	%	N°.	%
Yes	0	0	0	0	0	0
No	341	100	331	100	47	100

In both the Phnom Penh and Ratanakiri Courts, the number of accused persons attending trial in prison uniforms has seen a slight increase compared to the Fifth Reporting Period, during which 75% and 67% respectively of accused individuals attended trial in prison clothing while 83% and 70% did during the Sixth Reporting Period. Judges and staff at the Courts have explained on numerous occasions that this issue is the responsibility of the prison service, rather than the Courts themselves. However, there has been a dramatic improvement at Banteay Meanchey Court where the practice of accused persons appearing before the Court in prison uniform has been partially eradicated (some accused persons still wear half prisoner uniform), compared to 31% of accused persons attending trial in prison clothing during the Fifth Reporting Period.

When accused persons attend trial in prison uniform, the presumption of innocence is undermined, particularly when the uniforms make no distinction between remand prisoners and convicted prisoners. Where remand prisoners attend court in prison uniform, they are presented in the same way as prisoners who may have already been convicted and sentenced in relation to other, unrelated offenses. As no distinction is drawn between the two categories of prisoners, this practice has the potential to create speculation as to whether the individual accused is in fact already a convicted offender. Even when accused persons are serving sentences, the fact that they appear before the Courts in prison uniform is equally prejudicial. Such a practice indirectly introduces evidence of previous conduct and convictions which is not legislated for in any way in the CCPC, and which again undermines the presumption of innocence.

The President of Ratanakiri Court claimed that since he was appointed in late 2012, he instructed court officials that accused should not appear in prison uniform unless they had been convicted by a final judgment for other charges. However, CCHR could not verify this as our monitoring activities ended in June 2012. Representatives of Banteay Meanchey Court recognized that most accused appear in prisoner's pants and civilian shirts, yet they pointed out to the responsibility lies with the prison rather than the court itself. However, they committed to work to properly implement a systematic civilian uniforms for the accused.²⁷

INDEPENDENCE, IMPARTIALITY AND PROFESSIONALISM OF THE JUDGE

Sources in Cambodian and International law:

- **Article 128** of the **Constitution**: *“The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.”*
- **Article 132** of the **Constitution**: *“The King shall be the guarantor of the independence of the judiciary. The Supreme Council of Magistracy shall assist the King in this matter.”*
- **Article 14(1)** of the **ICCPR**: *“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”*

²⁷ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

The right to be tried by an independent and impartial tribunal is a cornerstone of fair trial rights. Individual accused must be tried objectively and the proof of guilt – beyond a reasonable doubt – must be based solely upon admissible evidence presented to the court. This fair trial right has been described by the UN Human Rights Committee as “*an absolute right that may suffer no exception*,”²⁸ indeed, if a tribunal is not independent or impartial, then all other fair trial rights become superfluous. A court that is affected and influenced by outside sources is not capable of discharging its duty to ensure fair trials.

FIGURE 14: INDEPENDENCE AND IMPARTIALITY OF THE JUDGE

Was there anything to suggest that the judge had any interest in the case beyond his usual judicial role?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	0	0	0	0
No	183	100	141	0	30	100
Was there anything to suggest that any party had the opportunity to speak to the judge during deliberation?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	6	3	0	0	0	0
No	26	14	1	0.7	14	47
I/U	151	83	139	98.6	16	53

Although instances where there may have been opportunities for parties to speak to the judge during deliberation are low, it is important that such cases are eradicated completely. While the data that CCHR’s Trial Monitors have collected does not suggest explicitly that there were any cases of interference in any deliberations, judges must ensure that their conduct does not give rise to the perception that this may have occurred.

It is equally important for judges to convey an image of professionalism at all times if the reputation of Cambodia’s courts is to be improved in the eyes of both national and international observers. Unfortunately, the issue of judges answering mobile telephones continues to plague the monitored Courts and does nothing to enhance their image.

²⁸ Human 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 15: JUDGE'S USE OF MOBILE PHONES

Did the judge answer a mobile telephone during the hearing?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	35	19	29	21	5	17
No	148	81	112	79	25	83
If yes, how did the judge respond?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Answered briefly and hung up	9	26	13	46	5	100
Conducted a conversation	26	74	16	54	0	0

As the data shows, the use of mobile telephones by judges has continued into the Sixth reporting Period. While there has been a decline in this practice at Phnom Penh Court (from 32% in the Fifth Reporting Period to 19%), there has been an increase in the percentage of cases in which the judge has answered a telephone during a trial at both Banteay Meanchey and Ratanakiri Courts (from 18% and 9% respectively in the Fifth Reporting Period to 21% and 17%).

The President of Ratanakiri Court admitted that some judges answer phone calls during trial hearings and that although there is no legal bidding instrument prohibiting judges and prosecutors from answering their phones it is not in line with the code of conduct and high level of professionalism. The Court's President also committed to issue an internal circular calling for judges to not answer their phones, at the exception of prosecutors who require being able to answer emergency request from the judicial police within their competency at any time.²⁹ On the contrary, representatives of Banteay Meanchey Court³⁰ and Phnom Penh Court³¹ answered that judges only answer phone calls as a matter of emergency such as request from the judicial police or for cases under investigation.

²⁹ CCHR dialogue with Court President, Sous Lar, and two resident judges, Eak Poliphil and Y Sovann, 27 August 2013.

³⁰ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

³¹ CCHR dialogue with two vice presidents, Eung Seang and Kor Vandy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

FIGURE 16: OVERVIEW OF TRENDS IN THE USE OF MOBILE PHONES BY JUDGES

Did the judge answer a mobile telephone during the hearing?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	17	28	151	28	126	22	73	18	128	27	69	19
No	43	72	381	72	459	78	325	82	345	73	285	81
If yes, how did the judge respond?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Answered briefly and hung up	11	65	82	54	82	65	44	60	52	44	27	40
Conducted a conversation	6	35	69	46	44	34	29	40	66	56	42	60

Although levels of mobile telephone use have remained broadly unchanged over the course of the implementation of the Project, there has in fact been an increase in the percentage of cases where the judge actually conducts a conversation on the telephone during a trial, as opposed to answering briefly and hanging up. The practice of speaking on the telephone during a trial is unacceptable. Judges must either use their telephones when the court is in recess or, if it is official Court business, other members of Court staff should take messages. During a trial, the judge must be completely focused on the evidence being presented and cannot be interrupted by any other matters while the Court is sitting.

EVIDENTIARY RIGHTS

Sources in Cambodian and International law:

- **Article 14(3)(e)** of the ICCPR: *“Everyone shall be entitled [...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”*
- **Article 153** of the CCPC: *“The investigating judge may question any person whose response is deemed useful to the revelation of the truth [...] The investigating judge may also arrange a confrontation between the charged person [...] and witnesses.”*
- **Article 298** of the CCPC: *“At their expenses, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”*

- **Article 324** of the **CCPC**: “At the commencement of the trial hearing, each party may request the court to hear witnesses who are present in the court room but who were not properly summonsed to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses and instruct them to retreat to the waiting room.”
- **Article 326** of the **CCPC**: “[t]he presiding judge shall listen to the statements of civil parties, civil defendants, victims, witnesses and experts in the order which he deems useful [...] The Royal Prosecutor, the lawyers and all the parties may be authorized to ask questions. All questions shall be asked with the authorization of the presiding judge. Except for questions asked by the Royal Prosecutor and the lawyers, all questions shall be asked through the presiding judge. In case of objection to a question, the presiding judge decides whether the question should be asked.”

All decisions of the court must be based exclusively upon the evidence presented during the course of the trial. It is therefore essential that each party has the opportunity to present evidence and call witnesses in support of their case.³² It is equally important that each party is given the opportunity to cross-examine witnesses and challenge evidence that he or she does not accept.

It is therefore encouraging to see, as the data below indicates, that there were very few cases in which evidence was not presented or where there was a suggestion that a party was prohibited from presenting evidence.

FIGURE 17: EVIDENTIARY RIGHTS

Was evidence presented?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	183	100	135	96	30	100
No	0	0	6	4	0	0
Was there anything to suggest that any party was not given the opportunity to present evidence?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	0	0	0	0
No	183	100	141	100	30	100

Evidence was presented in all but six cases (all at Banteay Meanchey Court). The data collected in the Sixth Reporting Period, when compared with previous reporting periods below, indicates a continuation of high levels of adherence to the right to present evidence.

³² Article 334 of the CCPC.

The vast majority of the evidence presented in the trials monitored was documentary evidence. While it is encouraging to see that Courts continue to seek evidence during the course of trials, Courts must also ensure that the evidence that is relied upon is of sufficient quality and that all parties have the opportunity to challenge the evidence. In addition to documentary evidence, judges and prosecutors should be actively seeking and examining other types of evidence where relevant, such as medical evidence and forensic evidence.

During a meeting with Banteay Meanchey Court in August 2013, the Court’s representatives claimed that in principle evidence can be freely submitted to the court, except in cases where evidence have already been considered by penal judges and/or the evidence is not relevant and could cause a delay in the proceeding.³³

FIGURE 18: OVERVIEW OF TRENDS IN EVIDENTIARY RIGHTS

Was evidence presented?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	153	77	512	96	569	97	394	99	457	99	348	98
No	46	13	20	4	16	3	4	1	6	1	6	2
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		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	3	2	3	1	0	0	0	0	0	0	0	0
No	196	98	529	99	585	100	398	100	463	100	354	100

There was only one case in which a party was denied the right to call witnesses. This case was at the Phnom Penh Court and was the trial of the Boeng Kak Lake protesters (see case study below).

³³ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

FIGURE 19: THE RIGHT TO CALL AND EXAMINE WITNESSES

Was there anything to suggest that any party was not given the opportunity to call witnesses?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	1	0.5	0	0	0	0
No	182	99.5	141	100	30	100
N/A	0	0	0	0	0	0

In cases where witnesses were called, were the witnesses present in the courtroom before they were questioned?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	5	18	3	14	0	0
No	23	82	18	86	17	100

Banteay Meanchey Court's representatives explained that the presence of witnesses in the courtroom before their questioning was due to a lack of technical capacity of individual judge in leading a hearing. As a result, the Court's representatives recommended to further strengthen judges' capacity.³⁴

Case Study: Trial of the Boeng Kak Lake Protesters

Date: 24 May 2012

Court: Phnom Penh Court of First Instance

Judge: Pou Pau Sun

The charges:

Article 503 Criminal Code: Obstruction of a Public Official:

"Obstruction consists of violent resistance against a public official acting in the discharge of his or her office for the enforcement of laws, orders from a public authority or judicial decisions. Obstruction of public officials shall be punishable by imprisonment from one month to three months and a fine from one hundred thousand to five hundred thousand Riels."

Article 504 Criminal Code: Aggravating Circumstances (Obstruction of Public Official):

*"Obstruction of public officials shall be punishable by imprisonment from six months to one year and a fine from one million to two million Riels where it was committed:
(1) by several perpetrators, co-perpetrators, instigators or accomplices
(2) by armed perpetrator."*

³⁴ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

Article 259 Land Law 2001: Being an Illegal Occupant:

“An infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or imprisoned from one to five years.

The perpetrator must vacate the public property immediately. He has no entitlement to any indemnity for works or improvements that he made on the property.

In the case of a person who was in possession of State public property before this law comes into force and has documents proving and attesting clearly that he bought the property from another person, he can request the competent authority to implement the legal rules against the person who illegally sold public property of the State and in order to recover his damages caused by such act. Regardless of the circumstances, the aggrieved party has no right to continue his possession of the State public property.”

Article 34 Land Law 2001: Definition of Illegal Occupant:

“After this law comes into force, any new occupant without title to an immovable property belonging to public bodies or private persons shall be considered as an illegal occupant and shall be subject to the penalties provided in Article 259 of this law.”

Elements of the offenses that must be proven to secure a conviction:

1. That public officials were obstructed.
2. That the public officials were acting in the discharge of their office for the enforcement of laws/orders from a public authority or judicial decisions.
3. That there were several perpetrators and the perpetrators were armed.
4. That the perpetrators were “occupants” of the land and not simply temporarily present for the purposes of holding a demonstration.
5. That the occupied land was “state public property”, or belonged to a public body or private person.

Background:

On the morning of 22 May 2012, a group of 13 women were arrested and detained for their involvement in a demonstration that took place at Boeng Kak Lake. The women, the oldest of whom was 72 years old, were protesting in support of a family who were attempting to rebuild their home which had been destroyed by *Shukaku Inc.*, the company that owned the land in question (owned by Senator Lao Meng Khin of the ruling Cambodian People’s Party). Video footage of the police breaking up the demonstration and arresting the 13 women is available at: <http://bit.ly/1a6wJFy>

Mode of proceedings:

The proceedings in this case were conducted as a “*case of immediate appearance.*” According to Article 47 CCPC, prosecutors may only order the accused to appear before the Court of First Instance immediately if the offense carries a sentence of imprisonment of “*not less than one year*” and “*not greater than five years.*” While this criteria was met in terms of the offense under Article 259 of the Land Law, which carries a sentence of between one and five years, the same cannot be said for the offense under Article 504 of the Criminal Code. The aggravated offense of obstructing a public official carries a minimum sentence of six months and a maximum sentence of one year. Since the

offense, therefore, carries a sentence of less than one year, it can be argued that it was unlawful for the case to have been conducted by way of immediate appearance. A proper judicial inquiry should have been conducted, giving the women the opportunity to be legally represented and to examine and challenge the evidence against them.

Conduct of the trial:

After being held in police detention since their arrest on 22 May 2012, the women were presented in court on 24 May 2012 and their trial commenced at 13:30. While the judge informed them of their rights to be represented and to remain silent, he failed to give any explanation of those rights. The 13 women were initially represented by two lawyers. At the beginning of the trial, the defense lawyers made submissions to the judge, asking for the case to be adjourned so that they would have time to prepare for their clients' defense. The judge refused this request, failing to give any detailed reasons justifying his refusal. The lawyers went on to request permission to call four defense witnesses, explaining that the witnesses were outside the Court and the police were refusing to allow them entry to the building. Again, the judge refused the request, stating that the witnesses should have been present in Court. At this point, the defense lawyers felt unable to properly represent their clients and withdrew from the case. The judge proceeded to hear the case in the absence of legal representation for all of the 13 defendants. The trial lasted for approximately three hours, during which time the Court heard evidence from three prosecution witnesses and watched video footage of the incident. It took the judge 25 minutes of deliberation to convict each of the 13 defendants before going on to impose sentences ranging from one year to two and a half years.

The means by which the women's trial was conducted – immediate appearance – was arguably unlawful in the circumstances and severely compromised their fair trial rights. It is clear that the women – whose sentences were subsequently reduced on appeal and who were released from prison, although their convictions still stand – were denied some of the most fundamental fair trial rights, namely, the right to adequate time and facilities to prepare a defense, the right to representation, and the right to call witnesses. Furthermore, it would seem impossible for the judge to examine each legal point and each element of the charges in sufficient detail in only three hours.

During the course of the trial no thorough legal argument took place (the women were unrepresented) in respect of the essential elements of the offense. For example, while there were clearly a number of demonstrators present at the demonstration, they do not appear to be armed on the YouTube footage and no weapons were recovered.

The right to full disclosure refers to the defense's right to have access to all documentation and to be made aware of all evidence relevant to the trial. This must include the case file prepared by the investigating judge containing the indictment, all of the evidence gathered, and the conclusions made by the investigating judge. The defense should receive disclosure of all other evidence relevant to the case that may either assist the defense or undermine the prosecution.

FIGURE 20: THE RIGHT TO FULL DISCLOSURE

Was there anything to suggest that any party was not given an opportunity to view the case file?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	0	0	0	0
No	183	100	132	94	30	100
N/A	0	0	9	6	0	0

While it is extremely positive that the Trial Monitors did not observe any cases where a party was prevented from having access to the case file, it should be noted that only legal representatives and not the defendants themselves are entitled to access the case file. Therefore, there *may* have been instances where unrepresented defendants did not receive full disclosure. This aspect of fair trial rights, however, is not easily monitored due to its nature. Similarly, it would be impossible to monitor cases in which representatives and/or defendants have not received full disclosure, since any withheld information would remain unknown.

THE RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

Sources in Cambodian and International law:

- **Article 38** of the **Constitution**: *“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 [...] Confession obtained by physical (or) mental force shall not be admissible as evidence of guilt [...] 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. Every citizen shall enjoy the right to defense through judicial recourse.”*
- **Article 14(3)(g)** of the **ICCPR**: *“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality[...]Not be compelled to testify against himself or to confess guilt.”*

The right not to be compelled to confess guilt encompasses the absolute prohibition against 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 21: THE RIGHT NOT TO BE COMPELLED TO CONFESS GUILT

Of the accused that had confessed guilt prior to the trial hearing, was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	3	0.9	0	0
No	341	100	328	99.1	47	100

Of the accused that had confessed guilt prior to the trial hearing, was there anything to suggest that physical violence or torture had been used to coerce the accused into confessing to the alleged crime?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	13	4	11	3	0	0
No	328	96	320	97	47	100

While there are only a relatively small number of cases in which there were indications of coercion, either psychological or physical, it is nevertheless a matter of serious concern that courts must investigate thoroughly. If any claim of any type of coercion is substantiated after an investigation, then judges are under a legal obligation to rule the subsequent confessional evidence inadmissible. While this is an issue that should be dealt with during the investigation stage of proceedings, trial judges must also remain vigilant and ensure that any claims of coercion that have not been dealt with during the pre-trial stages of the case are thoroughly investigated before the trial is allowed to proceed any further.

Representatives of Banteay Meanchey Court explained that 80% of the accused change their statement at the trial hearing claiming that police obtained their confessions under torture, but fail to present any concrete evidence. They explained that yet, judges impose lighter sentence if the accused confess.³⁵ Phnom Penh Court's representatives similarly raised the fact that accused fail to present evidence of torture or threat, that confessions can be accepted as evidence and that when an accused claims that he was tortured judges always cross-examine the relevant members of the judicial police.³⁶

³⁵ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

³⁶ CCHR dialogue with two vice presidents, Eung Seang and Kor Vanndy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

PROHIBITION AGAINST DOUBLE JEOPARDY

Sources in Cambodian and International law:

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

Double jeopardy – or the principle of *res judicata* (literally translated as “already judged”) – refers to the right of a person to be protected from being tried for the same crime or action more than once. It provides that the final judgment of a court, be it acquittal or conviction of the accused, shall act as a bar to any further prosecution for the act. There are a number of benefits of having this finality, both to the individual accused and the society as a whole, including the prevention of wasting legal resources where decisions have been made.

FIGURE 22: THE PROHIBITION AGAINST DOUBLE JEOPARDY

Was there anything to suggest that the accused had been tried for the same crime previously?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri court	
	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	1	0.3	0	0
No	341	100	330	99.7	47	100

There was only one case in Banteay Meanchey Court where there was a suggestion that the accused may have been tried previously for the same offense. This suggests that no serious problems are apparent with regard to the issue of double jeopardy. It is important to note that the fact that a suggestion has been raised by a party that the accused has been previously tried for the offense does not constitute proof that this was in fact the case. It is important, however, for the Courts to fully investigate any such suggestions in order to ensure that the right against double jeopardy is not being encroached upon in any way.

FIGURE 23: OVERVIEW OF TRENDS IN THE PROHIBITION AGAINST DOUBLE JEOPARDY

Was there anything to suggest that the accused had been tried for the same crime previously?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	Data not collected during 1 st and 2 nd reporting periods			1	0.1	1	0.2	1	0.1	1	0.1	
No				1028	99.9	687	99.8	914	99.9	716	99.6	

While the overall trends show a constant number of suggestions that the accused may have been tried for the same crime more than once, the overall data shows no significant problem in this area.

PROHIBITION AGAINST RETROACTIVE APPLICATION OF CRIMINAL LAW

Sources in Cambodian and International law:

- **Article 15** of the **ICCPR**: *“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”*
- **Article 3** of the **Criminal Code**: *“Only the act constituting an offence that is provided in the criminal provisions in force gives rise to criminal punishment. Only the penalty that is provided in the criminal provisions in force when an offence is committed may be imposed.”*
- **Article 10** of the **Criminal Code**: *“The new provisions which provide for less severe sentences are immediately applicable. However, the final sentences are carried out regardless of the severity of the imposed sentences. The new provisions which provide for more severe sentences can be applicable only to the acts committed after the effective date of these provisions.”*

A fundamental principle of criminal law is that no one can be found guilty of a criminal offense for an act or omission that did not constitute a criminal offense at the time the 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 offense was committed.

FIGURE 24: THE PROHIBITION AGAINST RETROACTIVE LEGISLATION OF CRIMINAL LAW

Was the sentence within the range of penalties applicable at the time that the offense was committed?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	342	99.7	330	99.7	47	100
No	1	0.3	1	0.3	0	0

There was only one case during the Sixth Reporting Period at Banteay Meanchey Court and Phnom Penh Court where it was suggested that the Court imposed a sentence that was outside the range of available penalties at the time of the commission of the offense. In the case at Banteay Meanchey Court, the date of the alleged offense was 19 December 2009, but the accused was charged with “breach of trust” under Article 392 of the Criminal Code, which did not come into effect until December 2010. The UNTAC Penal Code, which was in effect prior to the Criminal Code, does not contain an offense similar to “breach of trust.” The Court imposed a lighter sentence. In the case at the Phnom Penh Court, the alleged offenses were committed in 2009 and 2010, but the accused was charged with “fraud” under Articles 377 and 378 of the Criminal Code and “breach of special trust by administrators or other persons” under Article 393 of the Criminal Code. The Court imposed a heavier sentence under the Criminal Code.

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. The ICCPR and the 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. 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.

FIGURE 25: TRIALS INVOLVING JUVENILES

Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
Number of Trials	28		14		0	
	Nº	%	Nº	%	Nº	%
Felony	10	36	3	21	-	-
Misdemeanor	18	64	11	79	-	-

JUVENILES – PRIVACY

Sources in Cambodian and International law:

- **Article 14(1)** of the **ICCPR**: “The Press and the public may be excluded from all or part of a trial [...] when the interests of the private lives of the parties so requires [...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”
- **Article 40(2)(b)(vii)** of the **CRC**: “States Parties shall, in particular, ensure that ... [a child has] his or her privacy fully respected at all stages of the proceedings.”

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

FIGURE 26: JUVENILES - PRIVACY

Was a notice of the hearing posted on a public notice board?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	5	18	4	29	-	-
No	23	82	10	71	-	-
Were members of the public denied access to the courtroom or dismissed from the courtroom?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	0	0	-	-
No	28	100	14	100	-	-
Were any measures taken to protect the juvenile’s privacy during the hearing?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	Nº	%	Nº	%	Nº	%
Yes	0	0	0	0	-	-
No	28	100	14	100	-	-

There were no juvenile defendants in any of the trials that were monitored at Ratanakiri Court. While very few notices were posted relating to the hearings – five at Phnom Penh Court and four at Banteay Meanchey Court – both Courts allowed unrestricted access to members of the public in trials involving juvenile defendants. While it is important in adult trials for the public to have access to the courtroom, trials involving juveniles should be handled in a different manner. Public access should be restricted to protect their privacy; for example, by allocating a separate restricted courtroom for juvenile cases. Where it is not possible to do so, members of the public (other than the juvenile’s parents or legal guardian) should not be granted access to hearings. A juvenile defendant’s name or any other identifying details must not be displayed on any public notice board. Juveniles’ privacy may further be protected through the use of tools such as video conferencing systems, which have been installed in some courtrooms. Such practices would be in line with international standards guaranteed by the CRC.³⁷

While representatives of the Banteay Meanchey Court stated that judges decide to protect the privacy of juvenile defendants for specific crimes such as rape,³⁸ representatives of Phnom Penh Court alleged that no specific provision requires the Court to hold in-camera hearing in cases involving juvenile defendants.³⁹

JUVENILES – PRE-TRIAL DETENTION

Sources in Cambodian and international law

- **Article 100** of the **CCPC**: *“When a detained person is a minor, the judicial police officer shall notify by all means the parents, the legal representative or any person who is responsible for that minor.”*
- **Article 212** of the **CCPC**: *“A minor under 14 years old may not be temporarily detained. The investigating judge can decide to send the minor temporarily to his guardians or, if there are no guardians, to a Provisional Education and Care Center until the competent judge has made his decision on this issue.*
- **Article 213** of the **CCPC**: *“For a minor of 14 years to 18 years involved in a felony, provisional detention shall be as follows:*
 1. *provisional detention may not exceed four months if the minor is under 16 years old;*
 2. *provisional detention may not exceed six months if the minor is 16 to 18 years old.”*
- **Article 214** of the **CCPC**: *“For a minor of 14 to 18 years old involved in a misdemeanor, provisional detention shall be as follows:*
 1. *provisional detention may not exceed two months if the minor is under 16 years old;*
 2. *provisional detention may not exceed four months if the minor is from 16 to 18 years old.*

The duration of provisional detention in items 1 and 2 of this Article shall not exceed half of the minimum period of sentence set by law for the minor.”

³⁷ See Article 40(2)(b)(vii) of the Convention on the Rights of the Child (“CRC”).

³⁸ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

³⁹ CCHR dialogue with two vice presidents, Eung Seang and Kor Vanndy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

With regard to pre-trial detention, international standards strongly discourage its use in relation to juveniles, even more so than with cases involving adult accused. In most cases, the best interests of the child are protected by not separating them from their parents.⁴⁰ Detention of children, including after arrest and prior to trial, should be avoided whenever possible and used only as a measure of last resort for the shortest appropriate period.⁴¹ Both Cambodian law and international law specifically provide that, in the exceptional cases in which juveniles are detained in pre-trial detention, they should be separated from adults.⁴²

FIGURE 27: JUVENILE PRE-TRIAL DETENTION

Was there pre-trial detention?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	35	92	19	90	-	-
No	3	8	2	10	-	-
N/A	0	0	0	0	-	-
If held in pre-trial detention, was there anything to suggest that the accused was not separated from adults?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	2	10.5	-	-
No	33	87	17	79	-	-
N/A	5	1	2	10.5	-	-

It is extremely disappointing to see that the prevalence of pre-trial detention remains high. Its continued use in the majority of cases is particularly concerning when it is imposed on juvenile defendants. The imprisonment of juveniles, particularly un-convicted juveniles, must only ever be used as a measure of absolute last resort. The fact that both Phnom Penh and Banteay Meanchey Courts imposed pre-trial detention on the overwhelming majority of juvenile defendants represents a huge blow to the presumption of innocence and right to liberty. The fact that in two cases, both at Banteay Meanchey Court, there were suggestions that the juvenile defendants were not separated from adults is of great concern. Juveniles are particularly vulnerable to negative influences due to their intellectual and emotional immaturity. They must never be incarcerated alongside older, more experienced, and more sophisticated offenders.

⁴⁰ Article 9 of the CRC.

⁴¹ Article 37(b) of the CRC; Articles 96 and 212 of the CCPC. Article 212 of the CCPC prohibits the detention of minors under 14, with Articles 213-214 setting out the maximum provisional detention times applicable for minors between 14 – 18 years of age who have committed a felony or misdemeanor.

⁴² Article 166 of the Criminal 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 Minimum Rules for Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 on November 29, 1985.

JUVENILES – SENTENCING

Sources in Cambodian and international law

- **Article 39 of the Criminal Code:** “Minors who committed offences shall be subject to supervision, education, protection and assistance. However, a court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.”
- **Article 40 of the Criminal Code:** “Supervisory, educational, protective and assistance measures shall include:
 1. Returning the minor to his or her parents, guardian, custodian, or to another person who is trustworthy.
 2. committing the minor to a social service agency which cares for minors;
 3. committing the minor to a private organization that is qualified to receive minors;
 4. committing the minor to a specialized hospital or institution;
 5. placing the minor under judicial protection.

Article 40(4) of the CRC: “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

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.⁴³ Imprisonment of juveniles is to be considered a measure of last resort to be employed only in exceptional cases.⁴⁴

FIGURE 28: JUVENILE - SENTENCING

Was there anything to suggest that the judge considered imposing a non-custodial sentence before passing a custodial sentence?						
Data	Phnom Penh Court		Banteay Meanchey Court		Ratanakiri Court	
	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	1	5	-	-
No	30	100	19	95	-	-

In only one case did the judge give any consideration to imposing a non-custodial sentence to a juvenile defendant. In that case, the juvenile was given a sentence of three years and six months in prison, but the judge imposed a sentence of six months in jail and three years of probation. Ultimately, in every single case monitored during the Sixth Reporting Period where the juvenile defendant was convicted, an immediate custodial sentence was imposed. These figures are of

⁴³ Article 2(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.

⁴⁴ Article 37(b) of the CRC.

serious concern and at great odds with both international and domestic law, which stipulate that custody in the case of juvenile offenders must only ever be used as a last resort. It is worrying that the Courts are not making use of the alternative sentencing options that are available to them.

Representatives of Banteay Meanchey Court explained that the Court is willing to impose non-custodial sentence on juvenile defendants, but that it is very challenging to implement due to the lack of supervision measures.⁴⁵ Phnom Penh Court’s representatives on their side, claimed that judges always consider mitigating circumstances when imposing a sentence to juvenile defendants in compliance with Article 160 of the Criminal Code.⁴⁶

FIGURE 29: OVERVIEW OF TRENDS IN JUVENILE SENTENCING

Out of the juvenile defendants who were convicted after trial, was there anything to suggest that the judge considered imposing a non-custodial sentence before passing a custodial sentence?												
Data	1 st Reporting Period		2 nd Reporting Period		3 rd Reporting Period		4 th Reporting Period		5 th Reporting Period		6 th Reporting Period	
	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%	N ^o	%
Yes	0	0	0	0	0	0	0	0	0	0	1	2
No	20	100	46	100	32	100	15	100	36	100	49	98

The case at Banteay Meanchey Court in the Sixth Reporting Period represents the only juvenile case in all of the trials monitored since the beginning of the First Reporting Period where a judge has considered imposing a non-custodial sentence. In every single case monitored by CCHR, the juvenile defendant who has been convicted of an offense has been sent to prison. These results are astonishing and indicate a clear need for urgent reform in juvenile sentencing practices.

⁴⁵ CCHR dialogue with two resident judges, Em Vannak and Theam Chan Piseth, 29 August 2013.

⁴⁶ CCHR dialogue with two vice presidents, Eung Seang and Kor Vanndy, deputy prosecutor Sok Reoun, and other four resident judges Seng Neang, Y Thavarak, Seam Sakola, and Chang Sinath, 17 September 2013.

4. CONCLUSION AND RECOMMENDATIONS

The data collected during the course of the Sixth Reporting Period highlights the need for reform in a number of areas. While the monitored Courts are generally adhering to the procedures that are meant to ensure fair trial rights, the concerns lie in the more substantive issues. The most important issues to be addressed as a matter of priority include the continued high levels of pre-trial detention, the failure of judges to explain defendants' rights, and the low levels of legal representation. In addition to these areas of concern, the wider issues of juvenile justice and sentencing practices need to be addressed.

In response to the shortcomings that the data collected during the Sixth Reporting Period has highlighted, CCHR's recommendations are set out below.

RECOMMENDATIONS REGARDING THE RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY:

New legislation should be drafted in relation to the use of pre-trial detention, judicial supervision and the defendant's obligation to attend court for trial. This **Law on Bail, Judicial Supervision and Pre-Trial Detention** should:

- Set out detailed criteria for the imposition of judicial supervision and pre-trial detention. Judges should be compelled to give both reasons and grounds for either withholding or restricting a defendant's liberty;
- The date that pre-trial detention commenced and the date that the closing order was issued should be announced in open court at the beginning of each hearing so that any cases of excessive pre-trial detention can be calculated accurately;
- Give the explicit option of granting unconditional bail;
- Create an automatic right to bail/judicial supervision for minor offenses (for example, for offenses that carry a sentence of less than six months' imprisonment), save in exceptional circumstances. 'Exceptional circumstances' should be defined in the legislation and should include, for example, the scenario in which the defendant has repeatedly failed to comply with conditions of judicial supervision; and
- Impose sanctions on defendants who fail to attend for trial, making it a criminal offense to fail to attend court without a reasonable excuse. This offense would both incentivize defendants to attend trial as required and give judges the reassurance that there will be consequences for defendants who fail to obey orders of the court, thereby removing the current practice of blanket imposition of pre-trial detention due to the suspicion that a defendant will fail to attend trial;

To strengthen the proposed legislation, the **MoJ, Ministry of Interior (the "Mol")**, and **Ministry of Social Affairs (the "MoSA")** should ensure that there is a realistic system of support to monitor and enforce judicial supervision requirements. The **RGC** must ensure that sufficient resources are made available to support this scheme, which could initially be piloted in one geographical area.

RECOMMENDATIONS REGARDING THE EXPLANATION OF RIGHTS:

A standard form should be drafted and implemented for use in all courts. The form should be read out by the court clerk and should set out the following information:

- The offense(s) with which the defendant is charged and the relevant law;
- The date, time, location of the alleged offense and relevant parties; and
- The trial rights of the accused, along with a standard and comprehensive explanation of those rights.

Failure to read out the above information at the beginning of a trial should constitute grounds to appeal a conviction.

All courts should display a poster in waiting rooms, clearly displayed to defendants, setting out their trial rights.

RECOMMENDATIONS REGARDING THE RIGHT TO LEGAL REPRESENTATION:

CCHR recognizes the difficulties and financial constraints that impact the provision of legal aid lawyers. To address this difficulty, the **Bar Association of the Kingdom of Cambodia (“the BAKC”)** should implement a scheme whereby junior lawyers are assigned to assist senior lawyers who are representing defendants on a legal aid basis. The scheme could form part of a wider continuing professional development scheme and constitute a part of the formal training of junior lawyers. The junior lawyers would be responsible for research and preparation of cases, taking some of the burden away from the senior lawyers, who would then be in a position to represent a larger number of defendants.

The **RGC** must recognize the provision of legal aid as a priority and allocate funding accordingly.

To increase public awareness of the right to legal representation, **legal aid NGOs** should work with the **RGC** to disseminate information at the commune level.

Defendants should be entitled to speak to a lawyer either in person or on the telephone during police interrogation and should have the right to be represented during questioning. Police should not be permitted to hold suspects incommunicado. These practices should be reflected by making the necessary amendments to the CCPC.

RECOMMENDATIONS REGARDING THE IMPARTIALITY AND PROFESSIONALISM OF JUDGES:

The **MoJ** and the **BAKC** should work together to review the code of conduct for judges and implement any necessary amendments. The amendments should include a complete ban on the use of mobile telephones while the court is sitting and an obligation for judges to conduct all deliberations in isolation.

RECOMMENDATIONS REGARDING TRIALS INVOLVING JUVENILES:

The **RGC** must ensure that the draft Juvenile Justice Law is enacted as a matter of priority. The law must include appropriate guidance on the use of pre-trial detention and should advocate for the implementation of alternatives to custodial sentences that focus on education, integration and rehabilitation.

Before presiding over/prosecute cases involving juvenile defendants, judges and prosecutors should undergo specific training regarding issues relating to juvenile justice; this training should be implemented jointly by the **MoJ** and the **BAKC**.

Wherever possible, for example, in courts that have multiple courtrooms sitting at any one time, a separate courtroom should be allocated to deal exclusively with cases involving juveniles. No public access (save for access for the parent/guardian of the juvenile defendant) should be permitted and reporting restrictions should be imposed. Where it is not possible to allocate a separate courtroom, members of the public should not be granted access to the hearing and the child's name or any other identifying details must not be displayed on any public notice board.

The Juvenile Justice Law should include separate provisions relating to bail, judicial supervision and pre-trial detention of juveniles. The **MoJ**, **Mol**, and **MoSA** should implement a separate support package catering specifically to the needs of juvenile defendants.

All juveniles shall be entitled to have an appropriate adult (parent, guardian or other suitable person over the age of 18) present during police questioning and at every court hearing.

Sentencing options for juveniles must be widened. The **MoJ**, supported by the **MoSA**, should implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone. The incarceration of children must be avoided at all costs and should be implemented in only the most serious cases, where other forms of sentencing have been exhausted or where imprisonment is required for reasons of public protection.

The **MoJ** and the **MoSA** should implement diversion schemes, in which a juvenile offender is supported and rehabilitated within the community as an alternative to formal prosecution. This scheme must be implemented for all first time offenders with the exception of the most serious felony offenses.

The Cambodian Center for Human Rights

December 2013
Phnom Penh, Cambodia

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DATABASE

CCHR Trial Monitoring Database, available at tmp.sithi.org.

6. APPENDICES

APPENDIX I: TRIAL MONITORING CHECKLIST

General Trial Information

1. OVERVIEW				
1(a) Date of Trial:	Start Time:			
1(b) Monitors:				
1(c) Court:	<input type="checkbox"/> PPC	<input type="checkbox"/> KPC	<input type="checkbox"/> SRC	<input type="checkbox"/> BBC
	<input type="checkbox"/> Other Please specify: _____			
1(d) Judge:	1 st 2 nd 3 rd	<input type="checkbox"/> Other Please specify: _____		
1(e) Clerk:				
1(f) Number of Accused ⁴⁷	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	1(g) Number of Victims	Total:		
Adult:		Male:	Present:	Absent:
		Female:	Present:	Absent:
Juvenile:		Male:	Present:	Absent:
		Female:	Present:	Absent:
Legal Person Representative:		Male:	Present:	Absent:
		Female:	Present:	Absent:

⁴⁷If more than one accused, please see Annex I

TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING

2(a) Was notice of the hearing posted on a public board outside the courtroom?	<input type="checkbox"/> Yes <input style="margin-left: 150px;" type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <input style="margin-left: 150px;" type="checkbox"/> No Details:

3. RIGHT TO UNDERSTAND THE NATURE OF THE CHARGE

3(a) Did the Judge announce the case to be heard?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3(b) Did the Judge state the charge?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3(c) Did the Judge state the relevant law?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3(d) Did the Judge state the date of the alleged crime?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3 (e) Did the Judge state the place of the alleged crime?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3(f) Did the Judge state the parties involved?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No
3(g) If required, was an interpreter provided?	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No <input style="margin-left: 100px;" type="checkbox"/> N/A
3(h) If required, were provisions made for those with disabilities	<input type="checkbox"/> Yes <input style="margin-left: 50px;" type="checkbox"/> No <input style="margin-left: 100px;" type="checkbox"/> N/A
If yes, what disability was provided for?	<input type="checkbox"/> Hearing <input style="margin-left: 100px;" type="checkbox"/> Sight <input style="margin-left: 100px;" type="checkbox"/> Other Comment:

4. EXPLANATION OF RIGHTS N/A

4(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"/>
4(b) Did the Judge inform (I) and explain (E) to the accused their right not to answer or answer?	I only <input type="checkbox"/> I and E <input type="checkbox"/> Neither I nor E <input type="checkbox"/>
4(c) 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"/>

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

I only I and E Neither I nor E

5. RIGHT TO CALL AND EXAMINE WITNESSES

5(a) Was there anything to suggest that any party **was not** given the opportunity to call witnesses?

Yes No

If yes, which party?

Prosecutor Defense Civil Party

Comment:

5 (b) Were the witnesses present in the courtroom before they were questioned?

Yes No N/A

PLEASE GIVE A BRIEF EXPLANATION OF THE FACTS OF THE CASE:

6. PRESENTATION OF EVIDENCE:

6(a) Was evidence/witness presented?

Yes No

If yes, by which party and what type of evidence was presented?

Party/ type	P		D		CP	
Witnesses:	P:	A:	P:	A:	P:	A:
Physical Object:						
Documentary:						
Confession:						

Comment:

6(b) Was there anything to suggest that testimony presented by a witness constituted hearsay?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, please explain:
6(c) Did the judge rule that any of the evidence presented was inadmissible?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, please explain:

7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

7(a) Was there anything to suggest that any party was not given the opportunity to present evidence?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party Comment:
7 (b) Was there anything to suggest that any party was not given the opportunity to question witnesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party Comment:
7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If yes, which party did not have the evidence? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant <input type="checkbox"/> Civil Party Comment:
7(d) Was the defense given chance to have the last word?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no, comment:

8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE

8(a) Was there anything to suggest that the Judge had an interest in the case beyond their usual judicial role?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the nature of the perceived interest? <input type="checkbox"/> Family <input type="checkbox"/> Political <input type="checkbox"/> Financial <input type="checkbox"/> Other What suggests that such an interest exists? Please explain:
8(b) Did the Judge behave in an intimidating manner towards a party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:

8(c) Did the Judge used impolite word toward any party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
8(d) Did the judge leave the court room during the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain reason: <input type="checkbox"/> I/U
8 (e) Did the Judge answer a mobile telephone during the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, did they: <input type="checkbox"/> Respond briefly and hang up <input type="checkbox"/> conduct a conversation If yes, was the ring tone: <input type="checkbox"/> On silent <input type="checkbox"/> Audible

9. DELIBERATION

Finish time:

9(a) Was there a deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Next day <input type="checkbox"/> I/U If yes, how long: If no, comment:
9 (b) Was there anything to suggest that any party spoke to the judge during deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U If yes, which party? <input type="checkbox"/> Prosecution <input type="checkbox"/> Defense <input type="checkbox"/> Civil Party <input type="checkbox"/> Court Official

10. VERDICT

10(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, was the date that the verdict would be delivered announced during the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
10(b) Date of verdict:	_____ <input type="checkbox"/> N/A
10(c) How many judge while the verdict was delivered?	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 5 <input type="checkbox"/> 9
10(d) Was the verdict announced in public?	<input type="checkbox"/> Yes <input type="checkbox"/> No If no, please comment:

10(e) Did the judge inform (I) and explain (E) the procedure and terms of opposition motion?	<input type="checkbox"/> Inform	<input type="checkbox"/> Inform and explain	<input type="checkbox"/> Neither informed nor explained	<input type="checkbox"/> N/A
10(f) Did the judge inform (I) and explain (E) the procedure and terms of appeal?	<input type="checkbox"/> Inform	<input type="checkbox"/> Inform and explain	<input type="checkbox"/> Neither informed nor explained	<input type="checkbox"/> N/A

TOTAL TIME OF HEARING:

SPECIAL NOTE:

Individual Accused Information

11. CRIMINAL RESPONSIBILITY

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

12. LEGAL BASIS OF CHARGES

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
12(a) Criminal proceedings were conducted through?	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U	<input type="checkbox"/> Judicial Investigation <input type="checkbox"/> Citation <input type="checkbox"/> Immediate Appearance <input type="checkbox"/> I/U
12(b) Charge against accused	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense
Offense: ⁴⁸ Relevant law: Relevant article of the law:					

⁴⁸ If human trafficking please see Annex II: Human Trafficking Trial

PRE-TRIAL RIGHTS

13. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
13(a) Date of alleged offence:	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
13(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A
13 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
13 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
If Yes, what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
What date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U

14. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
14(a) Was there anything to suggest that the accused confessed to the offence prior to the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

14(b) Was there anything to suggest the accused was interrogated without a lawyer present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

15. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENSE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
15(a) Was there anything to suggest that the lawyer of the accused was assigned on the day of the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:
15(b) Was the issue of adequate time and facilities for preparation raised by the defense?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Notes:	Notes:	Notes:	Notes:	Notes:

TRIAL RIGHTS

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

17. PRESUMPTION OF INNOCENCE					
Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
17(a) Did the accused appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
17(b) Was the accused handcuffed throughout the trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
17(c) Were any statements made by the judge about the guilt of the accused prior to the delivery of the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details:	Details:	Details:	Details:	Details:	Details:

17 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, please explain:	Details:	Details:	Details:	Details:	Details:
17 (e) Did the judge say anything to suggest that s/he was placing the burden of proof on the accused?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please explain:	Details:	Details:	Details:	Details:	Details:

18. PROHIBITION AGAINST DOUBLE JEOPARDY

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

19. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
19(a) Was there anything to suggest that the charged offense was not an offense at the time it was allegedly committed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

If yes, please explain:	Details:	Details:	Details:	Details:	Details:
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20. VERDICT

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
20(a) Was the accused in provisional detention prior to the verdict?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
20(b) Verdict:	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
20(c) Did the judge refer to the article of the law under which the accused had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
20(d) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the accused confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

21. SENTENCE

Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
21(a) Was the accused sentenced to imprisonment?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Length:	Details:	Details:	Details:	Details:	Details:

Prison:	Details:	Details:	Details:	Details:	Details:
Probation:	Details:	Details:	Details:	Details:	Details:
Pre-trial detention taken into account?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U <input type="checkbox"/> N/A
21(b) Was the accused ordered to pay a fine?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:	Details:	Details:	Details:	Details:	Details:
21(c) Was the accused ordered to pay compensation?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Amount:	Details:	Details:	Details:	Details:	Details:
21(d) Was there any other alternative sentence?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Details:	Details:	Details:	Details:	Details:
21(e) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details:	Details:	Details:	Details:	Details:	Details:

21(f) Was the sentence within the range of penalties applicable at the time the offense was committed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, please provide further details:	Details:	Details:	Details:	Details:	Details:

Annex I: JUVENILE ACCUSED

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

23. PRE-TRIAL DETENTION <input type="checkbox"/> N/A			
23(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14	<input type="checkbox"/> 14 – 15	<input type="checkbox"/> 16 – 17
23 (b) Was there anything to suggest that the accused was not separated from adults?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Comment:

24. TRIAL <input type="checkbox"/> N/A	
24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No Details:
24 (b) Did the judge give the accused juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No

25. SENTENCE <input type="checkbox"/> N/A	
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25(a) Did the judge cite Article 38 or 39 of the Penal Code when sentencing the accused?	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither
Was there anything to suggest that the Judge considered imposing a non-prison sentence?	<input type="checkbox"/> Yes <input type="checkbox"/> No Comment:

APPENDIX II: LAW BANK

		Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments	
Right to a public hearing	2(a)	Was notice of the hearing posed on a public board outside the courtroom?	X	X	X	X		X	X	X			Good Practice	Internal Rules of Court - need to check
	2(b)	Were members of the public or media prevented from entering or dismissed from the courtroom?	Art 316	Art 23	Art 129	X	Art 14(1)	X	X	X	X	Art 10	X	Also Criminal Prosecution Code 93 (art 128) and Art 4 draft law on organization and functioning of the court
Right to understand nature of the charge	3(a)	Did the judge announce the case to be heard?	X	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X
	3 (b)	Did the judge state the charge?	Art 325	X	X	X	14(3)(a)	X	X	X	X	X	X	X
	3(c)	Did the judge state the relevant law?	X	X	X	X	X	X	X	X	X	X	Good Practice	X
	3(d)	Did the judge state the date of the alleged crime?	Art 325	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X
	3(e)	Did the judge state the place of the alleged crime?	Art 325	X	X	X	Art 14(3)(a)	X	X	X	X	X	X	X

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments	
	3(f)	Did the judge state the parties involved?	Art 322	X	X	X	X	X	X	X	X	X	X	X	
	3(g)	If required, was an interpreter provided?	Art 330	X	X	X	Art 14(3)(f)	X	X	X	Principle 5	X	X	BUT 330 wording is "may provide" NOT "should provide"	
	3(h)	If required, were provisions made for those with disabilities?	Art 331	X	X	7	X	X	X	X		X	X	X	
Explanation of Rights	4(a)	Did the judge inform (I) and explain (E) to the accused their right to legal representation or to self-defense?	Art 301	Art 1(2) Competent, Art 1(3), Art 24(3) Right not to self-incriminate	Art 128 (states Judge should respect rights), Art 129 competent	Art 128 (Competent)	Art 14(3)(d)	X	Art 1, 5	X	X	X	Good Practice		
	4(b)	Did the Judge inform (I) and explain (E) to the accused their right not to answer or to answer?	Art 321				X	X	X	X	X	X	X	Good Practice	
	4(c)	Did the Judge inform (I) and explain (E) to the accused their right to change the judge.	X				X	X	X	X	X	X	X	Good Practice	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	4(d)	Did the Judge inform (I) and explain (E) to the accused their right to have the last word?	Art 335				X	X	X	X	X	X	Good Practice	
Right to call and examine witnesses	5(a)	Was there anything to suggest that any party <i>was not</i> given the opportunity to call witnesses?	Art 298	Article 24(4), 24(5)	X	X	14(3)(e)	X	X	X	X	X	X	
	5(b)	Were the witnesses present in the courtroom before they were questioned?	Art 324	X	X	X	X	X	X	X	X	X	X	
Presentation of evidence	6(a)	Was evidence/witness presented?	Art 321 and 324	Art 24	X	X	X	X	X	X	X	X	X	
	6(b)	Was there anything to suggest testimony presented by a witness constituted hearsay?	Art 321 and 324	X	X	X	X	X	X	X	X	X	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	6(c)	Did the judge rule that any of the evidence presented was inadmissible?	Art 321	X	Art 38	X	X	X	X	X	X	X	X	
Right to full disclosure/Equality of arms	7(a)	Was there anything to suggest that any party <i>was not</i> given the opportunity to present evidence?	Art 321 and 334	Article 24(4)	X	X	Art 14(3)(e)	X	X	X	X	X	X	
	7(b)	Was there anything to suggest that any part <i>was not</i> given the opportunity question witnesses?	Art 326	Art 24(1)	X	X		X	X	X	X	X	X	
	7(c)	was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?	Art 319	X	X	X		X	X	X	X	X	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
	7(d)	Was the defense given chance to have the last word?	Art 335	Art 1(2) Competent, Art 1(3),	Art 128, Art 129	Art 29 (Competent)	X	X	X	X	X	X	Good Practice	
Independence, Impartiality and Conduct of the Judge	8(a)	Was there anything to suggest that judge had an interest in the case beyond their usual judicial role?	Art 5556 and 557	Art 1	Art 128, Art 129, 132	Art 2,3,8,11, 12, 14, 17, 20	Art 14(1)	Art 1-7	See all	X	Principle 1 & 2.5.3	Art 10	X	Art 3 draft Law on Statute of Judges
	8(b)	Did the judge behave in an intimidating manner towards a party?	X						Art 8	X	X		Principle 3.1 and 5	X
	8(c)	Did the judge use impolite word toward any party?	X	X	X	X	Principles 3 and 5	X		X				
	8(d)	Did the judge leave the courtroom during the trial?	X	X	X	X	Principles 1,2,3, 6.1, 5.2	X	X					
	8(e)	Did the judge answer a mobile telephone during the trial?	X	X	X	X	X	X	X	X	X	X		
Deliberation	9(a)	Was there a deliberation?	Art 337	X	X	X	X	X	X	X	X	X	X	
	9(b)	Was there anything to suggest that any party spoke to the judge during deliberation?	Art 337	Art 1	Art 128, 129, 132	Art 9	Art 14(1)	Art 1-7	X	X	Principle 1 & 2.4	Art 10	X	

		Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments		
Verdict	10(a)	Was a verdict delivered on the day of the hearing?	Art 357, 359, 347	Art 26(2)	X	X	X	X	X	X	X	X	Old law gives 15 day limit between trial and verdict - need article and name of law. Law on Criminal Procedure 1993 Art 128		
	10(b)	Date of verdict?	Art 347	X	X	X	X	X	X	X	X	X			
	10(c)	How many judge while the verdict was delivered?	X	X	X	X	X	X	X	X	X	X			
	10(d)	Was the verdict announced in public?	Art 359	Art 26(2)	X	X	X	X	X	X	X	X			
	10(e)	Did the judge inform (I) and explain (E) the procedure and terms of opposition motion?	Art 375, 376, 382	X	X	X	X	X	X	X	X	X		X	
	10(f)	Did the judge inform (I) and explain (E) the procedure and terms of appeal?		X	X	X	X	X	X	X	X	X		X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Criminal Responsibility	11(a)	Was the accused a juvenile at the time the offense was committed?	Art 38	Art68(2)	X	X	Art 14(4)	X	X	X	X	X	X	See also Article 1 of the United Nations Convention on the Rights of the Child
Legal Basis of Charges	12(a)	Criminal proceedings were conducted through?	Art 43-47; 122; 252	X	X	X	X	X	X	X	X	X	X	
	12(b)	Charge against accused?	Art 46-48	X	X	X	X	X	X	X	X	X	X	
Right to Liberty and to be tried without undue delay	13(a)	Date of alleged offense?	X	X	X	X	X	X	X	X	X	X	X	
	13(b)	Date of arrest?	X	X	X	X	X	X	X	X	X	X	X	
	13(c)	Was there judicial supervision?	Art 220-230	X	X	X	X	X	X	X	X	X	X	
	13(d)	Was there provisional detention?	Art 203-218	Art 14	Art 38	X	Art 9	X	X	X	X	Art 9	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Rights during interrogation	14(a)	Was there anything to suggest that the accused confessed to the offense prior to the hearing?	X	X	X	X	X	X	X	X	X	X	X	
	14(b)	Was there anything to suggest that the accused was interrogated without a lawyer present?	Art 145	X	X	X	X	X	X	X	X	X	X	
	14(c)	Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime?	Art 321	Art 12(1), 24(3)	Art 38	X	Art 14(3)(g)	X	X	3, 15	X	X	X	
	14(d)	Was there anything to suggest that violence or torture were used to coerce the accused into confessing the alleged crime?				X	X	X	X	All	X	Art 5	X	

			Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Right to lawyer and to adequate time and facilities to prepare a defense	15(a)	Was there anything to suggest that the lawyer of the accused was assigned on the day of the trial?	X	X	X	X	Art 14(3)(b)	X	X	X	X	X	X	
	15(b)	Was the issue of adequate time and facilities for preparation raised by the defense?	Art 319, 149	Art 17(2), 21(2)	Art 38	X	Art 14(3)(b)	X	Art 8	X	X	X	X	
Right to be present and to legal representation	16(a)	Was the accused present?	Art 300	X	X	X	14(3)(d)	X	X	X	X	X	X	
	16(b)	Was the accused represented by a lawyer?	Art 300, 301	Art 10	Art 38	X	Art 14(3)(d)	X	Art 1, 5, 7	X	X	X	X	
	16(c)	Did any of the lawyers represent more than one accused?	X	X	X	X	X	X	X	X	X	X	X	
Presumption of innocence	17(a)	Did the accused appear before the court in prison uniform?	X	Art 25	Art 38	X	Art14(2)	X	X	X	X	Art 11(1)	Good Practice	

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Presumption of innocence continued	17(b)	Was the accused handcuffed throughout the trial?	X			X	X	X	X	X				
	17(c)	Were any statements made by the judge about the guilt of the accused prior to the delivery of the verdict?			Art 2,7,8,9							X		
	17(d)	Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused?	Art 321	Art 1	Art 128,129, 132	X	Art 14(1)	Art 1-7	X	X	X	Art 10	X	
	17(e)	Did the judge say anything to suggest that s/he was placing the burden of proof on the accused?	X	X	Art 38	X	Art 14(2)	X	X	X	X	X	X	
Prohibition against double jeopardy	18(a)	Was there anything to suggest that the accused had been tried and sentenced for this offense previously?	Art 12	X	X	X	Art 14(7)	X	X	X	X	X		

		Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments	
Verdict	19(a)	Was there anything to suggest that the charged offense was not an offense at the time it was allegedly committed?	X	X	X	X	Art 15	X	X	X	X	Art 11(2)	X	
	20(a)	Was the accused in provisional detention prior to the verdict?	Art 203-218	Art 14	Art 38	X	Art 9	X	X	X	X	Art 9	X	
	20(b)	Verdict?	Art 357	X	X	X	X	X	X	X	X	X	X	
	20(c)	Did the judge refer to the article of the law under which the accused had been charged?	Art 357	Art 26	X	X	X	X	X	X	X	X	X	
	20(d)	Did the judge refer to the evidence presented?	Art 357	X	X	X	X	X	X	X	X	X	X	
	20(e)	If the accused confessed to the alleged offense at any stage prior to or during the trial, did the judge rely on the confession as evidence?	Art 321	Art 26	Art 38	X	X	X	X	X	X	X	X	

		Criminal Code of Procedure	UNTAC	Constitution	Code of Ethics for Judges and Prosecutors	International Convention on Civil and Political Rights	Basic Principles of the Independence of the Judiciary	Basic Principles on the Role of Lawyers	Convention against torture	Bangalore Principles	UN Declaration of Human Rights	GOOD PRACTICE / IDEAL	Comments
Sentence	21(a)	Was the accused sentenced to imprisonment?	Art 43,44,51	X	X	X	X	X	X	X	X	X	
	21(b)	Was the accused ordered to pay a fine?	Art 43	X	X	X	X	X	X	X	X	X	
	21(c)	Was the accused ordered to pay compensation?	Art 355, 14	X	X	X	X	X	X	X	X	X	
	21(d)	Was there any other alternative sentence?	Art 39,40,53, 55,72,76, 104,117	X	X	X	X	X	X	X	X	X	
	21(e)	Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial?	Art 321	X	X	X	X	X	X	X	X	X	
	21(f)	Was the sentence within the range of penalties applicable at the time the offense was committed?	X	X	X	X	X	X	X	X	X	X	See individual sentencing provisions for each offense

APPENDIX III: TRIAL MONITORS CODE OF CONDUCT

Preparation and prerequisites⁴⁹

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;⁵⁰
- 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.

⁴⁹ This section will be provided as an additional document and will apply for all trials to be monitored

⁵⁰ Attach copy of notification/agreement with relevant court

Prior to Each trial to be monitored

Preliminary Assessments

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

- Whether there are relevant reports on similar trials in Cambodia;
- Which binding international laws and treaties, if any, pertain to the case;
- What are the domestic laws, substantive and procedural, relevant to the case;
- The relevant Constitutional provisions.

Notification

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

Access

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

During the Trial

General

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

Identification

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

Conduct in court

- Monitors must display professionalism at all times.
- Must possess a high standard of legal knowledge, including international human rights law.
- Monitors must decide where to sit, attempting to secure an appearance of impartiality and to facilitate observation of the trial. The observer should choose to sit in a prominent, neutral

location in the courtroom. Maintain polite and composed demeanor with all court officials and parties to a case.

- Wear appropriate clothing.
- Arrive promptly at court.
- Maintain a respectful approach during all interactions with court officials and actors.
- Visibly make extensive notes during hearings based on the CCHR checklist, irrespective of whether the trial is being recorded.
- Monitors must be familiar with and fully understand the checklist and guidelines for trial monitoring.
- Ensure the safety and confidentiality of notes.
- Get a neutral party to give introduction to court (only if staying the entire time) to increase visibility.

Impartiality and non-interference

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

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