



FAIR TRIAL RIGHTS NEWSLETTER

Fair Trial Rights of Juveniles

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The Cambodian Center for Human Rights (CCHR) has been conducting trial monitoring since 2009, in observing criminal trials in Cambodian courts and assessing their adherence to international and Cambodian fair trial standards. Since March 2013, CCHR's Fair Trial Rights Project has been monitoring hearings in the Phnom Penh Court of Appeal. This newsletter is part of a series of newsletters that analyze the findings of CCHR's monitoring and discuss broader issues. It focuses on the fair trial rights of juveniles, and in particular the right to privacy, the protection of presumption of innocence and pre-trial detention.

The right to privacy

Juveniles have the right to have their privacy respected at all stages of legal proceedings. The underlying rationale is to avoid the harm caused by undue publicity or libel. This is enshrined in Article 5, 6, 47 of the Law on Juvenile Justice as well as in Article 40(2)(vii) of the Convention on the Rights of the Child (CRC). As such, no information should be publicized that could lead to the child being identified.¹

"Every minor suspected or accused of having committed an offence shall have the following basic procedural rights: [...] the right to privacy [...]" Art. 6, Law on Juvenile Justice

The right to privacy applies from the initial contact with law enforcement until the final decision is rendered, or until the child is released from supervision, custody or otherwise, if the child is sentenced. Juveniles' privacy may also be protected by the use of screens during trials, or employing some other means of providing testimony (such as video conferencing, or a closed hearing).

Convention on the Rights of the Child Article 3(1)

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The presumption of innocence

This means that a juvenile must be assumed to be innocent throughout proceedings until proven guilty by law.² This is a fundamental and universally recognized right, essential in all fair trials. It is provided for by Article 38 of the Cambodian

Constitution, Article 5 of the Law on Juvenile Justice, and Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

"All persons performing any function concerning a minor shall [...] ensure that the arrest, detention or imprisonment of a minor is used only as a measure of last resort and for the shortest period of time [...]" Art. 5, Law on Juvenile Justice

Amongst other things, the presumption of innocence requires that:

- the court must not decide the case in advance of hearing it;
- the prosecution must prove guilt beyond reasonable doubt (in other words, it is not for the juvenile to prove that they did not commit the crime that they are accused of);
- the accused juvenile should not be treated as if they are guilty during proceedings; and
- the media should avoid news coverage that undermines the presumption of innocence, for instance by presenting the juvenile as guilty;
- Public authorities should also refrain from making public statements as to the guilt of the accused.³

What should happen if a juvenile is accused of a crime?

Cambodian law provides special treatment for juveniles. For instance, the Law on Juvenile Justice was adopted in

¹ CRC General Comment 10 "Children's rights in Juvenile Justice", 25 Apr 2007, para. 64, <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

² OHCHR, "The Right to a Fair Trial", Part 1, Ch. 6, p.

219, <https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf>

³ UN HRC, General Comment 32 "Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial", 23 August 2007, para. 30, <https://bit.ly/2FB9fEh>.

2016 to safeguard the rights and best interests of children who commit criminal offences.

Further, accused juveniles are entitled to all the fair trial rights that are available to adults, as well as to additional protections that account for their age, maturity, and intellectual development.

In particular, the cross-examination of witnesses and of the defendant shall take place in a closed hearing, where the public is not permitted to attend, in order to respect the juvenile's privacy (Article 47, Law on Juvenile Justice)

The ICCPR and the CRC also set out specific provisions for the treatment of juveniles in criminal proceedings. These include, and are not limited to, the fact that the procedure must take account of the child's age and work towards promoting their rehabilitation (Article 14(4) ICCPR). In addition, the survival and development of the child must be ensured to the maximum extent (Article 6(2) CRC).

"All persons performing any function concerning a minor shall [...] Consider primarily on actions concerning the best interest of minors; in particular, to ensure the minors' right to life and maximum survival and development [...]" Art. 5, Law on Juvenile Justice

What should happen when a juvenile is convicted of a crime?

The best interests of the child must be the primary consideration when ordering or imposing penalties upon juveniles found to have infringed criminal law. This is in accordance with Article 3(1) CRC.⁴ A juvenile's hearing must take place in the presence of "legal or other appropriate assistance" and their parents or legal guardians (unless it is *not* in the juvenile's best interests) (Article 40(2)(b)(iii) CRC).

The imprisonment of juveniles must be considered only as a last resort, and used only in exceptional cases (Article 37(b) CRC). Article 39 of the Cambodian Criminal Code respects this provision, by promoting supervision, education, protection and assistance over detention. However, if "warranted by the circumstances of the offence or the character of the minor", a court may impose a criminal penalty.

Article 40 of the Cambodian Criminal Code also allows for alternative measures to custodial sentences such as judicial protection, committing the minor to a social service agency or institution, or a private organization qualified to receive minors.

⁴ See also CRC General Comment 10 "Children's rights in Juvenile Justice", paras 10 & 71, cited above in footnote 1.

⁵ Therefore, in this case, CCHR could not obtain information on the trial process to enter into the database.

Juvenile Defendants in Cambodia in Numbers

Findings from CCHR's Trial Monitoring

Between 1 August 2017 and 30 November 2018, CCHR monitored 257 cases, involving 380 defendants. Out of these, 9 cases included 14 juvenile defendants.

	Cases monitored	Cases involving juveniles	Number of defendants	Number of juvenile defendants
1 Aug 17-31 Mar 18	102	2 (1.9%)	150	6 (4%)
1 Apr 18-30 Nov 18	155	7 (4.5%)	230	8 (3.4%)
1 Aug 17-30 Nov 18	257	9 (3.5%)	380	14 (3.6%)

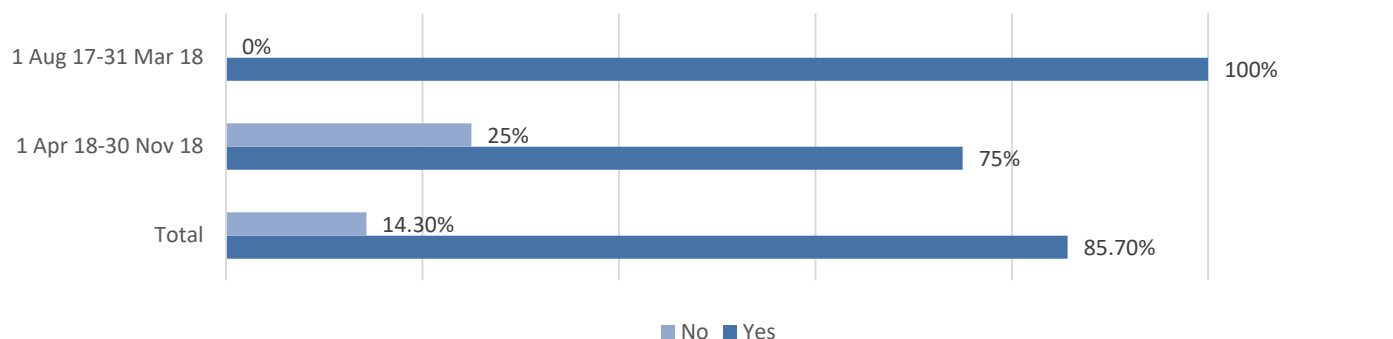
Key concerns include that, first, no measure was put into place to respect the juveniles' privacy. Second, most were held detention. Third, while between August 2017 and March 2018, more than 83% of the juvenile in the cases monitored by CCHR appeared before the Appeal Court wearing the orange suspect uniform (not the blue prison uniform for convicts), a welcomed move which better respected the presumption of innocence, although fair trial rights international standards allow defendants to wear their own clothing. Between April and November 2018, three-quarter of the juveniles wore the same uniform than that of convicted individuals, which violates their presumption of innocence.

It is important to note that in June 2018, CCHR observed that in one case, the hearing of a juvenile was held in a closed session,⁵ it represents a good practice which should be followed in all cases involving juveniles.

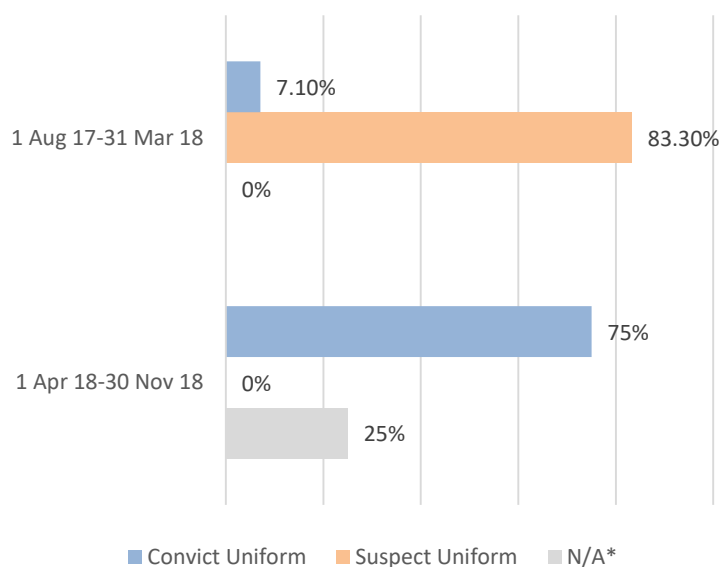
Many of these issues, and particularly the question of the juvenile's right to privacy, were discussed with the Court of Appeal's Deputy Presidents in April 2018.⁶ He undertook to review the existing practices in order to be compliant with both national and international standards.

⁶ On 5 April 2018, CCHR's Fair Trial Monitoring Project team met with Appeal Court representatives, in order to discuss the findings contained in its 2017 Annual Report.

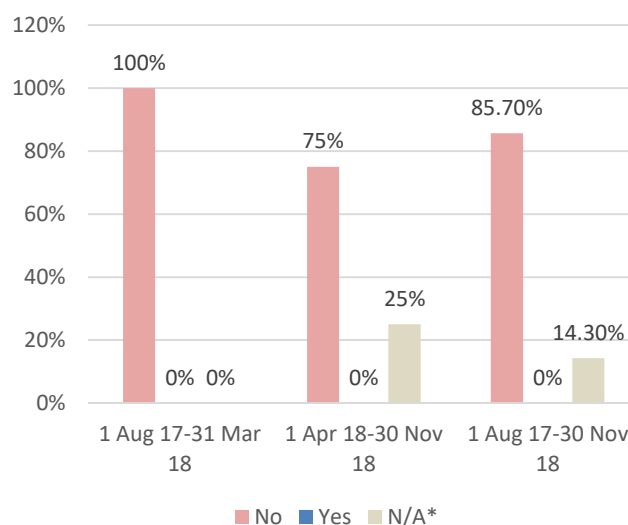
Overview of Juveniles Held in Pre-Trial Detention



Juveniles & Prison Uniforms



Where measures taken to protect Juveniles' Privacy?



* N/A refers to cases where the defendant was absent, or where he/she was not in detention.

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Recommendations

CCHR calls on judges and the Royal Government of Cambodia to:

- Implement the Law on Juvenile Justice, in particular Article 47 which requires that the trial process and the judgment be conducted in a closed hearing;
- Follow the best practice of the Extraordinary Chambers in the Courts of Cambodia (ECCC) and allow juvenile defendants to appear in court wearing their own clothing, at all stages of the criminal procedure;
- Limit pre-trial detention of juveniles to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile's rights;
- Ensure that Judges and prosecutors undergo specific training concerning issues relating to fair trial rights of juveniles;
- Examine alternatives to custodial sentences for juveniles, and implement a set of sentencing guidelines relating to juveniles whereby the focus is placed firmly upon rehabilitation rather than punishment alone;
- Review existing legislations in order to ensure their compliance with international standards on the juvenile justice system, including, but not limited to, the [UN Standard Minimum Rules for the Administration of Juvenile Justice](#) and the [UNICEF guidance for legislative reform on juvenile justice](#).

Previous issues of CCHR's Fair Trial Rights newsletter are available online ([Issue 1](#), [Issue 2](#), [Issue 3](#), [issue 4](#) and [issue 5](#)). You can also read our 2017 [annual report](#) on "Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal", outlining key findings from its monitoring of the Court of Appeal in Phnom Penh between 1 November 2016 to 31 October 2017.