



BEYOND CAPACITY 2012: A PROGRESS REPORT ON CAMBODIA'S EXPLODING PRISON POPULATION

A LICADHO Report
July 2012



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CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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LICADHO
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

This is the third installment in LICADHO's annual series on prison overcrowding in Cambodia¹.

LICADHO first reported on the explosive growth in the prison system in 2010, when the nation's prisons were filled to 167% of their capacity and the inmate population was growing by about 14% annually.

By May 2011, the national prison occupancy rate had ballooned to 179%, while the 18 prisons monitored by LICADHO² were filled to 181% of their capacity. Growth at the LICADHO-monitored prisons averaged about 13% per year, and the system was on track to become the world's most overcrowded by 2019. Evidence showed, meanwhile, that the authorities were doing nothing to limit their overreliance on prisons as the primary form of judicial sanction. Prisons were still being used, for example, to warehouse drug users, petty criminals and poor people who could not pay criminal fines.

In 2012, there are finally some encouraging developments, though it is not time to celebrate victory just yet.

Since May 2011, the population of the 18 prisons monitored by LICADHO has remained statistically flat. As of May 31, 2012, these 18 prisons held 13,468 inmates, which was actually a 1.6% decrease compared to May 2011.

Nationwide, however, Cambodia's total prison population increased slightly to 15,351 - a 2.3% increase - over roughly the same time period³. The national prison occupancy rate stands at 170.6%, an improvement over last year's figure of 179% thanks to the addition of extra beds. That number places Cambodia's prison system among the top 35 most overcrowded in the world, but it is an improvement over last year, when the Kingdom ranked in the top 25⁴.

But disturbing signs remain.

Despite only modest growth figures for 2011-12, Cambodia's national prison population has still grown by a whopping 15.2% since March 2010⁵. And while occupancy rates are down, they likely underestimate overcrowding by a large measure. Prison authorities have admitted that capacity figures are not necessarily calculated uniformly across the system.

¹ See "Beyond Capacity: Cambodia's Exploding Prison Population & Correctional Center 4," a LICADHO report, July 2010 and "Beyond Capacity 2011: A Progress Report on Cambodia's Exploding Prison Population," a LICADHO report, July 2011.

² These prisons are Correctional Center 1 ("CC1"), CC2, CC3, CC4, PJ, Takhmao, Kampong Som, Kampong Speu, Kampot, Kampong Chhnang, Kampong Cham, Kampong Thom, Koh Kong, Pursat, Battambang, Banteay Meanchey, Siem Reap and Svay Rieng.

³ The General Department of Prisons (GDP) does not provide regular public updates on the national prison population. Thus, the figures compared come from April 2011 and February 2012 - the best available figures for showing growth over a period of one year.

⁴ Based on current data, Cambodia would rank approximately No. 34 out of 196 jurisdictions surveyed. See International Center for Prison Studies, "Entire World - Occupancy Rates," available at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_occupancy

⁵ GDP reported a nationwide prison population of 13,325 in March 2010.

Most seriously, the underlying causes of the overcrowding crisis remain largely unaddressed. Drug arrests nearly quadrupled in 2011, and the number of prisoners detained on drug charges nearly tripled in 2011 alone. There is still no parole system. Some 3,000 inmates languish in prison without a final verdict, leaving them at risk of being held past the expiration of their sentences. Non-custodial sentences, such as community service, have yet to be implemented in a systematic manner.

In short, there has been modest progress toward solving the prison overcrowding crisis in the past year, but there is still much work to be done.

ABOUT THIS REPORT

LICADHO's previous prison overcrowding reports provided a statistical and narrative overview of Cambodia's prison overcrowding crisis. This report is a continuation of that narrative, meant to be read in the context of LICADHO's previous reports.

To that end, the first section of this report primarily consists of updated core statistical data based on the tables included in LICADHO's first two reports.

The second section is a summary and analysis of key developments that have taken place since LICADHO's last prison overcrowding report in July 2011. This section also contains statistics to illustrate trends which may not have been fully analyzed in LICADHO's previous reports.

In the final section, we review key recommendations made in our 2010 and 2011 reports, and track the progress made toward fulfilling them.



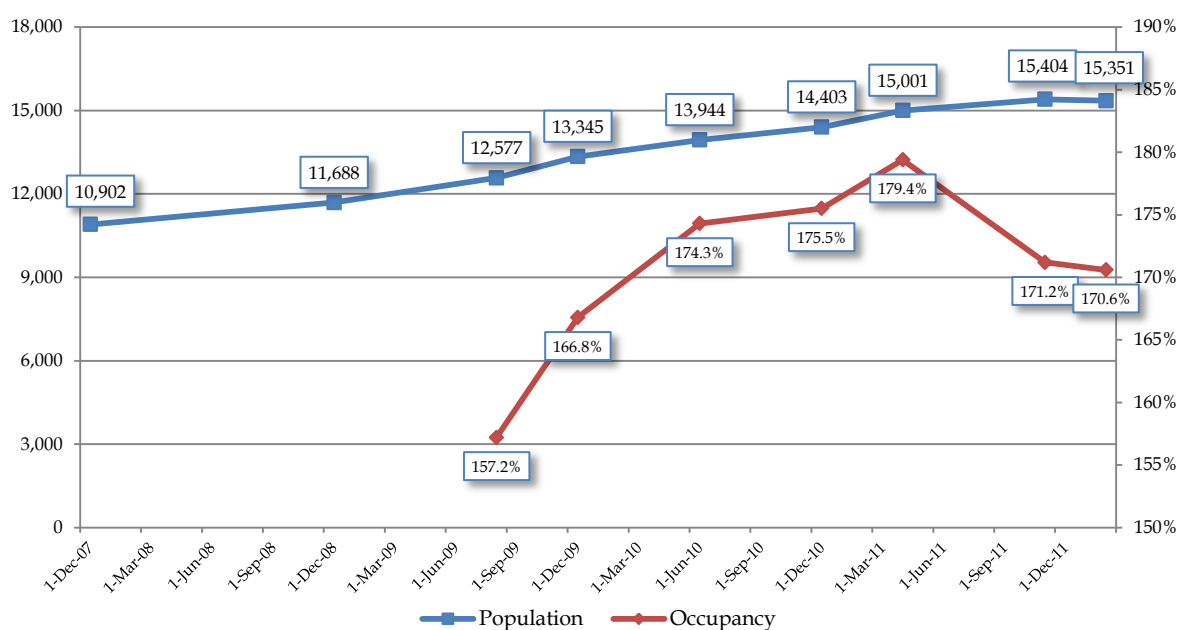
A colonial-era building lies in a decrepit condition inside Kampot prison. The prison was built in 1936, and as of May 2012, it held 454 inmates – over 280% of its rated capacity.

I. OVERCROWDING: UPDATED CORE DATA

The tables and charts below provide an updated snapshot of Cambodia's prison population. Statistics are drawn from a variety of sources, including LICADHO research, General Department of Prisons (GDP) documents, and media reports.

The first graph details Cambodia's national prison population and the overall occupancy rate, from December 2007 to February 2012 at periodic intervals (GDP does not always release comprehensive population data at regular intervals). After years of steady growth, the occupancy rate finally began to shrink in late 2011 and early 2012. The decrease results from both an increase in the prisons' stated capacity, and a decrease in the growth rate:

NATIONAL POPULATION AND OCCUPANCY DATA (ALL PRISONS)



Notes:

- Data taken from: Dec. 2007, Dec. 2008, Aug. 2009, Dec. 2009, June 2010, Dec. 2010, April 2011, Nov. 2011, and Feb. 2012.
- GDP reports that the current capacity of the prison system is 9,000; that number has been current since late 2011. In early 2011, capacity was reported as approximately 8,360; in 2010, it was reported as 8,000. Capacity data for 2009 is an estimate, using the same figure as in 2010.
- Source: official GDP reports, published media reports and other GDP data

The table below illustrates the inmate population, by prison, of the 18 facilities monitored by LICADHO for 2010, 2011 and 2012. The 2012 occupancy rate for each prison is listed in the last column. Note that the capacity of several prisons have changed since 2010 and 2011:

PRISON	POPULATION (JUNE 2010)	POPULATION (MAY 2011)	POPULATION (MAY 2012)	CAPACITY (MAY 2012)	PERCENT OF CAPACITY (MAY 2012)
PJ	167	142	168	200	84%
CC1	2,644	2,848	2,860	1,600	178.8%
CC2	777	811	733	300	244.3%
CC3	1,529	1,502	1,473	810	181.9%
CC4	154	196	176	210	83.8%
Takhmao	1,042	1,040	926	314	294.9%
Kg. Som	332	435	365	150	243.3%
Kg. Speu	313	338	352	180	195.6%
Kampot	345	428	454	160	283.8%
Kg. Chhnang	271	336	436	150	290.7%
Kg. Cham	798	839	850	600 ⁶	141.7%
Kg. Thom	208	271	432	300 ⁷	144%
Koh Kong	218	237	233	150	155.3%
Pursat	229	233	203	120	169.2%
Battambang	1,174	1,141	1,207	650	185.7%
B. Meanchey	816	1,085	1,060	700	151.4%
Siem Reap	1,361	1,482	1,236	1,000	123.6%
Svay Rieng	266	317	304	160	190%
TOTAL	12,646	13,681	13,468	7,754	173.7%

⁶ This number reflects an additional 100 beds added since July 2011, via the completion of a new cell building.

⁷ This number reflects an additional 100 beds added since July 2011, via the completion of a new cell building.

The final table depicts Cambodia's national incarceration rate, which is defined as the number of incarcerated people per 100,000 of the national population. It is difficult to pinpoint a "normal" incarceration rate – figures vary widely around the world⁸ – but Cambodia's rate continues to grow steadily, which remains a cause for concern:

CAMBODIA'S NATIONAL INCARCERATION RATE SINCE 2006

YEAR	NATIONAL POPULATION ⁹	INMATE POPULATION	INMATES PER 100,000
2006	13,515,884	10,338	76.5
2007	13,669,857	10,902	79.8
2008	13,822,644	11,688	84.6
2009	13,977,903	13,345	95.5
2010	14,139,000	14,043	99.3
2011	14,365,224	15,404	107.2
2012	(DATA INCOMPLETE)		

(Prison population data represents nationwide figures at the end of each calendar year)

⁸ One study places Cambodia's incarceration rate around 21st highest among 31 Asian countries. See International Center for Prison Studies, "Asia - Prison Population Rates per 100,000 of the national population," available at http://prisonstudies.org/info/worldbrief/wpb_stats.php?area=contasia&category=wb_poprate.

⁹ Data drawn from <http://data.worldbank.org/indicator/SP.POP.TOTL>. Note that national population figures have been significantly revised from LICADHO's previous reports to reflect more accurate data. The adjustment has also altered past estimated incarceration rates. The figure for 2011 is an estimate based on the 2010 figure, plus a growth rate of 1.6%.

II. NEWS & DEVELOPMENTS IN 2011-2012

LICADHO's previous reports highlighted several factors contributing to prison overcrowding, all of which still loom as problems, despite the slowing growth rate. Imprisonment is still overused as a criminal sanction, pretrial detention is imposed as a matter of course, inmates are given extra prison time if they cannot pay their criminal fines, and poor Cambodians are locked up for trivial offenses.

The section below provides a brief update on some of these issues and identifies new areas for concern that arose in the past year.

CONTINUED FAILURE TO IMPLEMENT ALTERNATIVES TO IMPRISONMENT

LICADHO recommended in both of its previous reports that courts make greater use of alternatives to imprisonment, such as community service, bail and suspended sentences. Two years later, a few leaders have given lip service to the idea, but very little concrete progress has been made.

Non-custodial sentencing remains unheard of, pretrial detention is the rule (with bail being an underutilized exception) and the parole system authorized in the Code of Criminal Procedure¹⁰ has still not been implemented¹¹, five years after the code came into force.

Following the publication of LICADHO's 2011 report, the government announced plans to implement a system of community service for minor offenses¹². The project was to be implemented with the help of AusAID's Cambodia Criminal Justice Assistance Project. Granted, the implementation of such a system - at least on a systematic scale - cannot be accomplished overnight. But nearly one year after the announcement, LICADHO has not documented any concrete progress toward increased use of community service.

More recently, the Director General of the GDP, Kuy Bunsorn, told the Cambodia Daily in March 2012 that the Ministry of Justice had agreed to implement "Article 205 of the Penal Code" to ease overcrowding, which would see prisoners convicted of minor crimes "released on bail"¹³. But the director was apparently misquoted or misspoke, as Article 205 of the Penal Code is a provision that enhances the punishment for murder accompanied by torture or rape. He may have been referring to Articles 104 and 105, which concern suspended sentences. These, however, must be imposed by the court on a case-by-case basis.

¹⁰ *Ibid* Articles 512-522.

¹¹ This appears due to the continued failure of the Ministry of Justice to issue a Prakas required to implement a parole system. See Article 522 ("The modalities of monitoring, supervising, and reintegrating a convicted person into society shall be determined in the Prakas of the Ministry of Justice. This Prakas may entrust public or private institutions with the social reintegration of the convicted person.")

¹² Mary Kozlovski and Meas Sokchea, "Community service planned," *The Phnom Penh Post*, July 6, 2011.

¹³ Kuch Naren and Kate Bartlett, "Cambodian Prisons at 171% Capacity in 2011," *the Cambodia Daily*, March 22, 2012.

A MASSIVE SURGE IN DRUG ARRESTS

Since January 2011, Cambodia's prisons have seen a huge increase in the number of inmates detained on drug-related charges. This issue was analyzed in LICADHO's 2011 report, but new data for 2012 demonstrates just how large the surge was. It is clear that drug arrests are driving a significant part of the prison population boom.

The table below compares the number of prisoners – both pretrial and convicted – held on drug-related charges in January 2011 and February 2012. The table depicts data in only 13 prisons, as GDP does not consistently provide LICADHO with complete statistics on prisoners' charged offenses¹⁴:

**COMPARISON OF DRUG CRIME STATISTICS IN 13 PRISONS
(JAN. 2011 VS. FEB. 2012)**

PRISON	JAN. 2011			FEB. 2012			INCREASE
	Traffic	Use	Total	Traffic	Use	Total	
Kg. Som	0	0	0	80	0	80	∞
Kg. Speu	9	0	9	21	10	31	244%
Kampot	20	0	20	24	0	24	20%
Kg. Cham	46	32	78	97	78	175	124%
Kg. Chhnang	5	0	5	14	0	14	180%
Kg. Thom	8	0	8	33	2	35	338%
Pursat	2	0	2	9	0	9	350%
Battambang	85	0	85	79	112	191	125%
B. Meanchey	118	14	132	332	131	463	251%
Siem Reap	71	79	150	92	115	207	38%
Svay Rieng	6	0	6	9	0	9	50%
Koh Kong	3	0	3	21	0	21	600%
CC3	68	0	68	68	0	68	--
TOTAL	441	125	566	879 (99% ↑)	448 (258% ↑)	1,327	134%

¹⁴ The regular data provided to LICADHO by GDP specifies "drug trafficking" and "narcotic use" as the only two drug-related categories. Crime data does not reference specific provisions in criminal law. Figures for both crime categories in the table combine convicted prisoners and pretrial detainees. Note also that the distinction between "use" and "trafficking" is not always supported by the facts of the case; LICADHO research indicates that apparent "use" cases are often escalated to trafficking charges based on limited or no evidence. One example is the case of union leader Sous Chantha, who was convicted of drug trafficking (later downgraded to drug distribution) for the possession of a small amount of drugs (See "Sous Chantha released but contrived criminal charges upheld," Clean Clothes Campaign, June 24, 2011, available at <http://www.cleanclothes.org/news/sous-chantha-released-but-contrived-criminal-charges-upheld> and "Supporters Gather Outside Cambodia's National Prison to Seek Release of Imprisoned Union Leader," LICADHO press release, Jan. 21, 2011, available at <http://www.licadho-cambodia.org/articles/20110121/130/index.html>).

The number of prisoners arrested on drug-related charges more than doubled in 13 months.

Going back further in time, the increase is even more dramatic: In January 2008, the 13 prisons above had a total of 369 prisoners detained on drug charges. In January 2009, there were still only 385. By February 2012, this number had almost quadrupled¹⁵.

It is difficult to obtain accurate nationwide data, but the GDP did release limited data in February 2012, comparing two snapshots of the inmate population – one from Nov. 15, 2010, and one from Nov. 15, 2011.

This data was more specific than the numbers provided to LICADHO, separating drug crimes into five categories. It also painted an even darker picture: Inmates detained on drug-related charges nearly *tripled* in one year:



Alleged drug offenders at a drug rehabilitation center in Banteay Meanchey. Detainees are generally not allowed to leave.

**COMPARISON OF DRUG CRIME STATISTICS NATIONWIDE
(NOV. 2010 VS. NOV. 2011)¹⁶**

CRIME	NOV. 15, 2010	NOV. 15, 2011	DIFFERENCE
Drug distribution	292	541	85% increase
Drug trafficking	688	1,974	187% increase
Drug use	55	227	313% increase
Drug production	2	2	--
Aiding and abetting production or distribution	9	3	(200% decrease)
TOTAL	1,046	2,747	163% increase

¹⁵ Even by Jan. 2010, the 13 prisons reported only 519 inmates with drug-related charges.

¹⁶ See General Department of Prisons, "Report on Work Achieved in 2011 and Goals for 2012," published February 2012 (unofficial English translation).

Of course, it is no surprise that drug arrests are helping drive an explosion in the prison population. Last year saw a huge crackdown on drug crime; media outlets frequently featured stories of authorities boasting of their arrest numbers¹⁷.

All told, the number of drug-related convictions in Cambodia nearly quadrupled during 2011, from 248 in 2010 to 951 in 2011, according to *The Phnom Penh Post*¹⁸. Arrests jumped from 864 to 1,300.

While many experts agree that drug trafficking is a growing problem in Cambodia, it is not clear that the drug crackdown has actually addressed the problem. Despite the increase in arrests, for example, the amount of drugs seized in raids increased only by a small amount, from 31 tons in 2010 to 34 tons in 2011¹⁹. This suggests that authorities may be targeting small-time players in the drug trade – and simple users – to increase arrest numbers.

The arrest of drug users, in particular, is a problematic criminal justice strategy. Experts widely agree that drug users don't belong in detention.²⁰ Imprisoning drug users is an expensive, ineffective and dysfunctional approach to treatment. If the government is serious about drug treatment as an alternative to prison, it should consider community-based treatment programs, where participants are free to go home at night.



Incarcerated mothers and their children in Pailin prison. Male prisoners spend most of their day inside a cage, which is pictured in the background.

¹⁷ See, e.g., Buth Reaksmeay Kongkea, “Drug cases gain speed,” *The Phnom Penh Post*, Sept. 16, 2011 (noting that through September 2011, drug arrests had tripled compared to the same period in 2010. Major General Khieu Samorn, Acting General Secretary of the Ministry of Interior’s National Authority for Combating Drugs said the arrests showed “a strong commitment to [cracking down on drugs]” and to combatting “drug use and sales.”).

¹⁸ Buth Reaksmeay Kongkea and Kristin Lynch, “Drug bust convictions skyrocket,” *The Phnom Penh Post*, March 28, 2012.

¹⁹ *Ibid.*

²⁰ In fact, the entire “war on drugs,” with its emphasis on criminalizing drug use, has come under serious scrutiny. A global panel made up of former heads of states and United Nations officials called it an outright “failure” in June 2011. “There are an estimated 250 million drug users in the world, according to UN estimates. ‘We simply cannot treat them all as criminals.’” TuThanh Ha, “War on drugs ‘a failure,’ international panel declares,” *The Globe and Mail*, June 2, 2011. The group’s report is available at <http://www.globalcommissionondrugs.org/Report>

MORE MOTHERS AND CHILDREN IN PRISON: A CASUALTY OF THE DRUG CRACKDOWN

One further apparent side-effect of the increase in drug arrests has been a corresponding rise in the number of children living with their mothers in some prisons.

As of March 2011, only 36 children lived with their mothers in the 18 prisons monitored by LICADHO. But by May 2012, that number had more than doubled, to 73. That does not even include approximately 20 more children living in the Pailin provincial prison. The increase in children living in prisons has come mostly from border regions near Thailand – Banteay Meanchey, Pailin and Battambang – which tend to have higher levels of drug trafficking.

Children typically go to prison with their mothers - or their fathers - when they have no other family to care for them.

In Pailin, LICADHO researchers interviewed an entire family of eight people, spanning three generations. They were detained on drug charges, but during the interview it became clear that the authorities viewed only one individual as the culpable party. There was no apparent reason to arrest the entire family, other than to intimidate the suspect and increase arrest numbers.

It is clear that drug arrests are driving the increase in the number of children living in prison with their mothers. In the 18 prisons that LICADHO monitors, there were 79 women in prison who were either pregnant or with one or more children. Fifty-five of them were imprisoned on drug offenses:

**MOTHERS IN PRISON²¹ CHARGED WITH DRUG CRIMES
(MARCH 2011 VS. MAY 2012)**

PRISON	MOTHERS IN PRISON (MARCH 2011)		MOTHERS IN PRISON (MAY 2012)	
	TOTAL NO.	NO. CHARGED DRUG CRIMES	TOTAL NO.	NO. CHARGED DRUG CRIMES
CC2	16	9	15	9
Takhmao	2	1	1	0
Koh Kong	1	1	1	1
Pursat	3	0	1	0
Battambang	5	2	16	11
B. Meanchey	8	2	25	21
Siem Reap	4	2	11	7
Sihanoukville	0	0	7	6
Kampot	1	0	1	0
Kg. Chhnang	2	0	0	0
Kg. Cham	2	0	0	0
TOTAL	44	17(39%)	78	55(71%)

²¹ Defined as pregnant women and women living in prison with their children. Children are by law permitted to live with their mothers in prison up until the age of three (See Prison Law, Art. 41), though in practice they are often allowed to stay until age six.

MISSING FINAL VERDICTS

In February 2012, GDP announced in its annual report that 3,597 inmates had yet to receive their final verdicts from the courts²². The lack of a final verdict is problematic for at least two reasons. First, it can delay an inmate's release, and second, it can prevent an inmate from applying for a sentence reduction or amnesty.

Prisoners frequently report to LICADHO that they are asked to pay to receive copies of these verdicts. Those who cannot pay are sometimes held past the expiration of their sentences.

In March 2012, the Cambodia Daily reported that Justice Minister Ang Vong Vathna ordered court officials to expedite the processing of these verdicts²³. LICADHO researchers are monitoring the implementation of the order, but it is still too soon to judge its impact.

PUNISHING THE POOR

LICADHO's last report cited several examples of individuals who were sentenced to prison for minor crimes, such as stealing small quantities of food, livestock or rubber latex. One received a year in prison for stealing a chicken.

The defendants in such cases tend to be poor, and prison is not always the most proportionate punishment. But it seemed that there was no ability – or will – to divert such minor criminals out of the prison system.

LICADHO has continued to document such cases in the past year. Examples include:

Takhmao: A woman who worked in a brick factory was arrested and detained in March 2012 for stealing \$100 from the factory owner. She paid back the money, but currently remains in pretrial detention.

Takhmao: A woman with seven children was arrested in February 2011 for stealing a basket of green beans to feed her children. She was convicted and sentenced to six months in prison, and released later in 2011.

Kampot: A man was arrested in Oct. 2011 and convicted of “theft with violence” for stealing an empty gasoline barrel. He was sentenced to three years; he remains in prison as of June 2012.

Kampot: Five juvenile males and young men, ages 16 to 18, stole a mobile phone and were sentenced to six months in prison. They completed their sentences and were released earlier in 2012.

Sihanoukville: A 16-year-old boy was arrested in Feb. 2012 and charged with theft after allegedly taking small household items outside someone's house. He remains in pretrial detention as of late-June 2012.

²² See General Department of Prisons, “Report on Work Achieved in 2011 and Goals for 2012,” published February 2012 (unofficial English translation).

²³ Kuch Naren and Kate Bartlett, “More Than 3,000 Prisoners Await Release of Court Verdicts,” the Cambodia Daily, March 23, 2012.

The imprisonment of the poor continued to drive overcrowding in other ways, including;

- **Extra prison time for unpaid fines:** The practice of extending prison time for inmates who cannot pay their criminal fines continues. This practice can add up to two years additional time to a prisoner's sentence, but it can be waived by the prosecutor²⁴. LICADHO believes that the use of such waivers should be vastly expanded.
- **Difficulties in releasing inmates in a timely manner:** The unofficial practice of prison and court staff being "too busy" to process inmates' release paperwork in a timely fashion continues. This is often used as code for officials to request bribes. LICADHO documented numerous instances in which prisoners were held past the expiration of their sentence due to late or missing paperwork. One way to encourage the on-time release of all prisoners would be to institute a system which compensates inmates when they are not released on time.
- **A lack of legal aid defense lawyers:** LICADHO researchers have long had difficulty helping find pro bono lawyers for pretrial detainees, especially those in the provinces. This problem has worsened in the past two years due to downsizing²⁵ at some of the largest legal aid NGOs, such as the Cambodian Defenders Project and Legal Aid of Cambodia.

Inmates who are able to secure lawyers – whether paid or pro bono – frequently complain that their attorney has no time for them due to massive caseloads. Many convicted prisoners have reported that they only saw their lawyers once, on the date of their trial.

Data from court monitoring projects operated by other NGOs supports what LICADHO sees in the prisons. The Cambodian Center for Human Rights reported in March that over one-third of defendants in Phnom Penh's municipal court had no lawyer; over 40% of those cases involved felony charges²⁶. The assistance of lawyers is mandatory for minors and defendants charged with a felony²⁷, and advisable in any court proceeding. The lack of legal assistance at trial puts the defendant at a disadvantage, and increases the chance that the defendant will be wrongfully convicted or subject to a longer sentence.

Also, in some cases, judges assign one lawyer to a group of several defendants. This practice is not ideal, as defendants in the same case may have significantly conflicting interests.

PRISON CONSTRUCTION

GDP has continued its efforts to grow the nation's prison capacity, both by building new facilities and expanding existing ones. While some prisons are certainly in need of upgrading, LICADHO only supports the construction of new facilities as a solution of last resort – after other options for reducing the prison population have been explored. Building new prisons is expensive, and historically has tended to have the effect of increasing the overall prison population.

²⁴ Code of Criminal Procedure, Articles 523 to 533.

²⁵ A staff roster for the Cambodian Defenders Project from September 2009, for example, lists 22 lawyers. Their Website states that they currently employ only nine lawyers. See <http://www.cdpcambodia.org/content.php?id=11>.

²⁶ Bridget di Certo and Chhay Channyda, "Capital's accused lack lawyers: study," *The Phnom Penh Post*, March 29, 2012.

²⁷ Code of Criminal Procedure, Art. 301.

The problem is that the government continues to use new prison construction as its solution of first resort. And for practical purposes, it's still the only solution being used.

In February 2012, GDP reported that the following prison construction projects related to capacity-expansion took place during 2011²⁸:

- Construction of new cells at Prey Veng prison (funded by the government and CCJAP); LICADHO does not monitor this prison and GDP did not announce how many beds were added.
- Construction of a new cell at Kampong Cham (funded by CCJAP), which added approximately 100 new beds.
- Construction of a new cell for women at Kampong Thom prison (funded by CCJAP), which added approximately 100 new beds.
- Continued construction on a new three-building cell block at CC1, to be completed sometime in 2012, which will add an unknown number of beds.
- Construction of cells for women at Stung Treng and Kratie prisons (funded by the government); LICADHO does not monitor these prisons and GDP did not announce how many beds were added.

A new temporary facility was also opened in Oddur Meanchey, reportedly attached to the police detention facility. GDP reported that it housed 44 prisoners as of November 2011. GDP has not provided a capacity estimate. LICADHO does not maintain an office in Oddur Meanchey province, and has not visited the new prison.

Plans for the future include²⁹:

- Construction of new prisons in Takeo, Pailin, Oddur Meanchey, Pursat and Phnom Penh, Sihanoukville³⁰ and Mondulkiri
- Continued expansion of CC4
- A land-swap deal in Ratanakiri to build a new prison
- The possibility of a new national correctional center (Correctional Center 5) in Kratie province

Many of these projects are likely years away from completion. Indeed, there is still no estimated completion date for the new Pailin prison, which is extremely urgent given that prisoners currently live an old movie theater. Conditions there are among the worst of all prisons in



Male prisoners sit inside a cage at Pailin prison. The prison – housed in a former movie theater – opened in 2011 as a temporary facility, but construction on the permanent jail has yet to begin.

²⁸ See General Department of Prisons, "Report on Work Achieved in 2011 and Goals for 2012," published February 2012 (unofficial English translation).

²⁹ *Ibid.*

³⁰ The construction of a new prison in Sihanoukville was not mentioned in GDP's annual report, but Radio Free Asia reported in 2012 that approximately 20 prisoners helped government forces demolish the houses of villagers in Sihanoukville's Group 16, Sangkat 1. The land will reportedly be used for a new prison. See Radio Free Asia, "Prisoners destroy houses," May 23, 2012, available at http://www.rfa.org/khmer/indepth/prisoners_distroy_house-05232012082645.html.

Cambodia – there is no outdoor area for inmates to get fresh air or sunlight and the male inmates are housed in a cage. The facility is simply not suited to be a prison. Yet the completion date of the new facility keeps being pushed back. At present, it is not even clear if the government has earmarked funding for the project.

CAPACITY CALCULATIONS

One item missing in GDP's 2012 annual report was a comprehensive survey of current prison capacity. The report did not even provide a capacity figure (though this number has been reported in the media as being 9,000³¹).

GDP has never publicly adopted a space-per-prisoner standard and conducted a proper nationwide survey of prison capacities based on that standard. Thus, the accuracy of capacity figures in Cambodia's prisons varies widely.

While there is no international standard governing the appropriate space that should be provided to each prisoner, the European Committee for the Prevention of Torture has recommended at least four square meters per inmate for cells with several prisoners.³² The International Committee of the Red Cross (ICRC) has stated that "even in exceptional crisis situations, the floor space in cells and dormitories must never be less than two square meters per person."³³

Research indicates that GDP primarily uses the two square meter standard, which is not ideal. This standard is of particular concern given that inmates at many prisons are allowed only limited time outside their cells.

Thus, the true capacity of Cambodia's prison system remains unknown – and the current figure cited by the government, 9,000, appears generous.

LICADHO reiterates its recommendation that GDP conduct a nationwide survey of its prisons – preferably with the assistance of an international partner – in order to calculate the system's true capacity. Also, given the prevailing conditions in Cambodian prisons, LICADHO recommends that this survey use a standard of at least 3.5 square meters of floor space per prisoner.

³¹ Kuch Naren and Kate Bartlett, "Cambodian Prisons at 171% Capacity in 2011," the Cambodia Daily, March 22, 2012.

³² http://www.coe.int/t/commissioner/Viewpoints/070305_en.asp

³³ International Committee of the Red Cross, "Water, Sanitation, Hygiene and Habitat in Prisons," Aug. 2005, p. 21 (available at <http://www.icrc.org/eng/resources/documents/publication/p0823.htm>).

III. RECOMMENDATIONS IN REVIEW

LICADHO's last two reports on prison overcrowding offered several recommendations to reduce prison overcrowding. Below, LICADHO renews some of its key recommendations and briefly reviews what – if any – action the government has taken on them.

- ▶▶ **The government should evaluate its criminal justice policy from a more systemic perspective, so that MOI and GDP are not left alone to deal with the back end of the problem, i.e., the exploding prison population. As part of this systemic approach, the government should compile a reliable and accurate profile of the prison population – including details such as sentence length, commitment offense and the age of offenders – to help inform criminal justice policy decisions.**

As noted above, the government has spoken publicly of implementing alternatives to incarceration, but no significant, measurable progress has been made. GDP officials continue to recognize the problem of overcrowding, and some appear open to implementing non-custodial sentences.

For example, one prison director told LICADHO in 2012 that his staff had recently performed an inmate security classification session for approximately 80 inmates. More than 60 of them were classified as “low security” – which he implied was an indicator that they would be good candidates for non-custodial sentences.

Some limited progress has been made in terms of compiling and publishing data on the prison system. Most notably, GDP should be commended for its publication of nationwide data on prisoners' charged offenses in its February 2012 report. This data helped make clear that drug-related arrests are driving the recent increase in the prison population. GDP should also be commended for its continued willingness to share data with LICADHO and other civil society organizations, so that Cambodia's criminal justice landscape can be analyzed.

Data reporting is still spotty however, and varies from prison to prison – and even among sources at GDP. For example, LICADHO requested that GDP headquarters provide a nationwide prison population figure for May 2012 to include in this report. A senior GDP official said that it was not possible to provide this number.

Finally, a nationwide survey of prison capacities, using appropriate floor space standards, has not yet been conducted.

LICADHO reiterates its recommendation from 2010 and 2011.

- ▶▶ **MOJ, MOI and relevant partners should take steps to establish the infrastructure necessary to implement non-custodial sentences on a broad scale. These steps could include: the training of judges, prosecutors, staff and defense attorneys on the proper use of non-custodial sentences; and the development of a probation department or similar government office dedicated to the supervision and rehabilitation of non-custodial offenders.**

As noted above, no concrete progress has been observed in this area. The use of alternative sentences remains rare.

LICADHO thus reiterates its recommendations from 2010 and 2011.

- ▶▶ **MOJ should take immediate steps to implement on a trial basis non-custodial sentences for certain types of offenders. This trial could start with a task force to review the cases of all prisoners currently sentenced to three years or less, which is the threshold for community service.**

No progress noted.

LICADHO reiterates its recommendations from 2010 and 2011.

- ▶▶ **MOJ and the courts should immediately begin increasing their use of non-custodial pretrial measures among the roughly 3,800 pretrial detainees now burdening Cambodia's prison system; [pretrial freedom] should be the rule - not the exception - for minor and non-violent offenses [in line with Code of Criminal Procedure Article 203].**

The number of pretrial detainees has decreased, though it is not clear if that is due to increased use of bail and pretrial release.

In April 2011, GDP reported that there were 5,394 pretrial detainees nationwide. In Nov. 2011 (the most recent nationwide data available), the number was 4,199.

Complicating matters is the reliability of the data. It is not clear, for example, whether pretrial detainees are counted in a consistent manner across all prisons. LICADHO research indicates, for example, that some prisons may classify an inmate as "pretrial" until the prison receives a final judgment from the court. Inmates who have an appeal pending are deemed not to have "final judgments."

LICADHO cautiously welcomes the apparent decrease in pretrial detainees, but renews its recommendation from 2010 and 2011 that the government increase the use of non-custodial pretrial measures.

- ▶▶ **Imprisonment should be viewed as a punishment of last resort, and not the default option for every offense.**

No progress noted.

LICADHO reiterates its recommendations from 2010 and 2011, and urges progress in three specific areas:

- (1) Reducing the severity of prison sentences for minor crimes not involving violence against another person;*
- (2) abolishing the practice of imposing additional prison time for nonpayment of criminal fines or imposing such sentences concurrently with ordinary prison terms; and*
- (3) Reexamining criminal justice policy surrounding drug crimes, with a goal of decreasing the use of extensive prison terms and increasing effective non-custodial treatment options.*



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