



**គម្ពីរមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
**Cambodian Center for Human Rights**

February 2012

# Fair Trial Rights and Trial Monitoring Handbook

An overview of Fair Trial Rights in Cambodian and international law and guidance on how to develop a trial monitoring project



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## **ABOUT THE CAMBODIAN CENTER FOR HUMAN RIGHTS**

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

## **ACKNOWLEDGEMENTS**

This Handbook is made possible by the generous support of the American people through the United States Agency for International Development ("USAID"). The contents are the responsibility of CCHR and do not necessarily reflect the views of USAID, the United States Government, or the East West Management Institute.

## CONTENTS

<b>INTRODUCTION.....</b>	<b>5</b>
<b>PART I – OVERVIEW OF FAIR TRIALS.....</b>	<b>7</b>
The Rule of Law.....	7
What is a Fair Trial? .....	7
How are Fair Trial Rights Protected Internationally? .....	8
How are Fair Trial Rights Protected under Cambodian Law?.....	8
The Role of the Courts in Enforcing the Rule of Law and Fair Trial Rights .....	10
Brief Overview of the Cambodian Judicial System .....	10
<b>PART II – CONTENT OF FAIR TRIAL RIGHTS .....</b>	<b>12</b>
Right to the Presumption of Innocence.....	12
Right to be Tried without Undue Delay .....	13
The Right to Liberty and to Trial within a Reasonable Time .....	13
Right to Legal Representation or Self Defense.....	15
Right to Adequate Time and Facilities to Prepare a Defense .....	16
Right to be Informed of the Nature and Cause of the Charge .....	17
Evidence Rights – Right to Full Disclosure of Evidence for the Preparation of the Defense .....	18
Right to be Tried by a Competent, Independent and Impartial Tribunal .....	19
Right to be Present at Trial.....	21
Right to a Public Hearing.....	22
Right to Silence.....	23
Right against Self-Incrimination.....	23
Evidence Rights – Right to Call and Examine Witnesses.....	24
Right to Have the Last Word .....	26
Right to Judgment within a Reasonable Time .....	26
Right to a Reasoned Judgment.....	26
Rights at Sentencing .....	27
Prohibition against Retroactive Application of Law .....	28
Prohibition against Double Jeopardy.....	29
Rights of Juveniles.....	30
Age of Criminal Responsibility.....	31
Detention of Juveniles – Pre-trial Detention.....	31
Right to Legal Representation .....	32
Right to Privacy.....	32
Detention of Juveniles – Post-trial Detention.....	33

<b>PART III – TRIAL MONITORING .....</b>	<b>34</b>
<b>a.Preparation before the Trial Monitoring .....</b>	<b>34</b>
Objective .....	35
Focus of the Trial Monitoring.....	36
Selection of a Trial .....	36
Selection of a Trial Monitor .....	36
Briefing the Trial Monitor.....	37
Best Practice: Notifying Courts of Trial Monitoring .....	37
Security Risk Assessment .....	38
<b>b.Conducting Trial Monitoring.....</b>	<b>38</b>
Trial Monitoring Checklist .....	38
Access to the Courtroom.....	39
Taking Notes.....	40
Non-intervention in the Trial Process .....	40
<b>c.Data Storage.....</b>	<b>41</b>
<b>d.Dialogue and Advocacy.....</b>	<b>41</b>
<b>e.Evaluation of the Trial Monitoring Process.....</b>	<b>43</b>
<b>Conclusion .....</b>	<b>43</b>
<b>Bibliography .....</b>	<b>44</b>
<b>ANNEX 1 – CHECKLIST.....</b>	<b>46</b>
<b>ANNEX 2 – CODE OF CONDUCT .....</b>	<b>64</b>

## **TABLE OF FIGURES**

Figure 1 the Separation of Powers .....	10
Figure 2 The Court Hierarchy .....	12

## **CASE STUDIES**

Case study 1: The ECCC and the trial of Duch .....	14
Case study 2: The case of Moeung Sonn.....	29
Case study 3: The CCHR Trial Monitoring Project .....	35
Case study 4: The CCHR Trial Monitoring Checklist .....	38
Case study 5: Report writing and dialogue – proof of progress.....	42

## **INTRODUCTION**

The independent and efficient functioning of the judiciary is central to the protection and enforcement of human rights. The Constitution of the Kingdom of Cambodia (the “**Constitution**”) provides for recognition and respect for human rights, as stipulated in all relevant international instruments. This includes the right to a fair trial, more specifically defined in the International Covenant on Civil and Political Rights (the “**ICCPR**”) as *“the right of every person accused of a crime to receive a fair and public hearing by a competent, independent and impartial tribunal established by law”*.

At the policy level, the establishment of a properly functioning judiciary remains a cornerstone of the government’s platform for legal and judicial reform. Legal and judicial reform in Cambodia is guided by the Royal Government of Cambodia’s (the “**RGC**”) Legal and Judicial Reform Strategy (the “**LJR Strategy**”). Amongst other things, the goal of the LJR Strategy is *“the establishment of a credible and stable legal and judicial sector”* in which the *“separation of powers”* remains a central pillar of the government’s transition to a liberal democracy. The RGC has prioritized strengthening legal and judicial sector institutions under Objective 7 of its LJR Strategy. Crucial to this, as acknowledged by the RGC, is a means of assessing the practices of the legal and judicial sector to develop practical recommendations to improve their functioning. Monitoring the justice system is a crucial way in which data can be collected and analyzed to identify strengths and weaknesses in the justice system, supporting the wider efforts of the RGC and international donors to strengthen and reform the justice system in Cambodia.

In August 2009, CCHR launched its Trial Monitoring Project, the objective of which was to monitor criminal trials in Cambodia, namely at the Phnom Penh Capital Court of First Instance and the Kandal Provincial Court, to assess their adherence to standards of fairness set out in international and Cambodian law, to develop practical recommendations to improve respect and provision for fair trial rights, and to use the data and findings contained as the basis for dialogue with the courts monitored and other justice sector stakeholders. The information collected through monitoring is intended to serve as a reference from which to implement reform of the legal and judicial sector. CCHR has found that trial monitoring and the collection of quantitative, empirical data, has formed a strong basis for evidence based advocacy for legal and judicial reform. For the purpose of developing monitoring in Cambodia, CCHR has created this resource, the ‘Fair Trial Rights and Trial Monitoring Handbook’ – a practical guide for establishing trial monitoring programs in Cambodia (the “**Handbook**”). The Handbook is separated into three parts:

Part I of the Handbook provides an overview of the legislative basis guaranteeing fair trial rights in Cambodian and international law. It discusses the concept of the ‘rule of law’ and the role of the judiciary in protecting and enforcing the ‘rule of law’ and fair trial rights, and provides an overview of the Cambodian Judicial system.

Part II details the content of specific fair trial rights and explains the key aspects of these rights. It provides a summary of the legal basis of international and domestic legal instruments under which these rights are guaranteed.

Part III provides a guide to the actual trial monitoring process; a process which is crucial to the defense of human rights and the primacy of the rule of law. Part III is intended as a guide only. CCHR acknowledges that different monitoring organizations monitor trials for various reasons – some of which may affect the manner of trial monitoring and therefore be incompatible with CCHR’s trial monitoring

model. Nonetheless Part III is a valuable educational tool for any organization interested in establishing a trial monitoring program.

This Handbook is aimed at lawyers, human rights defenders and human rights organizations and institutions conducting or wishing to conduct trial monitoring. The intention of CCHR in publishing this Handbook is to share CCHR's experience and knowledge in trial monitoring and to strengthen the protection and promotion of fair trial rights and the due administration of justice in Cambodia through the monitoring of criminal trials.

## **PART I – OVERVIEW OF FAIR TRIALS**

The right to a fair trial is an essential and universally recognized right. The right to a fair trial forms an important component of the Rule of Law and the proper administration of justice.

### **The Rule of Law**

The rule of law refers to the principle that each and every member of society must follow the law and that the law is dominant over all other interests with the ultimate goal of serving society as a whole and the individuals and groups who make up society, to the extent that that does not undermine the rights of other individuals and groups. This doctrine is essential to freedom and democracy, and forms the foundational principle of all juridical systems. The concept of the rule of law incorporates principles of:

- Supremacy of the law;
- Laws publicly known and accessible;
- Laws consistent with the principles of human rights;
- Laws applied equally and in a non-discriminatory manner to everyone;
- Separation of powers;
- Avoidance of arbitrariness;
- Procedural and legal transparency.

### **What is a Fair Trial?**

A fair trial is a guarantee to which anyone charged with a criminal offence is entitled. The right to a fair trial is, in fact, a composite of a number of individual rights which encompass the entire legal process, from the initial arrest of a suspect, through to the completion of the final appeal. A fair trial is essential for the protection of the rights of the accused and victims but also to ensure the proper administration of justice, which is integral to the rule of law.

The concept of a fair trial incorporates all guarantees, and processes, relating to international standards of due process contained in international law mechanisms. These guarantees and processes include, but are not limited to, the following rights, prohibitions and principles:

- Right to a public hearing;
- Right to be tried without undue delay;
- Right to understand the nature and cause 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;
- Right to be present at trial;
- Right to the presumption of innocence;
- Right to be tried by an independent and impartial tribunal;



- Evidence rights (including the right to call and examine witnesses);
- Right to full disclosure of evidence for the preparation of the defense;
- Right against self-incrimination (not to confess guilt as a result of coercion or inducement);
- Prohibition against retroactive application of penal legislation (being tried for an offense that was not an offense at the time it was committed);
- Prohibition against double jeopardy (being tried more than once for the same offence); and
- Right to judgment within a reasonable time; and
- Right to appeal to a higher court on grounds of fact and law.

## How Are Fair Trial Rights Protected Internationally?

Under International law fair trial rights are protected by a number of declarations, covenants and conventions. These include:

- The Universal Declaration of Human Rights (“**UDHR**”) adopted by the United Nations (“**UN**”) General Assembly in 1948; and
- The International Covenant on Civil & Political Rights (“**ICCPR**”) adopted by the UN General Assembly in 1966 and entered into force on 23 March 1976.

Cambodia is a member State of the UN and is a party to the major international human rights instruments, including the ICCPR.<sup>1</sup> These instruments guarantee that individuals charged with a criminal offense are entitled to a fair and public hearing by an independent and impartial tribunal<sup>2</sup> and have the right to be presumed innocent until proven guilty.<sup>3</sup> The ICCPR places binding obligations on the RGC and the courts to uphold and apply the rights set out in these instruments. Furthermore the Constitution at Article 31 entrenches the rights stipulated in the UDHR and the covenants and conventions related to human rights, women’s and children’s rights into Cambodian law. Any derogation from the provisions contained in the international instruments therefore constitutes a violation of Cambodia’s Constitution.

## How Are Fair Trial Rights Protected under Cambodian Law?

Fair trial rights are protected in Cambodia, through general and specific provisions, set out in a number of instruments, as follows:

- The Constitution;
- The Code of Criminal Procedure of the Kingdom of Cambodia (2007) (“**CCPC**”); and
- The Penal Code of the Kingdom of Cambodia (2009) (“**Penal Code**”).

As the highest law in Cambodia, the Constitution provides the framework for how all other Cambodian laws must be constructed, construed and applied. The Constitution provides a number of guarantees that together provide the basic framework for fair trials. As noted above, the Constitution also

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<sup>1</sup> Cambodia ratified the ICCPR, which is a key instrument codifying civil and political rights including the right to a fair trial, in 1992. The UDHR is not ratified by any nations; however its provisions form part of customary international law and thus require no ratification by the RGC in order to be enforceable.

<sup>2</sup> Article 14(1) of the ICCPR.

<sup>3</sup> Article 14(2) of the ICCPR.

incorporates international human rights standards, including those set out in the UDHR and ICCPR (and other international human rights mechanisms as discussed above), into the domestic legal system. Article 31 of the Constitution states:

*“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights.*

*Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.”*

This provision was elaborated upon in a decision of the Constitutional Council dated July 10, 2007, which held that *“international conventions that Cambodia has recognized”* form part of the law which trial judges must consider.<sup>4</sup>

Article 38 establishes the rights of Khmer citizens and protects fair trials by guaranteeing that:

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

These constitutional guarantees are representative of many of the accepted human rights norms contained in international law. In addition, Articles 51, 128 (new), 130 (new) and 132 (new) of the Constitution provide for the separation of powers and an independent judiciary guaranteed by the King. In this regard, the Constitution provides for the creation of a body – the Supreme Council of Magistracy – chaired by the King and mandated to assist the King in his role as guarantor of the independence of the judiciary.

Cambodia’s criminal procedure was codified in 2007 with the introduction of the CCPC, which replaced sections of the provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period, 1992 (the **“UNTAC Law”**). The CCPC, which is based on the principles set out in Article 38 of the Constitution, provides comprehensive rules for how suspects should be treated and sets out the roles and responsibilities of judges, prosecutors and defense counsel, from initiation of an investigation, to the time of arrest, throughout the entire criminal process until the final appeal. The CCPC sets out in detail the legal procedures for investigating and prosecuting criminal offences, as well as the rights of victims and those charged with a criminal offense.

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<sup>4</sup> Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, dated July 10, 2007.  
Fair Trial Rights and Trial Monitoring Handbook

In 2009, the Penal Code was promulgated. It is a comprehensive law setting out classes of offenses, principles of criminal responsibility, principles of sentencing, the territorial jurisdiction of the courts and an extensive array of criminal offenses, including many new offences which previously did not exist under Cambodian law. The general provisions contained in Book 1 of the Penal Code, came into effect on December 10, 2009. The remaining provisions of the Penal Code, including the provisions creating new offenses, were put into effect on December 10, 2010 in Phnom Penh and December 20, 2010 in the rest of Cambodia.

### The Role of the Courts in Enforcing the Rule of Law and Fair Trial Rights

Courts serve a dual purpose in relation to the rule of law. According to the rule of law, no one may be punished unless a competent and impartial court has decided that a law has been contravened. The rule of law also requires the courts to ensure that laws have been applied in an equal and non-discriminatory manner – this includes ensuring that fair trial rights are observed in all cases. A criminal trial is a means which enables the administrative authority to consider if a person has broken the laws of the land. The process of consideration must be fair and include the observation of the rights owed to a criminal accused, starting with the presumption of innocence and ensuring that the accused is aided in presenting his/her view of the allegation and defense to the charge. Fairness underpins the entire process, ensuring justice prevails; only the guilty are convicted and incarcerated and the innocent are able to freely participate in society without prejudice.

### Brief Overview of the Cambodian Judicial System

Pursuant to Article 51 of the Constitution, Cambodia adopts a policy of liberal democracy and pluralism. ‘The Separation of Powers’ provides for the division of Cambodia’s government into three distinct and independent branches – the judiciary, the executive and the legislature – each acting as a check on the actions of the others and as a counterweight against any abuse of power. Figure 1 below sets out the components of each branch:

**Figure 1: Separation of Powers**

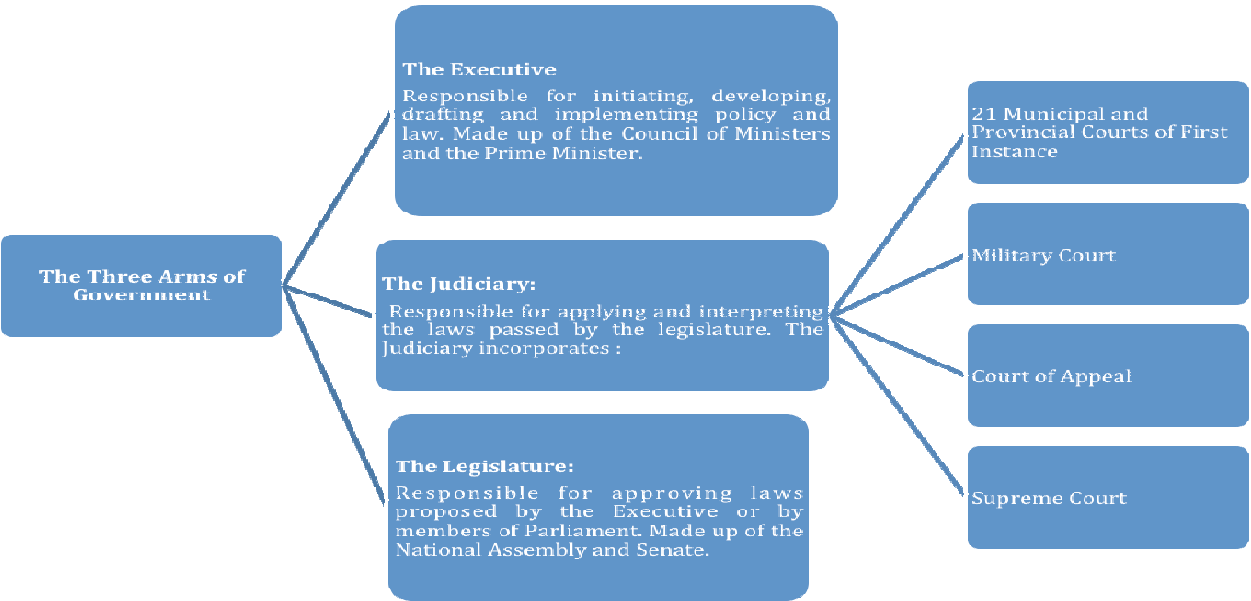
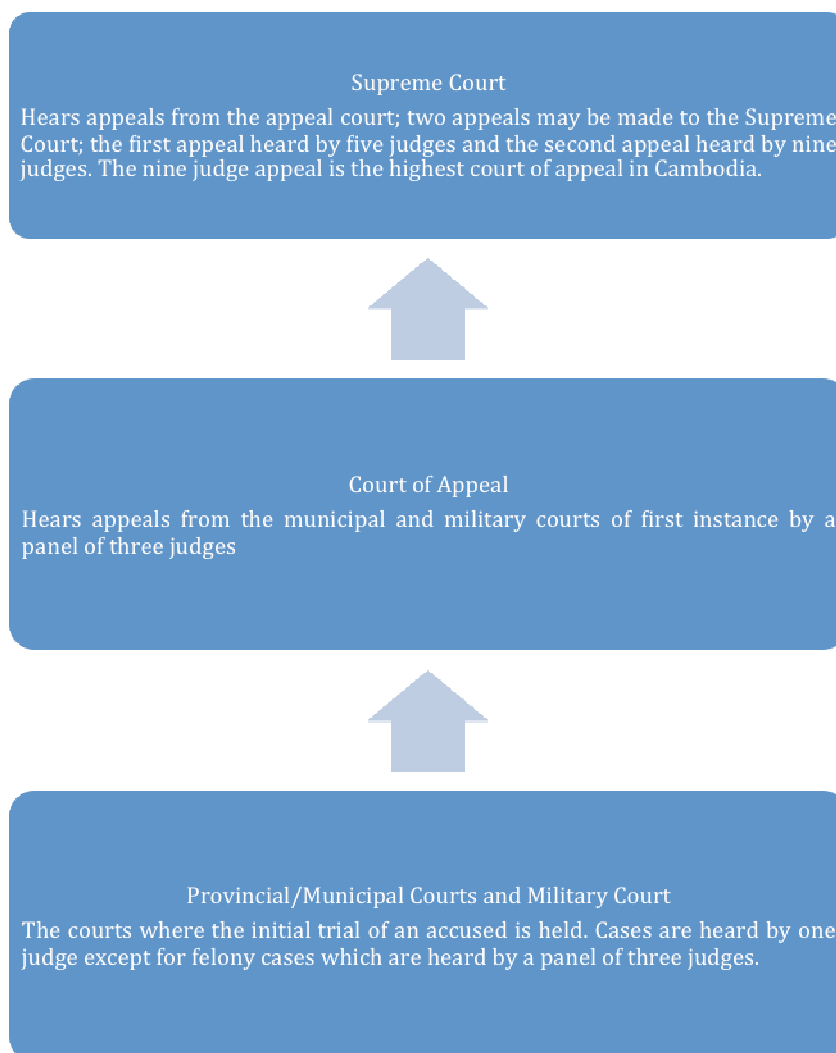


Figure 2 below indicates the hierarchy and structure of Cambodia’s court system; it shows that all criminal matters are first tried at either a provincial/municipal court or a military court if the accused is military personnel. In accordance with Article 289 Code of Criminal Procedure, at the court of first instance misdemeanor cases and petty offenses will be heard by a single judge, whereas felony cases will be heard by a bench of three judges. The decision of the municipal and military courts may be appealed to the Appeals Court – heard by a three judge panel. Two further appeals may be made to the Supreme Court, the highest court of appeal in Cambodia. The first Supreme Court appeal – appeals on points of law - will be heard by a five judge panel while the second and final appeal – appeals on points of law and fact - will be heard by a nine judge panel. No further appeals may be made. Neither the Supreme Council of Magistracy nor the Constitutional Council has the power of judicial review. The Supreme Council of Magistracy has the power to discipline and appoint judges; it guarantees the independence and impartiality of the judiciary. The Constitutional Council decides whether laws made by Cambodian Parliament are constitutional and has the power to review the constitutionality of the application of law. A decision on the constitutionality of a law by the Constitutional Council is binding on all other courts throughout Cambodia.

**Figure 2: The Court Hierarchy of Cambodia**



## **PART II – CONTENT OF FAIR TRIAL RIGHTS**

Part II of the Handbook analyzes individual fair trial rights and the manner and extent to which they are provided for under Cambodian and international law. For this purpose, focus will primarily be on rights contained in Cambodian laws including the Constitution, the CCPC and the Penal Code; where an application of international law is appropriate the provisions of the ICCPR have been used.

To ensure consistency and avoid reader confusion the term ‘accused’ will be used generically throughout Part II to represent suspects, accused and defendants. However it is important that the reader understands the distinction between these categories of individual: A ‘suspect’ is someone suspected of a crime but has not been formally charged; an ‘accused’ is someone who has been formally charged with a crime; and a ‘defendant’ is someone who is standing trial for a crime for which they have been formally charged.

### **Right to the Presumption of Innocence**

#### **Source 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.”*

Simply put, everyone has the right to be presumed innocent until proven guilty. The right to the presumption of innocence is one of the most fundamental and well-established fair trial rights. It has developed to ensure that no one may be arbitrarily punished for an act that they may not have committed by requiring that any alleged act of wrongdoing must be proven in a court of law before punishment can be imposed on an offender. This right is also the source of the right not to be compelled to testify against oneself or confess guilt, the right to silence, and the presumption in favor of bail and release from pre-trial detention.

The right to the presumption of innocence provides that:

- Judges must be impartial and must refrain from pre-judging a case;
- Public officials (including police and the prosecutor) should not make statements concerning the guilt or innocence of an accused before a trial has been completed;
- Authorities should prevent the media from influencing the outcome of a case by making judgments of an accused’s guilt or innocence;
- The purpose of the criminal action is to examine the existence of an offense and prove the guilt of an offender;
- If there is any doubt as to an accused’s guilt, the accused must be found not guilty;
- No external indicators of guilt should be attributed to the accused.

The provision prohibiting “external indicators of guilt” includes the accused’s right to wear civilian clothing throughout a trial and not to be shackled or handcuffed during the trial. Every accused is entitled to be brought before a court with the appearance and dignity of a free and innocent person. When a accused is forced to attend a hearing in prison attire or wearing handcuffs or shackles, it has the potential to create an

impression that the accused is a guilty or dangerous criminal and risks affecting, consciously or unconsciously, the judgment of the trial judge, the manner in which the proceedings are conducted and the outcome of the case. In this regard, Article 4(5)(F) of Cambodia's Proclamation 217 on the Administration of Prisons by the Ministry of Interior on March 13 1998 states that *"prisoners who are required to appear before a court shall be given the opportunity to wear their own clothes provided that the clothing is clean and suitable"*.

## Right 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 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"*
- **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"*

The right to be tried without undue delay is a minimum requirement for those charged with a criminal offense. This is provided for expressly in Article 14(3)(c) of the ICCPR and given authority in Cambodian law by the effects of Articles 31 and 38 of the Constitution. As such, everyone charged with a criminal offence has the right to be tried without undue delay. This right is important for a number of reasons, as follows:

- It ensures that those held in detention during their trial are not denied their liberty for longer than necessary;
- It prevents people from being kept in prolonged detention without trial in a state of uncertainty in relation to their fate for an extended period of time.
- It reduces the opportunity for evidence to be lost, undermined or destroyed, or, in the case of witnesses, prevents memories and testimony from being distorted;
- It reduces the possibility of miscarriages of justice by ensuring that innocent individuals who are charged with crimes are not subject to prolonged periods of imprisonment for crimes they did not commit.

## The Right to Liberty

### Sources in Cambodian and international law

- **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;**

The right to liberty is linked with the right to be presumed innocent. Articles 9(3) of the ICCPR and 203 of the CCPC create a presumption against detention for those awaiting trial, indicating that such detention should only occur when necessary and in the exceptional circumstances mentioned in Article 205, as set out above.

Article 208 limits the time an accused may be held in provisional detention, for an alleged

felony, to six months. However the investigating judge may extend this time for an additional six months with an order and express statement of reasons. Such an extension may be made two times only.

Article 209 of the CCPC provides that an adult held in provisional detention for an alleged misdemeanor, may not be held for more than four months, with an option available to the investigating judge to extend this once, for an additional two months, by an order with a proper and express statement of reasons. The time an accused may spend in provisional de-



### Case Study 1: The ECCC and the Trial of Duch

The Extraordinary Chambers to the Courts of Cambodia (“ECCC”) were created by an agreement between the United Nations and the RGC to bring to trial senior leaders of Democratic Kampuchea and those deemed most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed between 17 April 1975 and 6 January 1979. One of those deemed most responsible for the crimes committed within this period was Kaing Guek Eav (alias, “Duch”), Khmer Rouge Cadre and the former head of Tuol Sleng (S-21) prison, found guilty by the ECCC on charges of crimes against humanity, murder and torture. During his

-tention must not exceed half of the minimum sentence set by law for the alleged misdemeanor. Any time spent in pre-trial detention is to be included (i.e. deducted from) in any prison term served pursuant to Article 51 of the Penal Code.

If an accused is not brought to trial within a reasonable time, he/she is entitled, under Article 9(3) of the ICCPR to be released from detention; this does not mean the charges will be dropped, merely that the accused may not be kept in detention while the investigating judge prepares his/her case (see Article 249 of the CCPC).

trial Duch acknowledged his personal responsibility for the execution of more than 12,000 prisoners murdered during his tenure as head of the S-21 facility.

The ECCC held that as Duch had been arbitrarily detained by a military court for a period of eight years, he was entitled to a reduction in his sentence of eight years (for time already served) and a further reduction of five years as compensation for his wrongful detention. An additional three years were deducted from his sentence for time served in detention at the hands of the ECCC itself.

## Right to Legal Representation or Self Defense

### Sources in Cambodian and International law

- **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 38** of the **Constitution**: *“Every citizen shall enjoy the right to defense through judicial recourse.”*
- **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; and 2. The accused is a minor.”*
- See also, **Articles 46, 98, 143, 149, and 510** of the **CCPC**.

An accused who has been charged with a criminal offence is entitled to representation by a lawyer. This is to ensure that:

- The accused has the best possible defense at law from an expert advocate;
- The accused has a representative with the ability to explain and defend his/her interests in court;
- All criminal accused have equal access to the law and law is not dispensed discriminatorily.

The Constitution provides for the right of every citizen to defense through judicial recourse. Under Article 301 of the CCPC, the assistance of a lawyer is compulsory if the case involves a felony or if the accused is a minor. The court will appoint a lawyer if the accused has not already selected one him/herself. Should the right of accused to legal representation not be implemented, he/she will not have received a trial in accordance with fair trial principles. As such, where any accused faces conviction of a felony, and is not



represented by a lawyer, or informed of his/her right to such representation, justice will not have been done and the accused's rights will have been breached.

While legal representation is not mandatory for misdemeanor offenses it should still be strongly encouraged to meet the principle of equality of arms – being that all parties in a criminal case be treated in a manner ensuring that they have a procedurally equal position to make their case during the whole course of the trial.

## 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 the police custody has expired, the detainee may request to speak with a lawyer or any other person...The selected person may enter into the custodial site and talk with the detained person for 30 minutes...the selected person may make a written note to be placed on the case file.”*
- **Article 149** of the CCPC: *“The lawyer of a charged person who is in detention may freely communicate with his client in the detention center or in prison. The conversation between the lawyer and the charged person shall be confidential and shall not be listened to or recorded by others. “*
- **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.”*

The right to adequate time and facilities to prepare a defense is linked with the concept of ‘equality of arms’ – that is, that the defense and the prosecution are given equal treatment thereby ensuring that both parties are given an equal opportunity to prepare and present their case throughout proceedings. The provision of adequate time and facilities is designed to ensure that an accused right to a defense is meaningful. The question of whether time is adequate will depend on a number of variable factors including the complexity of the case; the time limits prescribed by national laws; and the accused's access to his/her lawyer and evidence. This right has to be balanced against the right to trial within a reasonable time. There is an obligation to grant reasonable requests for adjournment, in particular where the accused is charged with a serious criminal offense and additional time for preparation of the defense is needed.

The provision of adequate facilities includes:

- **Right to information concerning the charges** – As discussed above, the right to understand the charge. This includes information as to the nature and cause of the charge, without which no defense can be made;
- **Access by the accused to his/her lawyer** – The accused and his/her lawyer are allowed confidential communications (Article 149 of the CCPC);

- **Access to appropriate information** – That the accused and his/her lawyer have access to documents and other evidence that will assist the preparation of a defense, act as a mitigating point to reduce any penalty he/she may receive, or exonerate them of the charge (Article 319 of the CCPC);
- **Access to Experts** – The accused may request the investigating judge order an expert report in case of technical questions (Article 162 of the CCPC);
- **Where necessary, provide an interpreter** - Article 14(3)(f) of the ICCPR entitles an accused to “*the free assistance of an interpreter if he cannot understand or speak the language used in court.*” Article 330 of the CCPC provides that “*If necessary, the presiding judge may seek the assistance of an interpreter/translator.*” The right to an interpreter is intrinsic to the right to understand the charge; any case where an interpreter is refused is a miscarriage of justice;
- **Where necessary implement provisions for people with disabilities** – Article 331 of the CCPC provides for additional steps to ensure that deaf and mute persons are afforded a full opportunity to understand the proceedings against him/her, it provides that: “*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.*” This is important to ensure that the interests of justice are met. A court has to take all steps that are reasonably necessary to ensure that a person is in a position where he/she can understand the charges against him/her, taking into account any special needs of the charged person. If the court fails to do so and thereby fails to afford an accused with special needs an opportunity to understand the charges against him/her, or the opportunity to present or understand evidence or testimony, such an accused will not have received a fair trial.

## Right to be informed of the Nature and Cause of the Charge

### Source in Cambodian and International law

- **Article 325** of the CCPC – “*The presiding Judge shall inform the accused of the charges he is accused of.*”
- **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.*”

The implementation of the right to be informed of the nature and cause of the charge at both the pre-trial and trial stages of proceedings is essential in order to:

- Ensure the accused understands why he/she is being prosecuted;
- Ensure that the accused is able to challenge any detention that he/she is subject to as soon as possible;
- Ensure that the accused has an opportunity to present the best possible defense to any charges leveled against him/her;
- Guard against unfounded criminal charges.

### Pre-trial

Article 14(3)(a) of the ICCPR requires that before an accused is brought to trial he/she is told what he/she is said to have been arrested for and under what provision he/she is being charged. This requirement is closely related to the right to be provided with adequate time and facilities to prepare an adequate defense.

An explanation of the relevant law should have occurred prior to the trial; an accused must be placed in a position where they have the opportunity to understand the nature of the charge in order for the Article 14 obligation of the ICCPR to be met. If an accused has not been provided with such an opportunity before trial a duty is placed on the court to ensure that the accused is placed in such a position;

### At trial

Article 325 of the CCPC is concerned with the rights of an accused of the right to be informed of the nature and cause of the charge at the trial stage of proceedings. In order to meet the obligations created by both the CCPC and ICCPR the trial judge must:

- **Announce the case to be heard** – this requirement can be inferred from the requirements of Article 14(3)(a) ICCPR;
- **Explain the charge, including the date and location at which the alleged crime was said to have been committed** – Article 325 of the CCPC requires that *“The presiding judge shall inform the accused of the charges that he is accused of.”* It is important that this requirement is met to ensure that the accused, or his/her representative, has been provided with the correct information to prepare its defense;
- **State the parties involved** – Article 322 of the CCPC provides that *“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.”* Identification of the parties is important as doing so ensures the correct accused has been brought before the court to be tried and that every relevant person is present at the trial to be given an opportunity to be heard and/ or represented;

## Evidence Rights – Right to Full Disclosure of Evidence for the Preparation of the Defense

### Sources in Cambodian and International law

- **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.”*
- **Article 391** of the **CCPC**: *“The General Prosecutor and lawyers may consult the case file prior to the hearing.”*
- **Articles 129, 145, 149, 170, 259 and 428** of the **CCPC**.

To be able to prepare a defense to any charge, the accused’s counsel must be able to access the evidence uncovered during the investigation and analyze the evidence relied upon by the prosecution. Fair access to evidence in advance of a trial enables the accused’s counsel to weigh the strength of the evidence and prepare well-informed arguments and counter arguments with which to adequately defend his/her client.

This right is also extremely important in aiding the accused's ability to evaluate his/her case and thus decide to assert his/her innocence or even admit guilt.

The right to examine case documents is enshrined in Article 319 of the CCPC. The right to full disclosure includes the right of the defense counsel to have access to all documents relevant to the trial. The case file is the most important document. It is prepared by the investigating judge and contains the indictment sent to the trial court. The dossier contains all the evidence gathered as well as the conclusions of the investigating judge. It is important to note that only legal counsel are able to gain access to the case file, and that access is to be supervised by a court clerk as stipulated in Article 318 of the CCPC.

## Right to be Tried by a Competent, Independent and Impartial Tribunal

### Sources in Cambodian and International law

- **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."*
- **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 55** of the **CCPC**: *"A member of the Investigation Chamber may not participate in the trial of a criminal offense which he has knowledge of in his capacity as investigation judge. Otherwise, the judgment shall be null and void."*
- **Article 288** of the **CCPC**: *"Any sitting judge who has been acting as a Prosecutor or Deputy Prosecutor or investigating judge upon a certain case may not participate in the adjudication of that case, otherwise the judgment shall be deemed null and void."*
- **Article 337** of the **CCPC**: *"The court shall retreat to deliberate in a deliberation room to reach its verdict. No further request may be submitted to the court; no further argument may be raised. The Royal Prosecutor and the court clerk are not authorized to participate in the deliberation."*
- See also, **Articles 556 and 557** of the **CCPC** – Relate to the Applications for disqualification of a judge.

Central to the idea of a fair trial is the guarantee that decisions relating to the liberty of an individual will be made by competent, impartial and independent tribunals that have been established by law and which are independent of any political goals or objectives. In Cambodia the independence and impartiality of the Judiciary are assured under the Articles 128 – 135 of the Constitution. These Articles provide that:

- The Judicial power shall be an independent power (Article 128);
- The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of all citizens (Article 128);
- The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels (Article 128);

- The King shall be the guarantor of the independence of the Judiciary and that the Supreme Council of the Magistracy shall assist the King in this matter (Article 132);
- Trials shall be conducted in the name of the Khmer citizens in accordance with the legal procedures and laws in force (Article 129);
- Only judges shall have the right to adjudicate (Article 129);
- A judge shall fulfill this duty with strict respect for the laws, wholeheartedly, and conscientiously (Article 129);
- Judicial power shall not be granted to the legislative or executive branches (Article 130) .

All tribunals and courts and their judges must be independent from:

- The legislative and executive arms of government;
- Parties to the proceedings;
- Any State mechanisms.

This is to ensure that the justice system cannot be used for personal ends or manipulated into a political tool, whereby government or others, such as wealthy private individuals, can use the courts to intimidate or interfere with anyone who disagrees with their position or undermines their interests. To ensure that justice is done, and is seen to be done, there must be a distinct separation of powers. There must be no blurring of the lines between the executive, the legislature and the judiciary.

Tribunals, courts and judges must be impartial. This means that the judge, court or tribunal must not:

- Have any interest or stake in the cases that they try;
- Hold no prejudicial or preconceived views regarding the matter, or of the parties involved in the matter;
- Show any party favoritism.

The impartiality and independence of a tribunal is undermined when:

- The judge has previously played a role in proceedings, such as being the investigating judge, a witness, or if the case is an appeal, was the judge of first instance. Article 55 of the CCPC specifically prohibits a judge from taking part in the trial of a criminal offence of which he has knowledge due to his capacity as the investigating judge and, in the event that this does occur, such a judgment shall be null and void;
- The judge is a party to the proceedings;
- The judge has some relationship, connection, or kinship with either of the parties to the proceedings;
- There is pending litigation between the judge and one of the parties;
- There appears to be evidence of outside interference to the judge in relation to the making of his/her decision (i.e. the judge answers his mobile phone in court, leaves the courtroom; speaks to anyone during deliberation). Article 337 of the CCPC prohibits any further arguments being made once the court retires to the deliberation room and specifically prohibits the prosecutor and the court clerk from participating in the judge's deliberation;

- The judge appears to display animosity to a party; this can give the impression of bias leading to less public trust in the judiciary.

## Right to be Present at Trial

### Sources in Cambodian and International law

- **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 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 representation of his own choosing...*”
- See also, **Articles 46 and 143** of the **CCPC**.

An accused has the right to be present during the entirety of his/her trial. This is so that he/she can hear and rebut the prosecution’s case and present a defense to the crimes charged against him/her. In order for this right to be satisfied, the authorities must request the accused’s presence at trial – together with his/her legal representative; provide notification to the accused of the time, date and location of the trial; and not wrongfully prevent or exclude the accused from attending. The right to be present at trial can only be derogated from in extreme circumstances. These include instances in which the accused:

- Chooses to waive his/her right to be present;
- Is so disruptive to court proceedings that the court considers it unfeasible to continue the trial in his/her presence. In this case the lawyer of the accused must maintain his/her presence at the trial to continue their client’s defense;
- Cannot be located or refuses, despite the provision of sufficient notice, to attend the trial.

The first and third of these points result in what are referred to as *in absentia* trials. For an *in absentia* trial to be considered fair under international law it is important that:

- All necessary steps have been taken to notify the accused of the charges against them and of the impending criminal proceedings;
- All necessary steps have been taken to notify the accused sufficiently in advance of the location and date of their trial and to request the accused’s attendance;
- The relevant court has taken all necessary steps to guarantee the defense rights of the accused, including the provision of legal counsel.
- The accused has the ability to appeal or seek a remedy of a fresh determination of his/her case.

Under Cambodian law the right to be present at trial is enumerated in Article 300 of the CCPC and is guaranteed in international law pursuant to Article 14(3)(d) of the ICCPR. Any attempt to exclude an accused from being present at trial, unless in conformity with the requirements of trials *in absentia*, is a breach of the accused’s fair trial rights.

Adequate time must be granted for the accused person to appear in the court, depending on where the person lives. Pursuant to Articles 457 and 466 of the CCPC, the accused is afforded 15 days to appear if the accused person lives in the territorial jurisdiction of the court of first instance – that is to say, the province or municipality of the court in question; 20 days if the accused person lives in other places within the national territory of Cambodia; two months if the accused person lives in a country bordering Cambodia and three months if the accused resides in any other location. There is no minimum time period between the delivery of the summons and the date to appear before the court if the accused is being detained.

## Right to a Public Hearing

### Sources in Cambodian and International law

- **Article 316** of the **CCPC** – *“Trial hearings shall be conducted in public”*
- **Article 14(1)** of the **ICCPR** – Everyone is entitled to a *“fair and public hearing...”*

Public hearings ensure that the administration of justice is transparent and that the judiciary remains accountable to the public for the decisions and judgments they make. For the parties involved in a trial, public scrutiny provides a check against arbitrary decision-making and abuse of power, procedural violations, including inequality in the treatment of parties, and interference and influence from external parties. When a legal system is operating in accordance with law and ethical principles, public hearings also engender confidence in the ability of the State to deliver justice. 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.<sup>5</sup> Articles 317 of the CCPC further provides that in all trials the judgment must be announced in a public session while Article 14(1) of the ICCPR provides that, except where the interests of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children, judgments rendered in a criminal trial or any suit of law must be made public.

There are some limited exceptions that allow a court to hold a closed hearing. Under Cambodian law, Article 316 allows the court to order a closed hearing if it considers, on the merits of the case, that a public hearing will cause significant danger to the public order or morality. It should be noted that the CCPC provides no definition or guidance as to what would constitute “a significant danger to public order or morality.”

In international law these exceptions, contained in Article 14(1) of the ICCPR, are:

- **Morals:** The UN Economic and Social Council has indicated that any limitation to the right to a public trial based on morality must be essential to the maintenance of respect for fundamental values of the community;<sup>6</sup>
- **Public order:** Defined by the Siracusa Principles in relation to exceptions under the ICCPR generally as *“the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded.”*<sup>7</sup>

<sup>5</sup> United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (CCPR/C/GC/32), August 23, 2007, para. 28.

<sup>6</sup> UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, para.27, available at: <http://www.unhcr.org/refworld/docid/4672bc122.html>

- **National security in a democratic society:** Exclusion of the public from a trial for reasons of national security can only be justified where the genuine purpose and demonstrable effect of such an act is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force.<sup>8</sup> If the genuine purpose or demonstrable effect of such an act is to protect interests unrelated to national security – such as to protect a government from embarrassment or exposure of wrongdoing – the act will be illegitimate and a breach of the accused's right to a public trial.
- **When the interest of the private lives of the parties so requires:** For instance where proceedings involve a juvenile.
- **Where, in the opinion of the court, publicity would prejudice the interests of justice:** For instance where interference of the trial by the public causes such a disturbance as to risk endangering the objectivity of a witness' testimony, i.e where the witness may be endangered if his/her identity is made available to the public, or if the public presence would cause the witness to alter his/her testimony.

If the court closes a trial to the public for any reason not recognized by Cambodian or international law, the right to a public hearing will have been violated and the accused's rights will have been breached. The exceptions outlined above for closing a trial to the public must be narrowly interpreted by the courts and used only in exceptional circumstances.<sup>9</sup> This is essential as a decision to close the trial to the public is not subject to appeal (Article 316 of the CCPC). Where the court does close a trial to the public it must make its decision on the merits of a closed trial case via a written decision separate from the judgment, or by a special section within the judgment (Article 316 of the CCPC). Regardless of whether a trial is held in closed session the judgment must be made public, except where the interests of juveniles otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children, in which case redacted judgments which protect the identities of the victims, witnesses or other sensitive information are made public.<sup>10</sup>

## Right to Silence

### Sources in Cambodian and International law

- **Article 14(3)(g) of the ICCPR:** In determination of any criminal charge against him, everyone has the right, *“not to be compelled to testify against himself or to confess guilt.”*

The right to silence is linked to the right to be presumed innocent and safeguards the right not to be compelled to testify or confess guilt. The right to remain silent is protected by Article 14(3)(g) of the ICCPR and therefore forms part of the criminal law of Cambodia via Article 31 of the Constitution.

## Right against Self-Incrimination

### Sources in Cambodian and International law

<sup>7</sup> Ibid, para. 22.

<sup>8</sup> Ibid para. 29. See also: Article 19, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, November 1996, Principle 2, available online at:

<http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

<sup>9</sup> United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (CCPR/C/GC/32), August 23, 2007, para. 29.

<sup>10</sup> Article 14(1) ICCPR.



- **Article 14(3)(g)** of the **ICCPR**: *“A person should not be compelled to testify against himself or to confess guilt.”*
- **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 321** of the **CCPC**: *“Unless it is provided otherwise by law, in criminal cases all evidence is admissible ... A confession shall be considered by the court in the same manner as other evidence. Declaration given under the physical or mental duress shall have no evidentiary value.”*

Linked to the presumption of innocence is the right not to incriminate oneself. This right is designed to prevent accused from being compelled to testify against him/herself and/or confess his/her guilt. The right implies a right to silence enabling the accused to refuse to testify in court and/or refuse to answer questions put to him/her in any type of proceedings.

A more direct consequence of this right is the freedom from being forced into confessing guilt through the use of two types of intimidation: coercion and torture. It is important to distinguish this right from an accused’s decision to offer a voluntary confession. The main distinguishing factor is the element of choice – whether a party chooses to impart incriminating statements or a confession or whether he/she is forced by an external entity to make an incriminating comment. Under Cambodian and international provisions, any self-incriminatory statement or confession involuntarily obtained, has no evidential value; this includes evidence obtained by the use of physical and/or mental coercion or torture.

International law contains separate provisions for the right against self-incrimination through coercion and torture as stipulated in Article 14(3)(g) of the ICCPR and Article 5 of the Universal Declaration of Human Rights. Further, all of the Convention Against Torture (“**CAT**”) is applicable to situations involving the inducement of incriminating statements and other forms of information through the use or threat of physical or mental abuse, intimidation, violence and so on. A physical action compelling a person to confess can constitute torture. In this context, torture is specifically linked to tactics used by the authorities to extract a confession or an incriminating statement. The use of torture to induce a confession is strictly forbidden both domestically and internationally.

## **Evidence Rights – Right to Call and Examine Witnesses**

### **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 294, 295, and 296** of the **CCPC**: Summons of witnesses in case of indictment, citation, and immediate appearance, respectively.
- **Article 297** of the **CCPC**: *“Inculpatory witnesses who have never been confronted by the accused shall be summonsed to testify at the hearing.”*
- **Article 298** of the **CCPC**: *“At their expense, the accused and civil party may summons witnesses who have not been summoned by the Prosecutor.”*
- **Article 321** of the **CCPC**: *“Unless it is provided otherwise by law, in criminal cases all evidence is admissible. The court has to consider the value of the evidence submitted for its examination, following the judge’s intimate conviction. The judgment of the court may be based only on the evidence included in the case file or which has been presented at the hearing. A confession shall be considered by the court in the same manner as other evidence. Declaration given under the physical or mental duress shall have no evidentiary value. Evidence emanating from communications between the accused and his lawyer is inadmissible.”*
- **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**: *“The 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.”*
- **See also Articles 133 and 179** of the **CCPC**.

The right to call and examine witnesses is a fundamental component of the principle of “equality of arms” i.e. the principle that all parties are treated in a way that ensures equality at all stages of the trial and that no party is placed at a disadvantage to the others in presenting his/her case. The right to call, examine and cross-examine witnesses provides the court an opportunity to observe evidence and to hear legal arguments regarding the evidentiary value. This assists the court in its assessment of the various arguments presented and in making its ruling. This enables the defense to compel the attendance of witnesses, and to examine and cross-examine prosecution witnesses. It also empowers the defense to call its own witnesses. The defense counsel therefore must have enough opportunity and time to:

- Examine his own witnesses to support his client’s case;
- Cross examine witnesses;
- To challenge all evidence presented at trial.

While the prosecutor summons the witnesses, pursuant to Article 298 and 324 of the CCPC, the defense may present to the hearing any witnesses who were not summoned by the prosecutor and request that the court hear them in the capacity of witnesses.

## Right to Have the Last Word

➤ **Article 335** of the **CCPC**: *“the accused and his lawyer shall always be the last ones to speak.”*

This right, established under Article 335 of the CCPC, is important because it ensures that the defense has the best opportunity to respond fully to all arguments and evidence presented by the prosecution and others. It ensures that the last words heard by the judge are from the individual, the accused, with the most at stake in the event of a guilty verdict.

## Right to Judgment within a Reasonable Time

### Sources in Cambodian and International law

- **Article 14(5)** of the **ICCPR**: *“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”*
- **Article 347** of the **CCPC**: *“The judgment is issued at the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement.”*

The right to a judgment within a reasonable time is entwined with a right to be tried without undue delay. It supports the idea that unnecessary delay adds to the length of the proceedings, which adds to the time the accused is unsure of his/her status. Failure to deliver a judgment within a reasonable time can also hinder the accused’s ability to initiate an appeal; under Article 14, paragraph 5 of the ICCPR, a convicted person is entitled to have, within reasonable time, access to written judgments that are duly reasoned so as to enjoy the effective exercise of his/her right to judicial review by a higher tribunal.<sup>11</sup> Article 347 of the CCPC places a duty on the court to inform the parties to proceedings of the date of announcement of the judgment where the judgment is not issued the day of the hearing. However no restriction is imposed on the court stipulating the time frame in which the court must deliver its judgment.

## Right to a Reasoned Judgment

### Sources in Cambodian and international law

- **Article 14(5)** of the **ICCPR**: *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
- **Article 357** of the **CCPC**: *The judgment shall be divided into two parts: – The holding (the arguments of facts and law that led to the court’s decision) – The ruling (the decision of the court) the facts shall be clear and unequivocal. The court shall examine each of the charges and arguments presented during the trial. In the holding part of the judgment, the court shall respond to the written arguments submitted by any party. In the ruling part of the judgment, the court shall note the offense committed by the accused, the applicable law, the sentence and any civil remedy.*

<sup>11</sup> Human Rights Committee, views of 29 March 1994, *Currie v Jamaica*, Communication No. 377/1989, para. 13.5; *Abdelihamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi v. Algeria*, Communication No. 1085/2001, Paras 8.4 and 8.5

The right to a reasoned judgment requires the court to examine each of the charges and arguments presented during the trial and to respond to the written arguments submitted by any party. A reasoned judgment ensures that those found guilty are done so in accordance with legislated principles and provides an avenue of appeal should the reasoning contained in the judgment be inconsistent with the law.

## Rights at Sentencing

### Sources in Cambodian and International law

- **Article 44 of the Penal Code – Principal Penalties:** *“When an offence is penalized for a prison term, the law sets a minimum and a maximum of jail term imposed. When an offence is penalized by a fine, the law sets a minimum and a maximum amount of fine imposed.”*
- **Article 96 of the Penal Code – Individual Principles of Penalty:** *“The court pronounces penalties based on seriousness of the penalty and circumstances of the offence, of personality of the accused, of his/her mental state of mind, resources and burdens, motives as well as his/her conduct after committing the offence, in particular towards the victim.”*

### See also:

- **Articles 53-71 of the Penal Code – Additional Punishments**
- **Articles 72-76 of the Penal Code– Substitute Penalty**
- **Articles 104 – 116 of the Penal Code – Simple Suspended Sentences**
- **Articles 117 – 123 of the Penal Code– Probationary Suspended Sentence**
- **Article 355 of the CCPC – Judgment on civil remedy**

### Penalty Parameters

An accused found guilty of an offense must only be sentenced in accordance with legislative provisions and limits pertaining to that offense. Article 44 of the Penal Code stipulates that the law sets maximum and minimum terms and amounts for prison sentences and fines. These sentencing parameters, and permissible additional or alternative penalties, are contained in the Penal Code itself and are specifically detailed for each offense. The court must not deliver a sentence that is either more or less severe than the applicable penalty provided for in the Penal Code.

### Mitigating circumstances to be considered during sentencing

Article 31 of the Penal Code requires the courts to take the mental state of the offender into consideration when passing sentence. If the accused has no control of his/her faculties at the time the crime was committed he/she should not be held responsible for the crime; if the accused’s mental faculties were reduced due to mental disorder at the time the crime was committed he/she will still be held responsible – although the court should consider the reduced mental faculties of the accused when passing sentence (i.e. diminished responsibility or diminished capacity as a mitigating circumstance). If the mental disorder was triggered by the use of alcohol, drugs or substances prohibited by law there will be no exemption from criminal responsibility.

## Prohibition Against Retroactive Application of 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 Penal Code: *“Only the act constituting an offense that is provided in the criminal provisions in force gives rise to criminal punishment. Only penalty that is provided in the criminal provisions in force when an offence is committed may be imposed.”*
- **Article 10** of the Penal 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.”*

The prohibition against retroactive legislation protects an accused from being tried for an offence that was not a crime at the time that it was committed. The doctrine of *nullem crimen sine lege* (literally translated as “no crime without law”) provides that you cannot commit a crime unless it is an act prohibited by the law at the time it was committed. The rationale behind the principle – also known as the principle of legality – is that an individual cannot be said to have committed a crime unless it was reasonably within his capacity to find out that the impugned act was a criminal offence at the time he/she undertook it. The principle does not require that the individual actually knew that the act in question was illegal – as such a requirement would place an undue burden on the state – rather that he/she was in a position to inform him/herself of such as the time the act took place. A state discharges this burden through the publication of laws. In essence, the principle guards against situations whereby laws seek to apply criminal sanction for acts that occurred before the law came into force. The prohibition against the retrospective use of increased sentencing provisions has a similar basis: ie that the State should not apply greater sanctions to an act than existed at the time the act was committed.

Articles 9 and 10 of the Penal Code provide:

- Prosecutions concerning crimes that the Penal Code has abolished must be stopped immediately;
- All legal proceedings concerning such crimes must be terminated and any sentences or penalties relating to the sentence of such crimes must not be carried out or must cease to be executed;
- There is immediate application of less severe sentences imposed by any new legislation i.e. where the Penal Code provides for a less severe sentence and the sentence has not yet been determined, such a sentence must be applied.
- More severe sentences are prohibited from being imposed retrospectively i.e. where a sentence provided in the Penal Code is more severe than that previously available to the court, it may only

be applied to crimes that have been committed after the coming into force of the Penal Code provisions (Please see the Moeung Sonn case-study).

The following case study highlights a specific problem relating to fair trial rights in Cambodia which those seeking to establish a trial monitoring project may encounter especially in the months and years after the introduction and coming into force of the new Penal Code.

#### CASE STUDY 2: Moeung Sonn

On 15 July 2009 Moeung Sonn, head of the Khmer Civilization Foundation, was found guilty of disinformation under Article 62 of the UNTAC law for criticisms he made in relation to a lighting installation at Angkor Wat. Moeung Sonn was sentenced *in absentia* to two years imprisonment, fined 7 million Riel and ordered to pay compensation of 8 million riel.



On appeal three judges delivered a verdict that upheld the original compensatory amount but changed the charge to 'Provocation to Commit Crimes' (Article 495 of the new Penal Code). Effectively this reduced the fineable amount to four million Riel thereby reducing Mr. Sonn's sentence (permissible under Article 10 of the Penal Code); however, the switching of the charges could be interpreted as a misapplication of the law that resulted in Mr. Sonn being found guilty via the application of Penal Code provisions that were not substantively the same as the crimes with which he was originally charged. Arguably this constitutes a retroactive application of the law – a breach of Mr. Sonn's fair trial rights. Further Mr. Sonn's lawyer was only informed of the change of charge during the reading of the appeal decision. Consequently Mr Sonn was not given adequate time to prepare a defense, nor was he informed of the nature and cause of the charge; further violations of his fair trial rights.

## Prohibition against Double Jeopardy

#### Sources in Cambodian and International law

- **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."*
- **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".*

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. When a final judgment – a decision by the highest court or a lower court in the event that none of the parties appeal within the prescribed time – has been entered by the court the matters that were decided upon are considered to be a final decision in relation to that act or offence. All the parties must respect that decision and the prosecution cannot attempt to try that person again for the same act. The judgment already rendered and the acquittal or conviction of the accused acts 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.

It is not double jeopardy where a higher court quashes a conviction and orders a retrial. There are exceptions to the double jeopardy rule recognized by international law, for instance the resumption of a criminal trial may be justified by exceptional circumstances, such as the discovery of evidence which was not available or known at the time of the acquittal.<sup>12</sup> The situation vis-à-vis the exceptions to the principle of double jeopardy under Cambodian law are provided for under the Code of Criminal Procedure.<sup>13</sup>

## Rights of Juveniles

### Sources in Cambodian and International law

- **Article 31 of the Constitution:** *“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in ...the covenants and conventions related to human rights, women’s and children’s rights.”*
- **Article 48 of the Constitution:** *“The State shall protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation. The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.”*
- **Articles 212 – 214 of the CCPC**
- **Articles 39 and 40 of the Penal Code – Measures to apply against Minors**
- **Article 40(1) of the Convention on the Rights of the Child:** *“States parties will recognize the right of every child accused of a criminal offense to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and takes into account the child’s age and the desirability of promoting the child’s reintegration and the child assuming a constructive role in society.”*
- **Article 14 (4) of the ICCPR:** *“In the cases of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”.*

Juveniles who are accused of having committed a criminal offense are entitled to all the fair trial rights that apply to adults, as well as additional protections in recognition of their age, maturity, and intellectual development. The primary purpose of juvenile justice should be to rehabilitate and reintegrate the offender towards becoming a constructive member of society. Articles 31 and 48 of the Constitution guarantee that the State shall protect the rights of children, while Cambodia’s statutory framework also makes provision for differentiated treatment of juveniles in a number of important areas. Wherever appropriate, consideration should be given to dealing with a juvenile offender without resorting to a formal trial, provided that human rights and legal safeguards, such as the presumption of innocence, are fully respected. Measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling, community service or educational

<sup>12</sup> United Nations Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial* (CCPR/C/GC/32), August 23, 2007, para. 56.

<sup>13</sup> See in particular Articles 7 and 443 of the CCPC.

programmes, should be considered.<sup>14</sup> The Penal Code creates a statutory presumption in favour of such alternatives to incarceration for juveniles in Article 39.

## Age of Criminal Responsibility

### Sources in Cambodian and International law

- **Article 38 of the Penal Code: Legal Age of Criminal Responsibility** – “*The criminal legal age is set at 18 (eighteen) years of age.*”
- **Articles 39 and 40 of the Penal Code:** “*The minors who committed an offence are subject to the measures of surveillance, education, protection and assistance. However, the court may pronounce a criminal conviction against a minor of 14 (fourteen) years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.*”
- **Articles 212 to 214 of the CCPC**

Article 38 of the Penal Code puts the age of criminal responsibility at 18 years old. Article 39 of the Penal Code allows the court to pronounce a criminal conviction against a juvenile<sup>15</sup> of 14 years of age or more “*if the circumstances of the offence or the personality of the [juvenile] justify doing so.*” By implication this means that a minor is less than 14 years of age. A minor cannot be subject to criminal prosecution and a judge has an obligation to dismiss any case brought against a minor.

## Detention of Juveniles – Pre-trial Detention

- **Articles 96, 100, 212-214, 224 of the CCPC**
- **Articles 10(2)(b) and 10(3) of the ICCPR**

Even more so than is the case with adults, international standards discourage the pre-trial detention of juveniles. In most cases, the best interests of the child are protected by not separating them from their parents.<sup>16</sup> Detention of juveniles should be avoided whenever possible and used as a measure of last resort for the shortest appropriate period of time.<sup>17</sup> The CCPC establishes additional judicial requirements *vis-à-vis* the age of the minor or juvenile accused; the additional requirements are as follows:

### A Minor less than 14 years of age:

- May not be held in police custody (Article 96 of the CCPC);
- Must not be temporarily detained, but may be sent to their parents/guardians, or a provisional care and education center, if there are no parents/guardians, until the judge makes a decision on the issue; (Article 212 of the CCPC);

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

<sup>15</sup> NB: The Penal Code and the CCPC refer to minors as anyone less than 18 years of age. For the purposes of this publication reference to a ‘minor’ is a reference only to a person under the age of 14. Persons aged 14 but less than 18 years of age will be termed ‘juveniles’. This has necessitated the switch of the two terms when quoting Cambodian legislation.

<sup>16</sup> Article 9 of the Convention on the Rights of the Child (“CRC”).

<sup>17</sup> Article 37(b) of the CRC.



- Must not be placed under judicial supervision (Article 224 of the CCPC).

#### **A Juvenile aged 14 but less than 16 years of age:**

- May only be held in police detention for a maximum of 36 hours under a felony charge and 24 hours under a misdemeanor charge (Article 96 of the CCPC);
- Must have his/her parents, legal representative, or anyone responsible for the juvenile notified by a judicial officer that the he/she is being held in police custody (Article 100 CCPC);
- May only be held in provisional detention for a felony for a maximum of four months (Article 213 CCPC) or for a misdemeanor a maximum of two months and the duration of provisional detention for a misdemeanor must not exceed half of the minimum period of sentence (Article 214 CCPC).

#### **A Juvenile aged 16 but less than 18 years of age:**

- May only be held in police detention for a maximum of 48 hours for a felony and 36 hours for a misdemeanor (Article 96 of the CCPC);
- Must have his/her parents, legal representative, or anyone responsible for the juvenile notified by a judicial officer that he/she is being held in police custody (Article 100 of the CCPC).
- May only be held in provisional detention for a felony for a maximum of six months (Article 213 of the CCPC) or for a misdemeanor a maximum of four months; the duration of provisional detention for a misdemeanor must not exceed half of the minimum period of sentence (Article 214 of the CCPC).

## **Right to Legal Representation**

- **Articles 143** of the **CCPC**: *“A charged person who is a minor shall always be assisted by a lawyer. If a charged person does not choose a lawyer, the court shall appoint a lawyer according to the Law on the Bar.”*
- **Article 301** of the **CCPC**: *“The assistance of a lawyer is compulsory If [...] The accused is a minor. If the accused has not selected a lawyer, a lawyer shall be appointed upon the initiative of the court president in accordance with the provisions of the Law on the Bar.”*

Articles 143 and 301 of the CCPC create a mandatory requirement that all juveniles charged with an offense are represented by a lawyer. If the juvenile accused does not choose a lawyer, the court is required to appoint one.

## **Right to Privacy**

- **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.*
- **Article 40(2)(vii)** of the **CRC**: *“To this end, and having regard to the relevant provisions of international instruments, 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 provide for the right to a public hearing. However, when a trial involves a juvenile it is legitimate to restrict those who attend the trial in order to protect the privacy of the juvenile and avoid stigmatization. All trials involving juveniles should be held behind closed doors;<sup>18</sup> however where this is not possible measures should be taken to protect the privacy of the juvenile at trial. Numerous methods may be used such as privacy screening, or the use of vocal and facial distortion methods for closed-circuit television testimony.

## Detention of Juveniles – Post-trial Detention

### ➤ Articles 39-40 Penal Code

The best interests of the child are to be a primary considerations when ordering or imposing penalties on juveniles to have infringed the criminal law.<sup>19</sup> Imprisonment of juveniles found to have infringed the criminal law is to be considered a measure of last resort to be employed only in exceptional cases.<sup>20</sup> Articles 39 and 40 of the Penal Code dictate that juveniles who commit an offence may be reprimanded using measures such as surveillance, education, protection and assistance. However, a prison sentence may be imposed if the circumstances of the offence, or the “*personality of the [juvenile]*” justify such a measure. Minors cannot be subjected to any of the sentencing provisions. Alternative measures to incarceration available to the court include entrusting or placing the juvenile:

- With his/her parents or guardians or with a person who has a guardianship role or with another person who is trustworthy;
- With a social service agency charged with the handling of juveniles;
- With a private organization which has the qualification to receive them;
- With a specialized hospital or institution;
- Under judicial protection.

Should a juvenile be incarcerated, Article 166 of the Penal Code provides that he/she must be “*detained in the special quarters, separated from the adults*” and “*subjected to a special and individualized regime that canvasses a place for education and professional training.*”

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<sup>18</sup> UN Committee on the Rights of the Child, *General Comment No. 10 Children’s Rights in Juvenile Justice*, CRC/C/GC/10, 25 April 2007, para. 66.

<sup>19</sup> Article 3(1) of the CRC.

<sup>20</sup> Article 37(b) of the CRC.

## **PART III – TRIAL MONITORING**

Part I of this Handbook provided an overview of what constitutes a fair trial, noting that a fair trial is essential not only in terms of protecting the rights of the accused and of victims, but also to ensure the proper administration of justice, which is key to the rule of law. Part II focused on specific fair trial rights and their content as set out in Cambodian and international law, including the right to be tried by an independent, impartial and competent court.

Part III of the Handbook seeks to outline practical steps and issues that need to be considered when monitoring a trial and reporting on any observations. As noted in the preceding chapters, the right to a fair trial is fundamental to ensure due process of law and the appropriate administration of justice. The monitoring of criminal trials is thus crucial to the defense of human rights and the primacy of the rule of law. Having set out an overview of the laws and standards relating to a fair trial rights, Part III of the Handbook outlines criteria and operational aspects that need to be considered when monitoring trials. This section of the Handbook should be used as a guide only and may require adapting depending on the particular focus of an organization monitoring trial rights (“Monitoring Organization”) or any amendments to the laws granting fair trial rights.

The process of trial monitoring is multi-faceted, involving more than simply going to the court and observing proceedings. Monitoring Organizations need to develop a methodology for monitoring which relates to their objective for monitoring, which will consequently feed the types of fair trial issues that are monitored. The process of monitoring requires a monitoring infrastructure to be in place and an understanding of indicators of fair trial rights which are to be used as a benchmark from which to assess adherence to fair trial rights. As further detailed in Part III, considerations relating to Trial Monitoring fall broadly into the following categories:

- Pre-Trial Monitoring Preparation;
- Conducting of Trial Monitoring.
- Dialogue and Advocacy;
- Data Storage;
- Evaluation of any Trial Monitoring project.

### **a. Preparation before Trial Monitoring**

The quality, success and effectiveness of a trial monitoring project are directly impacted upon by the planning and preparation undertaken prior to trial observation. As further detailed in this section, the Monitoring Organization would need to undertake practical preparation in relation to the following:

- Identification of the Objectives;
- Selection of Trials;
- Selection of Trial Monitors;
- Briefing Trial Monitors;
- Initial research undertaken by Trial Monitors;
- Conferring with Stakeholders;
- Practical Considerations.

## Objective

Initially, the Monitoring Organization must consider the purpose of and identify its specific objectives for the proposed trial monitoring. The identification of objectives is perhaps the most vital consideration as this substantially affects all of the other initial preparatory stages including the choice of trials to be monitored and the trial monitor (detailed further below). General goals of trial observation often include some or all of the following:

- **Visibility:** The physical presence of the monitors informs the authorities and public of the interest in monitoring the fairness of criminal proceedings and encourages the court to provide a fair trial;
- **Justice:** To ensure the accused’s right to a fair trial is respected and implemented;
- **Gathering information:** To acquire more information about the practices of the courts in applying fair trial rights. To obtain details of the specific trial, and any external influences affecting the trial;
- **Reporting:** To inform the general public, the authorities and international bodies of positives and achievements as well as the anomalies and inconsistencies in criminal procedure and compliance with laws guaranteeing fair trial rights. The desired effect of reporting on breaches may be to encourage changes in practice and laws and to make recommendations to ensure that national practices and laws are in line with international standards.

On a narrower scale, the Monitoring Organization will be influenced by its agenda and areas of interest – such as a focus on a specific set of rights or category of rights activist. Determining the objectives of the proposed trial monitoring will ensure that the broader and narrower objectives of the initiative are clear from the outset and will assist the Monitoring Organization in choosing which types of trials it will monitor. In determining objectives, Monitoring Organizations should:

- Ensure that no conflict of interest between identified objectives arises; for example, where an organization monitors the rights of accused at trial it must also consider whether it has worked with victims of the crime or has an interest in the trial being monitored which impacts on its ability to conduct impartial and independent monitoring;
- Consider how each object will shape the monitor’s action during the trial observation process. Any difficulties should be clarified and dealt with at the preparatory stage, minimizing any foreseen conflict between objectives;
- Consider any negative implications of monitoring trials. For example, a court might impose a stricter punitive sentence on an accused as a result of the attendance at trial of a monitor.<sup>21</sup>

### CASE STUDY 3: The Cambodian Center for Human Rights Trial Monitoring Project

The Cambodian Center for Human Rights Trial Monitoring Project (the “Project”) aims to improve the procedures and practices of courts in Cambodia, resulting in greater adherence to fair trial standards. Project staff have been monitoring criminal trials at Phnom Penh Capital Court of First Instance and Kandal Provincial Court since August 2009. The project is sponsored by the United States Agency for International Development (“USAID”) through the East West Management Institute (“EWMI”).

<sup>21</sup>The Observation Manual for Criminal Proceedings: Practitioners Guide No. 5, International Commission of Jurists (2009), p. 5.

## Focus of the Trial Monitoring

It is important to determine a focus for trial monitoring, for instance the focus may be on the analysis of whether the rights enshrined in law (in relation to the accused's trial rights) are respected and applied in the actual trial; or an analysis of the merits of the case, or both. Monitoring Organizations should decide on a focus for the project to provide the project with direction and allow for the setting of achievable objectives.

## Selection of a Trial

As mentioned above, the Monitoring Organization's objectives, interests and areas of expertise will impact the selection of the types of trials to be monitored and the choice of trial monitor chosen by the Monitoring Organization. Some of the following factors may influence the choice of trial to be observed:<sup>22</sup>

- Political or human rights significance of the proceedings;
- Representative nature of the trial;
- Anticipated irregularities in the proceedings;
- Historical relevance of the trial;
- Media attention generated by the case;
- Status of the parties, including the accused or victim, to the trial;
- Nature of the charge.

CCHR Trial Monitors travel to courts daily and attend as many of the day's trials as possible recording adherence to a set of core fair trial rights using a pre-prepared and purpose built checklist. The data is then entered into an online Database, which is accessible to the public. Twice a year Project staff compile a report setting out the data collected over the previous reporting period, comparing data to previous reporting periods in order to identify trends.

Each report identifies the relevant basis for fair trial rights under Cambodian and international law and makes a series of practical recommendations to improve adherence to fair trial standards. Before and after the release of the report Project staff engage in dialogue with judicial stakeholders with the aim of sharing ideas for judicial reform and encouraging implementation of the recommendations. The Project advocates a constructive approach with the judiciary. The presidents of Phnom Penh Capital Court of First Instance and Kandal Provincial Court have been informed and updated about the project implementation since its beginning and throughout its execution.

## Selection of a Trial Monitor

The level or area of expertise of any trial monitor is a matter to be considered by the Monitoring Organization. While any decision will have its advantages and disadvantages, it is important that any trial monitor:

- Is, and appears to be, independent and impartial;
- Has knowledge of fair trial rights in the context of human rights;
- Has an understanding of the legal basis of these rights;

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<sup>22</sup>Ibid.

- Understands the role of a trial monitor including the requirement of objectivity and not involving oneself in the proceedings by talking to the parties.

The Monitoring Organization can assist the trial monitors in relation to the 2<sup>nd</sup> to 4<sup>th</sup> bullet points above by providing adequate training and comprehensive instruction.

## **Briefing the Trial Monitor**

From the outset and prior to the trial monitor observing any trial, the Monitoring Organization must ensure that its trial monitors are fully briefed and that they are provided with as much relevant information as possible. The briefing must be sufficiently detailed to adequately explain the mission, illustrate any necessary steps, provide the trial monitor with the required information and act as an opportunity to distribute any materials. The briefing should address and trial monitors must be made aware of:

- The purpose of the trial monitoring project including an outline of duties and responsibilities to ensure that the trial monitors scope of duties and tasks is clearly defined;
- The criterion used to monitor a trial;
- Copies of relevant legislation or binding international guidelines or instruments which are applicable to the proceedings;
- Practical information such as details of the court location, trial times and any court requirements;
- Details of the trial, such as the parties to the proceedings, names of legal personnel and judiciary, facts of the case, and nature of charges;
- Set of guidelines or a code of conduct which should be observed while trial monitoring;
- Contact details of relevant personnel at the Monitoring Organization in case contact during the trial monitoring project is required for instance in relation to policy issues or urgent matters requiring prompt attention;
- Any Memorandum of Understanding or authorization provided by the courts (discussed below);
- Security information including steps to be taken in the event of any threat or concern.

It is also a useful practice to establish a trial period where the new monitor accompanies a more experienced monitor to court on a trial monitoring session. This will provide the new monitor an opportunity to become familiar with the court process and the task of trial monitoring with a mentor who can explain any questions they might have in relation to the court or the checklist, in real time.

## **Best Practice: Notifying Courts of Trial Monitoring**

Once it is decided that a trial monitoring project is to be implemented it is considered best practice to provide prior notification to the court(s) where the monitoring is to take place. The Monitoring Organization should contact the president of the relevant court notifying him/her of the trial monitoring project and informing him/her that trials conducted at that court will be included in the project's monitoring. It is good practice to seek a meeting with the judges and staff of the court to inform them of the reasons for monitoring; such meetings also provide a good basis for building the trial monitors' relationship with the judge and the court staff.

## Security Risk Assessment

The Monitoring Organization should conduct a security risk assessment to determine whether there are security risks associated with the trial monitoring project or the monitoring of a specific court and, if so, determine whether there are any measures which may be taken to reduce these risks. The trial monitor should be informed of any potential security risks and should be made aware that he/she has overall responsibility for his/her personal security. If the security risks are not reasonably manageable, the Monitoring Organization should reconsider whether to undertake the trial monitoring project or to monitor a specific court (see Case Study 3 for the CCHR approach).

## b. Conducting Trial Monitoring

Once the pre-trial monitoring review and research has been completed, the trial monitoring process may begin. This section will consider the following topics:

- Trial Monitoring Checklist;
- Access to the courtroom;
- Taking Notes;
- Non intervention in the trial;
- Focus of Trial Monitoring;
- Public Statements made during the Trial.

## Trial Monitoring Checklist

A trial monitoring checklist is one method that can be used by Monitoring Organizations to monitor trials. It is a tailor made checklist which sets out points that the trial monitor should consider and analyze while observing a trial. A checklist can breakdown the legal proceedings and connect the specific trial rights that should be protected at each point. A checklist acts as a focus point, zoning in on specific details limiting the room for oversight. It further provides a

### Case Study 4: The CCHR Trial Monitoring Checklist

CCHR has compiled a comprehensive checklist for the purposes of our Trial Monitoring Project. This checklist is Cambodia specific – it is designed to include questions on fair trial rights that are the most relevant to the Cambodian context. A copy of the checklist, which may be used as an example, is attached as Annex 1. Each of the questions relates to a specific protection guaranteed in either domestic or international law.

uniform criterion that can be distributed to all trial monitors. The recorded results can be used for direct comparison and quantitative data; as such it can prove a most useful tool when undertaking trial monitoring. Monitoring Organizations that chose to use a checklist should aim to create a detailed checklist encompassing the objectives of the trial monitoring. A checklist must be user friendly to the trial monitor so that they can be completed during the trial. For this reason it is important that text input required by the trial monitor is kept to a minimum. It may be useful to utilize a series of check boxes whereby the checklist question is answerable by ticking a 'yes' box or a 'no' box. This also minimizes the trial monitors reliance on memory and assists in ensuring that data is as accurate and comprehensive as possible.

Once an adequate checklist has been agreed upon, the trial monitors should familiarize themselves with the criteria and understand fully the implications of selecting each option on the checklist. A note should be made of when each criterion will be applicable, which will make it easier for the trial monitor to apply the checklist in practice. An example of a checklist can be found in Appendix [1] of this Handbook.

## Access to the Courtroom

The trial monitor should be able to enter the courtroom and hearing without registering. However, upon inquiry, the trial monitors must be prepared to articulate the reasons for the project and the purpose and objectives of the monitoring to any court officials and legal actors.

The trial monitor should arrive at the court building early and familiarize themselves with the schedule for the day. Some Cambodian courts will post the daily timetable on a notice board situated in a public waiting area. For example, in the Phnom Penh Court of First Instance Courthouse, the notice board is situated in the public waiting area by the ground floor entrance. Sometimes notification is not posted and displayed at the courts being monitored. In such instances, the trial monitor should proceed to the courtrooms and speak with court staff to gain an understanding of the scheduled proceedings.

Once inside the courtroom, the trial monitor should sit in a position where he/she can clearly observe, listen and easily follow the proceedings. The International Commission of Jurists identifies two further considerations:

- The trial monitor should sit in a **prominent place** and should choose a place in the courtroom that optimizes the impact of his/her presence;<sup>23</sup>
- The trial monitor should sit in a **neutral position** and should choose a place in the courtroom that preserves impartiality.<sup>24</sup>

In Cambodia, the trial observers will most likely occupy a space in the public gallery. The same points of consideration should be kept in mind. Further, the trial monitor should aim to sit on the front bench of the gallery rather than a more obscure seat, as this will inevitably impact upon the quality of the observation.

Trials should be open to the public in all but exceptional circumstances. If the trial monitor is refused entry into a courtroom by any court official they should explain that they are only present to observe the proceedings. Should entry still be denied, the trial monitor should record the reasons for the non-admittance, including any reasons provided by the judge; this will afford the trial monitor an opportunity to consider whether the reasons provided for a closed hearing conform to the internationally recognized and domestically legislated exceptions to the right to a public hearing. The trial monitor should not demand access and should remain courteous at all times. The Monitoring Organization may decide to contact the courts and the Ministry of Justice in relation to prohibited access so as to work out a practicable solution.

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<sup>23</sup> Ibid., p. 18.

<sup>24</sup> Ibid.



## **Taking Notes**

Making a record of what is taking place in the proceedings is imperative. Not only does note taking help in actually analyzing the trial rights in the subsequent report, it also highlights the attention and scrutiny being applied to the legal process and actors.

The court should not object to note taking by trial monitors; however, CCHR knows of instances where a trial has been postponed as a consequence of note taking by trial monitors. Trial monitors must be aware that this does occur, should make a record when it does, list any reasons given and should notify the Monitoring Organization of the event.

Another point to consider is the risks of any notes being confiscated or checked by authorities. Trial monitors are encouraged to take rough notes to protect sensitive and potentially confidential information. Such notes can be added to later in a more secure environment, so long as the information is still fresh in the trial monitor's mind.

## **Non-intervention in the Trial Process**

The trial monitors are an impartial entity present at trial to observe the judicial process. Therefore key principles underpinning the duty of the trial monitors are non-intervention and respecting the independence of the Cambodian judicial process. It follows, that the observers should not attempt to persuade or interfere with any trials or preliminary issues in any way. In this regard, trial monitors should:

- Not interrupt any of the proceedings;
- Not publicly express an opinion on the proceedings;
- Not make recommendations to any of the parties to the proceedings;
- Not actively participate in any discussion surrounding the substantive trial;
- Respect the authority of the judiciary and court personnel;
- Not argue or get involved in any confrontation.

It should be highlighted that any concerns on the part of the trial monitor as to the integrity or otherwise of a trial may be outlined in the subsequent report. Consequently there is no need for the trial monitor to publicly express any concerns while the trial is in session.

With regard to the second bullet point above, that concerning publicly expressing opinions – Monitoring Organizations should carefully consider the purpose of making any public statement and the wider implications of any media alert. For instance, the Monitoring Organization will have to consider whether any statement will jeopardize the impartiality and success of the trial observation. However, the Monitoring Organization should not be deterred from making its presence known to the media; it should simply show discretion with regard to the content of any comment it makes.

## **c. Data Storage**

A Monitoring Organization must also consider how the raw data it has collected will be housed. Many options are available in this regard including soft or hard copy options. If a Monitoring Organization elects a hard copy storage system it must ensure that all files are kept in an organized manner and in a secure location. It is highly recommended that the Organization makes copies of the data to ensure that all valuable information remains available in case of data loss or damage to the original data. Copies should be kept in a separate location to the originals.

A soft copy storage format allows the Monitoring Organization to make its data available to the wider public faster than a hard copy format. All data stored in soft form must be backed up (i.e. soft form copies must be made in case of loss, damage or corruption of the original; such back-ups must be updated on a regular basis, preferably at the end of each working day to ensure up to date information is available at all times). It is good practice to make multiple back-up copies; at least one of these copies should be stored at a separate location to the original data.

The use of an online database is one method of soft copy data storage. A database is useful as it can act as both a back-up and, when made available online can also be used for data dissemination should the Monitoring Organization wish to share its data with the public and/or other organizations. A decision concerning public access to data will be largely dependent on the objectives of the Monitoring Organization. Regardless of whether public access is granted, should a database be utilized the organization must ensure that data entry is subject to quality control measures to ensure consistency with the data collected and any data input into the database. The publication of any monitoring data should also take into account any confidentiality issues that may arise and the Monitoring Organization should ensure that it does not publish sensitive information. In this latter regard, it is advisable to err on the side of caution.

## **d. Dialogue and Advocacy**

An important part of any trial monitoring project is how the information gathered by the project will be used and/or disseminated. The Monitoring Organization will have to consider how it will present its findings. The form used to present these findings should analyze the data with a view to the overall objective of the monitoring project and, if possible should comprise of both long and short form publications and, where appropriate involve dialogue with key justice sector stakeholders such as the courts and the Ministry of Justice.

One useful long form method for collating data, disseminating information and facilitating dialogue with judicial stakeholders is through a report that outlines the relevant findings and stipulates any recommendations the Monitoring Organization may have. Any report should ensure that results are presented in a clear and coherent manner.

A report can be an important tool enabling the Monitoring Organization to make informed recommendations; it is advisable that a Monitoring Organization fully utilizes the opportunities provided by publishing a report by considering all issues identified during the trial monitoring period. The Monitoring Organization should take into account that any report will enable external parties to assess its trial

monitoring processes, objectives and independence. These issues will necessarily affect the impact of the Monitoring Organization's conclusions and the extent to which third parties are willing to adopt any recommendations. It is therefore imperative that all information expressed in a report is accurate, clear, easy to understand and representative of the independence and neutrality of the Monitoring Organization.

Short form publications including newsletters and leaflets are also excellent tools for disseminating information. If a Monitoring Organization chooses to use short form publications it may prove useful to focus each publication on a specific topic, for example focusing on a specific right and only analyzing the issues/statistics associated with that right. In this way the content can be kept brief and simple to understand; qualities that lend themselves to wider audience consumption. Such methods are also useful for highlighting the most important issues/data collected by the Monitoring Organization.

The quantitative data collected via trial monitoring can be used in many different ways, be it to:

- Compare courts;
- Monitor trends; or
- Engage in evidence based dialogue and advocacy.

Data collected through trial monitoring to engage in evidence based dialogue and advocacy can be used in a number of different ways; for instance, presenting the data to the courts and other judicial stakeholders (for example, the Ministry of Justice) with a view to prompting legal and judicial reform. Engaging in dialogue with key justice sector stakeholders may be highly beneficial in bringing about such reform as it can lead to positive relationships with the courts, judges and relevant ministries. Such positive relationships can act as a spring-board from which constructive feedback can be shared by all parties concerned. This in turn lends itself to an environment that is more amenable to change, thereby assisting legal and judicial reform.

#### **CASE STUDY 5: Report writing and dialogue – proof of progress**

The CCHR Trial Monitoring Project has observed multiple successes in its effort to improve adherence to fair trial standards. Between August 2009 and December 2010 Trial Monitors observed an increase in the posting of notices of hearings on public notice-board outside the courtroom at the courts monitored. Rates rose from 3% in 2009 to 40% by December 2010.<sup>25</sup>

Similarly CCHR trial monitors observed a decrease in the use of mobile phones during trial by judges – taken as a sign of potential outside influence. Between August 2009 and December 2010 rates fell from 28% to 22%.<sup>26</sup> Both improvements to court adherence to fair trial standards followed recommendations in CCHR reports that were published after CCHR and key justice sector stakeholders engaged in constructive dialogue concerning the data collected. Such improvements are evidence of the correlation between trial monitoring and improvements in the court's respect for fair trial standards.

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<sup>25</sup> Cambodian Center for Human Rights, *Third Bi-Annual Report: Fair Trial Rights – One Year Progress*, Cambodian Center for Human Rights, September 2011, page 20.

<sup>26</sup> *Ibid.* Page 31.

## **e. Evaluation of the Trial Monitoring Process**

If the Monitoring Organization will be involved in subsequent trial monitoring projects, it is important to constantly review and evaluate its trial monitoring process and the actual and apparent independence of the trial monitors. Any checklist that has been devised may have to be amended to reflect issues that may have been identified by the trial monitors or in the evaluation of the trial monitoring project and to reflect any changes in the legislation. However, if the Monitoring Organization is to compare different trial monitoring projects, consistency between the questions recorded by the trial monitors will be necessary for an accurate comparison.

## **Conclusion**

A fair trial is a crucial aspect to any society wishing to conduct itself in a manner that reflects justice and equality for all. A fair trial is only possible if the law upholds internationally recognized principles and rights. Those administering the law must not only be independent and impartial but must be seen to be independent and impartial.

Trial monitoring is an important tool that assists in ensuring an independent, impartial and professional judiciary that upholds fair trial rights and performs to the standards espoused by international and domestic law. CCHR has compiled this Handbook as a guide for lawyers, human rights defenders and Monitoring Organizations wishing to establish their own trial monitoring projects. Project approaches may vary and as such some parts of this handbook may not be applicable to some projects, however, any organization may make use of the checklist and code of conduct annexed to the handbook. CCHR is happy to provide additional assistance to any organization seeking to establish its own trial monitoring project, or already engaged in trial monitoring. For more information please contact:

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Code of Criminal Procedure of the Kingdom of Cambodia (2007).

Constitution of the Kingdom of Cambodia (1993, as amended).

Penal Code of the Kingdom of Cambodia (2009).

Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period (UNTAC) (1992).

### International Law

United Nations General Assembly, *Convention against Torture and Other Cruel Inhuman or Degrading forms of Treatment or Punishment*. December 10, 1984.

United Nations General Assembly, *Convention on the Rights of the Child*. November 20, 1989.

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

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

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<http://www1.umn.edu/humanrts/undocs/html/Vws377.htm>

## United Nations Principles and General Comments

United Nations Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4; available at:

<http://www.unhcr.org/refworld/docid/4672bc122.html>

United Nations Committee on the Rights of the Child, *General Comment No. 10 Children's Rights in Juvenile Justice*, CRC/C/GC/10, 25 April 2007.

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

## Manuals

International Commission of Jurists, *The Observation Manual for Criminal Proceedings: Practitioners Guide No. 5*, International Commission of Jurists, 2009.

## Reports

Cambodian Center for Human Rights, *Third Bi-Annual Report: Fair Trial Rights – One Year Progress*, Cambodian Center for Human Rights, September 2011.

## Other Resources

Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, November 1996; available at:

<http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

## ANNEX 1 – CHECKLIST



**គម្ពីរមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
Cambodian Center for Human Rights

### TRIAL MONITORING CHECKLIST

#### A. 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"/> BMC	<input type="checkbox"/> RTK
	<input type="checkbox"/> Other Please specify: _____			
1(d) Judge:	1 <sup>st</sup> 2 <sup>nd</sup> 3 <sup>rd</sup>	<input type="checkbox"/> Other Please specify:		
1(e) Clerk:				
1(f) Number of Accused	Total:			
	Adult:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Juvenile:	Male:	Present:	Absent:
		Female:	Present:	Absent:
	Legal Person Representative:	Male:	Present:	Absent:
Female:		Present:	Absent:	
1(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:	

#### TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING	
2(a) Was notice of the hearing posted on a public board outside the	<input type="checkbox"/> Yes <input type="checkbox"/> No

courtroom?	
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <input type="checkbox"/> No Reason:

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

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



5. RIGHT TO CALL AND EXAMINE WITNESSES			
5(a) Was there anything to suggest that any party <b>was not</b> given the opportunity to call witnesses?	<input type="checkbox"/> Yes		<input type="checkbox"/> No
	If yes, which party?		
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Defense	<input type="checkbox"/> Civil Party
	Reason:		
5 (b) Were the witnesses present in the courtroom before they were questioned?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

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

6. PRESENTATION OF EVIDENCE:								
6(a) Was evidence/witness presented?	<input type="checkbox"/> Yes <input type="checkbox"/> 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) 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 <b>was not</b> 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 <b>was not</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
If yes, which party?			

given the opportunity to question witnesses?	<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 access to the case file prior to the hearing?			
<input type="checkbox"/> Prosecutor			
<input type="checkbox"/> Accused (if self represented)			
<input type="checkbox"/> Defense Counsel			
<input type="checkbox"/> Civil Party			
Comment: [Please provide details as to why it is suggested that the relevant party did not have access to the case-file?]			
7(d) Was the accused or defense counsel denied the opportunity to have the last word?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
<input type="checkbox"/> Accused			
<input type="checkbox"/> Defense Counsel			
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 make discriminatory comments about any party?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If yes, was the discriminatory comment based on the party's:			
<input type="checkbox"/> Race			
<input type="checkbox"/> Gender			
<input type="checkbox"/> Religion			
<input type="checkbox"/> Other			
Please explain the nature of the comment:			
8(d) Did the judge leave the court room during the trial?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> I/U
If yes, please explain reason:			
8 (e) Did the Judge answer a mobile telephone during the trial?	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"/> Audible			
<input type="checkbox"/> On silent			

9. DELIBERATION			
Finish time:			
9(a) Was there a	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Next day
			<input type="checkbox"/> I/U



## B. 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  Offense: <sup>27</sup> Relevant law: Relevant article of the law:	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Petty Offense

### 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

<sup>27</sup> If human trafficking please see Annex II: Human Trafficking Trial

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? If yes, please explain:	<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
14(b) Was there anything to suggest the accused was interrogated without a lawyer present? If yes, please explain:	<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
14(c) Was there anything to suggest that threats were made to coerce the accused into confessing to the alleged crime? If yes, please explain:	<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
14(d) Was there anything to suggest that violence or torture were used to coerce the accused into confessing to the alleged crime? If yes, please explain:	<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

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

### 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) If the accused is female was the accused represented by a female lawyer?	<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
16(d) Did any of the lawyers represent more than one accused? If yes, was there a conflict between the interests of two or more of the accused represented by the same lawyer  Details:	<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  <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?  If yes, please provide details:	<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 (d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the accused? If yes, please explain:	<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

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? If yes, please explain:	<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

19. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION					
Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
19(a) Was the law under which the accused is charged in	<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

force on the date the offense was allegedly committed?					
If no, please explain:					

20. VERDICT <input type="checkbox"/> I/U					
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"/> 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
20(b) What was the court's ruling?	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
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
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? (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 <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
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:					
Prison:					
Probation:					



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?  Amount:	<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
21(c) Was the accused ordered to pay compensation?  Amount:	<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
21(d) Was there any other alternative sentence?  If yes, please provide details:	<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
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?  If yes, please provide details:	<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
21(f) Were the sentencing provisions of the Penal Code used in sentencing?	<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
21(g) If yes to 21(f), were the retroactive sentencing provisions of the Penal Code applied correctly?  If 'No', please provide details	<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

## ANNEX: JUVENILE ACCUSED

22. AGE					
Juvenile Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
22(a) Age at the time of the offense	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
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	<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

23. PRE-TRIAL DETENTION					
Juvenile Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
23(a) Age at the time of pre-trial detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
23 (b) Was there anything to suggest that the accused was not separated from adults?  Comment:	<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

24. TRIAL <input type="checkbox"/> N/A					
Juvenile Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
24(a) Were any measures taken to protect the privacy of the accused juvenile during the hearing?  Details:	<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
24 (b) Did the judge give the accused juvenile the chance to express his or her	<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

views freely, either personally or through a representative such as a lawyer or parent?					
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25. SENTENCE		<input type="checkbox"/> N/A			<input type="checkbox"/> I/U
Juvenile Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5
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 <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A	<input type="checkbox"/> Article 38 <input type="checkbox"/> Article 39 <input type="checkbox"/> Both <input type="checkbox"/> Neither <input type="checkbox"/> N/A
25(b) Was there anything to suggest that the Judge considered imposing a non-prison sentence?  Comment:	<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

## ANNEX: LHTSE<sup>28</sup> TRIAL

26. GENERAL INFORMATION	
26(a) Has the trial been previously delayed?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please give details:
26(b) What is the relevant article of law?	
Please give a clear summary of the facts of the case.	

27. ACCUSED DETAILS						
Accused	Accused 1	Accused 2	Accused 3	Accused 4	Accused 5	
27(a) Age:	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> >46
27(b) Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	
27(c) Occupation:	<input type="checkbox"/> Pimp <input type="checkbox"/> Tourist <input type="checkbox"/> Sex Worker <input type="checkbox"/> Other Please state: _____ _____	<input type="checkbox"/> Pimp <input type="checkbox"/> Tourist <input type="checkbox"/> Sex Worker <input type="checkbox"/> Other Please state: _____ _____	<input type="checkbox"/> Pimp <input type="checkbox"/> Tourist <input type="checkbox"/> Sex Worker <input type="checkbox"/> Other Please state: _____ _____	<input type="checkbox"/> Pimp <input type="checkbox"/> Tourist <input type="checkbox"/> Sex Worker <input type="checkbox"/> Other Please state: _____ _____	<input type="checkbox"/> Pimp <input type="checkbox"/> Tourist <input type="checkbox"/> Sex Worker <input type="checkbox"/> Other Please state: _____ _____	

<sup>28</sup>Law on the Suppression of Human Trafficking and Sexual Exploitation 2008

27(d) Nationality:	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U
27(e) Is there anything to suggest that the accused is a family member of the victim? If yes, please give details:	<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

28. VICTIM DETAILS						
Victim	Victim 1	Victim 2	Victim 3	Victim 4	Victim 5	
28(a) Age:	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 45>	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 45>	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 45>	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 45>	<input type="checkbox"/> 0-14 <input type="checkbox"/> 15-17 <input type="checkbox"/> 18-25 <input type="checkbox"/> 26-35 <input type="checkbox"/> 36-45 <input type="checkbox"/> 45>	
28(b) Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Male <input type="checkbox"/> Female	
28(c) Occupation:	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Masseuse <input type="checkbox"/> Sex Worker <input type="checkbox"/> Restaurant/Bar worker <input type="checkbox"/> House maid <input type="checkbox"/> Porter <input type="checkbox"/> Construction worker <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U

28(d) Nationality:	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U	<input type="checkbox"/> Cambodian <input type="checkbox"/> Vietnamese <input type="checkbox"/> Thai <input type="checkbox"/> Laotian <input type="checkbox"/> Other Please state: _____ <input type="checkbox"/> I/U
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29. VICTIM'S RIGHTS		<input type="checkbox"/> N/A	
29(a) Did the Judge inform the victim of his/her rights?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Comment:			
29(b) Did the victim testify?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
29(c) Was there anything to suggest that the victim was ordered by the court to testify against their will?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Comment:			
29(d) Was there anything to suggest the victim is lying about their age?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Comment:			
29(e) Was there anything to suggest the victim had contact (directly or indirectly) with the accused between arrest and trial?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Comment:			
29(f) Did the Lawyer of the victim request that the victim's identity be kept confidential (i.e. did they request a closed hearing or the use of a screen)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If yes, did the Judge agree to this?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
29(g) Did the Judge approach sensitive topics in a suitable manner?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Comment:			

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30. FEMALE VICTIM <span style="float: right;"><input type="checkbox"/> N/A</span>					
30(a) Are any of the court officials female?	<input type="checkbox"/> Yes <span style="float: right;"><input type="checkbox"/> No</span> Comment:				
Female Victim	Victim 1	Victim 2	Victim 3	Victim 4	Victim 5
30(b) Was the victim represented by a female 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
Comment:					

31. WITNESSES <span style="float: right;"><input type="checkbox"/> N/A</span>	
31(a) Was there anything to suggest the witness had been intimidated by the accused?	<input type="checkbox"/> Yes <span style="float: right;"><input type="checkbox"/> No</span> Comment:

32. THE LAW	
32(a) Did the judge make any statements or comments which suggested he or she was confused as to the nature of human trafficking or the LHTSE?	<input type="checkbox"/> Yes <span style="float: right;"><input type="checkbox"/> No</span> Comment:
32(b) Did the facts of the case prima facie reflect the elements of the LHTSE under which the accused was charged?	<input type="checkbox"/> Yes <span style="float: right;"><input type="checkbox"/> No</span> Comment:

33. JUVENILE VICTIM <span style="float: right;"><input type="checkbox"/> N/A</span>					
Juvenile Victim	Victim 1	Victim 2	Victim 3	Victim 4	Victim 5
33(a) Did the Judge take extra precautions when speaking to juvenile victim?	<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
Comment:					
33 (b) Was there anything to suggest	<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

<p>that the juvenile wanted their parents / guardian present at the hearing?</p> <p>If yes, were the parents present?</p> <p>Comment:</p>	<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
<p>33 (c) Was there a screen to protect the juvenile from testifying in public?</p>	<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





**Trial Monitoring Project**  
**Promoting Justice in Cambodia**

**TRIAL MONITORING CODE OF CONDUCT**

Supported by:



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## General Duties

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### *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 organisational information relevant to CCHR

## Prior to Implementation of the Trial Monitoring Project

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### *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 is expected from a) Judge; b) Prosecutor C) Defence 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<sup>30</sup>
- 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) signed between CCHR and the Ministry of Justice

## Prior to Each trial to be monitored

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### *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
- What are the relevant Constitutional provisions

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<sup>29</sup> This section will be provided as an additional document and will apply for all trials to be monitored

<sup>30</sup> Attach copy of notification/agreement with relevant court

### **Notification**

- Trial Monitors must document in detail any dialogue with a) government; b) Defence 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 programme 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 demeanour 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 defence 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 should be made before the end of the trial.
- 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.