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និងការពារសិទ្ធិមនុស្ស

លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



RIGHTS AT A PRICE: LIFE INSIDE CAMBODIA'S PRISONS

A report issued in
January 2015



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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 13 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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A cell in Kampong Chhnang prison, 2011



Entrance to Correctional Center 3, 2014

Introduction



The role of Cambodia’s General Department of Prisons (GDP) is to confine prisoners¹ in a safe, secure, hygienic and humane environment which permits rehabilitation in order that they may return to society to lead meaningful lives.² Whilst these principles are commendable, they do not reflect the reality of life for the majority of inmates in Cambodian prisons.

Many inmates are deprived not only of their liberty but also of other fundamental human rights such as the rights to health and human dignity, the right to be free from torture and the right to due process of law. Many of those held have not been found guilty of any crime, yet are treated just the same as or worse than those convicted. Inside prison, corruption is rife whilst informal cell leadership structures and systems often take the place of formal rules and procedures rendering official complaint mechanisms obsolete or ineffective.

LICADHO notes that in recent years limited steps have been taken towards the promotion of rehabilitative imprisonment, pre-trial detention alternatives and non-custodial sentencing. Yet implementation of reforms is slow and, as the GDP itself recognizes, many challenges remain, including prison overcrowding, poor infrastructure, lack

of appeal transportation, weak implementation of the law and lack of knowledge amongst prison officials.³

This report provides a detailed analysis of the current state of Cambodian prisons and the human rights implications for those held in them. The report is based on LICADHO’s research in the 18 prisons regularly monitored⁴, including interviews with current and former prisoners, families of those held, meetings with prison directors and other prison staff. The report also draws on information obtained from full prison site visits conducted in the past two years⁵ and information from LICADHO’s medical staff who regularly treat patients and prison staff in 14 prisons.⁶

LICADHO recognizes the challenges associated with prison management in any country and acknowledges the efforts and improvements made towards an improved prison system in Cambodia in recent years. However, LICADHO remains deeply disturbed at conditions in many prisons and by ongoing, systematic reports of abuse, discrimination, exploitation and corruption within the prison system. The report concludes with a set of recommendations to the Cambodian authorities on how to improve policy and practice towards the promotion and full protection of prisoners’ rights.

¹ In this report the terms prisoner and inmate are used interchangeably to refer to all persons in prison. The term pre-trial detainee is used when referring to circumstances specific to those held in pre-trial detention, including (where the information is available) those awaiting appeal or final verdict.

² Policy Framework for Prison Reform, January 2008.

³ General Department of Prisons – Strategic Plan 2014-2018, point 2.2, challenges.

⁴ Police Judiciaire (PJ), Correctional Centre 1 (CC1), Correctional Center 2 (CC2), Correctional Center 3 (CC3), Correctional Center 4 (CC4), Takhmao, Tuol Sleng Military Prison, Kampong Som, Kampong Speu, Kampong Chhnang, Kampong Cham, Kampong Thom, Pursat, Battambang, Banteay Meanchey, Siem Reap, Svay Rieng and Koh Kong. LICADHO does not regularly monitor other places where people are deprived of their liberty such as police stations, immigration detention facilities, social affairs and drug rehabilitation centres.

⁵ In addition to the prisons regularly monitored, LICADHO also carried out full site visits to Preah Vihear and Prey Veng prisons and the temporary prison facilities in Pailin and Odder Meanchey provinces.

⁶ Kampong Cham, Kampong Thom, Kampong Chhnang, Takeo, Kampong Som, Koh Kong, Pursat, Battambang, CC4, Prey Veng, Svay Rieng, Takhmao, PJ, and the military prison in Phnom Penh.



Background



There are currently four national correctional centres, 23 municipal and provincial prisons and one military prison in Cambodia.⁷ All civilian prisons are the responsibility of the GDP under the Ministry of Interior.

Prisons across Cambodia differ from each other in many respects, from Phnom Penh's Correctional Center 1 prison holding more than 3,000 prisoners, to Mondulkiri prison which currently holds less than 100 inmates; from the relative modernity of Kampong Thom prison, completed in 2010 to Takeo prison, parts of which date back to 1914. Geographical settings also vary, with Kandal provincial prison located in the heart of Takhmao town, whilst CC4 prison sits on hundreds of acres of farmland in a remote area a one-and-a-half hour drive from Pursat town.

Availability of resources and activities can also depend on the prison's structure, location and size. Some prisons such as CC4 have large prison-run labor programs whilst others, for instance Siem Reap prison, rely on NGOs who provide much of the training, recreational activities and work opportunities. On the other hand, in Oddur Meanchey's temporary prison facility, activities are non-existent and the vast majority of prisoners are not even permitted to leave their cells for basic open air exercise.⁸

Despite these differences there are many constant factors that characterize the entire Cambodian prison

system. Overcrowding, squalid conditions are the norm and corruption is widespread. For most inmates, cash flow dictates conditions of detention, treatment, family visits⁹ and access to basic needs such as food, water, daylight and fresh air.

Those without money are in the worst situation, often sleeping on bare concrete floors, forced into the lowest jobs and, in some cases denied out-of cell time. Whilst some prisons boast of recreational activities and vocational training opportunities, these are often offered only to the privileged few, and sometimes only for a fee. Pre-trial detainees are often held in worse conditions than convicted prisoners and it is rare for inmates to be properly separated according to their security ranking, with petty criminals often housed in the same cells as murderers and rapists.

Cambodia's prison system remains badly overcrowded, with levels of pre-trial detention particularly high, many documented cases of unlawful detention and long waits for appeal hearings. The situation of inmates with mental health problems, juveniles, pregnant women and children living in prison with their mothers is also of particular concern, especially given the dire state of prison health facilities and ongoing reports of abuse.

⁷ In addition there is a temporary detention facility for the Extraordinary Chambers in the Courts of Cambodia (ECCC).

⁸ At the time of writing the new prison facility at Oddur Meanchey was reportedly near completion.

⁹ Whilst this report refers mainly to family visitors, LICADHO is aware that some inmates do not have families, have no contact with or do not wish to see their families. LICADHO notes that it is equally important for these individuals to have the right to other external visitors, including friends and colleagues.

Restricted access



Whilst LICADHO's findings are based on comprehensive research, it should be noted that certain constraints prevent the organization from gaining an even fuller picture of life inside Cambodian prisons. Given the nature of the constraints detailed below, it would appear likely that actual instances of abuse and other human rights violations are widely underreported.

In the past few years LICADHO's prison access has become increasingly restricted. LICADHO cannot visit places of detention without prior notice and, increasingly, prison researchers are unable to conduct in-prison interviews in full confidentiality.

Former inmates have told LICADHO that some external visits are carefully engineered by prison authorities to ensure that facilities appear clean and well-managed. Some reported that inmates were locked up during such visits to prevent them from communicating with the visitors. Others told how all inmates were allowed out of their cells for the duration of the visit and locked away immediately afterwards. One former prisoner confided to LICADHO that the only time he was allowed out of his cell for more than a ten-minute period was during pre-planned prison tours by external visitors.

“Sometimes when NGO representatives came to the prison we were allowed to turn on the fan to show that the rights of prisoners are respected, and we kept calm and quiet inside the building during the visit, very quiet, but in reality we were very angry.”

Some released inmates also report receiving threats before prison visits by LICADHO and other organizations. They were told not to complain about their prison experiences and threatened with punishment, including the reduction of food rations if they did so. Some said that after such visits they were questioned by authorities or cell leaders about the details of their conversations.

In these circumstances, LICADHO does not ask questions which could endanger inmates or compromise their conditions of detention. Unless confidentiality can be assured, LICADHO reserves more sensitive and detailed

questions for post-release interviews. LICADHO staff also make repeat visits to inmates in order to protect against possible reprisals.

Threats against inmates do not stop at the prison gates. Prisoners who have been intimidated or ill-treated may be reluctant to talk about their experiences once released for fear of retribution or re-arrest. In such a climate, not only prisoners but also prisoners' relatives and even prison staff are sometimes unwilling to divulge their concerns to external observers.

LICADHO has also received reports of prisoners being paid for their silence. One former inmate reported that upon release he was offered \$2.50¹⁰ with the provision that he would not talk to NGOs about prison life.

As with in-prison interviews, LICADHO staff employ careful methods to ensure that the safety of post release and family interviewees is assured. Such interviews are purely voluntary and are conducted in a safe environment. Confidentiality is fully respected and names are never used or follow up action taken without consent. For those released deemed to be at possible risk LICADHO staff maintain contact after interview in case of retaliation.

Unfortunately it is impossible to know the extent to which threats, intimidation and bribery are used as measures to restrict NGO access to information about prisons. However based on testimony received, LICADHO fears this practice is widespread.



Tower of a Cambodian prison, 2009

¹⁰ For the sake of consistency all monetary amounts are given in US dollars in the report. Both Cambodian riel and US dollars are common currency in Cambodia. \$1 is equivalent to approximately 4,000 riel.

Rights for sale



In general, conditions of detention in Cambodia are characterized by overcrowding and limited access to basic needs such as food, water, ventilation and natural sunlight. However, individual circumstances can vary greatly, usually in accordance with financial status.

The majority of prisoners interviewed by LICADHO after their release report that basic commodities and individual rights come at a price. There is no doubt that, with few exceptions, an inmate's financial status and position in the fiscal hierarchy is the defining factor in their daily prison life.

The poorest inmates and those without families, or whose families and friends cannot visit them are, by default, at the bottom of the prison hierarchy. They sleep on the bare concrete cell floors, often near the toilet, and survive on the minimal prison food and water allocated.¹¹ Some of them spend the majority of their day inside hot, dark and airless cells.

Roatha¹² was in prison for 19 months. She was not allowed out of her cell for the first ten days of her incarceration and was eventually allowed out only after she paid \$50 to prison guards. The first time her family came to visit her they had to pay \$20, after that they paid between \$2.50 and \$5 per visit. Roatha herself would have to pay the prison guards \$0.50 to receive the food her family brought for her.

For those with access to money, or family or friends able to provide for them, the situation is less bleak. Perhaps they can buy more food, a better space to sleep and extra out-of-cell time and their visitors may bring them additional food and other supplies. Some prisons reportedly house 'VIP cells' for well-connected prisoners or those able to pay for single cell accommodation. In some prisons drugs, alcohol and prostitutes are readily available to those who pay and LICADHO has received reports of some inmates paying up to \$2,000 to be transferred to a different cell or prison.

In many prisons, inmates report having to pay towards the electricity in their cell, with the occupants of each cell in Phnom Penh's CC1 prison reportedly paying up to \$200 per month to authorities for lighting and ceiling fans. The price is said to have been raised from \$150 following the recent installation of larger ceiling fans.

Former prisoners have also reported to LICADHO that in some prisons it is not just basic survival needs that come with a price tag, but that opportunities for rehabilitation such as work and vocational training opportunities, or access to library books are sometimes only available in exchange for money.

Alarmingly, LICADHO has also received reports that some inmates had to pay for prison medical services and medicine. For example one former prisoner reported that he had to give \$22.50 to prison staff in order to stay in the prison health post when he was sick. Another stated that in addition to paying his medical fees, he had to give \$10 to prison guards to be allowed to visit a specialist doctor outside of prison.

Water as a commodity

A burst water pipe connecting CC1 and CC2 prisons to Phnom Penh's mains supply recently led to a sharp increase in the cost of water in both prisons and the introduction of a profit-driven supply chain which benefits prison authorities and certain well-connected inmates. Whilst prisoners already had to pay for sufficient water for drinking and washing, prices were inflated with the introduction of an alternative trucked-in water supply. Some inmates reported that they could no longer afford to buy enough water whilst others were forced to work for wealthier inmates to do so.¹³

¹¹ A 2009 sub-decree on 'prisoner food ration and cell equipment' regulates the budget per prisoner that prisons are supposed to receive. The daily budget allocated to each prisoner is \$0.70. Often prisons do not receive the full amount provided for under the sub-decree or they receive the money late. When they do receive the money, there is no guarantee the full amount will be spent on the prisoners.

¹² Except where the full name is given in the text, all names of interviewees have been substituted to protect their identity.

¹³ At the time of writing CC1 and CC2 prisons had still not been re-connected to the mains water supply.

Contact with the outside world



All prisoners are entitled to communicate regularly with family and friends, including through direct visits. Such contact is crucial for emotional well-being and plays a major role in eventual reintegration into family and community. In Cambodia, prison visitors are also a vital, and often the only, source of nutritious food, medicine and financial support.

Yet, in Cambodia, this right only extends to those with families or friends who can afford to visit. In addition to the usual costs of transportation to prison, time off work and childcare arrangements, visitors are required to pay a fee to the prison on each visit. Amounts requested vary according to length of visit, meeting location, day of visit, and the perceived financial capacity of the visitor.

Typical amounts cited by prisoners and families are between \$2.50-\$5.00 for a 15-minute visit behind bars rising to \$10 to meet inside the prison compound and \$15 dollars or more for a private meeting. If visitors bring food or other materials to the inmates they are often required to pay more money or give a percentage cut to the prison guards. One released inmate told LICADHO that his family had to give an additional \$2.50 when his children came to visit him.

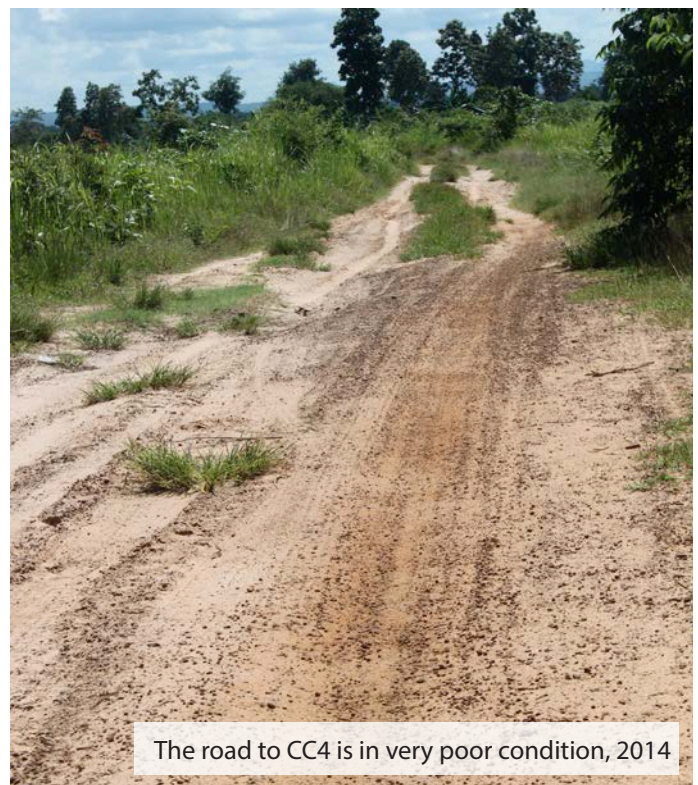
When Phally needed medicine which was not available from the prison health post, his family would bring it to him, paying \$0.50-\$1.25 each time. Because he had many prison-related health problems, Phally's family would deliver food or medicine to him two or three times a week and they would make a full prison visit, costing \$5, two or three times per month. Over the course of his one year imprisonment they spent almost \$250 on prison visits alone – not including their transportation costs and other related expenses.

Whilst external visits are important for all inmates, certain groups are more likely to be adversely affected when the frequency and conditions of family visits are restricted. For example, mothers should be allowed regular, private meetings with their young children and when juveniles are detained, it is important that they are able to maintain links with their families through regular, unrestricted visits. Unfortunately, LICADHO's research shows that such considerations are rarely taken into account when imposing prison visit fees.

Lack of contact with families is a particular concern for those inmates held in remote, rural locations such as CC3 and CC4 prisons, which house mainly convicted male inmates who have been transferred from provincial prisons across the country. Both prisons are more than a 90-minute drive from the closest provincial towns of

Kampong Cham and Pursat making it financially and practically impossible for many prisoners' families and friends to visit. In addition both prisons are approximately 80 km from the nearest provincial hospital.

Sar Song, a human rights defender imprisoned for his land activism spent almost five years in Kampong Chnang prison, but after attending his appeal in Phnom Penh and spending three months in CC1 prison he was transferred without explanation to CC3 prison in Kampong Cham province where he served the remaining ten months of his sentence. He believes this was to prevent his family from visiting him and to warn other community activists that they too could be sent to CC3 if they caused trouble. His wife was not notified of his transfer to CC3 until she traveled to Phnom Penh to visit him. Due to the remote location of CC3 she was only able to visit him once every few months whereas in Kampong Chnang she had visited at least twice a month.



The road to CC4 is in very poor condition, 2014

In August 2014 prison authorities told LICADHO that at most only three or four visitors per day come to CC3 prison. At the time CC3 held 1,410 inmates, the majority of them from provinces other than Kampong Cham. Given its remote location, most visitors have to pay for at least one night of accommodation costs in addition to transportation costs. Worryingly, LICADHO has received reports that there are plans to eventually build detention facilities for both women and juveniles at CC4 prison.

The mother of one former prisoner told LICADHO that, due to the distance and cost of travel she was unable to visit her 22-year-old son even once during his one-year incarceration at CC4. Instead, whenever she heard that a CC4 prison guard was visiting Phnom Penh, she would ask them to take back some noodles and other basic food items for him. She finally made the 250 km journey on the day of his release to meet him at the prison gates and bring him home.

It is not only CC3 and CC4 prisons which can be difficult for visitors to access. Many new prison buildings and those currently under construction are situated in unsuitable, remote locations several kilometers outside provincial town centres under lucrative land exchange programs between provincial authorities and private companies.

In a further violation of the right to outside contact, LICADHO has also received numerous reports of inmates being denied access to family visits, sometimes for months at a time, as punishment for minor infringements of prison rules. This has included those with young children and incarcerated juveniles.

Whilst the denial of family visits is unacceptable in itself, Cambodian authorities are well aware that, in the under-resourced prison system, such sanction also results directly in the restriction of food, medicine and other basic supplies to those under punishment.



Family visit in Kampong Cham prison, 2012

The right to contact with the outside world goes beyond the right to receive visitors. Inmates should also be entitled to send and receive correspondence on a regular basis, to make and receive telephone calls and have access to news from the outside world, including books, newspapers, magazines, radio and television where possible. However, in Cambodia these rights are not guaranteed to all.

Firstly, in some prisons the costs of telephone calls are prohibitive for many prisoners. Secondly, access to current affairs information can be patchy and dependent on political circumstances. For example in the immediate aftermath of the disputed July 2013 National Assembly elections, LICADHO received reports that in some prisons, notably in Phnom Penh, access to radio news broadcasts was restricted. Similarly, during mass pre- and post-election opposition rallies, some inmates told LICADHO that personal radios were confiscated in an apparent attempt to prevent any political dissent within prisons.

A right not a privilege

Perhaps the most shameful recent attempt to disrupt inmates' access to the outside world came in early January 2014 when 23 human rights defenders and activists were arrested during the brutal suppression of workers' rallies in Phnom Penh. Following a brief court appearance, all 23 men, including one juvenile, were held in incommunicado detention in an unknown location for a week. Authorities eventually admitted that they were held in CC3 prison, a particularly harsh and remote prison usually reserved for long-sentence adult male convicts.

This cruel and calculated move by authorities was clearly designed to isolate the men and conceal the brutal circumstances of their detention – thirteen of them had been arrested during clashes in which at least four people were shot dead and dozens more injured. Many of those held at CC3 were badly beaten upon arrest but were initially denied access to independent medical doctors.

The remote location of CC3 also meant that without the support of NGOs, it was extremely difficult for families, colleagues and supporters to regularly visit the men, provide them with material and moral support and update them on the growing global campaign for their release. The decision to send them to CC3 prison was also likely to have been driven by a fear of mass protests outside the more accessible CC1 prison in Phnom Penh and to prevent information about the protests from spreading within that prison.



Flood in Banteay Meanchey prison, 2010

Prison flood leads to mass evacuation



In October 2013 almost 900 prisoners were evacuated from Banteay Meanchey prison after floodwaters destroyed a prison wall and inundated the prison grounds. The prison had been completed in 2009, built in an unsuitable, flood-prone area about 7km outside the provincial capital of Sisophon following a lucrative land exchange deal. The prison had encountered flooding problems each year since it was built but had never before required evacuation.

The inmates, including juveniles and young children, were transferred to the already severely crowded Siem Reap and Battambang prisons where they remained for several weeks. LICADHO raised concerns about staff capacity, overcrowding in the prisons, the resulting sanitation and health concerns and the inability of both prisons to adequately separate prisoner groups.

Despite previous flooding problems it was clear from the outset that authorities were ill-prepared for such a mass evacuation. Staff reported that they had received no advance training for emergency evacuations and the prison itself had no evacuation procedures in place. Whilst women were transported separately from men, they were accompanied by male guards only.

Siem Reap and Battambang prisons were unable to cope with the extra demand for food, medicine and other basic supplies such as mosquito nets, mats, plates and cutlery,

and relied on the help of local NGOs and international organizations. Out-of-cell time was curtailed because of the additional numbers whilst inmates reportedly had to take turns to sleep at night due to lack of floor space.

LICADHO also pointed to the lack of procedures in place to ensure that evacuated inmates would still be able to attend court hearings, meet with their lawyers and families and that those due to be released would not get stuck in prison. Concerns that sick prisoners would not receive appropriate, ongoing medical care and that legal deadlines might be missed were heightened by the fact that prisoners' files and medical records were not transferred with them. In addition some lawyers and family members were not informed where their clients or relatives had been transferred.

Upon return to Banteay Meanchey prison many inmates found that their belongings had been destroyed in the floodwaters or had been partially destroyed and burnt by prison officials. Inmates did not receive any form of compensation for their destroyed property.

LICADHO responded to the situation by sending in two emergency medical teams to treat the evacuees. LICADHO also provided extra food, materials and medicine to Siem Reap and Battambang prisons to help them cope with the influx of extra prisoners.



Male prisoners build new Oddur Meanchey prison, 2014

Prison labor



In 2012 LICADHO provided recommendations on an inter-ministerial prakas on the prohibition of using prison labor for producing goods for export.¹⁴ The prakas had been introduced amid numerous media reports that Cambodian companies had employed prisoners to produce garments for export and LICADHO's own concerns about Article 71 of Cambodia's Prison Law which permits private firms to employ prisoners.

LICADHO welcomed the new prakas but raised concerns that it was vaguely worded in several key areas. Since the introduction of the new prakas however, LICADHO is pleased to note that it has received no reports of goods being produced by prison labor for export. Yet despite this apparent positive step forward, LICADHO remains seriously concerned at a number of issues surrounding prison labor in Cambodia, including the provisions of Article 71.

The International Labor Organization (ILO) states that prisoners should only work for private companies providing they do so voluntarily and in conditions "approximating a free employment relationship"¹⁵ and only where the "circumstances in which the prison labor is performed should not be so disproportionately lower than the free market that it could be characterized as exploitative."¹⁶

According to the ILO, indicators of a free employment relationship include the inmate's formal consent to work and ability to withdraw this consent at any time, conditions of work similar to work outside prison and wages comparable to those of free workers with similar skills and experience. Wages should also be paid directly to workers and working conditions should meet health and safety standards.

Unfortunately testimony received by LICADHO as well as recent media reports show that prisoners in Cambodia still work for private companies in conditions which bear no resemblance to a free market relationship. A recent investigation by the Cambodia Daily newspaper for instance revealed that around 15 prisoners from Oddur Meanchey's temporary prison were working to build the new prison under the contractual services of a private company under questionable conditions.

"Apart from there being no health or safety precautions at the construction site in Oddar Meanchey —some prisoners worked without shoes and none were wearing protective equipment—their pay of less than \$1 a day is well below the \$5 or more a construction worker would make outside prison walls."¹⁷

¹⁴ <http://www.licadho-cambodia.org/reports/files/166LICADHOBriefing-PrisonLabor%20Prakas2012-English.pdf>

¹⁵ International Labor Organization, 2007 Report on Eradication of forced labor: Chapter II. Forced Labor Convention, 1930 (No. 29), paragraph 116.

¹⁶ International Labor Organization, General Report of the Committee of Experts on the Application of Conventions and Recommendations, 2001, paragraph 143.

¹⁷ <http://www.cambodiadaily.com/news/amid-overcrowding-inmates-build-new-prison-67129/>

Similarly the Phnom Penh Post newspaper recently reported that a lucrative, private carpentry business is operating within Battambang prison, employing prisoners under clearly exploitative circumstances.

Prisoners who refuse the work or are taken ill have been denied visitation rights, have spent time locked in their cells as punishment and have endured long periods in handcuffs as a form of torture...“We don’t want to be punished, so we have to work even if we are sick.” A prison guard, who spoke on condition of anonymity, described the situation in no uncertain terms. “They force prisoners to work for them [making furniture] for sale, and prisoners do not get any of the benefits. We have no power, so we cannot speak out.”¹⁸

Sadly, publicly managed prison work is equally prone to abuse. For-profit projects such as the large-scale agriculture programs at CC3 and CC4 prisons are often coercive and some inmates report receiving no recompense, whilst in smaller prisons inmates have told LICADHO that they have to pay to be offered the opportunity to work outside their cell in the prison garden, the kitchen or in small scale handicraft or sewing projects.

A fundamental principle of prison labor as recognized by Cambodian authorities¹⁹ is that work programs should aim to improve vocational skills to facilitate reintegration upon release. Inmates should also be provided with protective equipment and tools to ensure their safety at work. Yet LICADHO has received many reports which suggest that profitability of the work program often outweighs any concerns for the safety of inmates or their future job prospects.



Prison labor in Pursat province, 2010

Punished for refusing to work

Former female inmates of one prison described to LICADHO how the occupants of entire cells had their out-of-cell time restricted when not enough women attended the sewing workshop to make car wash cloths. LICADHO also received reports of some women being threatened when they refused to work even if they were too unwell to do so, including being told that their families would not be able to visit them as punishment.

The workshop itself is reportedly extremely hot with a low ceiling and poor ventilation. As a result many of the women would suffer from health problems for which they received no treatment. Some reported that they received no payment but that instead the profits from selling the wash cloths were shared amongst the prison guards and cell leaders.

¹⁸ <http://www.phnompenhpost.com/national/made-conviction>

¹⁹ See for example the Policy Framework for Prison Reform, January 2008.

Children in prison - at risk of exploitation and abuse



After a reported ten-year drafting period, Cambodia's Law on Children in Conflict with the Law had still not been finalized by December 2014 and appears unlikely to be enacted in the near future. The version of the draft law seen by LICADHO²⁰ reiterates some fundamental rights and principles already laid out in existing Cambodian law, such as the rehabilitative and reintegration function of detention, the separation of minors and adults, the absolute prohibition on torture and cruel, inhuman or degrading treatment or punishment and the requirement that pre-trial detention should be used only as a measure of last resort.

Whilst promoting alternative sentencing and diversionary measures for juveniles, the draft law also sets out some rules for the detention of minors in both prison and police custody. Testimony received by LICADHO demonstrates the urgency of enacting the law and implementing its provisions without delay. Currently juveniles in detention are subject to the same abuse, humiliations and degradations as adults and are just as likely to be treated according to their financial status rather than their age.

Children in prison are overwhelmingly from poor backgrounds and their families are likely to struggle to support them financially and materially. This means that in Cambodia's financially hierarchical prison system, this already vulnerable group is at increased risk of exploitation and subordination. Some fall under the control of richer, adult prisoners who become their 'godfathers' and for whom they carry out tasks in return for protection, increased out-of-cell time or small amounts of money. These protectors can quickly become abusers if tasks are not carried out to their satisfaction or the children fall out of favor.

"If a boy without a family or from a very poor background arrived in prison, an older prisoner would choose him to stay and live in the same cell and serve him. They would be expected to massage them at night and cook for them."

Whilst there are attempts in many prisons to fully separate the living quarters of adults and juveniles, there are a number of prisons where there is no such separation and, in some other prisons, the availability of separate facilities depends on prison occupancy rates at any given time. If, for example, there are just a few male juveniles,

prison authorities might determine that their numbers do not warrant a separate facility and on the other hand, if the juvenile cell becomes overcrowded, some may be transferred to an adult cell.

Where juveniles are held separately from adults, they may have more living and sleeping space, however high occupancy rates generally mean that juvenile pre-trial detainees are rarely separated from convicts and there is no separation of juveniles according to their type of offence or alleged offence.

Even where separate facilities exist, few attempts appear to be made to fully protect children from the potential negative influence of adult prisoners, as the two groups often easily interact outside of the cells. LICADHO is also aware of prisons in which small numbers of adult prisoners are placed in the juvenile cells, taking on the role of cell leaders, ostensibly to prevent in-fighting between the youths. However in reality this arrangement reinforces adult-juvenile power structures and puts young inmates at unnecessary risk of violence and exploitation.

Sadly, LICADHO continues to encounter cases of juveniles who are sent to pre-trial detention and given custodial sentences for the most minor offences with no regard for the potential long-term impact on their future prospects. LICADHO recently met one 15-year-old boy who, at the time, had been held in pre-trial detention for six months simply for stealing a sack of rice. When LICADHO met him he did not know if he had a lawyer or even if his trial had already taken place. He was finally tried one month later, sentenced to seven months in prison and released the following week.

As prisoners, juveniles have special needs with regard to physical, mental and social development but sadly these are rarely fully catered for in Cambodian prisons. Likewise their education and vocational training needs differ from those of adults, depending on their age, gender and physical capacity.

However, even educational and vocational training opportunities, central factors in successful rehabilitation and reducing re-offending rates, are not provided to all young prisoners. Whilst some may benefit from NGO-run training programs tailored especially to their age and needs, LICADHO continues to receive reports that some of these programs are only made available to those who can

²⁰ LICADHO does not know if the current draft has changed substantially from the version previously reviewed.

pay. In some of the more remote prison locations where fewer NGOs operate, there are absolutely no training opportunities for juveniles.

“Some boys were detained in the cell and not allowed to come out to study. It was unfair that those who could afford to pay the bribe could study and those who are poor had to be detained in the cell.”

In reality juvenile prisoners’ access to services and goods is determined by money, not age. The frequency of family visits, especially important for the wellbeing and

eventual reintegration of children, depends on financial status. Likewise, the availability of nutritious food, regular recreation and sport, all crucial for physical development, cannot be guaranteed without payment.

Like adults, juveniles in Cambodian prisons have no protection or effective mechanisms to complain against torture and ill treatment. They have reported being beaten, slapped and kicked by other prisoners, sometimes under order of the prison guards. This includes initiation beatings for newly arrived prisoners and punishments for minor infractions of prison rules.



Juvenile in Takhmao prison, 2013

Girls in prison - A neglected group



Disappointingly the draft of Cambodia's Law on Children in Conflict with the Law seen by LICADHO made no specific reference to gender-related considerations at trial and sentencing of juveniles.

In addition the draft made only a few broad references to the particular needs of girls in prison. Aside from noting that minors should receive protection and requirements in accordance with their age, sex and character, stipulating that separate facilities should be available according to gender, and that female minors should be placed under the care of a female officer, the draft failed to properly identify or adequately address the specific challenges faced by girls in detention.

The small number of girls in Cambodian prisons is no reason to neglect them as a group. Indeed, as a minority group held in an environment designed primarily for adult males, they are particularly vulnerable and in need of special attention. As the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state, *'Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.'*²¹

Sadly girls in Cambodian prisons are unlikely to receive special care. Because there are few of them they are rarely separated from adults. As such, little attention is given to their particular physical and mental health requirements, their specific hygiene and sanitary needs or their general conditions of detention.

17-year-old Sreymom was sentenced to six months' imprisonment in 2013 on charges of theft. In prison she was given no educational opportunities but was instead assigned to the sewing workshop alongside adult inmates. Here, against her will, she made car wash cloths to be sold privately for prison profit. Sreymom suffered health problems due to the lack of adequate nutrition in prison and the poor working conditions. She would regularly suffer from dizzy spells but received only paracetamol from the prison health post. She was detained in a cell which held 45 adult female prisoners and was guarded by both male and female prison officers.

As is the case with male juveniles, there appear to be few attempts to protect girls from abuse or to assess the nature of their crime or personal circumstances when determining whether they should be sent to prison. Of the 18 girls in detention as of mid-September 2014, only one of them had been fully convicted and most of them were held for minor offences.

As noted by LICADHO, in Cambodian prisons training opportunities tend to be male-oriented and females, including girls, often do not receive the appropriate training, equivalent to males that will equip them for future employment. In some prisons, women and girls receive no training opportunities whatsoever.

On International Women's Day 2014, LICADHO called on Cambodian prison authorities to offer female prisoners, particularly female juvenile prisoners, a broader range of rehabilitation opportunities to build confidence and provide them with appropriate skills to find suitable employment once released.²²

Case studies

1- Socheata is 17 years old. She was arrested in August 2014 on charges of theft and is currently in pre-trial detention. Socheata told LICADHO that she was raped by her uncle and brother from the age of six and her mother was unable to care for her. She eventually fled her home and went to live with friends. She does not know whether she has a lawyer or when her trial will be held.

2- Vanny was 17 years old and pregnant when she was arrested in April 2014 on suspicion of theft. At the police station police officers repeatedly slapped and hit her, threatening her with rape and death if she did not confess. Vanny was held in pre-trial detention for five months and eventually sentenced to one-and-a-half years in prison.

²¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Rule 26.4

²² <http://www.licadho-cambodia.org/pressrelease.php?perm=340>

Female prisoners



In general, women in Cambodian prisons are subject to the same violations of their rights as their male counterparts and scant attention is paid to their individual needs. At sentencing their family circumstances, including childcare responsibilities, are rarely taken into consideration.

In a recent survey of 479 female inmates, LICADHO found that more than one third were accused or convicted of drug related offenses whilst a further 31% were in prison for minor offences such as theft, receiving stolen goods, breach of trust, damaging property and illegal fishing. As of mid-September 2014, 70% of women in prison were in pre-trial detention, including those awaiting appeal or final verdict. Whilst LICADHO does not have data on how many of these women have childcare responsibilities, the number is likely to be high.

Women currently constitute approximately 8% of Cambodia's prison population yet there are no separate institutions reserved solely for women. The largest facility housing female inmates is Phnom Penh's CC2 prison which, as of mid-September 2014, held 432 women and 154 male juveniles. There are no female inmates in CC1, CC3 and CC4 prisons.

In all provincial prisons and Police Judiciare (PJ) in Phnom Penh, women are held in separate cells from men but are not always held in separate cellblocks. In general Cambodia's prisons are set up to cater primarily for the needs of male inmates, especially when it comes to recreation and vocational training opportunities. As has been noted the absence of such opportunities usually equates to lack of out-of-cell time and other benefits. Women are also often less likely to have the financial resources to bribe prison officials for such 'privileges'.

In one prison officials recently acknowledged that women have absolutely no work or training opportunities and whilst male inmates who worked were permitted out of their cell for at least five hours a day, one woman who was held at this prison told LICADHO that, because women could not participate in activities, they were only allowed out of their cells for 30 minutes each day. It is notable that throughout 2013 an average 8% of the total prison population were women, yet according to GDP statistics, of the 1,643 inmates who received some form of education or vocational training, only 5.6% were women.²³

LICADHO has interviewed former female inmates who described the impact of imprisonment on themselves and their families. For some children, the imprisonment of their mothers can have a deep and long lasting emotional and



Women in Kampong Chhnang prison, 2009

social impact and LICADHO has spoken to many mothers who report that their children dropped out of education whilst they were in prison, primarily for financial reasons.

"I am so concerned about my children...Before my arrest they were like normal children, but now they think and act like adults. It is as if they lost their childhood."

If their mother is in a prison far from the family home, a regular scenario in cases of drug traffickers, it can be extremely difficult for their children to visit them on a regular basis, if at all. The social stigmatization of female inmates also tends to be greater than that of men, leading to a higher risk that their children will also feel the impact of such stigmatization.

Yet none of this is routinely considered when determining whether a woman should spend time in prison. LICADHO believes that women with children should not be held in pre-trial detention unless absolutely necessary. LICADHO also believes that non-custodial alternatives should always be considered when sentencing a parent or primary caregiver, taking into account the possible impact on the child or children. Unfortunately in Cambodia even pregnant women and those with newborn babies are sent to prison without due consideration of their background and family situation.

²³ GDP annual meeting on achievements for 2013 and goal setting for 2014 (April 2-3, 2014).



A boy with his mother on International Women Rights Day in CC2, 2011

Childhood behind bars - Growing up in a Cambodian prison



As of October 2014 there were 35 children between the ages of one month and three-and-a-half years living in Cambodian prisons with their mothers, in the prisons monitored by LICADHO.²⁴ Approximately half of them were born in prison and have never experienced life beyond the prison walls. Whilst there have been few detailed studies on the long-term impact of prison life on a child's development, it is clear that, for some children, early life behind bars can have devastating physical and psychological consequences and life in Cambodian prisons is no exception.

Since the introduction of the December 2011 Prison Law which reduced the age limit of children allowed to stay in prison from the age of six to the age of three, the number of children in Cambodian prisons has dropped by more than 50%. In the month following passage of the law, of the 71 children in prison 17 were over the age of three and almost three years later there were just six over three-year-olds in prison.

LICADHO welcomed the 2011 change in law and has been greatly encouraged by the sharp reduction in the numbers of children currently living in prison with their mothers. However, these statistics are largely testament to the sustained efforts of NGOs working with women and children in prison, including LICADHO and, unfortunately less obviously a result of improved efforts on the part of GDP and the Ministry of Social Affairs, Veterans & Youth Rehabilitation (MoSAVY), the agency which should be responsible for leading the assessment of appropriate custodianship and the safe removal and relocation of a child from prison.

Unfortunately the Cambodian system is incapable of providing for most of a child's basic needs, including education, proper nutrition, medical care and social interaction. Children, isolated from the rest of the world and poorly nourished, often acquire severe developmental problems and have a difficult time adjusting to life outside prison when they leave. LICADHO is also aware of cases of young children who have been beaten in prison with no intervention or protection measures being taken by authorities.

Decisions to allow children under the age of three to stay with their mothers in prison should be based on full individual assessments and the best interests of the

child.²⁵ Such assessments should take into account the child's age, sex, maturity, health, relationship with the mother and the existence of appropriate alternatives as well as the likely impact of prison life on the child's health and development. Similar assessments should be carried out when a child is born to an incarcerated mother in order to decide if and for how long the baby should stay in prison, or if the baby should stay at all. In LICADHO's view these assessments must be ongoing in recognition of the changing prison environment and developing needs of a child.

Once a child has reached the age of three, any separation must be carried out in a fully informed, sensitive and appropriate manner and only when suitable alternative care arrangements have been put in place.

Unfortunately, in Cambodia there appear to be no consistent systems or guidelines in place for determining when it is appropriate for a child to live in prison or how to remove a child from its mother when it reaches the age of three. To address these concerns, NGOs still often take the lead when it comes to case-assessments, leading discussions with those concerned and finding suitable alternative placements for children.

In 2013, LICADHO received information that in one prison which at the time held several children over the age of three, mothers were given a one-week ultimatum to find alternative living arrangements for their children. Other prison directors have explained to LICADHO that they feel ill-equipped to ensure that removal of a child from his or her mother is done properly and that they receive no support from MoSAVY.

To address the situation of children who live in prison with their mothers, LICADHO is issuing a series of case-studies assessing the impact on children of growing up in Cambodian prisons together with a set of recommendations to Cambodian authorities on how to ensure that the rights of children and their mothers are fully respected. The first case-study highlighted the story of Sokun²⁶ who was born and raised in prison until he was almost seven years old. His story demonstrated that the prison system is currently incapable of providing for and protecting children in prison. The second case study will assess the experiences of Dara who lived with his mother in Takhmao prison from birth until he was more than three-and-a-half years old.

²⁴ There are currently no children living in Cambodian prisons with their fathers or other primary carers.

²⁵ Bangkok Rules, 49 and 52 and Article 3 (1) of the UN Convention of the Rights of the Child.

²⁶ <http://www.licadho-cambodia.org/reports/files/182LICADHOReportChildrenBehindBars2013-English.pdf>



Wall of Kampong Chhnang prison, 2009

Torture and ill-treatment



On June 20, 2014, during a meeting with Surya Subedi, the UN's Special Rapporteur on the situation of Human Rights in Cambodia, Cambodia's Interior Minister Sar Kheng stated that Cambodian authorities would not tolerate the practice of torture in detention.

Six days later LICADHO issued a report²⁷ to mark 26 June, International Day in Support of Victims of Torture, based on more than 500 detailed allegations of abuse by officials in police stations and prisons since January 2008, including the abuse of females and juveniles and those experiencing mental health problems. The report revealed that there had been no palpable change in the type, frequency and severity of abuse reported in recent years.

“...the policeman read out the confession, but they were not my words. I refused to thumbprint the paper. The policeman suddenly beat me with a cane on my shoulders and back...even though I told him I was pregnant...”

LICADHO's records show that most of those who report brutality by police or prison officials described being beaten, kicked, slapped or punched, often until they were bleeding and unconscious. Many were beaten all over the body including on the head and neck. Some had their heads smashed against walls. Objects used during beatings included guns, sticks, iron rods, stun batons, walkie-talkies, handcuffs, chains, ropes, electric cables, bricks and belts. Some detainees had their faces covered with plastic bags or other items during the beatings. Many of those interviewed said that they were beaten in order to force them to confess or pay money to their abusers. Those who cannot read Khmer were forced to thumbprint confessions they did not understand.

LICADHO also received reports of inmates being dragged on the ground by their hair; being forced to stand on one leg for prolonged periods; of guards standing and stamping on bodies and faces; objects being forced into mouths; cigarette burns; forced prolonged kneeling, including in direct sunlight; choking; and the use of electro-shock weaponry for torture.

Many reported being threatened, or having their family threatened, by police or prison officials, again usually to extract money or a confession. Some were threatened with death or sexual abuse, others had guns pointed at their heads or were threatened with electric shocks. Threats of

²⁷ See <http://www.licadho-cambodia.org/reports.php?perm=195>

nail extraction were also reported. Many said they were denied food and water in police custody.

Cambodia ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2007. Among other things this protocol requires State Parties to establish an independent National Preventative Mechanism (NPM) within one year of ratification. Cambodia has failed to establish such a body, the primary purpose of which is to monitor and prevent torture and ill-treatment in places of detention. Instead, an inter-ministerial committee made up of various government officials was created in 2009. The committee is neither independent nor effective.

In addition to abuse by state officials in police stations and prisons, LICADHO regularly documents abuse by police and other security forces at the point of arrest and during transit to police stations. Once in prison, there is also abuse by other inmates, often under the direct order or with the acquiescence of prison authorities.

Additionally, LICADHO believes that conditions of detention in some places of detention, including the denial of appropriate medical treatment, may amount to cruel, inhuman or degrading treatment. Of particular concern are reports that people experiencing mental health problems are at risk of being targeted for abuse in prison and police custody.

Cambodian authorities' response to LICADHO's report was typically dismissive. Kuy Bunsorn, Director-General of the GDP claimed that there had been no cases of torture in any of the country's prisons "from the past up to now" whilst Interior Ministry spokesman General Khieu Sopheak said the government has been taking action against torture and, according to its own data, has seen a decrease in the number of cases year on year. LICADHO disputes this assertion. Indeed, in the three months since publication of the report, LICADHO received 53 allegations of ill-treatment of abuse, including one man who was hospitalized after being beaten unconscious with a gun by police.

Cell leadership

Informal, unregulated cell leadership structures often consisting of cell leaders and deputies chosen for their loyalty to prison management are, in many prisons, the effective creators and enforcers of prison rules, running a parallel system of prison management which often takes precedent over formal rules and procedures. Cell leaders and members of cell management committees thus operate with impunity, routinely beating new inmates as a form of 'initiation' to prison life and subjecting others to violence under the guise of discipline. Such beatings are often random and brutal and those targeted have no recourse to complain.



Oddur Meanchey prison, 2014



A LICADHO medical doctor provides medical treatment , 2014

The dire state of prison health facilities



When a state deprives a person of their liberty it becomes responsible for their physical wellbeing, not only in terms of their treatment and conditions of detention, but also by ensuring they have access to health care without discrimination on the grounds of their legal status.²⁸

Sadly, Cambodia's prison system fails on both counts. Detention conditions often do not meet basic health requirements in terms of access to food, water, fresh air, floor space, lighting and ventilation. The denial of adequate out-of-cell time and physical activity also has a significant negative impact on both physical and mental well-being.

Added to this, prison health care facilities are woefully inadequate and under-resourced and some prisons have no health posts whatsoever. Those which do exist usually lack sufficient medication and appropriate equipment whilst staff often have no proper medical qualifications and only basic training. Many prison health posts lack sufficient privacy and there are few attempts to ensure that medical consultations take place in full confidentiality.

The right to confidentiality and equality of treatment is also compromised by the fact that requests for access to medical care must often be referred through a cell leader or prison guard who can determine which cases should take priority and demand money or favours in exchange for priority check-ups.

One former inmate told LICADHO that only those inmates who were close to the prison guards received appropriate medication and that despite feeling constantly weak and suffering from frequent dizzy spells he received no proper treatment. Following external intervention he was eventually transferred to a less crowded cell, supposedly reserved for sick prisoners. However, he told LICADHO that some in his cell were not sick at all. Instead he believed they had bribed prison health staff to fabricate a medical problem so they could move to a more comfortable cell.

LICADHO has received some alarming reports of medical care and medication being provided only to those who can afford to pay and inmates regularly report that, even if they are able to visit the health post when sick, they do not receive a proper check-up, instead being sent away with painkillers regardless of their actual health concern. Due to the inability of prisons to provide appropriate medicine to those with health problems, many inmates rely on their friends or families to bring them regular medical supplies, often paying money to receive them.

"There was no health post in the prison so when I became sick I asked the guards to help me. They responded by giving me a strip of paracetamol for which I had to pay \$0.30."

It is almost inevitable that imprisonment will have a damaging effect on a person's physical and mental health,

²⁸ Basic Principles for the Treatment of Prisoners, Principle 9.

but prison authorities must do what they can do limit these risks. As it is, in Cambodia those with pre-existing health conditions do not receive the treatment they need and those who are healthy when they enter prison often leave with significant health problems resulting from their incarceration. In some prisons pregnant women, those who have recently given birth and their babies receive no specialized care or health advice.

Between January and June 2014, LICADHO's medical staff treated 3,433 prisoners over the course of 59 visits to 16 prisons. The most common ailments identified apart from the common cold were beriberi, asthenia, dyspepsia, gastritis and hypertension. In many cases prisoners had received no prior treatment or medication from prison health staff.

Upon admission to prison, all new inmates should receive a proper medical examination as soon as possible and should thereafter be provided with free medical care and treatment whenever necessary.²⁹ However many incoming inmates receive no such examination and screening for transmissible diseases such as TB is not applied across the board.

LICADHO also has serious doubts about the efficacy of the initial medical examinations which do take place. The official form for recording the health status of incoming suspects does not for example require information about a detainee's history of alcohol or drug use, any history of psycho-social problems, if there may be a risk of suicide or self-harm, whether there has been any sexual abuse and, in the case of women and girls, if there is a chance of pregnancy.

Most detainees are transferred to prison less than 48 hours after arrest, suggesting that signs of physical abuse

in police custody, such as bruises, open wounds and burns would still be evident at the time of the initial prison health screening. Indeed, given the levels of physical abuse occurring in police custody, it is inconceivable that prison health staff are not sometimes aware of the physical signs of such violence when they do carry out medical examinations. However, it would appear that prison health staff lack the independence and the authority to accurately identify, record and report signs of abuse by state officials.

Because prison health post staff are usually so poorly qualified and under-resourced that they are unable to provide even the most basic medical, dental and psychiatric care, it comes as no surprise that they are unable to perform other crucial prison medical functions, such as providing a proper medical determination of prisoners' physical capacity to work, inspecting and advising on the quality of food, levels of hygiene and sanitation and quality of physical activity and sport as they relate to health. Equally, as far as LICADHO is aware, prison health staff are not involved, as they should be, in assessing the physical and mental impact on those undergoing punishment and responding to health needs following incidents of prison violence.

LICADHO believes that the deliberate or negligent denial of appropriate and timely health care in Cambodian prisons has, in some cases, led to unnecessary inmate deaths. Those with serious health problems are often transferred to hospital too late because their conditions were not recognized, ignored until they became too serious or misdiagnosed and wrongly treated. LICADHO is particularly concerned at the high rate of deaths among young inmates who had no apparent health problems before entering prison.

²⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24.

Mental health issues sidelined



Cambodia's Penal Code states that a person suffering from a mental disorder which destroyed his or her capacity to reason at the time of committing an offense should not be held criminally responsible and that those suffering from a mental disorder which diminished his or her capacity to reason can be held criminally responsible but the court should take this into consideration at sentencing.³⁰

Unfortunately in Cambodia, criminal suspects are rarely assessed for mental health problems to ascertain their criminal responsibility, instead they are tried, often without a lawyer to represent them, and incarcerated in facilities where there are no mental health provisions and where they are likely to be neglected and abused. Furthermore, the government continues to use the so-called 'social affairs centres', which are operated by MoSAVY outside the scope of the criminal justice system to temporarily detain society's 'undesirables' such as drug users, sex workers, the homeless, beggars and the mentally ill.³¹

Despite provisions in the prison law which state that prisoners with mental illness should receive specific health care³² and inclusion in the GDP's four year strategic plan of the development of a strategy to improve mental health education and treatment programs for prisoners who have mental health problems,³³ there still appear to be few attempts to assess the mental wellbeing of inmates when they arrive in prison or to provide appropriate treatment for those with obvious problems.

In Cambodia, prison health staff generally have no prior experience in mental health care and training opportunities are inadequate. Inmates with pre-existing mental health problems are usually only able to access the individualized support or treatment they need through the limited services of NGOs which specialize in mental health issues.

This is unsurprising given the overall lack of resources, expertise and understanding of mental health issues in Cambodia. A 2012 study by the Leitner Centre for International Law and Justice estimated that at the time only 0.02% of the entire Cambodian health budget went to mental health and noted that there were no stand-alone psychiatric units in the country with in-patient mental health facilities available only in the urban areas of Phnom Penh and Siem Reap.³⁴

According to LICADHO's partner organization the Transcultural Psychosocial Organisation (TPO)³⁵ Cambodia, the leading Cambodian NGO in the field of mental health and psychosocial interventions, depression, schizophrenia, anxiety and trauma are the most prevalent mental health problems in Cambodian prisons, with many unable to access the treatment they need.

The psychological impact of life in Cambodian prisons is not only of concern for those experiencing mental health problems when they enter prison. For some, incarceration may signal the beginning of such problems whilst the poor conditions of detention, lack of food and inability to sleep, combined with lack of contact with the outside world, may exacerbate pre-existing conditions in others.

Case study

Han Visot, a Cambodian-American was arrested in August 2014 outside Phnom Penh's royal palace with a banner declaring that Prime Minister Hun Sen, his wife and eldest son were dead and that he was the new ruler of Cambodia. Despite reports that the police initially raised doubts about his mental health and claims that a mental health assessment would be carried out, no such assessment took place.

Instead, Han Visot was declared fit to stand trial and sent to court the day after his arrest where he represented himself, claiming that his god had told him to return to Cambodia and lead the country. During his trial the deputy prosecutor reportedly noted that Han Visot had "good enough mental health and must bear responsibility for his actions", but apparently provided no evidence to support this claim. Han Visot was sentenced to two years in prison.

According to media reports, Han Visot's medical records from the USA state that he has been diagnosed as suffering from schizophrenia and paranoid delusions.³⁶

³⁰ Penal Code, article 31.

³¹ For more information see "They Treat Us Like Animals: Mistreatment of Drug Users and "Undesirables" in Cambodia's Drug Detention Centers": <http://www.hrw.org/node/120957>; and <http://www.licadho-cambodia.org/pressrelease.php?perm=365>

³² Law on Prisons, article 38.

³³ General Department of Prison, strategic plan 2014-2018, objective 3.2.5.

³⁴ <http://www.leitnercenter.org/files/2012%20Leitner%20Cambodia%20Report%20%28with%20photos%29.pdf>

³⁵ <http://www.tpocambodia.org/>

³⁶ <http://www.cambodiadaily.com/news/for-mentally-ill-man-justice-served-without-mercy-67725/>

LICADHO is extremely concerned that people experiencing mental health problems are targeted for abuse by police and prison authorities as well as other inmates. TPO has documented abuse of their clients and has identified the long term effects of abuse on their mental well-being. The types of abuse reported are consistent with allegations received by LICADHO and include detainees being slapped, kicked and shoved, beaten with objects including rifles, burned with boiling water and cigarettes, being suffocated with plastic bags or blindfolded, having objects inserted into their anus, being threatened with death, rape, strangulation and other physical violence and being forced to sit, stand or kneel in the same position for several hours.

TPO's clients in prison who suffered abuse also reported the ongoing impact which included headaches, anxiety, depression, disturbed sleeping patterns, hearing voices, constant fear, being quick-tempered and angry, and having startled reactions. Some TPO clients who experienced abuse had attempted suicide. Others had expressed suicidal thoughts. Unfortunately those who attempt suicide or self-harm may find that they do not receive appropriate support or supervision.

“Guards don't care if prisoners want to commit suicide, their attitude is that if you want to kill yourself, go ahead. When I first told guards that I felt suicidal, they scolded me and told me that they would stop my family from visiting me.”



Medical treatment in Pailin prison, 2011.

Beyond capacity



In July 2010 LICADHO reported on Cambodia's exploding prison population that at the time numbered 13,325 inmates, 167% of the system's then 8,000-inmate capacity.

As the prison population continued to grow over the next two and a half years - by mid-January 2013 the total prison population had risen to 15,542 - LICADHO increased its advocacy efforts, arguing that expansion of the prison system was not a durable solution and instead calling for a reduction in the use of pre-trial detention and an increase in the use of non-custodial sentencing.

Throughout 2013 the rapid increase in prisoner numbers finally began to ease, partly due to an increase in prisoner pardons. However there has been no overall significant reduction in prisoner numbers and no realistic, long-term solutions to the problem of overcrowding are in sight. In fact, Cambodia's prisons are now operating at a much higher capacity than they were in 2010 with the total inmate population standing at 15,182 as of mid-September 2014, 179% of the current official capacity of 8,500.³⁷

"I shared a cell with 70 other women. As a newcomer with no money I had to sleep on the concrete floor with 20 others. We each had about 0.5m width for sleeping so we always had to sleep on our sides. There was no room to move and if you did you would bump into your neighbor. At night people would step on me as they made their way to the toilet. Those who slept on the raised platform paid \$20 or \$30 to do so."

In January 2013 LICADHO recorded a cellblock in one prison with 12 identically sized rooms but with cell populations that ranged from one to 12. LICADHO understands that in this case, the single cell occupant was separated not for security purposes or other reasonable grounds, but for reasons of privilege and financial status alone.

Most of the 12 cells in this block held an average of seven inmates at any given time. At 5.46 m² per cell this would provide only 0.78 m² per person. At night only two or three inmates actually sleep in these cells, with the others sleeping in the corridors of the cell blocks. LICADHO was told by prison authorities that only low security inmates are permitted to sleep in the corridors but as in some other prisons, inmates, regardless of their security designation, have reported being able to pay to sleep in corridors where there is generally more airflow and natural light.

Space at a premium

Levels of prison overcrowding are not consistent across or within prisons, with some prisons operating at less than 100% capacity and others at well over 200%. Additionally, even within the same prison, some cells or buildings are much more overcrowded than others. In some prisons former inmates report that it is possible to pay to be moved to a less overcrowded, better equipped cell and that single cell accommodation can be bought for a few hundred dollars or more.

Even within individual cells, some inmates have more space than others due to their social or financial status. Many released prisoners have reported to LICADHO that those who can pay sleep on the raised concrete area of the cell whilst the lesser well-off sleep on the cell floor. Those with the least resources usually occupy the floor area nearest the toilet and report being regularly trampled on during the night.



Male prisoners in Kampong Chhnang prison, 2009

³⁷ "Reforming the process of deciding pre-trial detention", power-point presentation delivered by His Excellency Ith Rady, Under Secretary of State at the Ministry of Justice.

Towards an end to prison overcrowding



Cambodia's Code of Criminal Procedure (CCP) and Penal Code provide for alternatives to imprisonment by means of judicial supervision, suspended sentences and community service. However, alternatives to prison are rarely considered at sentencing, non-custodial measures are still regarded with suspicion and skepticism and, by the Ministry of Justice's own admission, the provisions and guidelines for judicial supervision "have not been appropriately, properly and effectively implemented" whilst suspended sentences and community service are "not effectively and smoothly performed."³⁸

To address this issue the government set up a working group on alternative sentencing which distributed three circulars in early January 2014 aimed at providing judicial officials with additional guidance on the implementation of non-custodial sentencing alternatives, with a view to ensuring that investigating judges and prosecutors comply with legal principles by looking thoroughly into the nature of the crime committed and the personality and personal circumstances of the accused person.

LICADHO welcomes these guidelines but has yet to see any evidence of positive outcomes or real commitment to making concrete improvements.

In Siem Reap, Friends International's³⁹ program Kaliyan Mith [good friends] has worked with local police stations since 2009 to divert juveniles accused of minor offenses away from the criminal justice system, instead offering them safe, temporary accommodation as well as education and vocational training opportunities. In 2013 police referred 76 juveniles into this program, 15 of whom had committed petty offenses and may have otherwise ended up in prison.

Whilst prisoner numbers are no longer increasing at the rate they were two years ago, overcrowding is still a major problem and according to the International Centre for Prison Studies' (ICPS) world prison brief⁴⁰, Cambodia's prisons rank as the 29th most overcrowded in the world. Cambodian authorities should remedy this and aim to reach a 100% or less prison occupancy rate within a reasonable time period. To do this they must do more than simply building more prisons and additional cellblocks, moving inmates from one prison to another⁴¹ or increasing numbers of prisoner pardons.



Prison guards in Kampong Chhnang prison, 2009

Instead for a lasting and meaningful solution, there needs to be a fundamental shift away from the blanket use of pre-trial detention and a country-wide increase in non-custodial alternative sentencing for less serious offences.

LICADHO's findings related to pre-trial detention and the unnecessary, harmful incarceration of those convicted of minor offences demonstrate the pressing need for these changes, not only to reduce overcrowding, but also to minimize the negative impact imprisonment can have on individuals, families and communities.

Despite new procedures for pre-trial detention which were introduced in early 2014 and the considerable resources spent in recent years on developing guidelines for alternatives to detention, to date there is little evidence of actual reform. In addition to improved policy guidelines, there must be concrete, practical changes to the way the criminal justice system operates and a move away from deep-seated attitudes towards crime and punishment which favor incarceration above all else.

³⁸ Ministry of Justice circulars 01/14 and 03/14.

³⁹ See <http://www.friends-international.org/>

⁴⁰ <http://www.prisonstudies.org/world-prison-brief>

⁴¹ In 2012 for instance, the GDP transferred 686 inmates, including 40 women between prisons in order to alleviate overcrowding (GDP 2012 annual report and 2013 objectives).

Pre-trial detention should be the exception not the rule



As clearly set out in Cambodia's Code of Criminal Procedure, in principle a charged person should remain at liberty.⁴² Pre-trial detention should only be ordered as a last resort and only in cases of a felony or a misdemeanor involving a punishment of one year or more.⁴³ Significantly, Cambodian law also requires the investigating judge ordering pre-trial detention to issue reasons for the order.⁴⁴

However, in practice, Cambodia's criminal justice system has focused almost entirely on incarceration for pre-trial detainees and the decision to imprison a suspect before trial tends to be automatic with no consideration of personal circumstance or mitigating factors. Indeed, it is widely assumed that it is only those with high-level connections or the available resources to bribe court officials who can avoid pre-trial detention. The inordinate use of pre-trial detention is indicative of a systematic failure to apply the Constitutional principle of innocent until proven guilty.⁴⁵

According to the law, pre-trial detention should only be ordered when necessary to stop the offense or prevent the offense from happening again; prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices; preserve evidence or exhibits; guarantee the presence of the charged person during the proceedings against him; protect the security of the charged person, or to preserve public order from any trouble caused by the offense.⁴⁶

Until recently however, the gap between law and practice could not have been wider. Traditionally, judges have simply ticked one or several check boxes corresponding

to the above six points on a court form without listening to arguments from all parties or properly elaborating the reasons for pre-trial detention.

Pre-trial detention orders have thus been issued without reasonable justification and without due consideration of the facts of the case or the personal situation of the accused person. As a result thousands of individuals, including juveniles and pregnant women, have been detained unnecessarily for committing extremely minor offenses such as stealing a bag of rice. As noted by the United Nations Office of the High Commissioner on Human Rights (UN-OHCHR) in Cambodia such unreasonable and disproportionate sentencing equates to nothing less than arbitrary detention.⁴⁷

The pre-trial percentage of the total prison population remains high and has shown no sign of dropping. According to the International Centre for Prison Studies' World Prison Brief, Cambodia currently ranks at 23 of 211 countries, from highest to lowest, when it comes to the percentage of inmates held in pre-trial detention.⁴⁸

GDP statistics indicate that in December 2012 the total adult prisoner pre-trial population, including those who were awaiting appeal or final judgment,⁴⁹ stood at 61% of the total prisoner population whilst in September 2014 the figure stood at 63%. Notably the pre-trial incarceration rate for women and juveniles is currently much higher than for adult males, with 70% of the female prisoner population and a shocking 83% of juveniles still awaiting trial, appeal or final verdict in September 2014. Of the 18 female juveniles held at the time, only one had been fully convicted.

⁴² Code of Criminal Procedure (CCP), article 203.

⁴³ As above, article 204.

⁴⁴ As above, article 206.

⁴⁵ Cambodian Constitution, article 38.

⁴⁶ CCP, article 205.

⁴⁷ Welcome remarks by Ms. Wan-Hea Lee, Representative, UN-OHCHR-Cambodia at the Conference on Pre-trial Detention and Alternatives to Detention, Cambodiana Hotel, Phnom Penh, 25-26 March 2014. The remarks were orally delivered at the conference by Marie-Dominique Parent, Deputy Representative.

⁴⁸ http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All

⁴⁹ According to the Open Society Justice Initiative (OSJI), "Pre-trial detention" is defined as the period during which an individual is deprived of liberty through to the conclusion of the criminal trial (including appeal). Similarly the International Centre for Prison Studies include in their definition of pre-trial detainees, those awaiting appeal or final verdict (http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All)

New court forms- A step towards reform



Whilst incarceration continues to be the default punishment for those awaiting trial, regardless of the nature of the crime, family situation or age, recent efforts seek to remedy this. Following a one-year consultation period, new procedures and forms for determining pre-trial detention were developed and circulated to all courts in early 2014.

Under the new procedures judges are required to properly consider arguments for and against pre-trial detention, including personal circumstances. In doing so they should pay special attention to whether the charged person is a juvenile, an elderly person, a pregnant women or a woman with young children.

When ordering pre-trial detention, judges should now demonstrate that they have carefully considered all the relevant facts before depriving anyone of his or her liberty and must clearly explain which of the six reasons for pre-trial detention, as set out in Article 205 of the CCP, apply to the case, with a reasoned explanation.

LICADHO has welcomed these moves towards reforming pre-trial detention procedures but notes with disappointment that there is no effective monitoring of the extent to which the procedures are properly implemented. At the March 2014 conference on pre-trial detention, it was announced that the Ministry of Justice would set up a team to monitor implementation but to date no such team has been established.

Information received from partner organizations suggests that whilst around 50% of judges now claim to be using the new pre-trial detention forms, they still often fail to provide strong reasoning for their decisions to send someone to pre-trial detention. Whilst it is not yet clear whether fewer people are now being imprisoned before trial on account of the new procedures, high pre-trial detention rates in prison would suggest that there has been no significant impact to date.



Entrance to Correctional Center 4, 2013

A burden on state and society



The arguments in favor of reducing rates of pre-trial detention are many. Restricting numbers of pre-trial detainees will reduce prison over-crowding, cut prison-running costs and increase staff capacity. For the accused, their families and communities, alternatives to pre-trial detention can prevent the many harmful social, economic, physical and psychological consequences of incarceration and preclude any stigmatization or criminalization resulting from imprisonment.

Detention before trial has many detrimental effects and for some the consequences of harsh, unnecessary pre-trial detention can be devastating. Individuals may lose their families, homes and other property, their jobs and, if self-employed, their livelihoods. If in education juveniles miss out on education and training. Pre-trial detainees, like all inmates, are also at risk of developing prison-related physical and mental health problems and are unlikely to receive appropriate treatment, potentially leading to longer-term health complications.

Given the poor state of prison health facilities in Cambodia, pre-trial detention may also lead to the unnecessary loss of life. Whilst LICADHO does not have full details of inmate deaths, of the 25 prisoner deaths recorded by LICADHO between January and October 2014, five were male pre-trial detainees, four of whom were under the age of 30.

Harsh pre-trial detention conditions combined with the fear of lengthy prison sentences has also led some detainees to consider taking their own lives.

LICADHO has spoken to many former inmates, particularly female inmates, who have described the impact of detention, including pre-trial detention, on their families and communities. Some explained that their children had been forced to abandon their education whilst others told how other family members had no choice but to give up their jobs in order to assume family care responsibilities.

LICADHO's findings demonstrate that disturbingly, pre-trial detainees, including women and juveniles, are often held in worse conditions than those who have been convicted of a crime. They usually have limited access to vocational or educational training opportunities and, because of the high percentage of pre-trial inmates, their cells are often more overcrowded. On the other hand, in some prisons there is no effective separation between untried inmates and convicts, a contravention of both international standards and Cambodia's own prison law.⁵⁰

During a recent visit to one prison where 50% of inmates have been convicted of a crime, pre-trial detainees were cramped in a cell block the same size and design as that reserved for significantly fewer convicted high security inmates. Whilst authorities told LICADHO that the majority of these convicted inmates were allowed out of their cell for three or four hours a day, pre-trial detainees were sometimes allowed less than one hour of recreation time per day.

The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) stipulate that all inmates who are not employed in outdoor work should, as a minimum, be allowed one hour of outdoor recreation time.⁵¹ However not all Cambodian prisoners are afforded this basic minimum right, and inmates are often forced to pay for recreation time. In such circumstances some inmates only leave their cell on a regular basis if they have the opportunity to work, visit the library or join vocational and life-skills trainings.

Attempted suicide

Roath attempted suicide whilst held in pre-trial detention because of his detention conditions and the uncertainty about his future. He described his pre-trial detention situation as abysmal and highly stressful, with up to ten men sharing a cell measuring 12m². As a pre-trial detainee he was not permitted to work so his out-of-cell time was limited. Other inmates extorted money from him and he was constantly watched by cell leaders who would report back to prison authorities. Because Roath had no lawyer, he had no idea of the length of prison sentence he might eventually face.

Instead of receiving the professional help he needed after his suicide attempt, Roath told LICADHO that he was handcuffed by guards and left with his cell-mates who threatened to beat him to death if he attempted suicide again.

At trial Roath, who was held in pre-trial detention for a minor offence, was sentenced to just one year in prison. His detention conditions subsequently improved and he was permitted to work as a carpenter, thereby getting plenty of out of cell time and other benefits such as additional food and coffee.

⁵⁰ Law on Prisons, article 26.

⁵¹ UN Standard Minimum Rules for the Treatment of Prisoners, article 21 (1).

This puts pre-trial detainees at an added disadvantage. Prison authorities are not legally required to provide them with education or vocational training opportunities and NGOs, the main providers of such programs, tend to limit their training programs to convicts who are nearing the end of their sentences. Whilst there are logical reasons to provide social and practical skills only at the pre-release stage of detention, in Cambodia this can result in pre-trial detainees being offered no meaningful out-of-cell activities at all. In extreme cases, it means that pre-trial detainees rarely see daylight.

Sok and Soheat were detained without trial for fifteen months, accused of using violence, a charge they both denied. They slept on the floor in cells measuring 4x5m with more than 20 other people. They told LICADHO that they were only allowed out of their cells for 90 minutes once every two weeks. Both men, who were held in separate cells, confirmed that other pre-trial detainees had similarly restricted out-of-cell time. Following intervention Sok and Soheat were appointed a legal aid lawyer and, when their case finally came to trial, they were acquitted of the charges against them and immediately released.



Tim Sakmony, a land activist from Borei Keila, was released on December 26, 2012

Human Rights Defenders targeted

Unjustified pre-trial detention is regularly used as a tactic to threaten and silence human rights defenders, political and land activists, limiting their ability to prepare an effective defense and sending a message to others that dissent will not be tolerated.

Human rights defender Tim Sakmony was arrested on September 5, 2012 and imprisoned on fabricated charges in retaliation for her land activism. She was held in pre-trial detention for more than three months and denied bail. Tim Sakmony and her family had been forcibly evicted from their Borei Keila⁵² home in early 2012 by Phanimex, a well-connected development company owned by tycoon Suy Sophan, the same woman who filed the complaint that led to her imprisonment.

After they were evicted from their home, Tim Sakmony together with her son and his 12-year-old twins lived at the bottom of a stairwell in Borei Keila. Tim Sakmony is the primary caregiver and wage earner for her family and whilst she was in pre-trial detention her family relied on support from their community and NGOs. Her grandchildren also supplemented the family income by collecting empty cans and bottles from the streets, getting up at 5am so they could earn some money before going to school. Her son, a former soldier, suffers from TB and is partially paralyzed as a result of a shrapnel wound to the head he sustained when he was 18 years old.

At trial Tim Sakmony was found guilty of making a false declaration and given a six-month sentence, partially suspended. She was released from prison on the same day.

⁵² For background of the Borei Keila evictions and ongoing land dispute see: http://www.licadho-cambodia.org/tag/borei_keila

Unlawful detention



According to Cambodia's Code of Criminal Procedure, adults can be held for up to six months before trial when accused of a felony offence. This period can be extended twice up to a maximum of 18 months if an order containing proper reasons is given. Those accused of misdemeanors can be held for a maximum of six months before trial but this period must not exceed half the minimum sentence for the alleged misdemeanor. Juveniles⁵³ can be held from between two to six months before trial depending on their age and the nature of the crime they are accused of.⁵⁴

However in reality many inmates are held beyond the maximum time period allowed for pre-trial detention. This is most likely to be the case for those inmates who cannot afford the services of a lawyer or to bribe prison authorities to process their paperwork. LICADHO's prison researchers regularly identify inmates in this situation and intervene for their immediate release. Following LICADHO's intervention, between January and June 2014, 29 detainees who had been held past the legal limit for pre-trial detention were tried by the Court of First Instance.

20-year-old Raksmei was arrested in September 2010 and detained in Takhmao prison. He was accused of conspiracy in a theft case in which the main suspect had not been arrested. As an adult accused of a misdemeanor, he should not have been held in pre-trial detention for more than six months but by the time LICADHO met with Raksmei, he had been in pre-trial detention for almost two years and had been given no information about his trial. When LICADHO became aware of his case, a lawyer was found for him and he was eventually tried on 12 November 2012, sentenced to 25 months' imprisonment and released two weeks later.

Other cases of unlawful pre-trial detention in Cambodia include individuals who are held before trial even though they were accused of a crime carrying a sentence of less than one year and those whose pre-trial detention is extended without proper procedures having been followed.

It is not only those awaiting trial who are regularly held unlawfully in Cambodian prisons. In fact there are many scenarios leading to the unlawful detention of both pre-trial detainees and convicts, the most common of which, as recorded by LICADHO, involves those inmates detained beyond their due release date. This often happens because of delays in processing release papers or because an inmate's file is lost.

Samnang was arrested in July 2003 in Banteay Meanchey and sentenced to ten years in prison in April 2004 on charges of theft. In 2010 Samnang was transferred to CC4 in Pursat province. When LICADHO became aware of his case Samnang had been in prison for more than eleven years. He was eventually released in July 2014 following LICADHO's intervention.

The price of freedom

Under the 2009 prakas on food ration and cell equipment⁵⁵ in Cambodia all inmates should receive the equivalent of \$12.50 upon their release for food and transport home, but most report that they receive nothing. On the contrary some former inmates report that they had to pay or give gifts in order to be released.

One reported that prison guards asked for a crate of beer whilst another said it was normal for inmates to pay between \$50-\$100 for release. Prison guards as well as court officials are reported to have asked inmates for money in order to process their paperwork to ensure timely release. Property confiscated at the time of arrest, such as cash, mobile phones and jewelry are often not returned to the owner.

LICADHO has also heard of inmates being required to pay for copies of their final verdict, without which they cannot apply for sentence reduction or pardon and their release cannot be properly processed. It has also been reported that inmates have paid bribes to prison officials in order to be included on the list of those to be considered for royal pardons.⁵⁶

The family of one inmate who had been in prison for just 22 days was ordered to pay \$20 on the day before his release and told this was to cover the costs of the food and water given to him over the course of his imprisonment. His wife reluctantly paid the \$20, fearful that he would otherwise be kept in prison.

⁵³The minimum age for imprisonment in Cambodia is 14.

⁵⁴CCP, Articles 208, 209, 212 and 213.

⁵⁵See footnote 11

⁵⁶See for example <http://www.rfa.org/english/news/cambodia/release-02062013155341.html> and <http://www.phnompenhpost.com/national/officials-accused-taking-bribes-royal-pardons>

The long wait for an appeal hearing



Another obstacle facing those caught up in Cambodia's criminal justice system is the often lengthy delay in hearing appeals, regardless of whether they are filed by defendants or prosecutors. This is partly explained by the fact that there is only one appeal court in the country, seated in Phnom Penh. This combined with the lack of an adequate system of inmate transportation has contributed to an ongoing appeals backlog which regrettably has yet to be properly tackled.⁵⁷

Many inmates also wait years for their appeal and remain trapped in prison simply because of basic administrative errors including lost, delayed or incorrect paperwork. Unfortunately those awaiting appeal have no legal recourse to complain because Cambodia's Code of Criminal Procedure does not specify a time-frame in which an appeal to the Court of Appeals must be heard.⁵⁸

An unusual and particularly troubling aspect of the Cambodian criminal justice system relates to appeals by prosecutors. If a prosecutor appeals against a sentence, the accused must remain in detention awaiting the appeal hearing and in some cases their period of incarceration extends far beyond the expiration of their original sentence. Even those acquitted by the Court of First Instance must remain in prison if the prosecutor decides to appeal against the acquittal.⁵⁹

33-year-old Piseth spent more than six years in prison despite receiving an initial sentence of just 13 months. He was arrested in July 2007 on suspicion of theft and spent more than one year in pre-trial detention before being given a 13-month sentence which was appealed by the provincial prosecutor. Had it not been for the prosecutor appeal, Piseth would have been released in August 2008. However, when LICADHO found out about his case in September 2013, he had already spent more six years in prison and had received no information about the prosecutor's appeal. He was eventually released one week after LICADHO's intervention.

Decisions by prosecutors to appeal against the verdict of the Court of First Instance often appear to be arbitrary and lacking in any consideration of the implications for those accused and their families. Rates of such appeals also seem to be higher in particular provinces, suggesting that certain prosecutors are simply more inclined than others to appeal a decision they are not happy with.



Male prisoners during recreation time in Prey Veng province, 2012

In one case a 17-year-old boy was only informed that the prosecutor had appealed his sentence the day before he was due to be released. He has now been in prison for six months past the expiration of his original sentence.

Vanny was arrested in December 2011 on suspicion of drug trafficking and sentenced to one year in prison. She was four months pregnant when she was arrested and she gave birth to a baby boy in May 2012. Under normal circumstances Vanny would have been released in December 2012 but the prosecutor had appealed against her one-year sentence. When the prosecutor appeal was finally heard in June 2014, Vanny and her son had spent two-and-a-half years in prison. The appeal court upheld the original verdict and one-year sentence.

⁵⁷ For more information on Cambodia's inmate transportation crisis and the right to appeal see: http://www.licadho-cambodia.org/collection/18/in_absentia_appeal_transportation_2013

⁵⁸ Article 387 of the CCP specifies only that the Court of Appeal should 'decide within a reasonable period of time.'

⁵⁹ CCP, article 398.

Barriers to justice



“Legal aid is an essential equalizer of justice...It places poor and rich defendants on a more equal footing, improving their chances for equal protection to the full extent of the law. Without it, justice in Cambodia will only be for the rich, powerful and the well-connected.”

Ms. Wan Hea Lea, representative, UN-OHCHR Cambodia

At a November 2013 conference on legal aid in Cambodia⁶⁰, Kem Santipheap, an undersecretary of state at the Ministry of Justice reminded participants that “access to justice and equal rights before the law are guaranteed... regardless of social status.” However Cambodian citizens are far from being equal before the law. Instead access to Cambodia’s skewed form of justice usually depends on financial and social status.

Legal aid remains woefully inadequate in Cambodia with only 74 legal aid lawyers working across the entire country in November 2013, a 41% reduction since 2010, with 51 of them based in Phnom Penh. Seven provinces had no locally based legal aid lawyers at all and the Cambodian Bar Association’s legal aid department had just seven full time legal aid lawyers.⁶¹ Whilst the government has recently increased the legal aid budget the Bar Association’s capacity remains extremely limited.

Given the lack of legal aid lawyers, particularly in rural areas, and the exorbitant fees for private lawyers, many suspects have no legal representation whatsoever. This inevitably leads to a situation in which the majority of inmates held in pre-trial detention and those eventually sentenced to prison terms are from poor backgrounds. One provincial prison director recently told LICADHO that only 5% of inmates in his prison had been represented by a lawyer.

Even for those who can afford a private lawyer there can be no guarantee of quality representation. Pervasive corruption in the entire judicial system hinders case work and many lawyers will not attempt a proper defense of their client, instead paying court officials to secure a

lenient sentence. Some lawyers have reported to LICADHO that they are not prepared to take on cases where bribe money is not available because trial judges will hold this against them in future trials.

Believing that they may be afforded some justice, many sell their land, homes or other property or fall into debt in order to pay the otherwise prohibitive lawyers’ fees, often seeing very little in return. LICADHO has received complaints from individuals who paid large amounts of money to lawyers who subsequently disappeared and others who made no attempts at a proper defense. In one case, the family of a 15-year-old boy borrowed \$3,000 to pay his legal fees when he was arrested on charges of rape but have since heard nothing from the lawyer.

Many suspects held in pre-trial detention report never having met their lawyers, and most receive no proper legal guidance before trial or advice related to the appeal process. One former inmate reported that prison guards told him he didn’t need a lawyer, that instead he should pay them money to ‘sort things out’.



Area to meet lawyer in Correctional Center 2, 2009

⁶⁰ National conference on legal aid in Cambodia, co-organized by the Ministry of Justice and the Cambodian bar association, with support from UNICEF and UN-OHCHR, Cambodiana Hotel, Phnom Penh, 29 November 2013.

⁶¹ http://cambodia.ohchr.org/WebDOCS/DocProgrammes/Number_and_location_of_legal_aid_lawyers_in_Cambodia.pdf

At trial, suspects are often convicted without firm evidence or witness testimony. Courts readily accept confessions obtained in police custody as the primary and sometimes the only basis for conviction and, if evidence does exist which contradicts the confession, it is often ignored. This is particularly alarming given that since 2008, 90 percent of all abuse reported to LICADHO was alleged to have taken place in police custody, often in the form of extracting confessions.

An independent judiciary and strong rule of law are fundamental to building public trust in the government and to protecting Cambodian society against abuses of power by officials or well-connected individuals. However, the three new fundamental laws on the judiciary⁶² instead appear intent on trying to legitimize the government's control over all aspects of the judiciary.

Under the new laws, the Minister of Justice is placed firmly in control of the Supreme Council of Magistracy (SCM), with the power to authorize the SCM budget and determine whether to pursue disciplinary complaints against judges and prosecutors. The judges and prosecutors will be included in the administrative framework of the Ministry of Justice and a top Ministry of Justice official will chair the commission for the promotion of judges. The Minister of Justice will also have some authority to control the assignment of judges and cases.

Justice denied

On September 15, 2013, when police shot and killed an innocent bystander firing live ammunition into a mixed crowd of local residents, commuters and peaceful demonstrators they also arrested six people, charging them with intentional violence and causing property damage. Their subsequent trial on February 17, 2014, epitomized the deficiencies of the Cambodian justice system. Numerous police witnesses who testified before the court could not identify a single defendant and all of them denied that their unit was responsible for any of the arrests. Despite this utter lack of evidence, three of the six were convicted to three years in prison. Two of the convicted had their sentences reduced to the 25 days they were held in pre-trial detention and thus did not have to serve more time in prison. The third person's prison sentence, however, was only reduced to one year because he placed his thumbprint on a confession. The confession, written in Khmer, was accepted despite that fact that the man is Vietnamese and cannot read Khmer.



Appellate court of Cambodia, 2012

⁶²The three new fundamental laws on the judiciary are the Law on the Organization and Functioning of the Supreme Council of Magistracy; the Law on the Status of Judges and Prosecutors of the Kingdom of Cambodia; and the Law on the Organization and Functioning of the Courts.



Prisoners work in Kampong Cham prison, 2012

Conclusion



When a state deprives a person of their liberty, it also assumes a duty of care to respect their dignity and protect their rights. Whilst there are some rights that are inevitably limited by imprisonment⁶³ there are others that can and must be fully protected without discrimination. In order to fulfill this obligation, the state must not only ensure appropriate accommodation, sanitary conditions and adequate food, drink and exercise, it must also protect individuals from physical and emotional abuse, prison related health problems and inhuman or degrading living conditions.

Unfortunately, despite government assertions to the contrary, the judicial and penal systems in Cambodia are not guided by human rights approaches. Instead both are corrupt political structures driven by nepotism. The courts continue to view prisons as a means to silence political activists and remove marginalized sectors of society from their communities whilst prison authorities are willing

to abrogate their protection responsibilities in favor of economic interests and political favor.

Whilst some prison authorities complain that they lack the financial and other material resources to properly implement promises of reform, it should be recognized that money alone will not solve the deep-seated problems within Cambodia's prisons. Firstly, the courts must understand the impact of their sentencing policies and secondly, there needs to be a shift away from the dominant factors which currently determine prison life, namely the normalization of corruption, the influence of powerful cell leadership structures and the almost complete lack of accountability. Without such fundamental changes Cambodian prison authorities will never be able to meaningfully fulfill their stated purpose of education and rehabilitation in a safe, secure environment and prisons will remain places where rights are violated rather than respected and protected.

⁶³ Such as the right to privacy, freedom of movement and freedom of assembly.

RECOMMENDATIONS

- ▶▶▶ Allow increased monitoring of all places of detention by independent monitors and end unwarranted restrictions on LICADHO's prison access. LICADHO and other monitors must be able to conduct confidential interviews with all detainees when requested.
- ▶▶▶ Provide for an adequate, effective and sustainable legal aid scheme which provides sufficient resources and independent capacities in order to guarantee access to justice for all, particularly for poor and vulnerable populations, and enables any person deprived of his or her liberty the right to be assisted by a lawyer.
- ▶▶▶ Establish a truly independent National Preventative Mechanism, made up of appropriately qualified independent experts, which is free from government influence, capable of acting independently and financially autonomous.
- ▶▶▶ Amend the three fundamental laws on the judiciary to ensure the judiciary is able to operate independently and effectively to protect the rights of all as required by the Cambodian Constitution.
- ▶▶▶ Establish a separate juvenile justice system by finalizing and implementing without delay the draft Law on Children in Conflict with the Law, providing its contents are in line with the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice.
- ▶▶▶ Properly monitor the implementation of the new pre-trial detention procedures and take action in situations where judges are not using the new forms correctly, with a view to increasing the use of non-custodial pretrial measures and reducing excessive pre-trial detention.
- ▶▶▶ Identify, as a priority, pregnant women and women with dependent children who are candidates for supervised pre-trial release and/or non-custodial sentences.
- ▶▶▶ Ensure that full assessments are carried out to determine if it is better to separate a child from his or her incarcerated mother or if the child should remain in prison and issue comprehensive guidelines on how to proceed and enhance outside referrals and placements of children in prison once they have reached the age of three.
- ▶▶▶ Provide prison staff with training on child development and the health care needs of pregnant mothers and children so that they can respond appropriately in times of need and emergencies. Allocate specialists to monitor a child's development so that any problems can be identified at an early stage.
- ▶▶▶ Ensure that young female prisoners are provided with special care according to their needs and offer all female inmates, particularly girls, appropriate training equivalent to males that will equip them for future employment.
- ▶▶▶ Take measures to improve conditions of detention in prisons and reduce overcrowding, including through improved hygiene, food supply and medical facilities.
- ▶▶▶ Ensure that only prison staff are authorized to exercise disciplinary powers over prisoners. Any cases of abuse and ill-treatment carried out by other inmates must be investigated and punished and any prison official found to have ignored or condoned such acts must be held accountable.
- ▶▶▶ Set up an effective state program of victim and witness protection which ensures confidentiality and protects those who come forward to report or complain about acts of torture; and ensure that victims are provided with redress.
- ▶▶▶ Introduce systems to monitor and act against corruption in prison. Any officials found involved in corrupt practices should be immediately removed from their positions and disciplined appropriately.
- ▶▶▶ Immediately end the practice of charging for prison visits and ensure that all detainees are given the opportunity to send and receive correspondence on a regular basis, make and receive telephone calls and have access to news from the outside world.
- ▶▶▶ Prioritize funding for prison transport vehicles and fuel for inmates to attend their appeals and be transported back to provincial prisons.
- ▶▶▶ Improve prison health facilities as a priority and ensure that prison health posts have sufficient equipment and medical supplies; provide prison health staff with adequate training to respond to the health needs of prisoners.
- ▶▶▶ Provide a proper physical and psychological health evaluation of incoming inmates with a view to ensuring that they receive appropriate and ongoing care.
- ▶▶▶ Introduce safeguards to ensure that inmates working for private entities only do so voluntarily and in conditions approximating a free employment relationship; publicly managed prison work programs should also be free from abuse and health and safety must be prioritized.

