



HUMAN RIGHTS AND CAMBODIA'S PRISONS: **PRISON CONDITIONS 2002 & 2003**

REPORT
October 2004



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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

PRISON CONDITIONS 2002 & 2003

A LICADHO Report
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CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENCE 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 the rights in Cambodia and to promote respect for civil and political rights by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through its six program offices:

- The Human Rights Education Office provides training courses to target groups such as government officials, students, monks and provides dissemination sessions to the general public.
- The Monitoring Office investigates human rights violations and assists victims in the legal process. Specially trained staff also monitors 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- The Medical Office provides medical assistance to prisoners and prison officials in 18 prisons and provides medical care and referrals to hospitals for victims of human rights violations.
- Project Against Torture provides comprehensive rehabilitation services to victims of torture and conducts advocacy against torture.
- The Children's Rights Office educates the public on children's rights, creates child protection networks at the grassroots level, and investigates children's rights violations.
- The Women's Rights Office educates the public about women's rights, investigates women's rights violations and advocates for social and legal changes.

For More Information Contact:

Dr. Kek Galabru, President
LICADHO (Cambodian League for the Promotion and Defense of Human Rights)
#16, Street 99
Phnom Penh, Cambodia

Tel: (855) 23 360 965/364 901
Fax: (855) 23 360 965/217 626
E-mail: licado@camnet.com.kh
Web: <http://www.licadho.org/>

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Executive Summary

Since 1997, LICADHO has issued reports on human rights in Cambodian prisons, highlighting the issues of most serious concern and recommending avenues of change. As an independent non-governmental organization, LICADHO aims to monitor Cambodian prisons and prisoners' rights; disseminate relevant high quality, non-partisan information; and lobby for positive reform. It is our sincere hope that this report will be used by government and prison officials, human rights advocates, researchers, aid donors, and legal professionals as a tool to identify existing problems, and to improve prison conditions and to encourage respect for prisoners' rights.

In 2002 and 2003, LICADHO identified the following urgent issues in Cambodia's prisons:

Severe Overcrowding:

Over the past five years the prison population in prisons monitored by LICADHO has almost doubled. Expansion of prison capacity has not kept pace with growth in prison population, resulting in serious overcrowding in a number of prisons. Overcrowding threatens the health and safety of inmates and is the most endemic violation of prisoners' human rights in Cambodia today.

KEY RECOMMENDATIONS:

- *Increase prison budget:* The Ministry of Interior should seek increased funding from the Royal Government to ensure that conditions in Cambodia's prisons conform to international standards. This entails ending overcrowding.
- *Coordinate with civil society:* The Ministry of Interior and prison officials should work with civil society to actively seek out alternative methods and resources to improve prison conditions, (e.g. by coordinating efforts to rebuild or improve insufficient prison facilities).

Children and Minors in Prison:

There are a number of children who live with their mothers in Cambodia's prisons. Growing up in prison is detrimental to a child's physical and psychological development and may put their safety at risk. In response to this problem, LICADHO has launched the "Adopt-a-Prison" project which aims to connect children in prisons with partner organizations which provide nutritional and material support.

KEY RECOMMENDATIONS:

- *Review, strengthen and enforce prison health care regulations on women and children:* Regulations relating to the care of children, their mothers and pregnant women should be reviewed, strengthened and then effectively enforced to ensure that there is a consistent level of care throughout the prison system.
- *Make special arrangements for pregnant prisoners and prisoners with newborns:* For prisoners at CC2, a separate section at Monivong Hospital should be created to provide care for pregnant women and newborns. Pregnant prisoners in provincial prisons should be transported to hospital to

give birth. All prisons should provide additional food and medical care for prisoners with newborns.

Minors between the ages of 13 and 18 are detained and incarcerated for crimes in Cambodia and are housed together with adult prisoners. This may lead to abuse as incarceration with adults exposes minors to hardened and potentially dangerous criminals. Incarceration with adults can increase minors' sense of powerlessness and may encourage them to engage in further criminal acts upon their release from prison. Street children and other minors suspected of committing petty crimes, drug use, or even simply of accused of bad behavior are sometimes sent to the Youth Detention Centre in Chom Chao, Phnom Penh. During arrest and in police custody, minors have reported serious physical abuse and torture.

KEY RECOMMENDATIONS:

- ***House minors and adults separately:*** The Ministry of Interior should ensure all institutions provide accommodation for minors separate from adults.
- ***Immediately end torture of minors in police custody:*** The routine practice of beating minors in police custody must be immediately stopped. Cases of alleged beatings must be investigated and guilty officers removed from their positions. Prison staff and prosecutors should closely watch for indications that a minor has been tortured as minors are more vulnerable to abuse.

Bribes and Corruption:

Bribes and corruption persist in the prison system. Prisoners and their families have reported to LICADHO that prison staffs demand fees for family visits and to transport detainees to their hearings. Such bribes can be exorbitant: in some instances reported to be \$50 to \$100 USD. In addition to being illegal, poor families are simply unable to meet such costs. This effectively prevents many prisoners from receiving much needed external support and can inhibit a prisoner's access to justice (e.g. hindering a prisoner's capacity to appear in court).

Prisoners who can afford to pay are in some cases able to improve their living conditions by bribing prison staff. Others may be led to believe that payments to prison staff can influence a court to rule in the prisoner's favor.

KEY RECOMMENDATIONS:

- ***Allocate more resources to the Prison Department:*** The Royal Government of Cambodia should allocate more resources to the Prison Department in order to raise the salaries of prison staff. This would reduce the incentive for underpaid staff to seek or accept bribes.
- ***Monitor and censure prison staff:*** The Prison Department should monitor prison staff, especially guards, to ensure that they do not accept or demand bribes from prisoners and their families. Prison staffs that are caught accepting or demanding bribes should be censured.

Torture:

Torture is one of the most serious human rights violations experienced by detainees and convicts both in police custody as well as within prisons. LICADHO remains deeply concerned that police torture continues to be practiced on a regular basis, particularly to elicit confessions from criminal suspects, but also to extort money from them or as a form of rough justice against perceived criminals. Torture is also

used in prisons as punishment for alleged breaches of discipline or security, especially escape attempts. In some prisons, new inmates are vulnerable to torture used to 'soften them up' and make them submissive to prison guards. Inmates may be forced to commit acts of torture against each other.

Notably, not a single prison official has been convicted of torture for over a decade. Such impunity fuels the problem.

KEY RECOMMENDATIONS:

- *Eliminate incommunicado detention in police custody:* The Royal Government of Cambodia should eliminate the practice of *incommunicado* detention in police custody and permit detainees to have access to lawyers, family members, and human rights defenders as early as possible after their arrest.
- *Authorize private interviews between prisoners and human rights organizations:* The Ministry of Interior Prison Department should authorize human rights organizations to conduct private interviews with pre-trial detainees and convicts in prisons.
- *Investigate all allegations of torture and suspicious deaths:* The prosecutor must investigate all allegations of torture and suspicious deaths of prisoners and detainees - in police stations, prisons, hospitals, or elsewhere in state custody.
- *Establish an independent complaints authority:* The government should establish an independent body to receive and investigate complaints against police and other law enforcement personnel.

These violations of prisoners' human rights occur despite legal protections set out in international and national law which Cambodian authorities are required to respect. LICADHO urges the government to take immediate and concerted action to remedy the inadequate conditions of Cambodia's prisons and to address the human rights abuses which have been documented.

1. Introduction

Under Cambodian and international law, *everyone* is entitled to certain fundamental rights, including the right to individual liberty and security, the right to fair trial, the right not to be subjected to cruel and inhuman punishment, the right to the highest attainable standard of living, the right to health, and other inalienable rights. With the exception of the right to liberty, these rights extend to prisoners, whether accused or convicted. There is a large body of international and Cambodian law that provides a good framework for the protection of prisoners' rights.¹ However, these rights are meaningless unless they are respected, protected, and enforced.

Since the initiation of its Prison Project in 1996, LICADHO has been making prison visits in order to monitor, promote and defend the rights of accused and convicted detainees. Following upon previous LICADHO reports on human rights conditions in prisons, this report describes human rights violations in Cambodia's prisons in 2002 and 2003. Please note that complementary reports on prisoners' health, children growing up in prisons, torture in police custody and prisoner rights are available to interested persons and a report on trial rights is forthcoming. A list of available reports is detailed in the *Annex*.

Methodology:

The findings of this report are the result of joint efforts between LICADHO prison monitors and its medical staff. Based on a total of 2,443 interviews of detainees and convicts held at regular intervals throughout 2002 and another 3,134 interviews in 2003, this report is an important but not exhaustive survey of current conditions in Cambodian prisons.

In 2002, LICADHO prison monitors made four visits a month to sixteen² out of Cambodia's twenty-four civilian prisons as well as monthly visits to Toul Sleng, a military prison. In 2003, prison monitors visited seventeen³ civilian prisons and Toul Sleng on the same schedule. Also in 2002 and 2003, LICADHO's medical office made monthly visits to twelve prisons.

LICADHO prison monitors arranged all prison visits in advance. This practice generally ensured cooperation by prison officials. However, this advance warning may have provided the opportunity to conceal certain violations.

Interviewees were selected by prison monitors using the prison register available at each prison. While monitors were usually able to interview inmates of their choice, obtaining interviews in 2002 with alleged Cambodian Freedom Fighters (CFF) proved to be particularly difficult. Prison directors required prison monitors, other human rights workers, and even the inmates' lawyers to obtain permission from various ministerial offices before permitting interviews – a factor which delayed the

¹ See, *Prisoner Rights Briefing Paper* (Phnom Penh: LICADHO, 2004).

² Police Judicial (PJ), Correctional Center 1 (CC1), Correctional Center 2 (CC2), Takmao, Kompong Som, Kompong Speu, Kampot, Kompong Chhnang, Kompong Cham, Kampong Thom, Pursat, Battambang, Banteay Meanchey, Siem Reap, Svay Rieng, and Koh Kong.

³ As listed above as well as Correctional Center 3 (CC3), also known as Trapeang Plong.

process considerably. After trial, LICADHO monitors were granted permission to meet with the CFF prisoners, but the meetings were never in private.

Monitors used set questionnaires to interview prison inmates. Two different forms were used: one to interview pre-trial detainees and one for convicts. Inmates were only interviewed once with the same form during a single reporting period. However, some inmates may have been interviewed twice in one year – first as pre-trial detainees and later as convicts.

Monitors conducted interviews orally using the appropriate questionnaire and recorded inmates' responses on the forms. It is important to note that most interviews could not be conducted confidentially as prison guards or other prisoners were present. Obviously, this may have deterred some inmates from talking frankly, particularly about human rights abuses.

Information obtained through occasional interviews with prison directors or guards, judges, lawyers, prisoners' families and others also appear throughout this report.

LICADHO would like to thank the Prison Department for its cooperation in permitting us to observe prison conditions and to interview and treat inmates. Unfortunately, cooperation by prison directors was not uniform across detention centers. Once, at the end of 2002, the prison directors for Kompong Som and Svay Rieng did not allow LICADHO researchers to interview pre-trial detainees in their prisons, despite having received permission from the Prison Department. Only after additional discussions between the LICADHO Phnom Penh office, prison directors, prosecutors and the Second Deputy of Provincial Governors, were monitors allowed to conduct interviews in these prisons. Since this incident, LICADHO monitors have not had any further difficulties in this regard.

LICADHO would also like to thank the judges, court presidents, prosecutors, lawyers, and inmates who cooperated in this project.

2. Prison Population and Overcrowding

Since 1996, when LICADHO began prison monitoring, the prison population in Cambodia has grown steadily and the problem of overcrowding has become an increasingly pressing concern. LICADHO has repeatedly highlighted the issue. Indeed, Cambodia has attracted international criticism from the UN Special Representative to Cambodia,⁴ Human Rights Watch,⁵ the UN Committee Against Torture,⁶ and Amnesty International⁷ due to the overcrowding of its prisons. The UN Special Representative to Cambodia observed that the overcrowding problem has changed little in the past eight years.⁸

A. The growing prison population

The prison population has nearly doubled in the last five years:

The prison population in the prisons monitored by LICADHO⁹ has nearly doubled since 1998. The population has swelled from 2,933 in December 1998 to 5,303 in December 2002 (81% increase); and to 5701 in December 2003 (94% increase).

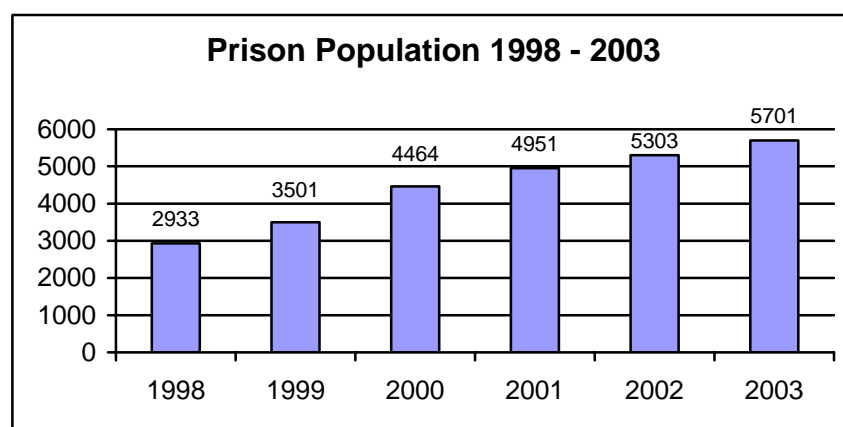


Figure 1: Increase in total of prison population in nineteen prisons which LICADHO has monitored and/or medical staffs have worked in since 1998.

The vast majority of inmates are men:

The overwhelming majority of inmates are men. Of the totals mentioned above, in 2002, 4,753 (89.6%) inmates were men, 277 (5.2%) were women and 273 (5.1%) were minors (female and male) between the ages of thirteen and eighteen.¹⁰ In 2003, 5200

⁴ E/CN.4/2003/114 (Geneva: United Nations Economic and Social Council, 2002), p. 3.

⁵ *World Report 2002* (New York: Human Rights Watch, 2002), p. 610.

⁶ *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention - Conclusions and Recommendations* (Geneva: United Nations Committee Against Torture 30th Session, 2003). The Committee cited overcrowding of Cambodia's prisons as one of its subjects of concern.

⁷ *Kingdom of Cambodia: A human rights review based on the Convention against Torture - Summary* (London: Amnesty International Secretariat, 2003); Amnesty International went further than the UN Committee Against Torture, and suggested that overcrowding also constituted "torture" under art. 1 of the convention, or at the very least, "ill-treatment" under art. 16.

⁸ E/CN.4/2003/114 (Geneva: Commission on Human Rights, 59th session, 2002), item 19 of the provisional agenda.

⁹ Prison population statistics are compiled from figures gathered by prison monitoring and prison health staff for nineteen prisons since 1998, namely: PJ, CC1, CC2, Toul Sleng, Takhmao, Kompong Som, Kompong Speu, Kampot, Kompong Chhnang, Kompong Cham, Kompong Thom, Pursat, Battambang, Banteay Meanchey, Siem Reap, Svay Rieng, Koh Kong, CC3 (also known as Trapeang Plong) and Prey Veng. Statistics are from the records of prison authorities and were collected by LICADHO prison or medical monitors. All other statistics are gathered from the prisons monitored in each year.

¹⁰ For more information on minors in prison, refer to *Section 4: Children and Minors in Prison*, below.

(91.2%) were men, 209 (3.7%) were women, and 292 (5.1%) were minors. This distribution of men, women and minors is consistent with past years.

The actual rate of prison population growth has, however, decreased:

While it is true that the prison population continues to grow, the *rate* of growth in recent years has actually decreased. Compare, for example, the alarming 27.5% increase in growth rate from 1998 to 2000 versus the 7.5 % increase from 2001-2003.

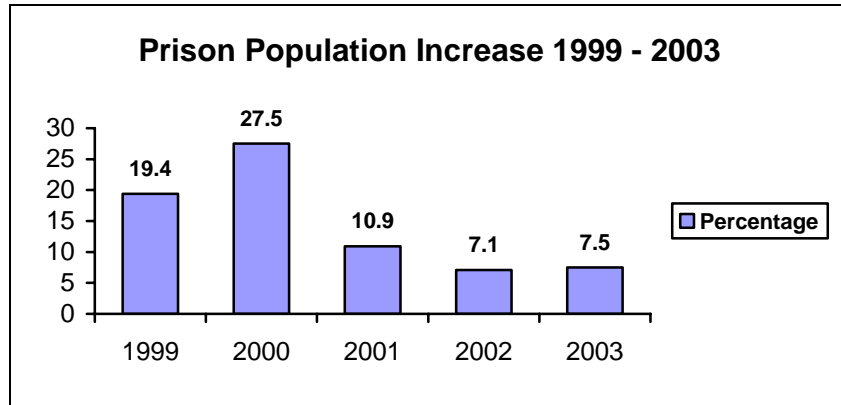


Figure 2: Percentage prison population increase calculated against each prior year across nineteen prisons which LICADHO prison monitoring and/or prison medical have worked in since 1998.

Excessive length and use of pre-trial detention:

The excessive length and use of pre-trial detention constitute major factors in the overpopulation of Cambodia's prisons.¹¹

Roughly a third of Cambodia's prisoners have yet to be convicted for any crime. In 2002, 30% (1,588) of prisoners were pre-trial detainees and in 2003, that number rose slightly to 32% (1,799).¹² Due to challenges to the judicial system, as well as problems with completing investigations within the pre-trial detention period, pre-trial detainees often remain incarcerated months and even years beyond the statutory limit. According to statistics gathered by LICADHO in the prisons it monitors, the number of persons held in pre-trial detention beyond the statutory limit varies,¹³ however, it has been as high as 225 (September, 2001) and as low as 70 (November, 2003). As of February 2004, there were 105 persons in excessive pre-trial detention in prisons monitored by LICADHO. Since 2001, the majority of excessive pre-trial detention cases have been at Banteay Meanchey, CC1 and CC2 prisons. In 2003, a number of cases of excessive pre-trial detention were also found at Takhmao, Kampot, PJ and Kompong Som prisons.

¹¹ For more information on this subject see the forthcoming LICADHO report on trial rights.

¹² Calculated against the total prison population of the respective year in the nineteen prisons used by LICADHO for population statistics.

¹³ Data gathered from the prison register at various points throughout the year from 2001 to 2004.

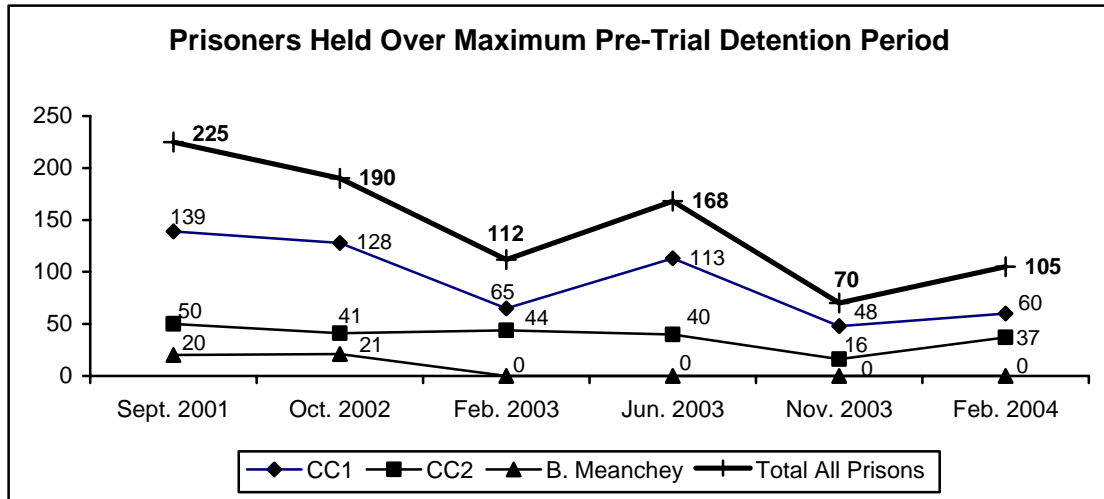


Figure 3: Based on data gathered from the prison register at various points throughout the year from 2001 to 2004. Total All Prisons refers to the total number of cases across all prisons monitored in that year. NB: the time intervals charted are irregular.

B. Prison capacity and population growth

The capacity of Cambodia's prisons has not kept pace with growth in prison population. Repeated recommendations from LICADHO, other local and international NGOs and the UN Special Representative to Cambodia have been issued; however, thus far, little progress has been made. For example, in 1996, cooperation between the Cambodian government, AusAid and LICADHO resulted in the construction of a new prison building at Kompong Thom. Designed to hold 40 prisoners, it has never been expanded and is now crammed far beyond capacity (133 inmates). Kompong Thom is currently the most overcrowded prison in Cambodia.

To the best of our knowledge, the only other significant rebuilding efforts by the Royal Government¹⁴ appear to have been motivated by business interests rather than as a concerted attempt to relieve overcrowding in Cambodia's prisons. Further, these new prisons also quickly became overcrowded.

In the first of these rebuilding efforts, prison authorities in 1999 traded the valuable land on which the T3 prison stood (in downtown Phnom Penh) to the Sokimex Corporation. In exchange, Sokimex built a new prison in the Prey Sar prison compound which was named Correctional Centre One (CC1).¹⁵ CC1 was completed in 2000. Although it was built to hold more than twice the population of T3, there was ultimately little improvement in overall prison capacity.¹⁶ By December of the same year, CC1's population had surged to 1287.¹⁷

¹⁴ The Cambodian Criminal Justice Assistance Project (CCJAP), funded by AusAid, has, over the years, refurbished a number of prisons by rebuilding cell walls, improving water systems and augmenting administrative facilities.

¹⁵ At the same time, the existing prison at Prey Sar was converted to a prison for women and minors and renamed Correctional Centre Two (CC2). The adult male prison population from both T3 and Prey Sar was transferred to CC1 and the female and minor populations to CC2. Also in 2000, Trapeang Plong prison was renamed Correctional Centre Three (CC3).

¹⁶ In December of 1999, the population at T3 and Prey Sar was 497 and 279 respectively. CC1 was built to hold 1200 prisoners and Prey Sar 300. After the transition, Prey Sar's population fell slightly to 245.

¹⁷ There are a number of explanations for this surge in CC1's prisoner population. At a general level, there was a concurrent and dramatic increase in the national prison population in 2000; 963 new prisoners were housed in the nineteen prisons where LICADHO collects population statistics. This increase is roughly *double* or more than that of any other year since 1998 to the present. More

Also in 2000, a similar deal was struck with Sokimex in Siem Reap. Again, the valuable land in Siem Reap center was traded to Sokimex which built a new, larger prison outside the city center. The old prison housed 266 prisoners and the new prison was built to hold 500. Unfortunately, maximum capacity was reached in 2002 and the prison is now overcrowded, housing a population of 540 prisoners as of December of 2003.

LICADHO is encouraged by these projects to the extent that they demonstrate some initiative by the Royal Government to find alternative ways to expand Cambodia's prison capacity; however, it is clear that such projects have been undertaken in an ad hoc manner, and only in instances where private business interests were present. The result has been inadequate improvement in prison capacity. Furthermore, the relocation of T3 and Siem Reap prisons away from the city center makes it more difficult for prisoners' families to visit. This is a serious concern as prisoners depend on their families to provide them with additional food to supplement the meager prison rations. A prisoner's family may also be their only connection to the outside world and a crucial source of emotional support.

C. Overcrowded prisons

As a result of the increasing prison population and extremely limited expansion of prison capacity, overcrowding is an urgent problem for the Ministry of Interior's Prison Department. Indeed, all of the prisons monitored by LICADHO in 2002 and 2003 are near or exceed their capacity (See *Figure 4*, below). If not addressed, the problem will continue to deteriorate, with serious consequences for prisoners' health, human rights, and for prison security and stability.

The most immediate impact of overcrowding is painfully cramped living conditions in prison cells. This situation is most acute at Kompong Thom. The Kompong Thom prison building measures approximately 7.5 m x 15 m (112.5 m²). According to the prison director, it was built to hold a maximum of 40 inmates. However, by the end of 2003, the prison population had increased to 128, and living space per prisoner decreased to 0.88 m². In fact, the actual living space per prisoner is even less than this as a portion of the prison building is sectioned off for the toilet. Over the years, the prison director at Kompong Thom has permitted some prisoners to live permanently outside their cells, in the prison courtyard, to ease the overcrowding. To try to create more space, prisoners suspend their belongings from the ceiling of their cells and others sleep in walkways.

In addition to Kompong Thom, overcrowding remains a particular problem in Battambang, and Kompong Som. By December of 2002, in these three prisons, the population exceeded maximum capacity by 317%, 107%, and 84% respectively. By December of 2003, Battambang had reached 147% overcapacity, Kompong Som 88%, and Banteay Meanchey also became seriously overcrowded, reaching 88% overcapacity.

arrests were made in 2000 than previous and subsequent years - especially of Cambodian Freedom Fighters among others, and there was a peak in excessive pre-trial detention. A number of prisoners from overcrowded provincial prisons were also sent to CC1.

By December of 2003, overcrowding in Kompong Thom had decreased to 220% overcapacity; this decrease is largely attributable to transfers of prisoners to CC1 and CC2 prisons. Clearly, despite these transfers, problem of overcrowding at Kompong Thom remains severe and must be urgently addressed.

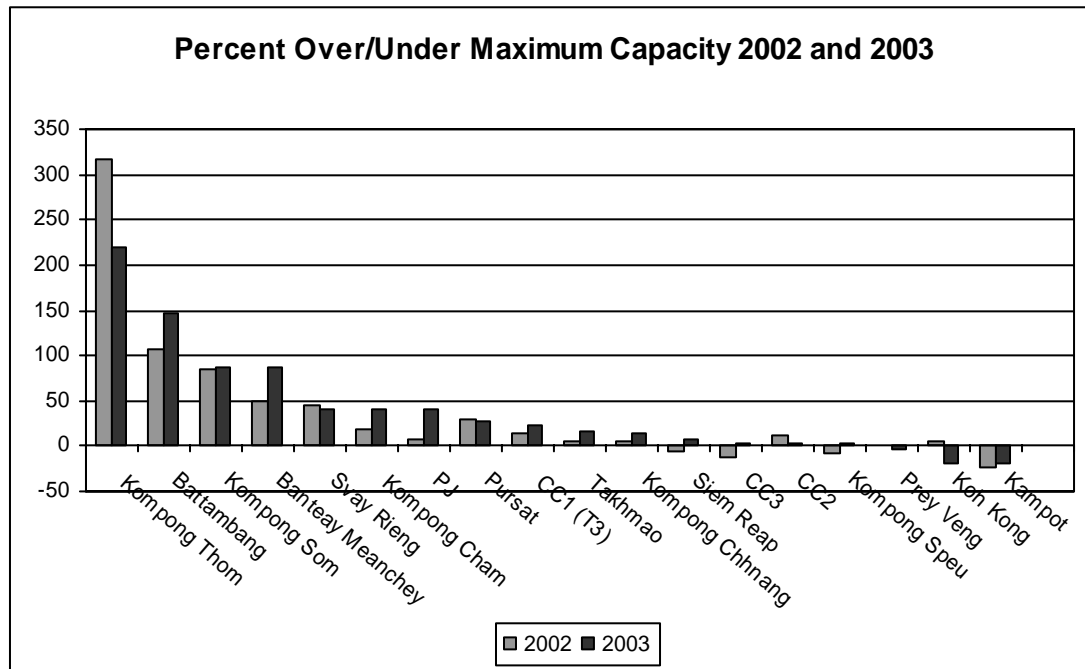


Figure 4: Percentage prison population over or under capacity. Prison capacity is based on estimates by prison directors.

Relocation of prisoners is not an adequate solution:

To solve the most acute problems of overcrowding, prisoners have for the last few years been moved from prisons like Battambang and Kompong Thom to CC1 and CC3. For example, from 1999 to 2002, prisoners have on four occasions been transferred from Kompong Thom prison to ease overcrowding: once to CC1 and three times to CC3. In 2003, 123 prisoners were relocated, again mostly to CC1 and CC3.

Relocation of prisoners is an unsatisfactory remedy that fails to address possible sources of overcrowding (such as insufficient number of prisons, excessive pre-trial detention and failure to implement non-custodial measures for minor offences). Furthermore, these moves often take prisoners far from their home provinces, making it difficult, and sometimes impossible, for family members to visit. This is a serious concern as families who visit often provide additional food for prisoners. As the prison food ration is inadequate, this is an important way for prisoners to avoid malnourishment and disease. And, as previously mentioned, prisoners' families are also a vital source of emotional support.

D. Overcrowding, prison security and violence

Overcrowding heightens tension and degrades prisoner health:

Overcrowding heightens tension, both among prisoners and with prison guards. In

prison cells which lack fans and proper ventilation, overcrowding creates a claustrophobic environment which together with the stress of being incarcerated can encourage violent confrontations between prisoners. Confined, overcrowded cells contribute to outbreaks of communicable disease by exacerbating poor sanitation, hygiene and malnutrition.¹⁸ Furthermore, overcrowding impedes the ability of understaffed, under-trained and overworked prison health workers to do their jobs.¹⁹

Overcrowding encourages violence and repression:

Overcrowding makes it more difficult for prison staff to monitor and control inmates, a situation in which physical violence and repression are more likely to occur. Overcrowding also threatens the security of prison officers and the greater community. In its *2002 World Report*, Human Rights Watch observed that overcrowding, coupled with poor living conditions and neglect, led to violent prison revolts, riots, hostage-taking, self-mutilation and hunger strikes in numerous countries, resulting in deaths and injuries to officers as well as prison inmates.²⁰ While such violent outbreaks have not occurred in Cambodia to date, the experiences of other countries demonstrates such a possibility and underscores the pressing need to deal quickly and effectively with the problem.

Overcrowding and prison escapes:

Overcrowding and dilapidated prison conditions contribute to the incidence of escapes and attempted escapes. In the 17 prisons monitored by LICADHO in 2002, there were 5 incidents in which 6 prisoners successfully escaped and 1 was recaptured. In the 18 prisons monitored by LICADHO in 2003, there were eight incidents in which twenty-four prisoners successfully escaped. Another two prisoners attempted to escape from Koh Kong while working outside of the prison but were apprehended later the same day. In all of the incidents of escape or attempted escape documented by LICADHO in 2003, lacks of proper supervision and/or substandard facilities were contributing factors. In one incident, fifteen prisoners escaped simultaneously from Banteay Meanchey prison on Chinese New Year Day (01/02/03) by breaking down a weak wall while prison officers were assembled for a meeting elsewhere.

Disturbingly, prisoners who have attempted escape are particularly vulnerable to abuse and torture once they are returned to prison. (See *Case Study 3* in Section 6 below)

Overcrowding and security concerns limit prisoners' right to recreation and fresh air:

It is set out in the Prison Procedures²¹ and international law²² that Prison Chiefs must provide for recreation time for prisoners, however, inmates have been denied this right by prison guards due to overcrowding and related security concerns. In CC1

¹⁸ Indeed, overcrowding violates the health rights of prisoners as guaranteed in the Constitution and the United Nations Standard Minimum Rules for the Treatment of Prisoners. See: *Constitution of the Kingdom of Cambodia*, adopted by the Constitutional Assembly, September 21, 1993, as amended 4 March 1999 [hereinafter "*Constitution*"], arts. 65 and 72; *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 [hereinafter "*Standard Minimum Rules*"] art. 10.

¹⁹ For more information on the health effects of overcrowding, see, *2002 & 2003 Health in Prisons Report* (LICADHO 2004).

²⁰ *World Report 2002* (Human Rights Watch), pp. 610 - 614.

²¹ *Prakas No. 217 on the Administration of Prisons*, Ministry of Interior Proclamation No. 217, Proclamation on Administration of Prisons, issued 20 May 2003 [hereinafter "*Prison Procedures*"]. No. 33(4).

²² *Standard Minimum Rules* supra note 14 provide: 21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits. (2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

for example, which held 1,377 prisoners in December 2002 and 1,471 in December 2003, around 400 prisoners were let out each weekday, either in the morning or afternoon, for approximately one hour. This means that most prisoners were allowed out of their cells for only one hour every three or four days.

RECOMMENDATIONS

- 1) *Seek increased funding:* The Ministry of Interior Prison Department should seek increased funding from the Royal Government to ensure that conditions in Cambodia's prisons conform to international standards. To support this, the Prison Department should develop a comprehensive policy on prison expansion so that efforts are not ad hoc or oriented to business interests.
- 2) *Expand Kompong Thom prison:* As a top priority, the Ministry of Interior, Prison Department should immediately renovate or rebuild the prison at Kompong Thom as it is severely overcrowded.
- 3) *Coordinate with civil society:* The Ministry of Interior and prison officials should work with civil society to actively seek out alternative methods and resources to improve prison conditions, for example by coordinating efforts to rebuild or improve insufficient prison facilities.
- 4) *Plan and develop alternative non-custodial initiatives:* Together with international organizations, the Royal Government of Cambodia should begin to develop a plan for implementing non-custodial sentencing alternatives for first-time offenders who commit minor offences (e.g. community service), and educate the public about non-custodial measures.

3. Children and Minors in Prison

A. Children living with incarcerated mothers

In Cambodia, children under the age of six are permitted to live with their incarcerated mothers in prisons.²³ In December 2003, LICADHO documented twenty-two children and four pregnant women in the eighteen prisons monitored that year.²⁴

Mothers bring their children to live in prison because they have no other option. A mother who gives birth to a child while incarcerated may not want or be able to pass on the care of such a young child to someone else. Other incarcerated women with very young children may not have the money to support them or relatives willing to look after them.

Children growing up in prison raise a number of human rights concerns. The majority of children living in prison are under the age of five – a critical age for a child’s physical, social and psychological development. Prison authorities are required to provide basic provisions for this group;²⁵ however, they are either unable or unwilling to do so. Thus, children in prison lack critical resources necessary for their health and development. Children in prison must share the very limited food supplies given to their mothers and as a result suffer nutritional deficiencies. They also have no state-supported access to health care and education, and may be in danger from mistreatment by other prisoners or prison staff. They are housed with offenders who have committed very serious crimes.



Incarcerated mother and child. Photo printed with the permission of the mother.

RECOMMENDATIONS

1. **Review, strengthen and enforce prison health care regulations on women and children:** Regulations relating to the care of children, their mothers and pregnant women should be reviewed, strengthened and then effectively enforced to ensure that there is a consistent level of care throughout the prison system.
2. **Make special arrangements for pregnant prisoners and prisoners with newborns:** For prisoners at CC2, a separate section at Monivong Hospital should be created to provide care for pregnant women and newborns. Pregnant prisoners in provincial prisons should be transported to hospital to

²³ *Prison Procedures* supra note 18, Procedure No. 34(3.2).

²⁴ For more information on this issue please see *Innocent Prisoners: a LICADHO report on the rights of children growing up in prisons* (LICADHO 2002).

²⁵ *Prison Procedures* supra note 18, Procedure No. 34(4.1).

give birth. All prisons should provide additional food and medicinal care for prisoners with newborns.

3. **Government should work together with NGO medical workers:** Government officials should join with NGO medical workers to provide specific medical care to vulnerable groups.
4. **Allocate more resources to improve facilities for women and children:** The Ministry of Interior should increase the prison budget and allocate more resources to improve prison buildings in order to achieve better living conditions, safety and security for children and their mothers.

B. LICADHO Adopt-a-Prison Project

The Adopt-a-Prison Project was started in 2003 in response to the problem of children living in prison as identified in the LICADHO report entitled "Innocent Prisoners: Children Growing up in Cambodia's Prisons." The aim of the project is first and foremost to arrange for the provision of the children's immediate needs. To achieve this, the project enlists the cooperation of local communities and organizations. LICADHO coordinates NGOs, individuals, embassies and others in the region of the prison to provide direct assistance to children (and indirectly their mothers) and pregnant women.

According to need, clients are provided with food, water, nutritional supplements, health services and materials such as mosquito nets, bedding, cleaning supplies, toys and medicine. Partner organizations are encouraged to follow-up with the mother and child(ren) after the mother is released from prison in order to facilitate reintegration of the family into society. In prisons in which no children currently reside, the project has been extended to provide arrangements for care, should the need arise.

The Embassy of the Sovereign Military Order of Malta cooperated as the first partner organization, adopting care for 13 children and three pregnant women in CC2 prison - the prison which houses the most children in Cambodia. The Embassy has provided food and materials to the women and children, medical assistance at the Prison Infirmary, as well as financial assistance to mothers to allow them to deliver their babies in hospital. Since the beginning of the project, more than a dozen partners²⁶ have come on board and, currently, LICADHO is pleased to report that the Adopt-a-Prison project is operating in twelve prisons.

C. Incarcerated minors' special needs

The age of criminal responsibility in Cambodia is not defined by law; however, it is prohibited to *detain* children under the age of thirteen.²⁷ In light of this prohibition as

²⁶ Partners include: Operations Enfants de Battambang, Kokkyo naki Kodomotachi, Meahto Phum Ko'mah, AFEC, CARDH, Komaa Mekong, Lutheran World Federation, World Vision Cambodia, CARE Cambodia, Save the Children Australia, Starfish, World Vision Cambodia, HAGAR, Wathnakpheap(SKIP), Kumar Ney Kdey Sangkheurm, Ponleu Kumar, Anakot Kumar, Caritas through CRS (Catholic Relief Service).

²⁷ United Nations Transitional Authority in Cambodia - *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period*, adopted by the Cambodian Supreme National Council in September 1992 [hereinafter "UNTAC"], art 14.4. The same article holds that minors age thirteen to eighteen may not be placed in pre-trial detention for more than a month. The length of such detention may be doubled if the minor is charged with a felony.

well as commentary on the Penal Code developed by the Ministry of Justice (which says that the age for criminal liability is thirteen, but which does not possess the force of law) it is common practice to regard children under thirteen as unable to be held criminally liable, and therefore unable to be imprisoned.

Minors between the ages of thirteen and eighteen, however, are detained and incarcerated for crimes in Cambodia. In 2002 there were 273 minors (264 boys and 9 girls) between the ages of thirteen and eighteen in pre-trial detention or incarcerated for crimes they had committed in 19 prisons monitored by LICADHO.²⁸ By the end of 2003, that number had risen to 292 (285 boys and 7 girls).

The Youth Rehabilitation Centre at Chom Chao:

Street children and other minors accused of petty crime, drug use or bad behavior are sometimes sent by their families, the police or the District Office of the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (DSALVY) to the Youth Rehabilitation Center at Chom Chao in Phnom Penh. Mith Samlanh/Friends, an NGO dedicated to working with street children in Phnom Penh, works in close collaboration with the center.²⁹ They report that there are 60 minors currently³⁰ detained at Chom Chao under the age of 18; the majority are between the ages of 13 and 17. The minors are sent to Chom Chao by the Ministry of Social Affairs, by the police or by their parents.

Minors at Chom Chao are detained in one of two buildings - Building C and Building K. Upon arrival, minors are detained in Building C where they are released from their rooms in the morning and in the afternoon for activities/exercise, basic education and meals. In the evening they must return to their rooms which are locked for the night. While minors housed in Building K have more freedom than those in Building C, they are subject to the same general procedures, only their rooms are not locked during the night. A minor who has stayed Building C for one or two weeks may be transferred to Building K if it has been observed that their behavior has positively changed. At this stage, the minors are allowed to leave the center during the day - for example, to attend Mith Samlanh trainings - but must return at night.

The Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MoSALVY) provides 1000 Riel per day per minor, the same budgeted for persons incarcerated in Cambodia's prisons.

Vulnerability of minors in prison:

Even though it is laid out in the prison procedures³¹ that prisoners under eighteen should be separated from older prisoners, in practice all provincial prisons house minors together with adults. The only variations on this are CC2 which houses exclusively women and minors, and CC3 where only adult male prisoners are held. Minors are impressionable and incarceration with adults exposes them to hardened

²⁸ Nineteen prisons as listed supra note 9.

²⁹ Mith Samlanh visits the center twice a week. One staff member at Chom Chao has been integrated into the Outreach project of Mith Samlanh in order to get experience on how to effectively work with street children. Mith Samlanh has also accepted 20 children from Chom Chao to receive training skills at the Mith Samlanh Training Center. For more information on Mith Samlanh/Friends please see their website, <http://www.streetfriends.org/> (last accessed: 1 August 2004).

³⁰ as of the time of writing, August, 2004.

³¹ *Prison Procedures* supra note 18, No 3(3.2).

and potentially dangerous criminals, increases their sense of powerlessness, and encourages them to engage in further criminal acts upon their release from prison. While in prison, minors require special attention as they may be particularly vulnerable to physical, mental or sexual abuse by other prisoners and guards.

Also, it should be noted that the condition of Cambodian prisons as described in this report are of more serious concern for minors in prisons as they are more vulnerable to disease, food shortage and illness brought on by lack of exercise.

Torture of minors in police custody and prison:

It is with the highest concern that LICADHO reports that in 2003, twenty-two minors reported being the victims of torture.³² All of these incidents, except two, allegedly took place in police custody. These minors, as young as nine years old, recount being brutally beaten and threatened by police in order to be made to confess to crimes they were suspected of committing. In the majority of cases, the minors were accused of theft or robbery.

Case-study 1: Minors Brutally Beaten in Police Custody

Example 1: In 2002, a sixteen year old boy robbed a vendor. The boy was 100 meters away from the vendor when he was apprehended by a policeman who pointed an AK47 rifle at him. Another policeman arrived, hand-cuffed the boy and slapped the left side of his face. The officers ordered the boy to get on a motorcycle. While one officer drove back to the scene of the robbery, the other officer repeatedly beat the boy with a stick as they drove. The boy was then taken to the police station where he was beaten with a stick on the back and repeatedly slapped in the face. One officer scraped the sole of his shoe across the boy's chest, causing permanent scarring.

Example 2: In 2002, a sixteen year old boy was brought to a police station to be interrogated for suspected robbery. During the interrogation, two policemen kicked the boy's back repeatedly. One policeman grabbed the boy by the hair and hit him with his knee, once in the face and once in the ribs. Both policemen beat the boy's head with their fists until it was swollen.

The boy was brought to prison where he was ordered to sit down and cross his arms behind his back. A prison guard kicked him once in the face and many times in the ribs. When the boy fell back against a wall, the guard kicked him in the neck and pushed the boy into a cell. Days later, the boy's head remained badly swollen and he experienced sharp pain in his back and ribs.

Example 3: In 2003, a fifteen year old boy was caught in the act of attempted theft on a private property. He was detained by police guarding the bank who handcuffed his hands behind his back. One policeman kicked him in the face, causing bleeding, and another policeman beat him in the head twice. Four policemen then arrived to take him to the police station. Once there, the boy was hit in the head three times with a lock. He was transferred to the district police station and was chained by his right leg.

³² In the eighteen prisons monitored by LICADHO in 2003.

RECOMMENDATIONS

- 1) *House minors and adults separately:* The Ministry of Interior should ensure all institutions provide accommodation for minors separate from adults.
- 2) *Immediately end torture of minors in police custody:* The routine practice of beating minors in police custody must be immediately stopped. Cases of alleged beatings must be investigated and guilty officers removed from their positions.
- 3) *Appropriate use of rehabilitation centers:* Judges should consider sending convicted minors who are very young or who have not been convicted of a violent crime to rehabilitation centers like Chom Chao, rather than incarcerating them in prison with adult prisoners where they may be at risk of abuse. The Royal Government should stop sending street children that have not been convicted for a crime to rehabilitation centers.

4. Corruption and Bribes

LICADHO interviews with prisoners, their family members, guards and prison directors indicate that corruption remains a serious concern within Cambodia's prisons. Prison guards may demand bribes for essential services that would otherwise be provided to inmates free of charge or may be induced to accept bribes in return for procuring special services for those inmates who are able to pay. One police official commented to LICADHO that incomes are so low that bribes are necessary. He stated that bribe money is used to pay for basic necessities such as food for prison guards. Regardless of such justifications, corruption in prisons is unacceptable. The routine and flagrant bribe system diminishes the well-being and legal rights of many prisoners.

A. Bribes for family visits

In 2001, family members reported that they had to pay prison staff for permission to visit prisoners. This problem had worsened in 2002 and 2003. Preventing family members from visiting inmates is in direct contravention of Cambodian prison regulations.³³

The scope and impact of corruption in family visits:

Bribes demanded to visit detainees can begin in the very first month of confinement. Family members of prisoners interviewed by LICADHO reported that during this period, some prison staff prevented visits to pre-trial detainees on the premise that such visits might compromise the criminal investigation of the prosecution. Guards are willing to "overlook" this issue, and allow family visits if family members pay from 195,000 to 390,000 Riel (\$50.00-100.00 USD).

Many families of prisoners are poor and cannot afford to pay bribes, meaning that they effectively cannot visit as often as they would like, if at all. This has a serious impact on prisoner's psychological and physical well-being as families are relied upon to provide much needed food, other provisions and support. When prisoners lack the means to supplement their diets malnutrition ensues, giving rise to serious, sometimes life-threatening diseases such as beriberi.³⁴

For example, at CC1 prison, visitors have to pay from 16,500 Riel³⁵ to 19,500 Riel *per visit*, according to LICADHO interviews with prisoners and family members in 2001, 2003 and 2004. The amounts demanded and paid during each visit are not consistent, however, the checkpoints where bribes are most often demanded are clear. They are as follows:

³³ *Prison Procedures* supra note 18, Procedure No. 8(3.1) states: "All prisoners have the right to receive visits from families or friends for at least one hour each week at times designated in the Prison Rules by the Prison Chief." Moreover, Procedure 8(4.1(n)) states that "The collection of goods or money from visitors by any prison official for the privilege of visiting a prisoner is expressly forbidden. [...]"

³⁴ Beriberi is a life-threatening disease that results from malnutrition. It leads to progressive degeneration of the nervous system, digestive tract, and heart and, in its advanced stages, can lead to difficulty walking, swelling of extremities, heart failure, and death. The disease is linked to an inability to properly metabolize carbohydrates - a direct result of Vitamin B1 (thiamine) deficiency. Thiamine is found in yeast and the husks of unmilled brown rice. While some prisons make an effort to rotate brown rice into inmates' diets, more needs to be done.

³⁵ At the time of writing, one US dollar was equivalent to roughly 4000 Riel.

Bribe Checkpoints for Family Visits at CC1		
1.	First checkpoint to the prison (Bribes here are always demanded)	2000 - 3000 Riel or a package of cigarettes
2.	Entrance to the prison building.	2000 - 2500 Riel
3.	Administration office: At this point visitors are requested to fill out an authorization form. This is the most crucial requirement and concurrently results in the highest bribes.	5000 Riel
4.	Office of permanent staff.	5000 Riel
5.	Visiting room: There are two rooms here, one where visitors can speak directly to prisoners and the other where they talk via a telephone. Visitors have to pay additional bribes if they want to spend extra time talking to the prisoner.	Direct: 2000 Riel for thirty minutes. Indirect: 1000 - 1500 Riel for ten minutes.
6.	Gate to enter further into the prison; here visitors have to pay if handing over food to prisoners.	1500-2000 Riel
7.	Seconds gate to further enter prison; here any food received by prisoners is inspected, and a portion of it is often taken by the guard.	Portion of food.

Remote locations of some prisons make it difficult for families to visit:

It should be noted that the location of prisons such as CC1, CC2, CC3, and Siem Reap (situated far from urban centers) makes it very difficult for family members to provide prisoners with essential supplementary food. Travel costs combined with bribes make it next to impossible for some families to visit more than once or twice a year.

B. Bribes for recreational time

Prison guards have asked prisoners to pay for recreational time. In Takhmao prison, new prisoners were worst off, with some of them not allowed out of their cells for one month because they did not pay. According to interviews, prisoners in Battambang were asked to pay 150 Baht to 300 Baht³⁶ (\$3.75 to \$7.50 US) to work as a cook or gardener, or if they want to stay out of the cell longer than the usual recreation time.

Conversely, interviews with prisoners and their family members as well as prison staff, have revealed that some prisoners at CC1 have paid prison guards 2000 to 3000 Riel (\$0.50 - 0.75 USD) per day to be permitted to remain outside their cells for up to seven hours a day. Prison guards have also accepted bribes of \$20.00 to \$30.00 USD to allow convicts to remain outside their cells for the entire duration of their detention. The bribe money is paid by relatives when they visit inmates. This practice also occurs in other prisons, notably CC2, but with less frequency than in CC1.

³⁶ Battambang borders Thailand and the Thai Baht is the currency that is most used in this province.

C. Court-related bribes.

Prisoners and their families have repeatedly reported that prison guards – especially those at CC1, CC2 and Banteay Meanchey – demand bribes to transport prisoners to court to attend their own trials and for other events vital to the progression of their case such as being interviewed by the investigating judge.³⁷ As of the time of writing, the fee charged by guards for transportation from CC1 to the Phnom Penh Municipal Court is between \$5 and \$20 USD depending upon the ability of the prisoner to bargain down the price.

Interviews with prisoners and their family members in 2003 also revealed other types of bribes relating to prisoner's access to justice. For example, prison guards may lead families and prisoners to believe that they can influence court proceedings and accept bribes ostensibly in return for ensuring that the proceedings go smoothly. Guards have been reported to accept bribes to make certain that members of the court and clerks arrive at the hearing on-time, to secure a trial date, or to guarantee that necessary documents arrive at the courthouse. Bribes for such services cost from \$10.00 to \$20.00 USD.

D. Deficient prisoner budget

The official prisoner budget provided by the Ministry of Interior is calculated at a rate of 1000 Riel (0.25 USD) per prisoner per day. This amount is too low, barely adequate to provide for even the most basic needs of prisoners. This budget is meant to cover costs for prisoners' food, transportation, sanitation, cooking fuel (wood), water, electricity, and administration.

One of the most serious effects of this inadequate budget is that many prisoners are malnourished. This is especially true of inmates who are poor and cannot afford to purchase supplemental food or whose families are unable to visit. Prisoners who are malnourished are more vulnerable to infectious disease and thus, likely to fall ill more often.³⁸

The prisoner budget has remained unchanged since at least 1997, when LICADHO first began to monitor prisons. However, starting in 1999, transfer of the budget from the Ministry to the prisons has become more prompt which has moderately improved conditions. Prior to this, the provision of the budget to the prisons was often delayed, forcing prison directors to borrow money on the private market or buy food from shops on credit at exorbitant prices. It was prisoners who felt the effects of this system the most harshly through reduced food rations.

While the budget transfer is now timelier than in the past, LICADHO has received complaints from prison directors that the only way to ensure that the funds arrive on time is to bribe officials at the Accounting Department of the Ministry of Interior. The process of allocation and transfer of funds is not transparent, compounding this problem. Furthermore, Prison Directors in, or near, Phnom Penh travel in person

³⁷ For more information on this subject see the forthcoming LICADHO report on trial rights.

³⁸ For more information on the incidence and impact of malnutrition in prison see *Human Rights and Cambodia's Prisons: 2002 & 2003 Health in Prisons Report*, (LICADHO, 2004).

each month to collect the budget in cash. Prison Directors from more distant provinces travel to Phnom Penh each quarter. As, even in the provinces, bank transfers are now reliable in Cambodia, this is an unnecessary administrative measure. Transporting the budget in cash is risky and the cost of this travel is deducted from the prison budget.

RECOMMENDATIONS

- 1) *Allocate more resources to the Prison Department:* The Royal Government of Cambodia should allocate more resources to the Prison Department in order to ensure that the prisoner food budget is adequate. Additional funds should also be provided to raise the salaries of prison staff. This would reduce the incentive for staffs that are poor to ask for bribes.
- 2) *Regularize the distribution of funds:* Funds should be provided to prisons on time and should be distributed through the banking system.
- 3) *Perform regular independent audits:* Independent external audits of the prison budget should be conducted regularly in order to detect and eliminate corruption within the Finance Office.
- 4) *Monitor and censure prison staff:* The Prison Department should monitor prison staff, especially guards, to ensure that they do not accept or demand bribes from prisoners and their families. Prison staffs that are caught accepting or demanding bribes should be censured.
- 5) *Detain prisoners close to their families:* The Prison Department should make strong efforts to detain prisoners in detention centers closest to their families.
- 6) *Facilitate liberal access to prisons and inmates:* The Prison Department and Prison Directors at each prison should ensure that lawyers and human rights defenders are not prevented from visiting prisoners, and that family members are able to visit freely without having to pay bribes.

5. Torture

Torture is one of the gravest violations of prisoner rights documented by LICADHO.³⁹ Torture occurs in police custody after the arrest of criminal suspects as well as after suspects have been transferred into prison custody.

Figure 5 (below) compares the number of prisoners who reported being tortured in police custody or in prison from 1999 to 2003. It must be emphasized that it is extremely difficult to accurately quantify instances of torture due to problems of self-censorship and limited access to possible torture victims. Victims may refuse to talk about abuse because of fear of reprisal, shame, or psychological problems caused by torture. In some cases, victims are specifically warned by police or prison officers not to tell rights workers about torture they suffered. In addition, LICADHO interviews with prisoners are usually not private, but conducted with prison staff listening, and in some cases prison monitors and medical staff have been prevented from interviewing certain detainees. In 2002, this was particularly true in the case of members of the Cambodia Freedom Fighters.

The culture of impunity for officials accused of torture may also affect victims' willingness to report abuse. When weighing the likelihood of success in bringing perpetrators of torture to justice, against the greater likelihood of reprisal from prison guards for reporting incidences, torture victims may feel that the safest alternative is to not report such crimes.

All this leads to systemic under-reporting of the problem.

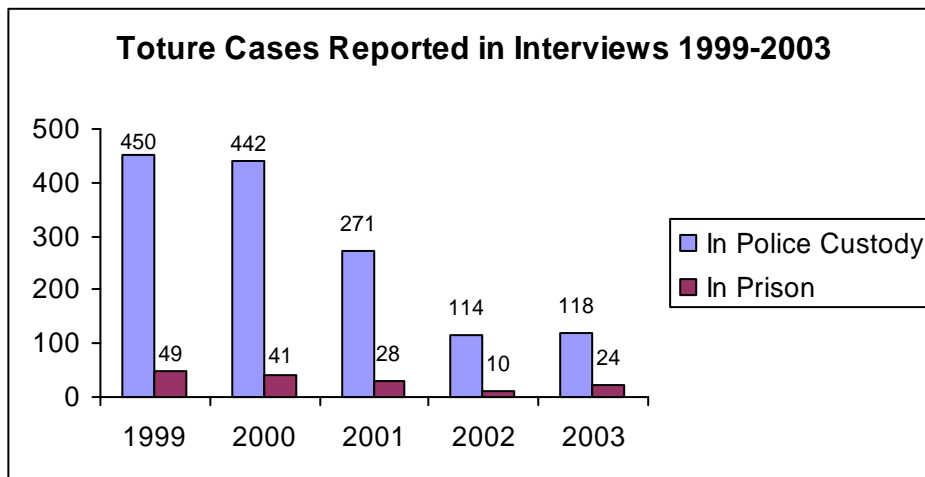


Figure 5: Cases of torture reported to LICADHO staff from interviews with pre-trial detainees and convicts for the years 1999-2003. Please note that the statistics refer to the year that the torture was reported, which is not necessarily the same year as the torture actually occurred. For various reasons including fear or trauma, torture victims may wait lengthy periods before disclosing the abuse.

Although the graph shows an apparent reduction in torture over recent years –

³⁹ For further details on this issue see *Report on Torture in Police Custody in Cambodia*, (LICADHO, 2003).

especially in police custody – it is unclear whether the incidence of torture is really decreasing, or whether prisoners have become more reluctant to divulge it. As noted above, there are reasons why prisoners may not disclose torture, and the real level of torture is almost certainly higher than reported. While human rights education for police and prison officers may have had some positive impact in discouraging torture, there is little reason to believe that the police have significantly reduced their use of torture. Several key factors which contribute to torture – such as *incommunicado*, detention without access to lawyers or human rights workers, and non-persecution of police torturers – remain the same.

A. Torture in police custody.

LICADHO is deeply concerned that torture continues to be used by the police on a regular basis, particularly to elicit confessions from criminal suspects, but also to extort money from them or as a form of rough justice. In interviews conducted by LICADHO in 2002, 114 inmates reported having been tortured in police custody. In 2003, 118 cases of torture were reported. (See *Figure 5* above)

The risk of torture of arrested persons is increased by the fact that they are often detained in police stations *incommunicado*, without access to family members, human rights workers or lawyers. Unlike prisons, police stations are generally closed to outsiders and there is little or no opportunity for independent scrutiny of conditions of detention.

Poor treatment of detainees who have been tortured while in police custody:

Some detainees arrive in prison after having been tortured at the hands of police during their arrest. While this torture cannot be blamed upon prison staff, the treatment of these torture victims in prison raises critical human rights issues. Torture often carries long-term physical and psychological effects which can be further compounded by lack of adequate medical and other care in prison. Furthermore, the right of these torture victims to judicial redress may be compromised by other violations of their rights in prison, for example, by not being permitted to attend their trials to testify.

RECOMMENDATIONS

- 1) ***Detail and report injuries upon arrival in prison:*** Prison Procedure 1.3.3 of the updated version of 2003 states that new inmates must be given medical examinations by prison medical staff upon arrival, and any injuries sustained prior to admission must be photographed, reported to the Prison Chief and recorded on the admission documentation prior to being placed in a cell. This procedure should be amended to add that serious injuries or information from the inmate about torture must be reported to the prosecutor. Failure to adhere to these procedures should lead to disciplinary sanctions.
- 2) ***Eliminate incommunicado detention in police custody:*** The Royal Government of Cambodia should eliminate the practice of 48-hour (and as

long as seventy-two hours)⁴⁰ *incommunicado* detention in police custody and permit detainees to have access to lawyers, family members, and human rights defenders as early as possible after their arrest.

- 3) ***Draft safeguards against torture in the criminal procedure code:*** In conjunction with local and international organizations, the Royal Government of Cambodia should include in the new draft criminal procedure code practical safeguards against torture so as to provide explicitly for regular, guaranteed access to police stations by detainees' families, lawyers and human rights defenders.
- 4) ***Establish an independent complaints body:*** The government should establish an independent body to receive and investigate complaints against police and other law enforcement personnel, as recommended by the UN Committee Against Torture.
- 5) ***Refuse uncorroborated confessions:*** Judges, in accordance with Cambodian criminal law and with Article 38 of the Constitution, should not accept uncorroborated confessions, or confessions obtained in police custody for which a detainee alleges torture as evidence against an accused. Further, judges must investigate such allegations and prosecute where there is adequate evidence.

B. Torture and prohibited use of force

The amount of reported torture committed by or with the acquiescence of prison guards has remained relatively low for several years, although by no means has it been eradicated. In 2002, ten prisoners reported having been tortured in prison. This indicates a slight drop compared with previous years. (See *Figure 5* above) In 2003, twenty-four cases of torture in prison were reported.

Torture is used as punishment:

Torture appears to be used in prisons primarily as a punishment for alleged breaches of discipline or security, particularly escape attempts, by inmates. The use of torture as a punishment violates the Ministry of Interior's Prison Procedures, Cambodian criminal law and international law.

Case-study 2: An Unsuccessful "Success Story" (Battambang)

In July 1993, the former Chief of Prison Guards at Battambang prison, Tem Seng, was arrested by UN police. In November of the same year, he was tried and convicted in Phnom Penh for the torture of an inmate in February 1992. To punish a prisoner who attempted to escape the prison, Tem Seng tied him to a tree, and ordered two prisoners to place rubbish around the prisoner for a two-meter radius. According to the victim, Tem Seng himself set the rubbish on fire. When the man screamed, Tem Seng had the fire extinguished and the prisoner taken to his cell. After a week the

⁴⁰ A 2001 amendment of the 1993 Law on Criminal Procedure allows for the forty-eight hour maximum police detention period to be extended by a further twenty-four hours. The extension only applies in certain circumstances, including that a prosecutor must issue written approval for it.

prisoner was taken to hospital for treatment of his burn injuries, where he remained for one month.

Tem Seng was sentenced to one year imprisonment, ordered to pay 200,000 Riels compensation to the victim,⁴¹ and according to government officials, served his sentence in a Phnom Penh prison. Despite his conviction, however, he resumed his job at Battambang prison where he served as Deputy Prison Director until 2003. Human rights organizations pointed to his continued employment at the same prison where he committed torture as an example of the government's lack of willpower to punish and prevent torture. After his case was raised by the UN Committee on Torture, Tem Seng was officially "retired" from his position in July 2003.

New inmates may be particularly vulnerable:

New inmates may be particularly vulnerable to torture in prison. Prisoner interviews conducted over several years have revealed a practice in Kompong Som prison in which new prisoners are beaten or kicked soon after their arrival at the prison, apparently in an attempt to 'soften them up' and make them submissive to prison guards. This abuse is committed by guards or by other inmates allegedly acting on the instructions of guards. In 2001, LICADHO raised this issue with the prison director, who promised to put an end to the practice. But information collected in 2002 and 2003 indicates that abuses continued. It is not clear how widespread this practice may be in Cambodian prisons, but similar abuse of new prisoners has been reported in at least one other prison.

Inmates may be forced to commit acts of torture against each other:

As noted above, torture is sometimes committed by other inmates acting on behalf of prison guards. Such abuses are encouraged by a semi-formal hierarchy within many prisons, in which inmates deemed to be "trustworthy" are given titles and positions of power - such as "chief of cell" or "inmate in charge of discipline." Prison guards' use of other prisoners to commit torture is apparently intended to allow the guards to deny participation in or knowledge of the abuse more easily. As is detailed further below however, prison officials can be held guilty of torture in which they are complicit, even if they are not physically involved in the act.

Prohibited use of force:

Cambodian law limits the use of force.⁴² UNTAC Article 12.1 strictly prohibits "cruel, inhuman, or degrading treatment" and goes on to specify shackling or isolation among those prohibitions.⁴³ Despite this, LICADHO received reports from released prisoners that shackles were used on three prisoners in CC3 prison in 2002. These prisoners had previously complained in court that they had been beaten by prison guards. When LICADHO went to investigate the situation, the prison director denied that shackles were being used but prevented LICADHO staff from inspecting the grounds. LICADHO was permitted to interview the three prisoners, but the interviews were observed by prison guards and the prisoners claimed that the

⁴¹ Trial proceedings, *Jugement no. 81 du 5 novembre 1993. Affaire pénale no. 671 du 22 septembre 1993.*

⁴² *Prison Procedures* supra note 18, Procedure No. 21(3) permits a minimal use of force only to minimize damage and injury and respect and preserve human life, and where no other means of restraint is available however, batons and handcuffs are the only permissible means of restraint. When force is used, police officers and prison workers must ensure that there is access to medical care for the injured detainee.

⁴³ *Prison Procedures* *ibid*, affirms this, and adds other prohibitions.

shackles were not being used.

LICADHO also confirmed that shackles were used on nine prisoners in Kampong Thom. The prisoners shackled were among a group of twenty who had attempted to escape on 12 July 2003. Prison guards handcuffed the nine, shackled their legs and left them for eight days in the prison hall, unshackling them only to eat. The shackles were not removed for bathing or defecation. The prison hall has no walls and at night, the nine slept without mosquito nets or blankets. After LICADHO intervention, the prisoners were unshackled and some were sent to CC1 and CC3 prisons. However, on 1 December 2003 another group of 7 prisoners, accused of breaking a wall to escape, was shackled under the same prison hall and under the same inhumane conditions for 8 days. They were released after they promised to behave well.



Prison hall in Kampong Thom where the nine prisoners were shackled

C. Suspicious deaths

Due to lack of proper autopsies and other factors, it is difficult to determine whether deaths in prison or police custody might be caused or related to torture or other physical violence. However, in at least one case in 2002 (see *Case study 4* below) the death of a prisoner was highly suspicious.⁴⁴ There was also one case of prisoner suicide in 2002, and two in 2003.

Case-study 3: Suspicious Death in Siem Reap

A male prisoner died just after midnight on 6 February 2002 in the provincial hospital of Siem Reap five minutes after he was brought there from the Siem Reap prison. The family was suspicious and filed a complaint with human rights organizations, which jointly started an investigation (among them LICADHO).

The wife of the deceased said her husband sent her a note on 2 February 2002, asking her to buy medicine for him as he was in pain. The next day when she went to visit him in the prison, she saw that his face was red, his eyes were bloodshot and the right side of his face was swollen. He complained of pain in his chest. The morning after he died, his family arrived at the hospital together with the village chief and was told that he died because of syncope (a form of fainting; this symptom can be caused by a heart attack or suffocation). The family saw blue marks on his head/face, chest and legs. The wife claimed that her husband was never sick before he went to prison, except for having malaria three years previously. In an initial interview, the village chief claimed to have only seen the head of the body which had blue marks. He also said the deceased was a strong person. When interviewed a second time he denied having seen the head or any injuries.

When human rights organizations interviewed a provincial hospital doctor on 27 February 2002 he stated that the man died from syncope and that he had not been beaten up, rather had marks of traditional Khmer massage performed with a coin.

⁴⁴ *Prison Procedures* *ibid*, Procedure No. 18(3) requires all prisoner deaths to be reported to the Head of Prisons. See also *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Adopted by General Assembly resolution 43/173 of 9 December 1988, principle 34.

He did not see the man in prison because he was not informed about health problems. He said he did not make a report because his wife was ill and he didn't have time to do so.

The wife of the victim filed a complaint with the prosecutor on 24 February 2002 who ordered the police to investigate. Different statements turned up to support that the death of the prisoner was from disease:

1. A statement of a fellow prisoner which claimed that other prisoners helped the sick prisoner with coin massage when he was fainting, signed on 5 February 2002 (the same day the incident occurred);
2. A report of the prison guard about the fainting of the prisoner at 11.00 p.m. to the prison director and the referral to hospital, signed on 5 February 2002;
3. A report thumb-printed by all the prison guards about the transfer of the fainted prisoner to the hospital on 11.00 p.m. and pointing out the fellow prisoner as witness, signed on 5 February 2002;
4. Official reports of the prison director to the prosecutor and the prison department with signature and stamp of the provincial hospital doctor, signed on 6 February 2002; and
5. An official report of the provincial hospital doctor about the cause of death, signed on 6 February 2002.

It seems improbable that all these statements were signed on 5 February 2002, late at night, almost during the time of the incident, and that on 6 February 2002 the prison director had already prepared all the official documents, with the signature and an official report of the hospital doctor, who on 27 February 2002 claimed he did not have time to write the report.

Unfortunately LICADHO was informed too late about this death in prison. As the body was cremated, it was impossible to make any conclusion about the cause of death. However, that the family saw bruising on the body, that testimonies from released prisoners claim it is common in Siem Reap prison to be beaten by the Chief of Cell, and that evidence gathered by officials could easily have been produced as a cover-up, is highly suspicious. It is clear that in such a case there is a need for an independent doctor to perform an autopsy on the body.

The prosecutor decided to drop the case claiming that he was unable to find enough evidence to prosecute the case in court.

D. Prison officials' indirect role in torture

Torture is defined by the United Nations as:

...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain

or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁴⁵ [Emphasis added]

A key element to the UN definition of torture is the implication of the state in the abuse, directly or indirectly, whether through deliberate acts or by turning a blind eye. Therefore, public officials and others acting in an official capacity (prison guards, people appointed by prison guards, high-ranking public officials, etc.) are guilty of committing torture even when they are not physically involved in the act. Thus prison guards, for example, who order inmates to torture other prisoners are themselves guilty of violating the Convention Against Torture. Cambodian law mirrors this standard and provides that those who conspire in the physical and psychological abuse of detainees shall also be punished.⁴⁶

E. Impunity and incidence of torture

Cambodian criminal law and prison regulations clearly prohibit torture for any reason, including for punishment.⁴⁷ However, no prison official has been convicted of torture for a decade. Indeed, Tem Seng, who was convicted and then allowed to return to his prison job (see *Case study 3* above), is the only such conviction of a prison official ever recorded. Disappointingly, a recent test case in Kampong Cham resulted in acquittal despite substantial evidence against the accused. A summary of this case follows:

Case-study 4: A Test Case Fails (Kompong Cham)

On August 30, 2002, five Kompong Cham prison guards were put on trial for the torture of five prisoners in December 1999. The torture, inflicted as punishment upon the victims for attempted escape, was conducted in full view of other inmates. The guards inflicted extensive abuse, including punching and kicking the victims, beating them with the wooden handles of a hoe, and hitting them with a broom, and throwing rocks at them. Following this, some victims were deprived of medical attention, and all were stripped of their clothing and made to sleep without mattresses, blankets or mosquito nets for two weeks. For one month they were fed reduced rations and confined to their cells twenty-four hours a day. One month later, four of the inmates still had wounds or scars.

If they had been found guilty, the prison guards would have been punished with a prison sentence of one to five years under Article 57 of *UNTAC*. However, despite victim and eye witness accounts and medical evidence of the beatings, all five officials were acquitted by the Kompong Cham provincial court. The judge recommended internal disciplinary action against the guards, an explicit

⁴⁵ *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, art. 1.

⁴⁶ This is entrenched in, *Constitution* supra note 13, art. 38, which states: "Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to law."

⁴⁷ *UNTAC* supra note 24 art. 57 imposes a sentence of one to five years imprisonment on public agents, including police and military, who deliberately infringe the rights of Cambodian citizens to be free from physical abuse; art. 41 imposes sentences ranging from two months to ten years on anyone who voluntarily strikes someone resulting in injury, depending on the extent of injury and whether a weapon was used.

acknowledgment that they had committed wrongdoing. To date, no such action has been taken, three of the guards continue to work at the prison, and the other two have quit their jobs. The UN Special Representative to Cambodia criticized this decision in his 2002 report, pointing to it as emblematic of a culture of impunity in Cambodia.

Lack of commitment to fight impunity by the government:

The Royal Government of Cambodia has failed to demonstrate that combating torture is a priority. For example, the government delayed for nine years the submission of a required report on the situation of torture in the country to the UN Committee Against Torture. When the government finally submitted the report, a Cambodian delegation failed to appear to answer questions from the Committee at its hearing on 29 April 2003.

Ongoing impunity in cases of torture is indicative of the government's lack of concern for the issue. In failing to hold perpetrators of torture accountable for their actions, the government sends a clear message to both perpetrators and victims that torture is acceptable. This culture of impunity is then cyclically reinforced by the victims' reluctance to report torture for fear of reprisal.

In order to reduce torture in Cambodian prisons further, it is important that LICADHO and other human rights organizations be able to continue to monitor the situation closely. In particular, the organizations should be allowed to conduct private and confidential interviews with prisoners to ensure that inmates feel as safe and comfortable as possible in reporting violations, without fear of reprisals from prison staff. LICADHO monitors still continue to face problems in securing confidential interviews with prisoners.

RECOMMENDATIONS

- 1) ***Authorize private interviews between prisoners and human rights organizations:*** The Ministry of Interior Prison Department should authorize human rights organizations to conduct private interviews with pre-trial detainees and convicts in prisons.
- 2) ***Investigate all allegations of torture and suspicious deaths:*** The prosecutor must investigate all allegations of torture and suspicious deaths of prisoners and detainees - in police stations, prisons, hospitals, or elsewhere in state custody.
- 3) ***Establish an independent complaints authority:*** The government should establish an independent body to receive and investigate complaints against police and other law enforcement personnel.
- 4) ***Train prison staff on minimum standards of treatment:*** The Royal Government must ensure that all staff in the prison system receives training on the minimum standards of treatment of prisoners enshrined in Cambodian and international law.
- 5) ***Instruct prison directors to stop practice of beating and torture of new***

inmates: The Prisons Department should instruct all prison directors that the practice in some prisons of torturing or beating new inmates upon arrival must be stopped. Failure to do so should lead to disciplinary sanctions against directors.

- 6) *Abolish prisoner against prisoner discipline:* The Prisons Department should direct all prison directors to ensure that the practice of certain prisoners being given titles and powers, particularly with regard to disciplining of other prisoners, is abolished. Failure to do so should lead to disciplinary sanctions against directors.
- 7) *Hold guards and prisoners accountable for mistreatment:* Prison guards must be held accountable for the mistreatment of prisoners by other prisoners, unless they can demonstrate they have taken all measures to protect prisoners from such violence. Prisoners who are perpetrators of torture must also be disciplined and prosecuted.
- 8) *Train professionals to identify ill-treatment and torture post-mortem and report it:* The government, NGOs and international donors should support the training of doctors to conduct post-mortems, in order to determine the cause of deaths in custody. Medical staff conducting post-mortems should be independent from police or prison staff and be lawfully obliged to report any information indicating torture or ill-treatment to the Prosecutor. Lawyers should also receive training in how to identify cases of torture, how to work with victims, and how to proceed with investigation and prosecution.
- 9) *Prosecute and sentence officials guilty of torture:* The judiciary must prosecute and sentence officials who are guilty of torture as well as when investigation demonstrates that a prison official has caused or permitted the death of an inmate, either through torture or neglect of medical/nutritional needs.

ANNEX 1: Related LICADHO Publications

2004

Human Rights and Cambodia's Prisons: 2002 and 2003 LICADHO Health Report (2004)

2003

Torture in Police Custody in Cambodia: LICADHO 2003 Briefing Paper (2003)

2002

Human Rights and Cambodia's Prisons: 2001 Report on Prison Conditions (2002)

Human Rights and Cambodia's Prisons: 2001 LICADHO Health Report (2002)

Innocent Prisoners: a LICADHO report on the rights of children growing up in prisons (2002)

Other

Cambodian Prisons in 1999: Conditions and Human Rights Violations (2000)

Cambodian Prisons – Some Human Rights Issues (1998)

Cambodian Prisons May 1997 – Some Human Rights Issues (1997)