Dear Editor,

The Phnom Penh Post recently reported that overcrowding resulting from Cambodia’s overburdened prison system is exacerbating health risks and likely has contributed to the 64 inmate deaths in the first eight months of 2010 (“State targets crowded prisons”, September 29).

According to the Ministry of Interior, the prison system is running at 174 percent of its official 8,000 inmate capacity, with a total of 13,957 persons currently detained in prisons throughout the country. The Ministry of Interior plans to build new prisons to reduce overcrowding and to work with the Ministry of Health to improve health services for prisoners, both of which are required.

While I welcome these initiatives, I take this opportunity to observe that by applying the law in relation to provisional detention and by pursuing non-custodial sentencing options, the judiciary in Cambodia can significantly reduce the prison population and problems endemic in existing facilities.

There are reportedly close to 4,000 individuals currently held in pretrial detention. Article 38 of the Cambodian Constitution states that accused persons shall be considered innocent until the court has finally judged on the case. This principle is reflected in a presumption against pretrial detention in both Cambodia’s Code of Criminal Procedure and the International Covenant on Civil and Political Rights.

However, despite these provisions, which imply that pretrial detention should only be used in exceptional cases, the Cambodian Centre for Human Rights’ Trial Monitoring Project recently found that in 532 monitored trials, 84 percent of accused persons had been held in pretrial detention. This notwithstanding the provision for judicial supervision in the Code of Criminal Procedure, an alternative to pretrial detention whereby a court may impose restrictions on the movements of accused persons while allowing them to remain at liberty pending their trial.

The 2009 Penal Code created a range of new non-custodial sentencing options for judges. Where an offender is sentenced to, or would have been sentenced to, less than or equal to three years imprisonment for an offence, judges can substitute the sentence for community work of between 30 and 200 hours (Article 72) or a public reprimand (Article 76). Article 104 allows the court to suspend a sentence – meaning the sentence will not be imposed unless the offender re-engage in criminal behaviour – and Article 117 provides for probationary suspended sentences.

Under a probationary suspended sentence the judge can impose a probationary period of between one and three years, during which time the offender must comply with one or more court-ordered obligations such as enrolling in schooling or professional training; residing in a designated area; providing proof that they have contributed to taking care of their family; or submitting themselves for regular medical checkups or treatment (Article 120). If the court-ordered obligations are not fulfilled, the full sentence can be imposed.
According to Cambodia’s 2009 report to the Committee against Torture, as of August 2009 there were a total of 718 juveniles accused in prisons throughout the country. Article 39 of the Penal Code creates a statutory presumption against conviction and imprisonment of juveniles, stating that minors who commit offences are “subject to measures of surveillance, education, protection and assistance”. The court may pronounce a criminal conviction against a minor “if the circumstance of the offence or the personality of the minor justify in doing so”, however, the default option is that criminal prosecution will not be pursued, and other non-custodial responses should be utilised.

Clearly, there remain many instances in which it is necessary to sentence criminal offenders to imprisonment to protect the community, punish the offender and to discourage other potential offenders.

However, for many nonviolent first-time offenders there are sentencing options providing more constructive solutions to offending than imprisonment. The new sentencing provisions in the Penal Code represent a commendable effort to shift the culture of Cambodia’s justice system from a myopic focus on punishment, characterised by the indiscriminate and often disproportionate use of imprisonment, towards acknowledgement of the other valuable goals of rehabilitation and reintegration.

To ensure such measures are viable and effective, however, the government must provide adequate resources to courts, police and social service providers, and those institutions must establish clear processes and procedures for monitoring adherence to non-custodial sentences.

Non-custodial sentences provide a win-win solution to Cambodia’s prison overcrowding: more effective responses to petty criminal offences and a lower prison population.

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