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លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



IN ABSENTIA 2013: AN UPDATE ON CAMBODIA'S INMATE TRANSPORTATION CRISIS AND THE RIGHT TO APPEAL

A report issued in
May 2013



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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.

MONITORING & PROTECTION



Monitoring of State Violations and Women's and Children's Rights:

Monitors 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.

Medical Assistance & Social Work:

A medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites. Social workers conduct needs assessments of victims and their families and provide short-term material and food.

Prison Monitoring:

Researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.

Paralegal and Legal Representation:

Victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.

PROMOTION & ADVOCACY

Supporting unions and grassroots groups and networks:

Assistance to unions, grassroots groups and affected communities to provide protection and legal services, and to enhance their capacity to campaign and advocate for human rights.

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) or used for other advocacy.

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COVER: Inmates line up in Koh Kong provincial prison. Photo/LICADHO



The facade of Cambodia's only Court of Appeals, which is located in Phnom Penh.

Introduction



In 2010 and 2012, LICADHO reported on Cambodia's widespread problem of in absentia appeals hearings. Hundreds – if not thousands – of prison inmates were being systematically refused the right to attend their criminal appeals, which is fundamental to a fair trial in Cambodia's legal system.

In the past year, the prison and judicial authorities have finally begun to address the problem, though it appears that the patching of one proverbial leak has caused another.

In its recently released 2012 annual activity report¹, the General Department of Prisons (GDP) reported that it had provided transport for 619 inmates to attend their appeal hearings in Phnom Penh; 475 of these inmates were from the provinces. On the face of it, this is a laudable improvement, almost twice the number of those transported for appeal during 2010². Further, LICADHO research suggests that a significant majority of these inmates were transported to Phnom Penh free of charge³.

What the report does not state is how many of these prisoners were transferred back to their home prisons in the provinces after their appeals. The reality, it seems, is

that very few have been – at least not without paying.

This is a critical problem for two reasons.

First, prisoners – especially poor ones – rely heavily on family and friends for their survival in prison. The standard prison rations of food, medicine, money and other material resources are grossly inadequate, and prisoners need outside help. Cutting prisoners off from their families also severs their links to the community, making them more likely to re-offend and less likely to reintegrate after being released.

Second, Phnom Penh area prisons are some of the most overcrowded facilities in the country, and the wave of one-way transfers appears to be making the situation worse.

LICADHO research has found that many prisoners are now actively trying to avoid being transported to Phnom Penh for their appeals, so that they may remain close to their families in the provinces. This is a disturbing development.

While GDP has made great strides in its efforts to transport prisoners to their appeals, it is clear that much work remains.

¹ General Department of Prisons (GDP), "2012 Annual Report and 2013 Objectives", published March 2013, (unofficial English translation).

² GDP's 2011 report, published in February 2012, did not mention transfers of inmates for appeals.

³ LICADHO has obviously not interviewed all of the inmates who were transferred to Phnom Penh for their appeals, but in the first half of 2013, a clear majority of those interviewed said they were transported free of charge. Still, some inmates continued to report that they paid, usually between US \$200 and US \$300.

A One-Way Ticket



In 2010, LICADHO issued a report entitled “In Absentia: The Right of Appeal and Cambodia’s Inmate Transportation Crisis”⁴. The report noted that the GDP’s long distance inmate transport network was nearly nonexistent, largely due to lack of material and human resources for such journeys. Inmates were only transported to their appeals hearings if they paid. As a result, appeal hearings were often held in absentia, seriously jeopardizing the right to a fair trial and in violation of Cambodian law.

LICADHO issued an update report in 2012⁵. This report found that Cambodia’s prison system still lacked the vehicles, gasoline, staffing and funding necessary to transport prisoners to their appeal hearings in Phnom Penh. LICADHO included a series of recommendations in both reports, including, but not limited to an expansion of the existing transport network.

GDP officials have admitted the lack of services for inmate transport and pledged to address the situation. A number of positive steps have been undertaken including, in cooperation with the UN Office for the High Commissioner for Human Rights (OHCHR), a new building at the Court of Appeal in Phnom Penh, additional office space and more equipment, making it possible to accommodate more judges and clerks. A database was also introduced to manage new cases.

LICADHO also began to support prisoners who wanted to request transport to attend their appeals. However, many proved reluctant to make such requests for fear they would not be able to return to their provincial prisons. LICADHO’s latest research proves that their fears were well founded.

PROTECTING A FUNDAMENTAL RIGHT

At first glance, prison authorities’ recent efforts to enable more prisoners to attend their appeals are commendable. The right of appeal is one of the most fundamental of all criminal trial rights, and in Cambodia, a criminal defendant’s attendance at his or her appeal hearing is essential because the court has the authority to re-examine witnesses and evidence⁶. Cambodian law also 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”⁷. Attendance is not optional.

When LICADHO’s 2010 report was published, only those prisoners who could pay their own way were in a position to attend their hearings. Indeed, according to Kuy Bunsorn, Director General of Prisons, previously prisoners

pending appeal were transferred close to the Court of Appeal “in just above 10% of cases, mainly when lawyers had submitted requests or funding had been secured from outside the prisons budget”⁸.

Cambodian authorities appear to be taking further steps to ameliorate the situation as well. In its 2012 report, the GDP acknowledged a continued lack of transportation and included in its objectives for 2013 to “always be ready to provide transportation to prisoners from one prison to another, as well as to Appeal and Supreme Court.” The report also notes that the GDP has requested 2,000 liters of diesel and 30 liters of engine oil for transporting prisoners to the Appeal Court but that no decision had yet been made on this

LICADHO recently met with inmates in CC1 and CC2 prisons who had travelled to attend their appeals from Siem Reap, Battambang, Kampot and Kampong Speu provinces. None had been offered the opportunity to return to provincial prisons.

request.

However, the provision of appeal transportation can only work if inmates are also able to return to their provincial prisons. Otherwise the system will become counter-productive, defeating the very objective of enabling and encouraging inmates to attend their appeals. In fact, the current system of keeping transferred inmates in Phnom Penh – or transferring them to Correctional Center 3 (CC3) in Kampong Cham province – may actually be discouraging inmates from attending their appeals.

Precise figures on how many inmates become stuck in Phnom Penh prisons following their appeals are not available and are subject to fluctuation. However, one senior prison official told LICADHO in March 2013 that

⁴ A LICADHO Briefing Paper, February 2010.

⁵ In Absentia 2012: An Update on Cambodia’s Inmate Transportation Crisis and the Right to Appeal, A LICADHO Briefing Paper, April 2012.

⁶ International Covenant on Civil and Political Rights (ICCPR), Article 14 (5), incorporated into Cambodian law by the Constitution of Cambodia, Article 31; Cambodian Code of Criminal Procedure (CCP), Article 375.

⁷ CCP, Article 389.

⁸ “Promoting cooperation between courts, prosecutors and prisons and the protection of children’s rights in the justice system: Report of the workshop organized by the Court of Appeal with support from OHCHR and UNICEF, Sunway Hotel, Phnom Penh, 5-7 September 2012.”

there are more than 100 in Correctional Centre 1 (CC1) prison alone because GDP does not have the money to transport them back. LICADHO is also aware of inmates in this situation in Correctional Center 2 (CC2) prison, indicating that at least 25% of those transported from the provinces in 2012 became trapped in Phnom Penh prisons. The actual number may be much higher.

LICADHO recently met with inmates in CC1 and CC2 prisons who had travelled to attend their appeals from Siem Reap, Battambang, Kampot and Kampong Speu provinces. None had been offered the opportunity to return to provincial prisons.

One inmate told LICADHO that he was transferred from Battambang with 16 others from Battambang and Kampong Cham provinces. According to him, all were travelling to attend their appeals and none have been returned to the provincial prisons.

Most of those interviewed by LICADHO reported that prison staff had told them they could only return to their provinces if they paid hundreds of dollars each. Several provincial prison directors have also told LICADHO that inmates who take GDP transport to attend their appeals often do not return or only return after long delays.

SHALLOW PROGRESS

This fundamental flaw in the appeals transportation system casts a long shadow on the progress made to date on this issue. Most importantly, if this problem is not addressed soon, it means the system of appeal transportation could ultimately fail.

As word spreads amongst inmates that the opportunity to attend an appeal hearing still comes with a hefty price tag, far beyond the means of the vast majority of prisoners in Cambodia, many will come to one of two conclusions – not appeal at all, or to allow their appeal to go ahead in absentia.

With this in mind, the sincerity of the GDP's attempts to enable inmates to attend their appeals is in serious doubt. It is a sad fact that efforts apparently designed to enhance the rights of inmates, have led to many being abandoned in Phnom Penh's hugely overcrowded prisons, far from their families and with little chance of return. It is equally disappointing that a system to promote adherence to Cambodian law is being stymied by financial issues at the expense of the poorest, most vulnerable inmates.

“If I knew I would end up here, I would never have attended my appeal”

“Lyna” (not his real name) was transferred from Kampot prison to Phnom Penh in October 2012 to attend his appeal along with five co-defendants. As a juvenile, he is held in CC2 prison. All six co-defendants remain in Phnom Penh's CC1 and CC2 prisons.

He says that if he knew that he would end up in CC2 prison, he would never have attended his appeal.

In the past six months his family has only been able to visit him once; in Kampot, they would visit him at least once a month. He has another five years to serve on his sentence.



An inmate lineup in Koh Kong provincial prison.

Facing Five Years Alone

In 2010, 23-year-old “Dara” (not his real name) was sentenced to eight years in prison for robbery. When his appeal hearing was scheduled in 2012, he did not want to attend. In Battambang prison he had heard that those who took GDP transportation often did not return. He had also heard that he would have to pay \$150 if he wanted to go back to Battambang prison. With his family nearby and visiting him at least twice a month, he was reluctant to take this risk.

Dara says that in the end he had no choice, that he was forced to attend his appeal. When he arrived in CC1 prison he had to wait more than three months before the hearing and since then no one has mentioned the possibility of going back to Battambang.

He has now been in CC1 prison for more than nine months and has received no family visits. In Battambang his aunt would visit him at least twice a month, but his family and friends are poor and cannot afford the journey to Phnom Penh. With no one to visit him he has no money and relies solely on the scant provisions provided by the prison.

Dara’s sentence was not changed upon appeal. As such, if he is not provided with transport back to Battambang, he faces another five years in Phnom Penh with no outside visitors.

Dara was transported to Phnom Penh with 16 other prisoners – 14 from Battambang and two from Kampong Cham, all coming for their appeals. He believes that all 16 are still held in CC1 prison.

THE BATTAMBANG EXAMPLE

The highest number of inmates transported to their appeal in 2012 came from Battambang prison. According to GDP statistics, 18 transfers took place, transporting a total of 80 inmates.

These figures are not surprising given that Battambang is one of the largest, most populated prisons outside of Phnom Penh. LICADHO’s own statistics show that as of January 2013 the number of inmates still awaiting appeal in Battambang was relatively low.

Interviews with inmates from Battambang paint a different picture however. It would appear that many who were transported are now stuck in Phnom Penh prisons. Most worryingly, inmates in Battambang told LICADHO that they no longer want to attend their appeals because they know that if they cannot pay the return journey expenses they will have to stay in Phnom Penh. Some inmates told LICADHO that they were forced to go to Phnom Penh to attend their appeals.

In January, a former Battambang Prison Director confirmed that while the GDP does send transport for inmates to attend their appeals, most do not want to make the journey these days. He told LICADHO that if they cannot pay, they remain in Phnom Penh or are transferred to CC3 prison.

FAMILY AND COMMUNITY CONNECTIONS LOST

Principle 19 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that “a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family...”⁹ Furthermore Principle 20 states that “if a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.”¹⁰

For most Cambodian inmates, visits from family and friends provide an essential lifeline. In a system lacking resources and plagued by corruption, those with no support beyond the prison walls are the most vulnerable. In such conditions, those with no money or outside support have to rely solely on what is provided by prison authorities. Prison food is nutritionally inadequate, water is scarce and even sleeping arrangements are prioritized according to financial means.

Of the inmates interviewed by LICADHO who became stuck in Phnom Penh’s prisons following their appeals, all described the impact on family visits. Some had received no visits at all since being transferred to Phnom Penh. Others said that their families had been able to visit only once or twice due to financial constraints or because they could not take time off work to travel to Phnom Penh.

Clearly those who are unable to afford return transportation are also those



Contact visiting area at Kampong Cham Prison.

⁹ Adopted by the UN General Assembly on December 9, 1988.

¹⁰ *Ibid.*



The provincial prison in Kampot.

most likely to come from poorer families who lack the time and resources to visit them in Phnom Penh prisons.

Being imprisoned far from one's family and community can have broader implications, including on the chances of successful reintegration and the likelihood of recidivism. If inmates are provided with proper preparation for release while still in prison, including skills-based training and continued connections with their family or community, the chances of successful reintegration are higher. Contact with appropriate family and community members can be particularly important for the well-being and future reintegration of young inmates.

The majority of those interviewed by LICADHO were young men. Indeed five of them claim to have been under the age of 16 at the time of their arrest. Some had been receiving vocational training and pre-release support in provincial prisons. None of them have received any such training or support since arriving in Phnom Penh.

No Way Back

"Sok" and "Vuthy" (not their real names) were arrested in April 2010 in Battambang province and sentenced to four years imprisonment for attempted rape. Both were juveniles at the time of their initial arrest.

In November 2012 they were provided with free GDP transport to attend their appeal. They have been held in Phnom Penh's CC2 prison ever since with no opportunity to return to Battambang prison.

At their appeal in December 2012 their sentences were reduced by one year and both are now due to be released on April 28. With no money or prior knowledge of Phnom Penh they do not know what they will do upon release or how they will get back to Battambang.

Since their transfer to Phnom Penh their families have been unable to visit them. By the time they are released they will have been in CC2 with no family visits for over six months.



Barbed wire in Phnom Penh's Correctional Center 2 prison.

The Impact in Phnom Penh



Those attending their appeals have been relocated to CC1, CC2 and PJ prisons in Phnom Penh and Takhmao prison on the outskirts of Phnom Penh.

Whilst the entire Cambodian prison system is bursting at the seams, CC1, CC2 and Takhmao prisons are amongst the most overcrowded in the country. Moreover, Cambodia's national Correctional Centers (CC1, CC2, CC3 and CC4) are theoretically designed to house long sentence convicted inmates. According to LICADHO's calculations, as of March 2013, CC1 was operating at 164% of capacity, CC2 at 227% capacity and Takhmao the most overcrowded at 296% capacity.

In such circumstances, it makes no sense to keep post-appeal inmates in these prisons indefinitely or even for a few months. Indeed the Director General of the GDP Kuy Bunsorn acknowledged this problem himself during a September 2012 workshop panel discussion noting that prisoners were transferred to CC1, CC2, Takhmao and PJ prisons for appeal, "although this was increasingly problematic due to the level of overcrowding in these prisons and correctional centers"¹¹.

Looking at the total number of transfers for appeal made during 2012 it also seems inconceivable that transport is not available for return journeys from Phnom Penh.

According to the 2012 GDP report for example, there were a total of 174 separate journeys made to transfer inmates for appeal, including 18 journeys to transfer inmates from Battambang. During 2012 the GDP also transferred a total of 686 inmates to other prisons due to overcrowding. The majority of these transfers were to CC3 and CC4 prisons¹².

If the vehicles, gasoline and staffing are available for such journeys, it begs the question as to why post-appeal return journeys are not also possible.

CC3 TRANSFERS

Perhaps the most disturbing development relating to appeal transportation is the relocation of some inmates, not back to their provincial prison, but to CC3 prison in Kampong Cham province. The prison is reputed to be one of the Cambodian penal system's harshest facilities, and its remote location near the Vietnam border means that inmates receive few visits from family and friends.

LICADHO researchers have interviewed a number of inmates who claim that prisoners are being transferred to CC3 after their appeals, instead of being sent back to their original provincial prisons. CC3 is far from immune to the overcrowding crisis. It is currently operating at 191% of its intended capacity.

¹¹ "Promoting cooperation between courts, prosecutors and prisons and the protection of children's rights in the justice system: Report of the workshop organized by the Court of Appeal with support from OHCHR and UNICEF, Sunway Hotel, Phnom Penh, 5-7 September 2012"

¹² GDP Annual Report statistics 2012, "Transfers to alleviate prison overcrowding", published March 2013 (unofficial English translation)



The problem of returning inmates to their provinces notwithstanding, recent statistics also show that the appeal transportation system, whilst apparently improved over the past two years, is still struggling to cope with the large numbers of inmates awaiting appeal.

Of the nine prisons reporting data of those awaiting appeal to LICADHO in March 2013, a total average of 15% of convicted prisoners were awaiting appeal. This represents a modest two percent decrease in figures recorded by LICADHO in 2012 (the population of the prisons monitored by LICADHO also shrunk by about 2.8% from February 2012 to March 2013). Note that the chart below includes only prisons which provided data in both 2012 and 2013. Two prisons which reported data in 2012 – Kampot and Siem Reap – did not provide data to LICADHO in 2013.

| Prison | Inmates with pending appeals (Feb. 2012) | Total no. of convicted inmates (Feb 2012) | Inmates with appeals pending (March 2013) | Total no. of convicted inmates (March 2013) |
|--------------|--|---|---|---|
| CC3 | 356 | 1,490 (23.9%) | 310 | 1,546 (20.1%) |
| Kg. Som | 16 | 160 (10%) | 22 | 241 (9.1%) |
| Kg. Speu | 70 | 252 (27.8%) | 60 | 196 (30.6%) |
| Kg. Chhnang | 22 | 120 (18.3%) | 16 | 310 (5.2%) |
| Kg. Thom | 30 | 282 (10.6%) | 47 | 290 (16.2%) |
| Koh Kong | 28 | 201 (13.9%) | 28 | 185 (15.1%) |
| Pursat | 28 | 107 (26.2%) | 16 | 126 (12.7%) |
| Battambang | 35 | 910 (3.8%) | 21 | 795 (2.6%) |
| Svay Rieng | 55 | 216 (25.5%) | 63 | 206 (30.6%) |
| TOTAL | 640 | 3,738 (17.1%) | 583 | 3,895 (15.0%) |

The Case of Samnang: A Promising Rehabilitation on Hold

“Samnang,” from Siem Reap province, is one young inmate who found himself stuck in CC1 prison after taking GDP transportation to Phnom Penh in order to attend his appeal.

He had been arrested in November 2008 and sentenced to five years imprisonment for breaking into a shop and stealing a mobile phone. At the time of his arrest he was just 16 years old.

In Siem Reap prison, Samnang participated in a vocational training program run by the NGO This Life Cambodia. Their program provides juveniles in prison with skills-based training in motorcycle mechanics and electronic repairs, as well as life skills, personal development and one-on-one educational support. The program aims to build self-esteem and to provide juveniles with more opportunities after their release, thus reducing the likelihood of reoffending.

In December 2010, Samnang began a motorcycle mechanic training course. Over the course of one year he attended three full-day training courses. He ultimately received his vocational training certificate and became a peer assistant to the vocational trainer. This Life Cambodia staff describe him as an extremely hard working, friendly student who enjoyed learning and was well respected by others.

Samnang appealed against his five-year sentence and, understanding the importance of attending his appeal, was pleased to be offered free GDP transportation so that he could be at the hearing in person. The GDP car collected him on June 28, 2012, and brought him to CC1 prison in Phnom Penh in advance of the September 2012 hearing.

Unfortunately this decision cut short his vocational progress and personal support. More than nine months after his appeal, Samnang is still at CC1. When he accepted the offer of GDP transportation to his appeal, no one explained to him that it might be difficult to return to Siem Reap.

Since his appeal, no one has spoken to him about the possibility of returning.

LICADHO has been told that only those who have money are able to return to their provinces after attending their appeal in Phnom Penh. Samnang estimates that he would have to pay US \$200 to US \$300 to prison authorities if he wanted to return to Siem Reap. Another prisoner from Siem Reap was told he would have to pay US \$300 if he wanted to return using GDP transportation.

Samnang has not been able to participate in any training opportunities at CC1 prison and is only allowed out of his cell twice a week, each time for approximately one hour.

His links to his family have also suffered. In the past nine months, his family has only been able to visit him twice due to the distance and time involved in travelling to Phnom Penh. In contrast, they visited him 14 times in Siem Reap between January 2011 and February 2012.

Fortunately, Samnang’s decision to attend his appeal hearing did have a positive result – the appeal court reduced his original sentence by six months and he is due to be released on May 27, 2013. When he returns home he plans to undergo some refresher training with This Life Cambodia to aid his reintegration back into society.

A Gender Imbalance



According to GDP's own nationwide statistics, as of November 2012, there were 1,474 inmates with a pending appeal out of a total of 11,806 convicted inmates (12.5%). Worryingly, GDP's statistics also reveal that 21% of all female convicts are still awaiting their appeal (189 awaiting appeal out of a total of 903 female convicts)¹³.

Indeed, GDP statistics further show that whilst 12.8% of those awaiting appeal in 2012 were women, only 3.9% of those transferred for appeal were women¹⁴.

Curiously, whilst almost 70% of inmates at CC2 prison in Phnom Penh are women, of the 19 inmates transported to the nearby appeal court in 2012, only one was female. CC2 prison does not provide LICADHO with statistics on how many inmates, male or female, are awaiting appeal.

The high proportion of female inmates awaiting appeal may reflect the high proportional growth of women prisoners over the past two years. In March 2013, LICADHO reported that in the Cambodian prison system there had been a 39% increase in female inmates and while women and girls represented 8% of the prison population, their incarceration rate had been growing four times faster than the male prison population¹⁵.

The apparent gender imbalance in appeal transportation may also be symptomatic of problems inherent in the system itself. If, as the GDP claims, it still lacks adequate resources for transfers, then it is likely that women from provincial prisons will be a lower priority.

During transfer women should be kept separate from men, thereby necessitating more journeys at additional cost. Women should also be accompanied by female prison staff during transportation. Given that 90% of Cambodian prison staff are men¹⁶, individual institutions may not have enough female staff available for such journeys.

Women from provincial prisons may also be especially reluctant to travel to Phnom Penh to attend their appeal if they know they will become stuck in Phnom Penh, especially if they have children or other caretaking responsibilities.



Female prisoners in Phnom Penh's Correctional Center 2.

Almost 70% of inmates at CC2 prison in Phnom Penh are women, but of the 19 inmates transported to the nearby appeal court in 2012, only one was female.

¹³ General Department of Prisons (GDP), "2012 Annual Report and 2013 Objectives", published March 2013, (unofficial English translation).

¹⁴ *Ibid.*

¹⁵ LICADHO highlights alarming increase in female prisoner population to mark International Women's Day, 7 March 2013.

¹⁶ General Department of Prisons (GDP), "2012 Annual Report and 2013 Objectives", published March 2013, (unofficial English translation).

Conclusion & Recommendations



As GDP Director Kuy Bunsorn has himself acknowledged, the issue of prisoner transportation is still “very challenging for GDP”¹⁷. Appeals Court president You Bunleng has also stated that whilst the number of appeal judges has now increased and the Court of Appeal has one additional courtroom, “it was still taking time to reduce the appeal backlog”¹⁸.

Transferring inmates to their appeal but not returning them to provincial prisons will only exacerbate any existing challenges. As LICADHO has documented, inmates are increasingly reluctant to attend their appeals because of this. A natural conclusion for some will be not to appeal at all. Additionally, keeping inmates in Phnom Penh’s prisons only puts additional strain on already vastly overcrowded prisons.

The current appeals transportation is clearly still not sufficient to meet the demands of the entire prison system. In 2012, LICADHO suggested other possible complementary solutions to ease the backlog, but it appears that, whilst these suggestions are being considered, to date little or no concrete action has been taken:

“GROUPING” APPEALS

Participants in a September 2012 workshop organized by the Court of Appeal agreed and recommended that the possibility of “grouping” appeal hearings of multiple inmates held in one provincial prison should be “explored” to facilitate the presence of the accused at the appeal hearing. Bun Honn, Under-Secretary of State at the Ministry of Justice, agreed that this required closer coordination between the Court of Appeal and the GDP, but that it should be possible. Participants agreed that the Court of Appeal, the Prosecutor General and the Director General discuss ways of “grouping” the hearings¹⁹. Whilst it is encouraging that this recommendation is being explored at central government level, it is disappointing

that no concrete action appears to have been taken to date.

REGIONAL APPEALS COURTS

A Ministry of Justice official told the Phnom Penh Post in May 2012 that a system of regional appeals courts would be created, but did not say when and where²⁰. Participants at the September 2012 workshop also agreed and recommended that the establishment of regional appeal courts should take place “as soon as possible”²¹. LICADHO welcomes this recommendation and urges that resources be put in place to implement it without delay.

MOBILE APPEALS COURTS

LICADHO is not aware of any further discussion regarding the possibility of introducing mobile appeal courts.

VIDEOCONFERENCING

LICADHO suggested that this technique could be used for limited purposes only, such as for witness testimony. Participants at the September 2012 workshop discussed this possibility and the idea was welcomed by You Bunleng, President of the Court of Appeal. The workshop recommendations noted that it would be “useful” to set up video conference facilities to allow more prisoners and witnesses to “attend” appeal hearings²². This is encouraging, but there are significant limitations to using videoconferencing as the sole means for inmates to attend their appeals hearings. As noted in LICADHO’s 2012 report, there are significant limitations in applying the technique to Cambodia’s courts. The use of a video feed could have a distancing effect between the defendant and the rest of the participants. The defendant would also have limited awareness – and literally a constricted view, based on what the video showed – of courtroom proceedings. Also, the cost of such a system would be significant, and scarce funds are likely better spent on more judges, more physical courtrooms and more inmate transport infrastructure.

RECOMMENDATIONS

- ▶▶▶ LICADHO again urges authorities to prioritize funding for prison transport vehicles and fuel for inmates to attend their appeals AND to be transported back to provincial prisons.
- ▶▶▶ LICADHO welcomes the recommendations from the September 2012 workshop and urges that concrete action be taken to implement them.
- ▶▶▶ Any inmates who became stuck in Phnom Penh’s prisons after attending their appeals, and who wish to be returned to provincial prisons, should be provided with free transportation back without delay.
- ▶▶▶ Female inmates should be given equal access to GDP appeal transportation and not marginalized due to lack of resources.

¹⁷ “Promoting cooperation between courts, prosecutors and prisons and the protection of children’s rights in the justice system: Report of the workshop organized by the Court of Appeal with support from OHCHR and UNICEF, Sunway Hotel, Phnom Penh, 5-7 September 2012.”

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Shane Worrell and Chhay Channyda, “Regional appeal court system to be installed,” the Phnom Penh Post, May 2, 2012.

²¹ *Ibid.*

²² “Promoting cooperation between courts, prosecutors and prisons and the protection of children’s rights in the justice system: Report of the workshop organized by the Court of Appeal with support from OHCHR and UNICEF, Sunway Hotel, Phnom Penh, 5-7 September 2012.”

