



FAIR TRIAL RIGHTS NEWSLETTER
Fair Trial Rights of Juvenile Defendants
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The Cambodian Center for Human Rights (CCHR) has been conducting trial monitoring since 2009, to observe criminal trials in Cambodian courts and assess 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. The present newsletter focuses on the rights of juvenile defendants, in particular the right to privacy, the right to presumption of innocence and pre-trial detention.

All the data collected by CCHR during trial monitoring is publicly available in our [trial monitoring database](#).

The rights of Juvenile Defendants

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

Accused juveniles are entitled to all the fair trial rights that are available to adults. However, they are also entitled to additional protections that account for their age, maturity, and intellectual development. Both international and domestic law provide special treatment for juveniles.

The International Covenant on Civil and Political Rights (“ICCPR”) and the Convention on the Rights of the Child (“CRC”) 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).

Cambodia adopted a Law on Juvenile Justice in 2016 to safeguard the rights and best interests of children who commit criminal offences. In particular, the cross-examination of witnesses and of the defendant shall take place in a closed hearing, where the public is not permitted

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.**”*

Cambodian Law on Juvenile Justice
Article 5

*“All persons performing any function concerning a minor shall ensure the observance of the following principles: **Consider primarily actions concerning the best interest of minors [...]**”*

to attend, in order to respect the juvenile’s privacy (Article 47, Law on Juvenile Justice).

“The cross-examination and pronouncement of judgment shall be conducted in closed court [...]” Art. 47, Law on Juvenile Justice

In addition, accused juveniles must be presumed innocent until proven guilty and their detention before trial should be avoided to the greatest extent possible. (Art 5, Law on Juvenile Justice).

The right to privacy

“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

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 CRC. As such, no information should be publicized that could lead to the

child being identified.¹ 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. At the trial stage, the privacy of juveniles must be protected through closed court.

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).

The right to presumption of innocence

“To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: [...] To be presumed innocent until proven guilty according to law.” Art. 40(2)(i), CRC

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, Article 14(2) of ICCPR and Article 40(2)(i) of CRC.

In 2013 a [Prakas](#) of Ministry of Interior was issued dictating that persons who have not been convicted, or whose convictions are not yet final but who are detained by the authorities will wear a dark orange uniform. While the provision of different uniforms for convicted persons and those whose convictions are not yet final is welcome, *all* defendants whose convictions are not yet final should be able to wear their own clothes to court, in order to ensure that the right to be presumed innocent is fully respected.

International best practices in criminal justice, notably the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted in 2015³, indicate that defendants should be able to wear their own clothing when appearing in court. In addition, in the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), defendants are permitted to wear their own clothes at all stages of the criminal process until there is a final conviction.

For this mean, juvenile defendants whose convictions are

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 General Assembly ‘United Nations Standard Minimum Rules for the Treatment of Prisoners’, Resolution 70/175, Annex, 17 Dec 2015, <https://bit.ly/3zRcE9p>.

⁴ Convict uniform refers to blue and white-striped attire.

not yet final, must be protected from attending a hearing in the uniform of a convicted person.⁴

Furthermore, 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;
- the media should avoid news coverage that undermines the presumption of innocence, for instance by presenting the juvenile as guilty; and
- Public authorities should also refrain from making public statements as to the guilt of the accused.⁵

Pre-trial detention as a last resort

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” Art. 37(b), CRC

Deprivation of liberty of juveniles, from the moment of arrest, throughout the proceedings and in sentencing, is to be considered as a measure of last resort, and should be employed only in exceptional cases, and for the shortest appropriate period of time, as provided by Article 37 (b) of CRC as well as Article 5 of the Law on Juvenile.

International human rights standards⁶ provide for the necessity of laws to include and expressively prioritize non-custodial measures for accused juveniles in order to avoid depriving them of their liberty to the greatest extent possible. Cambodian law provides for alternative measures to custodial sentences. Article 39 of the Cambodian Criminal Code states that minors who commit offences shall be subject to supervision, education, protection, and assistance and Article 40 provides a list of supervisory, educational protective and assistance measures to apply to juveniles.

⁵ 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>.

⁶ UN HRC, General Comment 24, 2019 “Children’s rights in juvenile justice”, para. 73, <https://bit.ly/3CDzkf5>.

Such measures notably include returning the minor to their parents, guardian, custodian, or to any other trustworthy person, intrusting the minor to a competent social service agency, a qualified private organization or a specialized hospital or institution as well as placing the minor under judicial protection.

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.⁷ 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.

The rights of Juvenile Defendants in Numbers

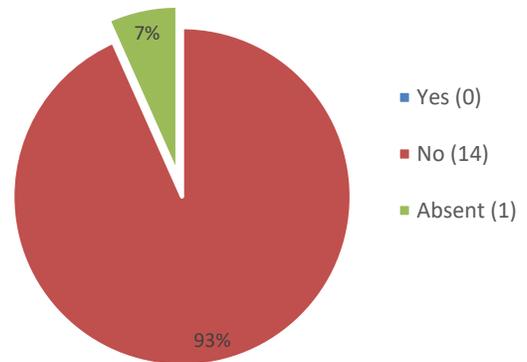
Findings from CCHR’s Trial Monitoring 2019-2020

Between 1 November 2019 and 31 December 2020, CCHR monitored 203 cases involving 255 defendants at the Phnom Penh Court of Appeal. Out of these, 15 cases included 15 juvenile defendants. Thirteen out of the 15 juvenile defendants (87%) were aged 16-17 at the time of the offence, and two juvenile defendants (13%) were aged 14-15 at the time of the offence.

Of the juvenile defendants involved in the cases monitored, 93% were present at their trials (14 out of 15). All the trials were public and no measures were taken by the courts to protect their privacy.

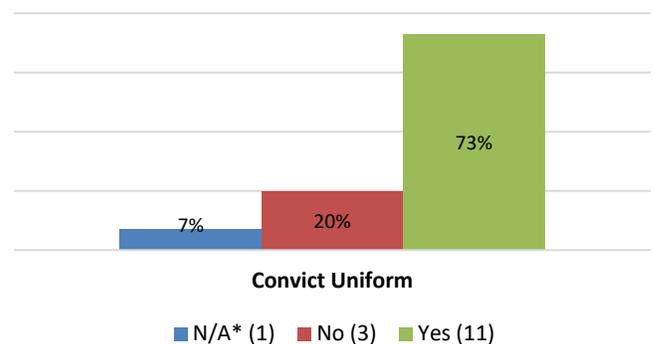
⁷ See also CRC General Comment 10 “Children’s rights in Juvenile Justice”, paras 10 & 71, cited above in footnote 1.

Measures taken to protect the privacy of juvenile defendants during the hearing (2019-2020)



In addition, the cases monitored concerned juvenile defendants who had been convicted at first instance but whose convictions were being appealed and were not yet final. Despite this, 73% (11 out of 15) of juvenile defendants appeared before the court in the blue convict uniform while 20% (3 out of 15) appeared in the dark orange uniform. At the same time, all 15 of the juvenile defendants (100%) were held in pre-trial detention.

Juvenile defendants who appeared in convict uniform (2019-2020)



* N/A refers to the non-detention or absence of juvenile defendants

For defendants whose conviction is not yet final, taking no measures for protecting the privacy during trials, requiring accused juveniles to wear convict uniform before the court, and placing them in pre-trial detention is inconsistent with the international human rights law and the domestic law outlined in the previous sections and international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Evolution of the Rights of Juvenile Defendants (2018-2020)

	Cases monitored	Cases involving juveniles	Number of defendants	Number of juvenile defendants
1 Nov 18-31 Oct 19	239	14 (5.8%)	352	22 (6.3%)
1 Nov 19-31 Dec 20	203	15(7.3%)	255	15 (5.8%)
1 Nov 18 - 31 Dec 20	442	29 (6.6%)	607	37 (6.1%)

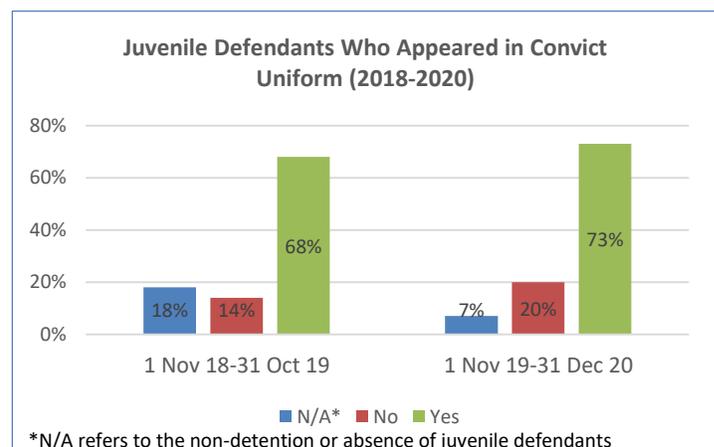
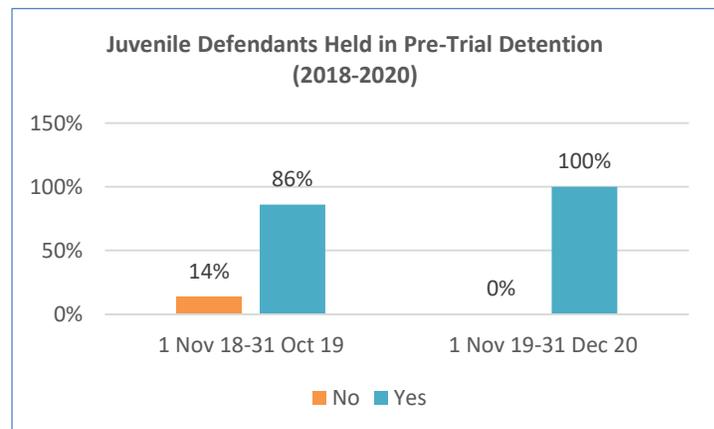
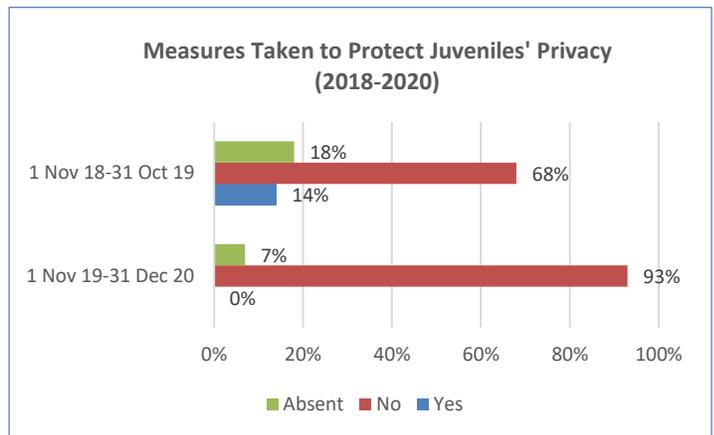
As compared to the period 2019-2020, between 1 November 2018 and 31 October 2019, CCHR monitored 14 cases involving juveniles out of the 239 cases monitored at the Phnom Penh Appeal Court. These cases involved 22 juvenile defendants. At the time of the offense, 17 of them were aged 16-17 (77%), 4 were aged 14-15 (19%) and 1 was under 14, but was immediately acquitted by the judge in accordance with human right standards. Of the total juvenile defendants, 86% (19 out of 22) were held in pre-trial detention and of 82% (18 out of 22) were present at their trials. Of all juvenile defendants, 68% (15 out of 22) appeared in court wearing the blue convict uniform, in violation of their presumption of innocence, while 14% (three out of 22) wore the dark orange uniform. In addition, no measures to protect their privacy were taken during trial for 68% (15 out of 22) of them, in violation of their right to privacy. However, it is important to note that relevant measures were taken to protect the privacy of three juvenile defendants who were present at the trial, which represents a good practice that should be applied with all cases involving juveniles.

While CCHR monitored fewer cases in 2019-2020, the findings show that the rights of juvenile defendants were less respected by the Phnom Penh Court of Appeal in the cases monitored in 2019-2020 than in the cases monitored in 2018-2019. This is particularly evident regarding the use of pre-trial detention and the lack of measures taken to protect juvenile defendants' privacy.

Overall, in the 29 cases involving 37 juveniles that CCHR monitored during the period 2018-2020, key concerns include that, first, almost no measures were put into place to respect the privacy of juvenile defendants. The Court took such measures for only 8% of the juvenile defendants (3 out of 37) involved in the cases monitored. Second, the majority of the juvenile defendants were held in pre-trial

detention. 92% (34 out of 37) of the juvenile defendants involved in the cases monitored by CCHR awaited their trial in detention. Third, 70% (26 out of 37) of the juvenile defendants appeared before the Phnom Penh Court of Appeal Court wearing the blue convict uniform, while 16% (6 out of 37) wore the dark orange uniform. None of them appeared in their own clothes despite best practice recommendations.

Many of these issues, and particularly the question of the juvenile's right to privacy, were discussed with the Court of Appeal's President in August 2020.⁸ The Court committed to reviewing the existing practices in order to be compliant with both national and international standards.



⁸ On 13 August 2020, CCHR team met with Appeal Court's president and team, in order to discuss the findings contained in its 2020 Annual Report.

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 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 cases, all necessary measures are taken to respect the juveniles' rights;
- Ensure that judges and prosecutors undergo specific training concerning issues relating to the 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 on CCHR website ([Issue 1](#), [Issue 2](#), [Issue 3](#), [Issue 4](#), [Issue 5](#), [Issue 6](#), [Issue 7](#), [Issue 8](#), [Issue 9](#), [Issue 10](#), [Issue 11](#), [Issue 12](#) and [Issue 13](#)). You can also read our 2018 annual [report](#), 2019 annual [report](#), and 2020 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 2019.