Court Management Hinders Fairness, NGO Says

BY FRANK RADOSEVICH AND CHENG SOKHONG
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Widespread and lengthy stretches of provisional detention continue to plague criminal trials, according to a new report detailing shortfalls in the Cambodian judiciary.

The report, released yesterday by the Cambodian Center for Human Rights, found that 84 percent of trials monitored at Phnom Penh Municipal Court and Kandal Provincial Court during the first half of last year jailed defendants before their trials. By law, such detentions are to be the exception, not the rule.

In one example, a convict was held for nearly two-and-a-half years after completing the seven-month sentence eventually handed down by the court.

"It is way, way too high," CCHR President On Vinaik said yesterday of provisional detention.

"We're hoping that pretrial detention is the exception and not the norm... I think the numbers tell otherwise."

Eighteen cases, about 3 percent of the total 532 criminal trials monitored at the two courts, exceeded the statutory limits of provisional detention. Of those 18 trials, 13 involved only misdemeanor charges.

Mang Monia, senior trial monitor at CCHR, said the share of cases involving provisional detention had in fact dropped 4 percentage points since a previous CCHR study that observed 199 trials at the two courts in 2009. Nonetheless, she said its elevated use was unwarranted. By law, suspects can be held for six months in felony cases, though...

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this can be renewed twice for a maximum of 18 months, and for four months for misdemeanor charges, though this can be extended to six months.

Generally, a person charged with a crime should only be detained ahead of trial if there is a risk that he or she will flee, destroy evidence, intimidate witnesses or pose other threats to the administration of justice.

"The authorities must respect that," Ms Mang said, adding that copies of the report had been sent to both courts but, CCHR received no response from them.

Sam Pracheameanith, Cabinet director at the Justice Ministry, said ministry inspectors were auditing the nation's courts and would submit their findings before Khmer New Year.

He added that any judge who allowed a suspect's detention beyond the legal limit could face punishment from the Supreme Council of the Magistracy.

"We always advise all courts not to detain any inmate over the time limit. The courts have a procedure for detaining inmates," he said, adding he had not seen the report.

The CCHR survey did observe some areas of improvement, notably that the vast majority of defendants in felony cases have lawyers and judges who tend to observe the presumption of innocence. In only 1 percent of the observed cases did it appear that a party was denied the opportunity to present evidence or summon witnesses.

Further, neither of the two courts barred individuals from attending proceedings, though they failed to post any public notices regarding the time and location of hearings.

But problems persist. Roughly 75 percent of defendants charged with misdemeanors appeared without legal representation, and CCHR's monitor found 151 trials where a judge answered a mobile telephone call during proceedings.

Judge Ke Sokhorn, deputy president of Phnom Penh Municipal Court, dismissed the concerns, saying that the accused always have a lawyer and that answering the telephone during trial was normal given judges' high workload and the occasional emergencies.

"Even when they take a phone call, they are still listening to the case," he said.