



# **IN ABSENTIA 2012: AN UPDATE ON CAMBODIA'S INMATE TRANSPORTATION CRISIS & THE RIGHT TO APPEAL**

A LICADHO BRIEFING PAPER  
April 2012



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**LICADHO**  
CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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L I C A D H O

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENSE OF HUMAN RIGHTS

## **Cambodian League for the Promotion and Defense of Human Rights (LICADHO)**

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through two programs:

### **Monitoring and Protection Program:**

- **Monitoring of State Violations and Women's and Children's Rights:** monitors collect and investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.
- **Paralegal and Legal Representation:** victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.
- **Prison Monitoring:** researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- **Medical Assistance:** a medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites.
- **Social Work:** staff conduct needs assessments of victims and their families and provide short-term material and food.

### **Promotion and Advocacy Program:**

- **Training and Information:** advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.
- **Public Advocacy and Outreach:** human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual).

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## INTRODUCTION

In 2010, LICADHO reported on an epidemic of *in absentia* criminal appeals trials in Cambodia<sup>1</sup>. Hundreds of inmates were stranded in provincial prisons, unable to attend their hearings in Phnom Penh due to lack of transportation funding, poor organization between the prisons and courts and, more generally, an indifference to their plight. Two years later, the problem remains unaddressed.

As of February 2012, nearly 800 inmates with pending appeals were held in 11 provincial prisons surveyed by LICADHO. As was the case in 2010, the General Department of Prisons (GDP) still has no means to transport these prisoners to their appeal hearings in Phnom Penh. The prison system lacks the vehicles, gasoline, staffing and funding necessary for a comprehensive long-distance inmate transportation network.

The right of appeal is one of the most fundamental of all criminal trial rights<sup>2</sup>; in Cambodia's legal system, the fulfillment of this right requires the accused's presence at the appeal hearing. Unfortunately, this right is routinely violated. The only solution available for most prisoners who wish to attend their appeal hearings is to pay their own way, a practice which amounts to putting a price tag on Cambodians' fundamental rights.



*The Court of Appeal in Phnom Penh*

<sup>1</sup> See "In Absentia: The Right of Appeal & Cambodia's Inmate Transportation Crisis," a LICADHO report, March 2010.

<sup>2</sup> International Covenant on Civil and Political Rights ["ICCPR"], Art. 14(5) (incorporated into Cambodian law by the Constitution of Cambodia, Art. 31); Cambodian Code of Criminal Procedure ["CCP"], Art. 375.

## I. LEGAL BACKGROUND

The importance of a criminal defendant's attendance at an appeal hearing was detailed in LICADHO's previous report, but it bears repeating:

Cambodian law requires that a detainee with an appeal pending "shall be transferred without delay by the order of the Prosecutor to the nearest prison or detention center to the seat of the Court of Appeal"<sup>3</sup>. In theory, this transfer should take place after the court notifies the General Prosecutor of the hearing date<sup>4</sup>. In reality, this rarely happens.

The presence of the accused is essential to securing a fair appeal in Cambodia, due to the nature of the country's appellate procedure. The Code of Criminal Procedure requires the judge to interrogate the accused at an appeal hearing, and permits wide-ranging interrogation of the defendant, testimony from the defendant, a reexamination of facts, and – if the court finds the original judgment invalid – a retrial on the merits<sup>5</sup>. None of this is possible when a criminal defendant is not present at the appeal hearing.

If the accused is not present at the appeal hearing, the decision of the court is classified as a "default judgment"<sup>6</sup>. The accused is then in theory entitled to file an opposition motion to invalidate the default judgment<sup>7</sup>, though in practice it seems this rarely occurs. The filing of such a motion triggers a hearing, at which the presence of the accused is mandatory<sup>8</sup>.

The International Covenant on Civil and Political Rights ("ICCPR"), which Cambodia ratified in 1992<sup>9</sup>, states that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." It also requires the presence of the accused "in the determination of any criminal charge"<sup>10</sup>.

Given that a proper criminal appeal in Cambodia requires the participation of the defendant, the ICCPR provision certainly requires that the accused be present.

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<sup>3</sup> CCP, Art. 389.

<sup>4</sup> *Ibid.*, Art. 388.

<sup>5</sup> *Ibid.*, Art. 393-395, 406.

<sup>6</sup> *Ibid.*, Art. 362 & 408.

<sup>7</sup> *Ibid.*, Art. 409.

<sup>8</sup> *Ibid.*, Art. 415.

<sup>9</sup> The ICCPR is incorporated into Cambodian law by the Constitution of Cambodia, Art. 31.

<sup>10</sup> ICCPR, Art. 14(3)(d).

## II. INMATE TRANSPORT IN CAMBODIA – THEN AND NOW

In 2010, LICADHO reported that Cambodian inmates detained in the provinces were rarely transferred “to the nearest prison or detention center to the seat of the Court of Appeal,” as required by the Code of Criminal Procedure. The situation is no different in 2012.

GDP's long-distance inmate transport network remains a shadow of what is needed to fulfill the requirements of the law. Inmates are occasionally moved to alleviate overcrowding, but free, publicly-funded transport of inmates to their appeal hearings is virtually unheard of.



*An inmate transportation vehicle at Kampong Chhnang provincial prison.*

Prison directors interviewed by LICADHO since our 2010 report stated that they continue to lack the ability to transport inmates to their appeal hearings. Some had vehicles, but none had money for fuel or staff overtime and expenses. Some also expressed concern at the staff shortages that such trips would cause<sup>11</sup>.

The director of one provincial prison said he would pay for transport if the appeal court issued an order saying it was “necessary” for the inmate to attend a hearing, but added that this only happened about once per year. The director of the Pursat provincial prison alluded to this issue in a Cambodia Daily article published in December 2011, saying that inmates were sometimes not transferred to Phnom Penh because “letters ordering a prisoner’s release ... to bring detainees to attend appeal hearings sometimes arrive to the prison after the hearing date”<sup>12</sup>.

The GDP's 2009 annual activity report, published in June 2010, noted quite frankly that “escorts to the appeal court failed many times due to lack of adequate transport.”<sup>13</sup> The department's 2010 report made a similar observation, citing a “shortage of budget for escorted guards and transportation to Phnom Penh”<sup>14</sup>. The report claimed that a total of 326 inmates were taken to attend appeal hearings in 2010, but it gave no indication of how many

<sup>11</sup> This is a concern because a trip to Phnom Penh could consume several staff members for a full day or more. Several prison directors have told LICADHO that they do not have sufficient personnel to handle this even in special circumstances, let alone on a regular basis.

<sup>12</sup> Kuch Naren, “Most Prisoners Absent from Appeal Hearings,” *The Cambodia Daily*, Dec. 8, 2011.

<sup>13</sup> General Department of Prisons, “Annual Report for 2009 and Directions for 2010,” published June 2010, p. 3 (official English translation).

<sup>14</sup> General Department of Prisons, “On Work Achieved in 2010 and Planning for 2011,” published January 2011, p. 3 (unofficial English translation) [“GDP 2010 annual report”].

of those prisoners came from the provinces.<sup>15</sup> The GDP's 2011 annual report, published in February 2012, does not even mention transfers of inmates for appeals under the heading of "transfers and transport"<sup>16</sup>. It does note, however, that numerous transfers were made to ease overcrowding.

Several prison directors have told LICADHO that the only option for prisoners who wish to attend their appeal hearings is to "pay their own way."

One prison director tacitly acknowledged this fact in a December 2011 Cambodia Daily article, admitting that prisoners' family members "sometimes" pay for transport<sup>17</sup>. In the same article, journalist Ros Sokhet, who was imprisoned at CC1 on a disinformation charge, stated that he always had to pay for transport to his appeal hearings – even though he was detained in Phnom Penh<sup>18</sup>.

"[R]idiculously, we had to pay for the gasoline and food for the prison officials to take us [the to appeal hearing]," he said. He added that the cost of such trips ranged from 10,000 to 20,000 riel (US \$2.50 to US \$5)<sup>19</sup>.

LICADHO research indicates that an inmate in the provinces who wished to be transported to the Court of Appeal in Phnom Penh would pay prison officials about US \$100, without an overnight stay<sup>20</sup>.

### **Two years of inaction and false starts**

The lack of concrete action is disappointing given that GDP officials have pledged to address the situation on more than one occasion.

In May 2010, immediately following the release of LICADHO's 2010 report, GDP's then-Director General, Heng Hak, told the Phnom Penh Post that there was admittedly a "lack of services" for inmate transport<sup>21</sup>. But he stated that the authorities were "not ignoring this problem – right now, we are in discussions with the Appeal Court and the UN to find ways to solve this problem."

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<sup>15</sup> *Ibid.* This compared to 9,314 trips to courts of first instance.

<sup>16</sup> General Department of Prisons, "Achievements in 2011 and Goals for 2012," published Feb. 2012, p. 5 (unofficial English translation).

<sup>17</sup> Kuch Naren, "Most Prisoners Absent from Appeal Hearings," *The Cambodia Daily*, Dec. 8, 2011.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> A rough calculation makes clear that fuel costs alone could exceed US \$100 for inmates coming to Phnom Penh from prisons in more distant provinces. Siem Reap to Phnom Penh, for example, is 620 km round-trip. Estimating fuel consumption at approximately 12 liters per 100 km – likely an efficient rate for a transport vehicle – GDP would need roughly 75 liters of fuel to make the trip. At US \$1.40 per liter, fuel costs would be US \$105.

<sup>21</sup> James O'Toole and Chhay Channyda, "Hundreds of prisoners denied right to an appeal: NGO report," *The Phnom Penh Post*, May 27, 2010.



He went on to note that other countries have addressed similar problems through the use of video-conferencing between courts and detention facilities, allowing prisoners to participate in hearings without being physically present<sup>22</sup>.

The GDP's 2010 annual activity report noted that GDP was cooperating with the UN Office for the High Commissioner for Human Rights (OHCHR) to "conduct research into the case of convicts pending appeal in the whole nation in order to cooperate with prosecutors" in finding a solution<sup>23</sup>. The report stated that GDP also held a two-day seminar providing instruction to prison staff to compile accurate data regarding convicts with pending appeals<sup>24</sup>. This was a positive step, as some prison directors had admitted that they sometimes do not know how many prisoners have appeals pending. Often the prisoners themselves may not know. Obtaining accurate data would mark a modest but significant step toward addressing the problem.

LICADHO prison researchers questioned a handful of prisoners and prison directors about the implementation of the appeal survey project, and confirmed that it was indeed taking place, albeit with some shortcomings. For example, one aim of the survey was to seek multiple sources of information – prison officials and prisoners themselves – and reconcile/cross-check this information. But LICADHO researchers found that prisoners were frequently not consulted during the process. Thus, in the end, the data collected echoed data already available at prison registries. Follow-up actions reportedly remain in the works.

There were other hopeful signs: In mid-2011, a prison director told LICADHO that the appeal court was attempting to "group" the processing of appeals, so as to conduct several hearings of prisoners in succession. This would allow for economization of staff and fuel costs. GDP reported around the same time noted that the department had made a special request for 2,000 liters of fuel specifically for the transportation of prisoners to the appeal court during 2011<sup>25</sup>. And the 2011 year-end report also stated that the agency had requested funding for two inmate transport vehicles<sup>26</sup>.

Unfortunately, it is not clear whether the fuel and vehicle requests were approved, or if the "grouping" was implemented. If they were, they do not appear to have had a significant impact<sup>27</sup>. LICADHO research has found that prisoners continue to miss their appeal hearings on a systematic basis due to a lack of transportation.

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<sup>22</sup> *Ibid.*

<sup>23</sup> GDP 2010 annual report, p. 5.

<sup>24</sup> *Ibid.*

<sup>25</sup> General Department of Prisons, "Report on First Semester 2011, and Directions for Second Semester 2011," published May 2011, p. 6 (unofficial English translation) ["GDP First Semester 2011 Report"].

<sup>26</sup> General Department of Prisons, "Achievements in 2011 and Goals for 2012," published Feb. 2012, p. 11 (unofficial English translation).

<sup>27</sup> It is also unclear whether 2,000 liters of fuel for one calendar year would have an impact, or actually be used for the intended purpose. By way of comparison, one prison director told LICADHO in 2010 that the government provides him 800 liters of petrol per month, which was barely enough to run electricity generators for three hours per day. The generators were necessary because the prison lacked connections to the electricity grid.

Perhaps the most positive step since 2010 was the recent completion of a new building at the Court of Appeal in Phnom Penh. The new facilities expand the total number of court rooms from one to three. In theory, this should allow for the faster processing of appeals, and could help facilitate the proposal to “group” appeals for inmates who need to be transported to Phnom Penh.

### **The normalization of *in absentia* hearings**

Due to the lack of a functioning inmate transportation system in Cambodia, appeal hearings are routinely held without criminal defendants present. The violation of trial rights that come with these *in absentia* hearings has been institutionalized, even “normalized.” According to one trial monitoring study released in June 2010, defendants were absent from 69% of appeal hearings<sup>28</sup>.

The expectation that inmates must pay their own transportation costs for appeal hearings has also become normalized. Like virtually everything else in Cambodian prisons, fundamental trial rights have become a commodity that can only be secured via a bribe. Of course, most prisoners cannot afford this precious commodity. Thus, their hearings go forward *in absentia* and their chance at a fair appeal is lost.



*Cambodia's only Court of Appeal, located in Phnom Penh.*

Evidence of this normalization can be seen in the attitudes of those in the prison and judicial systems. In December, a Supreme Court clerk downplayed the harm caused by inmates' failure to attend appeal hearings, telling the Cambodia Daily “although most appeals are heard in absentia, [prisoners] still have their lawyers to defend and represent them”<sup>29</sup>. A prison director interviewed for the same article told the Daily that the presence of the accused's lawyer assures that the system is still just.

The law does not support this position.

As noted in Section I above, the Code of Criminal Procedure requires that a prisoner with a pending appeal “be transferred without delay ... to the nearest prison or detention center to the seat of the Court of Appeal.” The law also requires the judge to interrogate the accused<sup>30</sup>,

<sup>28</sup> Centre for Justice and Reconciliation Law Review, issue 01-A, March 2010, p. 5. Even more surprising is the fact that of those trials which proceeded *in absentia*, 71% featured no defense lawyer. See *ibid.*, at p. 6. More than 90% of the *in absentia* proceedings monitored in the study – both trials and appeals – took less than 30 minutes to complete.

<sup>29</sup> Kuch Naren, “Most Prisoners Absent from Appeal Hearings,” *The Cambodia Daily*, Dec. 8, 2011

<sup>30</sup> CCP Art. 393

permits the accused to speak on his or her own behalf<sup>31</sup>, and classifies an *in absentia* verdict as a "default judgment"<sup>32</sup>. When a defendant is prevented from attending his or her appeal hearing, the resulting verdict is fundamentally flawed.

Unfortunately, prisoners who wish to challenge a default *in absentia* judgment would again be hamstrung by the transportation problem: If they are unable to attend their initial appeal hearing, it is doubtful they would be able to attend the mandatory hearing that follows an application to vacate a default judgment<sup>33</sup>.

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<sup>31</sup> CCP Art. 395

<sup>32</sup> CCP Art. 362 & 408.

<sup>33</sup> CCP Art. 415.

### III. INMATES AT RISK

It is difficult to discern just how many prisoners are prevented – or in danger of being prevented – from attending their appeal hearings. Recordkeeping by prisons can be poor, courts do not always inform the prisons of case developments, and prisoners themselves may even be mistaken regarding whether or not an appeal was filed on their behalf. There is no national database with accurate, up-to-date appeals data.

The most recent published data from GDP states that there were 993 prisoners with appeals pending nationwide as of Nov. 15, 2011<sup>34</sup>. In May 2011, the number was 961<sup>35</sup>. But GDP data does not generally indicate how many appellants are in the provinces versus Phnom Penh. Another source working within the prison system indicates that the number exceeds 1,500.

For this report, LICADHO was able to obtain appeals data from 11 prisons outside of Phnom Penh. This information was supplied exclusively by prison officials, and in some cases may be incomplete. Despite any potential flaws, the data does provide some insight into the magnitude of the problem. It is not a mere handful of inmates who are affected by the lack of an inmate transportation network; it is hundreds.

The table below compares the number of inmates with appeals in January 2010 – the date of LICADHO's last report – with data from February 2012. Significantly, all prisons except one – Sihanoukville – now house more inmates with pending appeals, though in some prisons appellants now comprise a smaller percentage of inmates.

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<sup>34</sup> General Department of Prisons, "Achievements in 2011 and Goals for 2012," published Feb. 2012, p. 4 (unofficial English translation)

<sup>35</sup> GDP First Semester 2011 Report, p. 2.

PRISON	INMATES WITH APPEALS PENDING - JAN. 2010	TOTAL NO. OF CONVICTED INMATES - JAN. 2010	INMATES WITH APPEALS PENDING - FEB. 2012	TOTAL NO. OF CONVICTED INMATES - FEB. 2012
CC3	355	1,400 (25.4%) <sup>36</sup>	356	1,490 (23.9%)
Siem Reap	110	1,031 (10.7%)	123	1,120 (10.9%)
Kg. Thom	5	121 (4.1%)	30	282 (10.6%)
Sihanoukville	23	114 (20.2%)	16	160 (10%)
Koh Kong	11	113 (9.7%)	28	201 (13.9%)
Kg. Chhnang	21	163 (12.9%)	22	120 (18.3%)
Pursat	15	109 (13.8%)	28	107 (26.2%)
<b>TOTAL</b>	<b>540</b>	<b>3,051 (17.7%)</b>	<b>602</b>	<b>3,480 (17.3%)</b>
<b>ADDITIONAL PRISONS REPORTING DATA IN 2012</b>				
Kg. Speu <sup>37</sup>			70	252 (27.8%)
Kampot			34	324 (10.5%)
Battambang			35	910 (3.8%)
Svay Rieng			55	216 (25.5%)
<b>TOTAL FOR 11 PRISONS IN 2012</b>			<b>797</b>	<b>5,182 (15.4%)</b>

Comparing the seven prisons which reported data both in 2010 and 2012, the situation is virtually unchanged. Roughly 17% of convicted inmates still have appeals pending in Phnom Penh, with no chance attending their hearings. The overall numbers – which show that 15.4% percent of convicted inmates have appeals pending – show a slight decrease from 2010. But it is hard to be encouraged, given the size of the total number, nearly 800 inmates.

#### Data for prisons in the Phnom Penh area

It is unclear whether prisons in the Phnom Penh area are being used to house prisoners who have appeals pending. LICADHO recommended in its 2010 report that Phnom Penh-area inmates with appeals pending should not be transferred to the provinces until their appeals were complete. Prosecutors and judges have reportedly made such recommendations to GDP. Such a system would make court transportation easier and cheaper.

<sup>36</sup> Figures in parentheses indicate the percentage of all convicts with appeals pending.

<sup>37</sup> Data was not available in 2010 for Kampong Speu, Kampot, Battambang, Svay Rieng and Kampong Cham prisons.

Most prisons in the Phnom Penh area did not share appeals data with LICADHO in 2012, but is possible to get a rough sketch of the situation comparing the most recent GDP data available – November 2011 – with LICADHO’s February 2012 data. In November, the GDP reported a total of 993 inmates with appeals pending nationwide. In February, LICADHO found that 797 inmates in the provinces had appeals pending. That works out to roughly 80% of all inmate-appellants reported in by the GDP in Nov. 2011. If that data is correct, clearly cell space in Phnom Penh area prisons is still not being prioritized for inmates with appeals pending.

Specific prisons in the Phnom Penh area that reported data to LICADHO between 2010 and 2012 include:

- Phnom Penh Police Judiciaire (PJ) prison, which held 60 inmates with appeals pending, out of a total of 155 convicted inmates. In 2010, they reported zero<sup>38</sup>.
- In July 2011, Correctional Center 1 reported 17 inmates – out of a total of 2,068 convicted inmates. Anecdotal evidence suggests that the real number is much higher, however – probably in the hundreds.
- In January 2010, Takhmao (Kandal Provincial) Prison, on the outskirts of Phnom Penh, reported housing nine inmates with pending appeals, out of 547 convicted inmates. Takhmao did not report data to LICADHO in 2012.
- Correctional Center 2 does not provide LICADHO with appeals data.



*Inmates line up at Koh Kong provincial prison.*

<sup>38</sup> The 2010 number was likely not accurate, given PJ’s reputation as Cambodia’s VIP prison. Inmates have told LICADHO that convicted and pretrial inmates typically must pay large sums to secure a long-term spot at PJ. It remains the only prison in Cambodia that is not filled beyond its rated capacity. See “Still Beyond Capacity: A Progress Report on Cambodia’s Exploding Prison Population,” a LICADHO report, published July 2011.

## IV. RECOMMENDATIONS

In 2010, LICADHO made two primary recommendations to the Royal Government of Cambodia aimed at addressing the problem of *in absentia* appeals. Below, we reiterate these recommendations<sup>39</sup>, and examine the progress made on each point:

**First, LICADHO recommended that the GDP should not transfer Phnom Penh inmates to the provinces until their appeals were complete.**

This short-term solution proposed that GDP more closely examine inmates' legal status before transferring them to a prison outside the Phnom Penh area. While the GDP took steps in this direction – namely the initiation of the inmate survey with UN OHCHR – it is not clear that there has been significant progress in this area. Judging by the data that GDP has made public and/or reported to LICADHO, up to 80% of inmates with appeals pending remain incarcerated outside of Phnom Penh. A better system of monitoring inmates' appeal status is needed.

Cooperation and communication with the Ministry of Justice and the courts seems not to have progressed in this area. Prison officials still report that they do not always receive accurate information on inmates' appeals.

Finally, as LICADHO noted in 2010, overcrowding in Phnom Penh-area prisons continues to make it difficult to find cell space for inmate-appellants. As of December 2011, CC1 was filled to 173% of its capacity, while CC2 and Takhmao stood at 185% and 306%, respectively. The population at the prisons monitored by LICADHO grew by about 12% between January 2010 and January 2012, though overall growth finally slowed in the second half of 2011.

**Second, LICADHO recommended that the GDP expand its inmate transportation network and centralize responsibility for appeals transfers.**

Specifically, LICADHO suggested that the GDP expand, staff, and fund a prison transport program that could handle regular transfer of provincial inmates to their appeals in Phnom Penh. We also noted logistical concerns that needed to be addressed, for example the provision of bed space for provincial inmates held in Phnom Penh during their appeals, and the provision of transport to and from court once inmates arrive in Phnom Penh.

It appears that only the most modest steps have been made toward fulfilling this recommendation, e.g., the GDP's request for a special fuel allowance and more vehicles in 2011. Although LICADHO acknowledges that the creation of a comprehensive inmate transport is a long-term goal requiring major commitments in budgeting and training, it is nonetheless disappointing to observe that little progress has been made in the past two

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<sup>39</sup> For the full text of the original recommendations, see "In Absentia: The Right of Appeal & Cambodia's Inmate Transportation Crisis," a LICADHO report, March 2010, pp. 5-7.

years. We again urge the authorities to prioritize funding for prison transport vehicles and fuel.

**Given the lack of progress in this area, LICADHO suggests that GDP, the Ministry of Justice and the courts explore other possible solutions in the interim. These ideas should not be considered substitutes for the establishment of a proper inmate transportation system. Rather, they are meant to be complementary proposals that would provide a further buffer against the ongoing systematic deprivation of inmates' trial rights. They include:**

- *"Grouping" the appeals of multiple inmates held in one provincial prison.* If the Court of Appeal was able to reshuffle its docket, several inmates could be transported to Phnom Penh together for their hearings<sup>40</sup>, thus minimizing transportation costs. The feasibility of this proposal increased earlier this year with the opening of two new courtrooms at the Court of Appeal.
- *Establishment of regional appeal courts, each covering a designated district of several provinces.* Cambodia's only Court of Appeal is located in Phnom Penh, a fact that complicates legal proceedings for all Cambodians, not just prisoners. The government should consider dividing the country up into a number of regional appeals districts, with a Court of Appeal serving each area. Each district could cover a handful of provinces in a specific geographical region. The existence of regional appeal courts could reduce the cost transporting inmates to hearings. Alternatively, the districts could be designated as "circuits" with multiple appeals courts, where judges could travel on an as-needed basis. This would even further reduce inmate transportation costs.
- *Mobile appeal courts.* This concept is similar to the circuit court concept mentioned above, but would involve a comprehensive traveling court, and could be based in Phnom Penh rather than in regional circuits. Rather than prisoners coming to court, the judges go to the prisoners. Mobile courts have been used successfully in other countries<sup>41</sup>, and in some instances, the vehicles themselves – converted buses – actually serve as the courtroom. Alternatively, hearings could be conducted inside prisons or municipal/provincial courts.
- *Videoconferencing.* This technique has been applied in various legal contexts elsewhere, primarily for witness testimony. But there are significant limitations in applying the technique to Cambodia's appeal court. First, streaming video is far from an ideal substitute for the actual physical presence of the defendant in the courtroom. The use of a video feed, for example, could have a distancing effect between the defendant and

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<sup>40</sup> Of course, this is not to say that the hearings themselves should be held en masse; each defendant should be afforded a separate hearing.

<sup>41</sup> Countries which have utilized mobile courts include the Philippines, Guatemala, Brazil, Bangladesh, India, Laos, Nigeria and the United States. See Merzenaida Donovan, "Getting Closer to the Poor: Justice on Wheels," Action Program for Judicial Reform (available at [http://apjr.judiciary.gov.ph/news\\_2007/archive\\_featurearticle003.html](http://apjr.judiciary.gov.ph/news_2007/archive_featurearticle003.html)).



those in the courtroom, including the defense lawyer. The defendant would also have limited awareness – and literally a constricted view, based on what the video showed – of courtroom proceedings. Second, there are the technical problems: Many prisons lack not only computer equipment and sufficient Internet connections, but also reliable electricity. Some of these issues could be overcome by placing videoconference equipment in local municipal courts. Costs may also be prohibitive. LICADHO believes this is not an ideal measure to address Cambodia's inmate transportation crisis, but could be used in very limited circumstances, such as for witness testimony.

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