

Reforming the pre-trial detention process to prevent arbitrary detention

The Ministry of Justice, with the assistance of OHCHR, introduced a new pre-trial detention form requiring judges to provide legal reasoning when deciding detention.



Photo: OHCHR Cambodia

Prison detainees arriving at the court for trial

In many cases, persons arrested for a suspected misdeed are detained before trial. In Cambodia, pre-trial detention has been a common practice, rather than the exception. Some prisoners are found to be in pre-trial detention for as long as 18 months. In order to place a person in pre-trial detention, the investigating judge used a form involving box ticking, but did not provide any legal reasoning for the detention. This resulted in cases of arbitrary detention. In addition, detainees could not understand the reasons

for their detention. In some cases, people were put in pre-trial detention and the judge would then demand money from their families in exchange for their release.

In 2012, the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Cambodia looked more closely into this practice during visits to many provincial courts. In June 2012, OHCHR organized a National Conference on the Implementation of the Code of Criminal Procedure which focused, among other things, on pre-trial detention. The Conference was co-organised with the Ministry of Justice and attended by senior judges and prosecutors, lawyers and judicial police officers from all over the country. One of the recommendations adopted by the participants was to amend the pre-trial detention form used by judges. Around the same time, OHCHR started to organize, in cooperation with the Ministry of Justice, a series of judicial roundtables involving provincial judges, prosecutors and lawyers. The same recommendation came from participants. It was crucial to build this consensus among relevant stakeholders on the need to reform the pre-trial detention process. Once this consensus was reached, the next step was to ensure that the Ministry of

Justice took the lead in the reform process, with technical assistance from OHCHR. Upon the advice of OHCHR, the Ministry invited some senior judges of the country, including Cambodian judges working at the Extraordinary Chambers in the Courts of Cambodia (ECCC), to draft the new court form on pre-trial detention. It was important to convince the Ministry that judges should participate in the reform process since they would have to implement it themselves. The direct and active involvement of ECCC judges allowed them to share good practice

“Judges are required to give proper arguments or justifications for the pre-trial detention. You need to have reasons, arguments to support your decision, you cannot just decide to detain someone that easily.”

Ang Vong Vathana
Minister of Justice

from the ECCC with fellow Cambodian judges. As a result, the new court form is modeled on decisions made at the ECCC. The new court form was submitted to the Minister of Justice for approval in June 2013. In January 2014, the new pre-trial detention form was approved and sent to all courts of the country. In March 2014, the Ministry of Justice and the Bar Association, with support from OHCHR, organized a national conference on 'Pre-Trial Detention and Alternatives to Detention' to inform judges, prosecutors and lawyers about the recent reform.

The purpose of the new pre-trial detention form is mainly to prevent arbitrary detention. The requirement to provide reasons for detention increases transparency and accountability in the judicial process. It also contributes to reducing corruption as judges are less likely to detain people simply because it gives an opportunity to demand money from their families. Finally, the introduction of the new form will help reduce prison overcrowding.

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