



TRIAL MONITORING & THE PROMOTION OF FAIR TRIALS:

Juvenile Justice: Pre-trial detention and sentencing in the Cambodian justice system

A monthly newsletter on fair trial rights

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A message from the President:

This International Children’s Day, the Cambodian Center for Human Rights (“CCHR”) would like to draw attention to the rights of juvenile accused to a fair trial. The rights and best interests of the child must be a primary consideration at all stages of the trial process. Sadly this is not the current state of affairs in Cambodia. I believe with a cooperative approach with government, working in partnership with donors, NGOs and private organizations, Cambodia can develop an effective juvenile justice process that ensures that young persons who break the law receive adequate support to become constructive members of society.

~Ou Virak President of CCHR

Juveniles in Cambodia’s justice system

Juveniles accused of a criminal offence are entitled to all fair trial rights applicable to adults, as well as additional protections in recognition of their age, maturity, and intellectual development. Despite legislative provisions for differentiated treatment of juveniles during the criminal justice process, a study conducted by the CCHR has revealed that there is a gap between the principles set out in domestic and international law and the application of the law by the courts. This is particularly the case with regard to pre-trial detention and incarceration at sentencing.

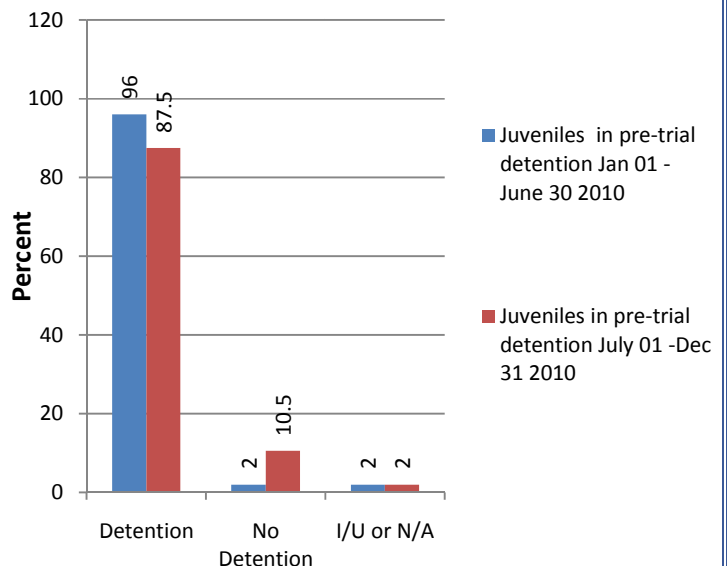
Juveniles in detention

Article 203 of the Cambodian Criminal Procedure Code (“CCPC”) creates a presumption against pre-trial detention for all charged persons regardless of their age. However, with regards to juveniles a great onus exists to avoid pre-trial detention, with Article 37(b) of

the United Nations Convention on the Rights of the Child (the “CRC”) providing that detention of juveniles should only be used as “a measure of last resort and for the shortest appropriate period of time.” The CCPC provides in Article 212 that a minor who is less than 14 years old may not be temporarily detained in pre-trial detention, with Articles 213 and 214 setting out maximum detention periods for minors between 14 and 18 years of age.

That there is a greater obligation on the courts to avoid detention of juveniles makes CCHR’s findings particularly concerning. The chart ‘Juveniles in Pre-trial Detention’ below indicates that between January and June 2010, 96% of all juveniles tried were held in pre-trial detention. Between July and December 2010, it was 87.5% of all juveniles tried.

Juveniles in pre-trial detention



The excessive use of pre-trial detention by the Cambodian Courts conflicts with standards sets out in domestic and international law of the presumption against pre-trial detention and detention of juveniles



prior to trial being a measure of last resort. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides that all efforts shall be made to apply alternative measures to pre-trial detention. Judges should only be applying pre-trial detention of juveniles as a measure of last resort and seek appropriate alternatives to such detention where necessary.

Juveniles in prison

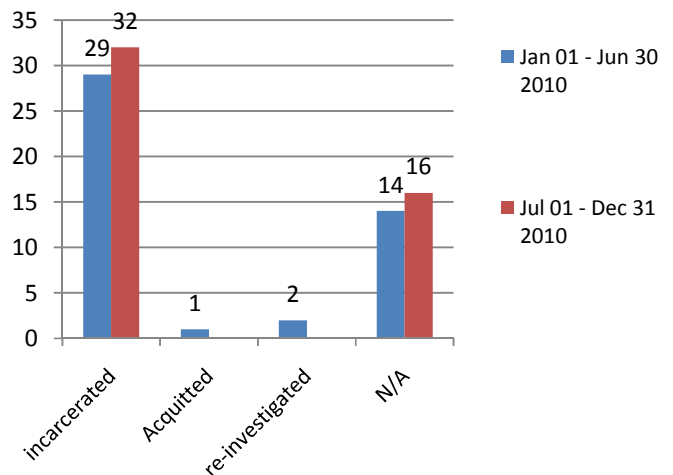
The United Nations Committee on the Rights of the Child has noted that a decision to initiate a formal trial of a juvenile does not mean that the process is concluded with a court sentence for the child. Article 3(1) of the CRC provides that the best interests of the child are to be a primary consideration when ordering or imposing penalties on juveniles found to have infringed the criminal law and in this regard there must be a concerted exploration of possible alternative measures to court convictions. Such alternative measures are provided for in Articles 39 – 41 of the Penal Code of the Kingdom of Cambodia (the “Penal Code”).

Article 39 of the Penal Code places an onus on the courts to avoid placing juveniles in prison. It provides that minors who commit an offence are subject to measures of surveillance, education, protection and assistance, but may be imprisoned, provided they are over 14, and only where the circumstances of the offence or the personality of the minor justify doing so. Articles 40 -41 of the Penal Code set out the alternative measures that can be applied to sentencing in cases involving juveniles as alternatives to a prison sentence. These statutory responses to criminal offending by minors should be applied in all but exceptional cases.

The chart ‘Sentencing of Juvenile Accused’ sets out the data collected by CCHR in relation to the sentencing of juveniles between January 1 and December 31 2010. The chart shows that of the 94 trials monitored involving juveniles an acquittal was monitored in one trial, while in 61 trials the juvenile accused was incarcerated. In none of the trials involving juveniles monitored during this period was a non-custodial sentence utilized. Two cases were reinvestigated, while information about verdicts and sentencing were

unavailable in 30 of the trials. In light of the legislative framework that specifically provides for differentiated treatment of juveniles, particularly the use of alternative measures to custodial sentences, the intemperate use of incarceration may indicate a lack of social and judicial resources and structures to support the court in implementing the alternatives outlined in the Penal Code. Judges should ensure that the imprisonment of juveniles is a last resort and utilize the new sentencing provisions available under the Penal Code. A cooperative approach in this area, with government working in partnership with donors, NGOs and private organizations, is recommended to ensure the development of an effective juvenile justice process that focuses on ensuring the reintegration and rehabilitation of juvenile offenders into constructive members of society.

Sentencing of juvenile accused



CONTACT:

Any suggestions, feedbacks, or more information, please contact us by:

Tel : (855) 23 72 69 01
 Fax : (855) 23 72 69 02
 Mail : PO Box 2515
 Email : info@cchrcambodia.org

CCHR is a non-political, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout the Kingdom of Cambodia.

