PRESS RELEASE

The Cambodian Center for Human Rights (“CCHR”) Releases Fair Trial Rights Annual Report Outlining Key Findings from its Court of Appeal Monitoring

Phnom Penh, 23 November 2021

Today, CCHR’s Fair Trial Rights Project releases its annual report “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, covering the period 1 November 2019 to 31 December 2020. This Report analyzes data gathered through the daily monitoring of 203 randomly selected criminal cases at the Court of Appeal in Phnom Penh, using a specifically designed trial-monitoring checklist to assess adherence to fair trial rights as set out in international and Cambodian law.

The Report finds that a number of key fair trial rights were guaranteed before the Court – including the pre-trial right to speak with a lawyer, the right to adequate time and facilities to prepare one’s defense, and the right to a public judgment. In addition, the Court consistently protected the defendants against double jeopardy and against non-retroactive application of criminal law. Regrettably, trial monitoring also uncovered a lack of compliance with some fundamental fair trial rights, as outlined below:

- The right not to be compelled to confess guilt has been classified as being not fully respected due to the remaining high number of defendants who claim they have been subjected to violence or torture to force them into confessing the alleged crime (17 out of 255 defendants). In addition, two defendants alleged that they were threatened into giving a confession.

- The fundamental right to a public hearing is not fully respected as only 15% of the hearings monitored by CCHR had a notice posted on the public board outside the courtroom.

- The right to understand the nature and cause of the charges continues to be considered not fully respected. While the judges informed the defendants of all relevant charges against them in 78.3% of the cases monitored, they failed to do so in over one fifth of the cases, which is insufficient.

- The right to legal representation and to be present at trial was not always respected: about 28% of defendants were not represented by a lawyer which is worringly lower than last year’s findings (about 26% of defendants without a lawyer in 2018/2019). Further, in 15 out of the cases monitored by CCHR, the judges failed to inform the accused about their right to legal representation, which is a concerning trend. Similarly, while an increased number of defendants were present during their hearing compared to the previous year (19% of defendants absent at trial in 2018/2019), 10% of the defendants were absent at trial in the monitored cases.
• The presumption of innocence remains not fully respected, with judges failing to inform 25.6% of the defendants about their right to remain silent and 28.2% of defendants appearing in court in the same prison uniform as convicts.

• Evidentiary rights are not properly respected. In one out of the two cases in which witnesses were called, witnesses were present in the courtroom before they were questioned, which can lead to their testimony being influenced by hearing the testimony of other witnesses prior to giving evidence. In addition, there is a concerning lack of quality of the evidence presented.

• The judges of the Court of Appeal also failed to fully respect the right to a reasoned judgement in the monitored cases, with almost 65% of the judgements given without adequate reasoning.

• The rights of juvenile defendants, who are entitled to special protection under international human rights law and Cambodian law, continue to be ignored: no specific measures were put into place to protect the juvenile defendants’ privacy at the trials monitored. In addition, all the juvenile defendants involved in the monitored cases were held in pre-trial detention.

The Report also compares this year’s data with that of 2014/2015, 2016/2017, 2017/2018, and 2018/2019 in order to identify trends and analyze the evolution of fair trial rights in the Kingdom. Overall, several key fair trial rights have been consistently upheld by the Court since 2014, including the pre-trial right to speak with a lawyer and the right to adequate time and facilities to prepare a defense, the right to a public judgment, the non-retroactive application of the law and the prohibition against double jeopardy. Regrettably, a certain number of rights have been consistently not fully respected since 2014, such as the right to a public hearing, the right to a reasoned judgment, evidentiary rights and the rights of juveniles. Finally, some rights that were classified as upheld by the Court in previous years were moved to the category of not fully respected rights in more recent years. These rights include:

• The right to presumption of innocence, which was classified as fully respected in 2014/2015 but has since then not been fully respected by the Court. In particular, appeal judges have failed to inform or explain to the defendants their right to remain silent and an increasing number of defendants have appeared before the court in prison uniforms since 2014.

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

• The right to legal representation and to be present at trial, which was considered as fully respected in 2014/2015 and has since then been classified as not being fully respected. The percentage of defendants who were represented by a lawyer has been steadily decreasing since 2014/2015. Moreover, in almost none of the cases in which the defendant was present did the
judge inform and explain to the defendant their right to legal representation or to defend themselves.

- The right not to be compelled to confess guilt which after having been considered as protected in 2017/2018 was re-classified as not fully respected in 2018/2019 due to allegations by various defendants that their confessions were obtained through violence or torture. While the trend in 2018/2019 shows a slight decrease in comparison to 2017/2018, data collected during the 2019/2020 reporting period reveals that the number of defendants who claim violence or torture was used against them is on the rise again, which is highly problematic and calls for immediate and thorough investigations by the competent authorities.

The Report is available on CCHR’s website in Khmer and in English, and the underlying data can be found on CCHR’s Trial Monitoring Database.

For more information, please contact CCHR’s Fair Trial Rights Project Coordinator, Mr. Hun Seang Hak via e-mail at seanghak.hun@cchrcambodia.org or telephone at +855 (0) 12 40 30 50.

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Notes to the Editor:

About the Fair Trial Rights Monitoring Project

CCHR’s Fair Trial Rights Project was set up in 2009 to monitor criminal trials in Cambodian courts, and to assess their adherence to international and Cambodian fair trial standards. The Project uses the findings to promote increased respect for fair trial rights, to advocate for improvements in court practices, and to increase understanding and knowledge of the concept of fair trial rights among the public. The overall goal of the Project is to improve the procedures and practices of courts in Cambodia, resulting in full adherence to fair trial standards in criminal trials and to increase understanding and knowledge of the concept of fair trial rights among the public. For more information, please visit our website as well as our Fair Trial Rights Monitoring Database. Other publications from the project can be found here.

About the Cambodian Center for Human Rights

Founded in November 2002, CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights in Cambodia. CCHR is a member of the International Freedom of Expression Exchange (IFEX), the global network for freedom of expression, and CIVICUS: World Alliance for Citizen Participation. CCHR is also a member of the World Organization Against Torture (OMCT) SOS-Torture Network and OECD Watch. The Cambodian Human Rights Portal www.sithi.org is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms and the 2013 winner of the Communication for Social Change Award awarded by the Centre for Communication and Social Change at the University of Queensland in Brisbane, Australia.