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ADHOC



## Hearing Monitoring

**Capital-Provincial Court of First Instance (January 2022 - July 2023)**

Phnom Penh, January 02, 2023

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## I. INTRODUCTION

**About ADHOC:** The Cambodian Human Rights and Development Association (ADHOC) is a non-governmental organization which is independent, neutral, non-profit and non-partisan. ADHOC is the first human rights organization established on December 10, 1991, officially recognized by Samdech Preah Norodom Sihanouk on March 10, 1992 and registered with the Ministry of Interior on March 28, 2000 with Prakas No. 278.

ADHOC operates nationwide, with its headquarter based in Phnom Penh branches in 21 target provinces, including: 1- Prey Veng 2- Kampong Cham 3- Kratie 4- Stung Treng 5- Ratanakiri 6 Mundulkiri Province 7-Kampot Province 8-Koh Kong Province 9-Preah Sihanouk Province 10-Kampong Thom Province 11-Kampong Chhnang Province 12-Battambang Province 13-Banteay Meanchey Province 14-Udor Meanchey Province 15-Siem Reap Province 16-Preah Vihear Province 17-Kampong Speu Province 18-Pursat Province 19-Pailin Province 20-Svay Rieng Province and 21-Tbong Khmum Province.

ADHOC works to address issues related to fundamental rights and fundamental freedom in Cambodia by providing citizens with knowledge and understanding of human rights, law, democracy, and the protection of their rights and freedoms. The main purpose of ADHOC is to help victims of abuse to seek justice for themselves, strengthen the capacity of citizens to claim their rights, and encourage them to peacefully advocate for the promotion and improvement of laws, institutions and the enforcement of the law.

**Methodology:** The "Hearing Monitoring" report was compiled by gathering information through the Hearing Monitoring reports of ADHOC workersworkers, coordinators, ADHOC office in the provinces/capital, who carry out their activities nationwide and participated in the trial in person. All cases in which ADHOC workers attended their trials were in its term and it provided a lawyer to act as attorney-in-fact at the request of the

victims. A 19-question Hearing Monitoring form was developed for use during the hearing monitoring and the report was sent to Phnom Penh Headquarter to be entered in the generated database (statistical software suite 'SPSS'), which will be used in analyzing and writing this report.

**Purpose:** The “Hearing Monitoring” report is designed to contribute to the promotion of the right to justice in a transparent manner and to ensure the non-existence of the four kinds of partialities, in particular to provide information that is relevant to the judicial performance of judges, prosecutors and attorneys-at-law in order to improve the judicial system in Cambodia.

## II. General information and parties in the case

The “**Hearing Monitoring**” report only covers the trials at the Capital-Provincial Court of First Instance, the “Provincial-Capital Courts”, where they participated in the hearing monitoring from January 2022 to July 2023.

During the reporting period, ADHOC workers monitored the trials of 175 cases in 20 Capital-Provincial Courts of First Instance, with the attorney-at-law of the Association acting as attorney-in-fact of the victims, including the courts of first instance of Phnom Penh, Banteay Meanchey, Mondulkiri, Preah Vihear, Prey Veng, Rattanakiri, Siem Reap, Sihanoukville, Stung Treng, Battambang, Svay Rieng, Takeo, Udor Meanchey, Pailin, Tbong Khmum, Kampong Cham, Kampong Chhnang, Kampong Speu, Kampot and Koh Kong.

Out of the 175 cases monitored by ADHOC, 79 (45.1%) cases were related to human rights, 64 (36.6%) cases were related to the women's and children's rights, and 32

(18.3%) cases were related to land rights, most of which involved political activists, human rights activists, and the violation of land rights.

Out of the 175 cases monitored by ADHOC, there were 137 criminal cases and 38 misdemeanors (no minor offenses), involving a total of 1,165 accused persons/defendants (including 151 women & 9 children, of which 358 people were absent during the hearing) and a total of 452 plaintiffs as victims (including 67 women & 36 children, of which 9 people were absent during the hearing).

**Postponement of the hearing:** Out of 175 cases monitored by ADHOC, there were 51 trials judged by single judges and 124 cases by judicial panel. In that case, the court adjourned 45 (25.7%) cases for the reason that the judicial panel members were busy, the court had an urgent meeting, there was a request from the accused person's attorney-at-law, the plaintiff's attorney-at-law was absent, the prison failed to send the accused person and the court needed more evidence.

**Pretrial detention for more than six months<sup>1</sup>:** Out of 175 cases monitored by ADHOC, there were 142 cases in which the accused persons were remanded in pre-trial detention. According to the report, 80 out of 175 cases have been remanded in pre-trial detention for more than 6 months to more than 24 months, including:

- Between 6 and 9 months            34 cases;
- Between 10 and 12 months       12 cases;
- Between 18 and 23 months       2 cases;
- Between 24 up                        32 cases.

**The difference between the time set in the judgment and the time of the actual trial:** According to the report, there are many cases with significant difference

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<sup>1</sup> Article 208, Article 209, Article 249, Article 283 and Article 305 of the 2007 Criminal Procedure Code and Article 14 of the International Covenant on Civil and Political Rights

between the time set in the judgment and the time of the actual trial process. The differences range from at least an hour or half an hour, for instance the time set in the judgment was 8:00 am, but the actual time of the trial was not earlier than 9:00 am to 9:30 am or 10:00 am, and sometimes until 11:00 am.

### III. Rights during the trial

**The right to a public hearing<sup>2</sup>:** According to the research report, there were 103 (59%) of 175 cases, the court failed to inform of the hearing as it failed to post it on the information board outside the courtroom. In addition, in the 175 cases, the public and reporters were barred from entering or being evicted from the courtroom:

<b>Barring entry or eviction from the courtroom</b>	
Public (142 cases - 81.14%)	Reporters (116 cases - 66.28%)
<p><b>Reasons:</b></p> <ul style="list-style-type: none"> <li>- Small courtroom, inadequate seats;</li> <li>- No invitation or pre-registration;</li> <li>- Police closed the gate, barred from entering;</li> <li>- Courts hear private cases such as rape and juvenile cases.</li> </ul>	

**Right to know the reason and charges against them<sup>3</sup>:** The research report shows that between 34% and 50.85% of the 175 cases in the trial, the court (judges) still failed to fully exercise the rights of the accused to know the reasons and charges against them:

<sup>2</sup> Article 316 of the Criminal Procedure Code 2007

<sup>3</sup> Article 325 of the Criminal Procedure Code 2007

<b>The right to know the reason and charges (A total of 175 cases)</b>	<b>Completely told (cases)</b>	<b>Somewhat told (cases)</b>	<b>In percentage (%)</b>
Inform all accused persons of the relevant charges	86	89	50.85
Inform of relevant legal articles	102	73	41.71
Inform of the date of committing the crime	115	60	34.28
Inform about the place of crime	116	59	33.71
Inform the parties involved in the crime	92	83	47.42
If needed, the court provided an interpreter	106	69	39.42

**Explaining the rights of the accused:** During the trial, the judges apparently failed to pay much attention to explaining the rights of the accused about their rights. The results represent that between 11% and 37% of the 175 cases, the judge failed to explain to the accused some of the rights, such as: the right to have an attorney-at-law or the right to defend oneself, the right not to answer, the right not to be compelled to confess guilt and the right to the presumption of innocence. According to the data, between 40% and 54% of 175 cases, the judges only briefly informed the accused of their rights without explaining them in detail.

<b>The judge inform and explained to the accused about (A total of 175 cases)</b>	<b>Told and explained (cases)</b>	<b>Just told (cases)</b>	<b>Did not tell - did not</b>
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			<b>explain (cases)</b>
The right to have an attorney-at-law or the right to defend oneself <sup>4</sup>	87	69 (40%)	19 (11%)
The right not to answer	38	95 (54%)	42 (24%)
The right not to be compelled to confess guilt	32	94 (54%)	49 (22%)
The right to the presumption of innocence	17	94 (54%)	64 (37%)

### **The right to call and question witnesses:**

The witnesses in 105 cases (60%) of the 175 cases were summoned by the court and present in the courtroom during questioning, and according to the monitoring, there were still irregularities, for instance there were 19 cases (11%) of the 175 cases, in which inculpatory witnesses received more special treatment than exculpatory witnesses, and there were exculpatory witnesses in six cases (3.42%) who were treated more specially by the court than inculpatory witnesses.

- In 6 (3.42%) of the 175 cases, the accused parties were prohibited from presenting documentary evidence, including the testimony of witnesses.
- In 17 (9.71%) of the 175 cases, the court did not allow the accused and their attorney-at-law to question the witnesses or the plaintiffs or the plaintiffs' attorney-at-law.

**The rights during interrogation and ban on torture <sup>5</sup>:** According to the report, during the interrogation at the judicial police stage, in 7 out of 175 cases, the accused

<sup>4</sup> Article 301 of the Criminal Procedure Code 2007

<sup>5</sup> Article 1 of the Convention against Torture and Article 5 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights and Article 38 of the Constitution of the Kingdom of Cambodia



were compelled to confess guilt and affix their thumbprints on the report, especially in drug cases, and in the other 3 cases, the accused were handcuffed by the district judicial police, tortured and compelled to confess guilt.

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<b>The accused was (A total of 175 cases)</b>	<b>No</b>	<b>Yes</b>	<b>Specify the reason (Yes)</b>
Questioned without the presence of an attorney-at-law	161	14	The accused just requested for an attorney-at-law at the investigating judge stage
Compelled to confess guilt (Drug case)	168	7	The accused stated that the police had compelled them to confess guilt and affixed their thumbprint on the report
Victims of violence or torture forced to confess	172	3	The accused stated that the district police handcuffed them and compelled them to confess guilt

**Presumption of innocence**<sup>6</sup>: According to the report, it suggests that in 46.28% (81 out of 175 cases) of the case, the judge talked about the guilt of the accused before a judgment was issued, with the judge "telling the accused to apologize". In addition, in seven cases, the judge convicted the accused based on their silence, and at the same

<sup>6</sup> Article 38 of the Constitution of the Kingdom of Cambodia and Article 14 of the International Covenant on Civil and Political Rights and Article 11 of the Proclamation of Human Rights

time, the prosecutor shouted when the accused did not answer. Of which, in 75.42% (132 out of 175 cases) appeared during the hearing in the prison uniform and 41.14% (72 out of 175 cases) were handcuffed during the hearing.

<b>The accused appeared (A total of 175 cases)</b>	<b>Yes</b>	<b>No</b>	<b>Specify the reason (Yes)</b>
During the hearing in prison uniform	43	132	
Handcuffed during the hearing	103	72	The accused were handcuffed while waiting for the hearing, but when they went to a podium he/she got unhandcuffed
The judge had talked about the innocence or guilt of the accused before the judgment was issued	94	81	The trial judge told the accused to apologize
The judge finds guilty out of silence of the accused	168	7	Prosecutors shouted when the accused did not answer

#### **IV Attorney-at-law Execution:**

- In 88% (154 out of 175 cases), attorneys-in-fact were present during the hearing, except for 16 cases, in which the hearing was proceeded without an attorney-at-law because the victims as civil plaintiffs, did not request for an attorney-at-law. Of which, in 60% of the case (105 out of 154 cases with the presence of attorney-at-law), the attorney-at-law represented more than one accused person "An attorney-at-law defended a group of the accused, most of whom were the

representatives of the community with disputes over land, natural resources and fundamental freedoms."

- In 58.3% (102 out of 175 cases) of the case, the attorney-at-law cited their client's right to a fair trial, such as the right to a fair trial, the right to know the charges and the right to be present at the hearing.
- In only 9.14% (16 out of 175 cases) of the case, the attorney-at-law referred to international law during the trial, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
- In only 29.14% (51 out of 175 cases) of the cases, the attorney-at-law cited the incompleteness and inconsistency of the evidence.
- In only 6.3 (11 out of 175 cases) of the case, the attorney-at-law used mobile phones during the trial.
- In only 2.9% (5 out of 175 cases) of the case, the attorney-at-law left the courtroom.

**Independence, impartiality and conduct of judges on stakeholders:** According to the report, in 18.85% (33 out of 175 cases) of the case, the judges and prosecutors used mobile phones during the trial and in 46.85%, they left the courtroom for reason that the judge had several hearings or went to the bathroom. In 10.3% of the case, the judges and prosecutors continued to intimidate the accused during the trial, such as compelling the accused to confess guilt, recording the voice with their phones, and shouting at the accused. 3.42% of the judges and prosecutors used discriminatory language against the accused who are ethnics and banned them from wearing traditional clothes.

<b>Judges/Prosecutors had (A total of 175 cases)</b>	<b>No</b>	<b>Yes</b>	<b>Specify the reason (Yes)</b>
Demonstrated threatening behavior to the accused	157	18	<ul style="list-style-type: none"> <li>- Asked the accused to confess;</li> <li>- Record the voice with their phones;</li> <li>- Used inappropriate words, shouting at the accused;</li> </ul>
Used discriminatory language against the accused	169	06	<ul style="list-style-type: none"> <li>- Prohibited the wearing of Apsara clothes;</li> <li>- On the accused who are ethnics</li> </ul>
Left the courtroom during the hearing	93	82	<ul style="list-style-type: none"> <li>- The judges had several hearings to attend;</li> <li>- Went to toilet;</li> <li>- Did not pay attention to their work;</li> </ul>
Used their phones during the hearing	142	33	<ul style="list-style-type: none"> <li>- 66.7% for judges and 33.3% for prosecutors;</li> <li>- In 66.7% of the case, they just answered the phone briefly and put it down</li> <li>- In 33.3% of the case, they chatted</li> </ul>

**Court discussion and decision:** In 6.3% (11 out of 175 cases) of the case, the judges made a decision during the decision of the judges and in 97.7%, the judge failed to make a decision during the decision of the judge. In only 2.85% (5 out of 175 cases) of the case, judgments were pronounced on the day of the hearing and in 97.15% of the case, the court postponed the pronouncement of the judgment, and in 53.71% (94 cases) of the case, the court postponed the pronouncement of the judgment without specifying a specific date.

**Judgment:** According to the report, in 78.3% (137 out of 175 cases) of the case, the judges added new offenses when the judgment was announced, and in 7.42%, the judges referred to the legal provisions, based on which the accused were convicted.

<b>The judge had (A total of 175 cases)</b>	<b>No</b>	<b>Yes</b>	<b>Percentage (Yes)</b>
Referred to the articles of law, based on which the accused were convicted	13	162	92.6%
Presented the evidence that rationalized the decision of conviction	173	02	1.14%
Changed the charge against the accused when the judgment was issued	174	01	0.8%
Added new offenses when the judgment was issued	38	137	78.3%

## **Refer to the report from the attorney-at-law representing the client:**

- **Disallowance of exculpatory witnesses to testify:** The trial judge does not allow – failed to summon the exculpatory witnesses whom the attorney-at-law had requested during the investigation and trial stages. When the court only used the records of the judicial police officer, the accused’s right to defend themselves (especially in the case of collective land disputes) was materially impacted before the law against any false accusation (according to Article 110 and 118 and Article 321 of the Criminal Procedure Code).
- **Issuance of invitation for the attorney-at-law to attend the hearing:** The court issued invitations for attorney-at-law to attend the hearing late, as most invitations arrived only one or two days before the hearing. According to Article 466 of the Criminal Procedure Code for criminal cases, if the case is in the hands of the prosecutor and the trial judge and Articles 236, 238 of the Criminal Procedure Code, if it is in the hands of the investigating judge.
- In many cases, the court failed to invite attorneys-at-law to accompany their clients to listen to their answers at the prosecution stage.
- In more than 90% of the case, the courts failed to inform of the judgment, such as the final judgment, closing order. (According to Articles 236 and 238 of the Criminal Procedure Code).
- Sometimes, the court summoned the clients but failed to invite the attorney-at-law, but if the attorneys-in-law were invited, the court failed to summon their clients to the prosecutor stage or the investigating judge stage.

## **V. Recommendations**

1. The Ministry of Justice should set out specific measures against any actions of judges and prosecutors that contradict the objectives of Article 208 and Article 209 of the Criminal Procedure Code 2007, which stipulate the duration of pre-trial

detention. According to the report, in 80 out of 175 cases, they were remanded in custody for more than 6 months to more than 24 months.

2. The Ministry of Justice should examine and impose severe administrative penalty on judges and prosecutors who delay the performance their duties in opening a trial. According to the report, there was a delay of more than an hour to two hours compared to the time specified in the summons and the actual time of the hearing.
3. The Ministry of Justice should set out specific measures against any actions of judges and prosecutors who delay the issuance of invitations to attorney-at-law and parties to the trial.
4. The Ministry of Justice should review and set out specific measures against any actions of judges and prosecutors who fail to invite the attorney-at-law to accompany their clients to listen to their clients' answers at the prosecutor and judge stages.
5. The Ministry of Justice should examine and set out specific measures against any action of judges and prosecutors who fail to notify the judgment, such as the final judgment and the closing order.
6. Judges and Prosecution Representatives should consider using words or talking about the innocence or guilt of the accused before issuing the judgment, such as telling the accused to apologize.
7. The judge should consider the rights of the accused, such as those wearing prison uniforms and being handcuffed during the trial.
8. The judge should explain to the accused/victims clearly about their rights to be granted, such as the right to have an attorney-at-law, the right not to answer, the right not to be compelled to confess guilt and the right to the presumption of innocence, the right to know the charges, the right to know date or place of crime etc.

9. The Ministry of Justice should set out specific measures for all courts of first instance to be open to the public and reporters to attend public hearings without restriction or eviction.

**- The End -**