



HUMAN RIGHTS AND CAMBODIA'S PRISONS: **PRISON CONDITIONS 2004**

REPORT
December 2005



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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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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.

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Executive Summary

Since 1997, LICADHO has issued reports on human rights in Cambodian prisons, highlighting the most serious human rights concerns and recommending avenues of change. As an independent non-governmental organization, LICADHO has several key aims:

- Monitor Cambodian prisons and prisoners' rights.
- Disseminate relevant high-quality non-partisan information.
- Lobby for positive reform.

It is our hope that this report will be used by government and prison officials, human rights advocates, researchers, media, aid donors and legal professionals as a tool to identify existing problems, improve prison conditions and to promote prisoners' rights.

New Issues in 2004

Alternatives to Sentencing: Community Work

Various drafts of the Penal Code and Criminal Procedure Law that are under review suggest the introduction of community service. This alternative to fines or imprisonment would provide a more humane and positive way for certain convicts to carry out their sentence. Community service would reduce overcrowding in prisons, save the government money and allow convicts to develop life skills. It would be particularly beneficial for young and first-time offenders.

Recommendations

1. Cambodia should finalize its Penal Code and Criminal Procedure Law to include community service.
2. Limit community service eligibility to first-time offenders or convicts sentenced to less than three years jail.
3. Promote community service as an alternative way to rehabilitate juvenile delinquents and first-time offenders.

Prison Escapes

LICADHO recorded 21 prison escapes in 2004. Overcrowding and poor living conditions increased the incentive for prisoners to try to escape, while the negligence of guards gave them the opportunity.

Recommendations

1. Reduce overcrowded prison conditions to decrease the incentive for escapes.
2. Provide better training to prison guards to improve their professionalism and thereby limit the opportunity for escapes.

Deaths

LICADHO recorded 58 prisoner deaths in prisons and hospitals during 2004. Most deaths were caused by diseases such as HIV/AIDS, malnutrition, lung disease, tuberculosis and malaria. These diseases were either contracted before incarceration and heightened during

imprisonment, or developed during prison life. Several prisoners complained about the lack of medical help provided when they were sick.

Recommendations

1. Take preventative measures against prisoner deaths such as providing adequate food, water and medical treatment to sick prisoners, and ensuring hygienic living conditions.
2. Increase the access to doctors, hospitals and medication for sick prisoners.
3. Provide nutritious meals to avoid malnutrition and to decrease the level of disease in prisoners.

Prison Population

The number of prisoners has increased in recent years, resulting in overcrowding. Little action has been taken to renovate or build new prisons to house the growing number of prisoners. In real terms, this means cells often hold 20-30 inmates in cramped, hot and unhygienic conditions. Overcrowding threatens the health and safety of inmates, and is a contributing factor in many human rights abuses within prisons

Recommendations

1. The Ministry of Interior's Prison Department should seek increased funding from the Government to ensure that prisons have the proper capacity to accommodate prisoners.
2. Expand Battambang prison as a top priority.
3. Adjust budgets so that the capacity of a prison is proportional to the province's population.
4. The Ministry of Interior and prison officials should work with civil society to actively seek out alternative methods and resources to improve prison conditions.
5. Pre-trial detainees should be separated from convicted prisoners.

Vulnerable Groups

The most vulnerable groups within prisons are women, innocent children, minors and pre-trial detainees.

Women in Prison

Women are particularly vulnerable to coercion (including threats of violence, rape and sexual assault) in prison as many are incarcerated in prisons cells surrounded by cells holding male prisoners. Also, pregnant or nursing mothers are denied appropriate medical attention and the nutrition they need to stay healthy.

Recommendations

1. Women must be housed in cells that are a safe distance away from male convicts.
2. Policies must be adopted to protect incarcerated women from sexual assault and rape.
3. Pregnant women should be provided with medical services to allow the delivery of their babies in the prison, or arrangements made to give birth in a hospital, with follow up care.

Innocent Children

According to Cambodian law, children under the age of six are allowed to live with an incarcerated parent. These children generally lack basic rights such as education, health and

nutrition. In 2004, LICADHO's Adopt a Prison project, with the aid of donors and NGO's in various provinces, provided additional food and clothing to 25 innocent children and their mothers. The project also conducted parenting skills training to incarcerated mothers.

Recommendations

1. Children and their mothers should be housed in separate parenting units, away from male prisoners.
2. Children should be given the food, medical care and educational opportunities they need for proper physical and psychological development.
3. The Government, NGO's and donors should explore options to allow children to attend pre-school or primary school while staying with their mothers in prison.
4. The Government should provide more funds to care for this vulnerable group of innocent children who due to unfortunate circumstances are living with a parent in prison.

Minors in Prison

There is currently no minimum age of criminal responsibility in Cambodian law, which means in theory a very young child can be sent to prison. Furthermore, no separate juvenile justice system exists to try minors. At the present time, minors are housed with adults and in some cases allegedly tortured in custody and prisons. Minors are not provided the option of rehabilitation centers or offered community service as an alternative to incarceration.

Recommendations

1. Add a provision in the Penal Code stating that children under the age of 13 cannot be tried under the law or incarcerated.
2. House minors and adults separately.
3. The Prisons Department should provide additional food, medical attention and education to minors, who are still developing physically and mentally.
4. Develop laws for children in conflict with the law, including the creation of a special children's court, separate sentencing laws for children and the introduction of non-custodial sentencing.

Pre-Trial Detainees

There was an overwhelming number of pre-trial detainees (both legal and those kept illegally over the statutory six month limit) housed in prisons during 2004. Subsequently, there was significant overcrowding in prisons which needs to be remedied. Various officials have suggested reasons for excessive pre-trial detention that include judges having heavy workloads, a lack of funds for transporting prisoners to trial and a lack of time for investigating judges to complete investigations.

Recommendations

1. The Government should provide the prison staff with a larger budget for transporting prisoners to court.
2. Appoint new judges and provide the means for more efficient investigations.
3. Improve or increase facilities so that pre-trial detainees are housed separately from convicted prisoners.

Corruption

Corruption impacts various aspects of prison life, including obtaining supplementary food or clean water, receiving family visits, having sufficient recreational time outside the cell and transportation to court.

Recommendations

1. The current daily 'ration' of 1,000 riel per prisoner must be increased to at least 4,000, to ensure that basic needs such as sufficient food and clean water are met.
2. Prison staff should be given increased salaries, thereby reducing the need for corruption.
3. Funds from the Ministry of Interior should be given to prisons on time and in full through banks so that prison staff are paid regularly and not relying on extra cash from prisoners.
4. Audit prison budget regularly to reduce corruption.
5. The prison department should monitor prison staff, especially guards, to ensure that they do not accept or demand bribes from prisoners and their families.
6. Immediately stop the practice of demanding bribes for transportation to courts.

Torture

Torture continued to be a prevalent problem for Cambodian prisoners in 2004 and is one of the more grave human rights abuses reported to LICADHO. Reported cases of torture included prison guards forcing confessions from prisoners through beating and shackling, and the practice of new inmates being beaten as a cruel form of prison initiation. There were also reports of prisoners torturing fellow inmates and of guards using prisoners to discipline fellow inmates using torture.

Recommendations

1. Prison staff should be better trained and must abide by the minimum standards of treatment stated in Cambodian and international law.
2. The Prison Department should instruct prison guards to eradicate the practice of certain prisoners being given powers to discipline other prisoners.
3. Detail and report injuries upon arrival in prison - as is required under current prison procedures but not always done - and provide this information to human rights organizations.
4. Authorize private interviews between prisoners and human rights organizations.
5. Guards and prisoners who perform torture must be held accountable for their actions.

Introduction

This LICADHO 2004 report is an update of the 2002-2003 Prison Conditions report.

Since LICADHO began its Prison Project in 1996, prison visits have been made repeatedly in order to monitor, promote and defend the rights of accused and convicted detainees.

Methodology

The findings of this report are a result of joint efforts between the LICADHO Prison Project and the Medical Team. A total of 2,892 interviews were conducted by LICADHO in 2004. LICADHO prison researchers made four visits a month to 18¹ out of the 26 prisons throughout Cambodia².

Table 1: Number of prisoners and pre-trial detainees who were interviewed in 2004 in the 18 prisons that LICADHO visits

Prisoners	Males		Females		Total
	<i>Pre-trial</i>	<i>Convicted</i>	<i>Pre-trial</i>	<i>Convicted</i>	
January	148	70	18	4	240
February	197	57	18	0	272
Mars	202	53	10	1	266
April	140	53	12	0	205
May	209	47	15	1	272
June	179	47	21	4	251
July	137	91	6	6	240
August	143	69	18	6	236
September	160	52	14	1	227
October	142	42	13	0	197
November	128	51	22	7	208
December	199	52	27	0	278
Total	1 984	684	194	30	2 892

It is important to note that this report represents a limited snapshot of the conditions and human right violations within prisons in Cambodia, for reasons explained below.

LICADHO prison researchers arranged all prison visits in advance. This practice generally ensured cooperation by prison officials. However, advance warning may have provided prison officials the opportunity to conceal certain violations. Furthermore, LICADHO prison researchers had limited access to certain prisons. This disturbing trend will be reported more fully in the 2005 report.

Interviewees were selected by prison researchers using the prison register, which is available at each prison, but interviews were rarely conducted in private. The prison researchers used a standard questionnaire to interview prison inmates. The questionnaire allowed prisoners to

¹ Police Judicial (PJ), Correctional Center 1, Correctional Center 2, Tra.Plong (T5), Toul Sleng, Takmao, Kompong Som, Kompong Speu, Kampot, Kompong Chhnang, Kompong Cham, Kompong Thom, Pursat, Battambang, Banteay Meanchey, Siem Riep, Svay Rieng, Koh Kong.

² LICADHO only monitors those prisons which are in close proximity to its Phnom Penh office and 12 provincial offices.

communicate the challenges experienced in prison and it permitted LICADHO to monitor human rights abuses.

The questionnaire was divided into five sections³:

1. *Introduction*: What prison the prisoner is housed in, the date of interview and date of release.
2. *Biography*: General biographical information including profession, gender, weight, name of parents and number of children in prison.
3. *Arrest*: Place of arrest, description of the arrest, prisoner's narrative, whether police asked for a bribe and the charged offense.
4. *Detention*: The date of detention, whether there has been mistreatment and whether the person has a legal representative.
5. *Trial*: Trial dates, whether the court asked for a bribe, the court's decisions, the offense given, the sentence and name of attorney.

The information gathered at the interview is integral to properly assessing the scope of human rights abuses in prisons, whether it pertains to health problems, torture, overcrowding, bribes, access to legal representation, pre-trial detention over the statutory limit or securing a trial date.

Researchers conducted interviews orally using this questionnaire and recorded inmates' responses on the forms. In some cases, the interviewee may have been prevented from honestly replying to researchers because prison guards or other prisoners were present. Confidentiality could not be secured or guaranteed.

In some cases, LICADHO conducted follow up visits with prisoners who had been released to gather further information on prison conditions. This practice has not become a regular procedure for LICADHO yet, but it may in the future. It is mainly adopted when LICADHO staff suspect the former inmate was a victim of torture or abuse but was not willing to discuss the matter while in prison.

Finally, for this report LICADHO also gathered information obtained through occasional interviews with prison directors or guards, lawyers and prisoners' families.

³ See Annex for full questionnaire.

New Issues in 2004

Alternatives to Sentencing: Community Service

At the time of writing this report, the practice of community service did not exist in Cambodian law. Nevertheless, a movement to legislate provisions on community service into the revised draft Penal Code and Criminal Procedure Law has begun.⁴ The drafting and implementing of this law would be beneficial as an alternative form of punishment for certain prisoners. In addition, the UN Standard Minimum Rules for Non-Custodial Measures (article 1.5) recommends for States to develop non-prison sentencing options within their legal systems to reduce the use of imprisonment and provide rehabilitation.⁵

Under a non-custodial sentencing option, a person who would otherwise go to prison has the option to do work that is beneficial to society. Generally, most countries suspend the prison sentence on condition that the accused perform a certain number of hours of community service at a given institution. Some countries such as Canada,⁶ Zimbabwe⁷ and South Africa⁸ have legislation which empowers the courts to issue community service orders without the need to suspend the prison sentence. Providing a community service alternative in Cambodia would be highly beneficial for prisoner's rights.

There have been many drafts of the Cambodian Penal Code that attempt to include community service. The latest version includes the following points:⁹

- The duration of community service is between 30-200 hours over a period of not over a year (article L.1213-1). Minors are also eligible for community service as an alternative, but only up to 100 hours (L. 1261-3).
- Where the accused is to receive a jail sentence and the maximum is less than or equal to three years, the court can require community work. The purpose of community service is unpaid community work for the benefit of the State or for a province, municipality, district, public legal entity or non-governmental organization (article L. 1213-1).
- The declaration of community service can only be pronounced if the accused agrees to it (L-1231-6).
- The court that determines the community service hours shall also fix the time period in which to complete the community service (L-1231-7). The prosecutor shall determine the community service entity that will benefit from the services and will supervise that the service is completed. (L.1231-8)
- The community service is also to be subject to the Labor Laws, specifically those that concern work at night, hygiene, security and work for women. (L.1213-3)

⁴ Michel Bonnieu, *Projet de nouveau Code Penale, Commenté et Comparé* (Funan, Phnom Penh) 2005.

⁵ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990.

⁶ See article 18(1) and following 'Work Releases' of *Corrections and Conditional Release Act, 1992, C.20 (CCRA)* which states: "work release" means a structured program of release of specified duration for work or community service outside the penitentiary, under the supervision of a staff member or other person or organization authorized by the institutional head.

⁷ See Zimbabwe's Criminal Procedure and Evidence Act; also look at Justice P. Garwe, *Feasibility on the Introduction of Formal Non-Custodial Options into the Criminal Justice System of the Kingdom of Cambodia*, Consultant, United Nations Centre for Human Rights, January 1997.

⁸ See section 297(1)(a)(l)(cc) of the Criminal Procedure Act which allows for postponement or suspension of sentence subject to the performance without remuneration and outside the prison of some service for the benefit of the community. A person sentenced to community service has to perform such duties under the supervision or control of an organisation or institution which in the opinion of the court promotes the interest of the community.

⁹ Bonnieu, supra note 4.

Advantages to community service

Community service has a positive effect on the prison population and society in general. Firstly, it reduces the overcrowding of prisons and also saves government money that would have been used to maintain the prisoners. Secondly, the convict is contributing to society and may be developing skills for future livelihoods such as becoming an electrician, farmer or carpenter. Thirdly, community service programs offer first-time offenders and minors an opportunity to reform. By keeping them integrated within society, first-time offenders and juveniles can be properly rehabilitated by working and continuing to interact with the community in a positive way.

Recommendations

1. Cambodia must endeavor to finalize its Penal Code and Criminal Procedure Law and include a community service component. It can reduce overcrowding in prisons and be beneficial for youths and first-time offenders.
2. Community service should be used in limited situations. Prisoners eligible for community service should be first-time offenders or persons who are sentenced to less than three years in prison. Prisoners must also have a fixed place to live and the community service must be performed near that place. In cases where the convicted person fails to turn up, the courts can issue a warrant of arrest.
3. Community service benefits juvenile delinquents. Rehabilitation (as opposed to prison sentencing) is better for the emotional development and safety of minors.

Escapes in 2004

Incidents of escape in 2004

There were several escapes that LICADHO monitored or followed up in 2004. In total 23 prisoners escaped (21 male and 2 female) with 12 escapees being recaptured. Aside from the obvious desire for liberty, there were several other factors that contribute to these escapes: overcrowded prison cells, violence among inmates, regular beatings or discipline by prison guards, deteriorating health conditions, lack of food and opportunity (due to negligence of guards).

Case Study: Large Escape in Pursat

At around 4:30pm on July 4, a group of 16 pre-trial detainees and prisoners in Building B of Pursat Prison escaped by running out of the building when the prison guard opened the door to give them food. The prisoners jumped over the walls of the prison, with some injuring themselves on the barbed wire. The prison guard shouted that there was an escape in progress, and several other prison guards responded. Some of the escapees were re-captured on a nearby road, while others were caught hiding in houses around 300 meters away from the prison.

According to the Prison Director, the 12 re-captured prisoners were not tortured or beaten as punishment. He said he recognized the negligence of the prison guard.

However, according to a LICADHO prison researcher, 11 of the prisoners were tortured by other prisoners and prison guards and all the recaptured prisoners were confined to their cells for 15 days.

Prisoners in hospital

Several escapes occurred while a sick prisoner was hospitalized. It is important that security remain tight while a sick prisoner is receiving treatment. There is a danger that an increase in escapes from hospitals could be used as justification for reducing access to medical treatment, thereby compounding the human rights abuses against prisoners. Prison guards are employed to watch over prisoners and should remain vigilant.

Case Studies

Case 1: A female pre-trial detainee in Kompong Cham prison, charged with human trafficking, gave birth a month before she went to trial. She encountered various health problems and was transferred to a hospital to be taken care of by her husband. She escaped from hospital.

Case 2: In Kompong Chhnang, a male prisoner who was sentenced to 11 years for robbery and murder was sent to hospital for sickness. He escaped. This occurred in the third year of his sentence.

Case 3: A female detainee in Battambang was brought to trial. During the trial she fell unconscious in front of the judge. The judge suspended the trial and had the woman transferred to a hospital. The detainee was transferred to Battambang hospital, where her boyfriend came to visit and they escaped together.

Recommendations

1. Prison guards must remain watchful to avoid prison escapes.
2. When prisoners are sent to the hospital, security must remain high.
3. Escapes attempts must not be punished with torture.

Deaths in Prison

In 2004, there were 58 prisoners who died in prison or in hospital; all were men. The largest number of deaths was in Correctional Center 1 (CC1) with 22 deaths. Over the past few years, there has been an increase in deaths among inmates. In 2002, there were 43 deaths and 46 deaths in 2003.

Table 2: Deaths in Custody

Prison	2002	2003	2004	Total
P.J.	0	0	1	1
CC1	17	13	22	52
CC2	1	5	3	9
CC3 (T5)	0	2	2	4
Toul Sleng	0	0	0	0
Takhmao	1	2	3	6
Kompong Som	3	1	1	5
Kompong Speu	3	2	2	7
Kampot	3	2	1	6
K. Chhnang	1	1	2	4
Kompong Cham	0	3	3	6

Kompong Thom	0	3	2	5
Koh Kong	0	2	2	4
Pursat	0	1	2	3
Battambang	6	4	6	16
B. Meanchey	3	2	3	8
Siem Reap	4	2	1	7
Svay Rieng	1	1	2	4
Total	43	46	58	147

Out of the 58 deaths reported in 2004, the causes of death include

- HIV/AIDS
- Malnutrition
- Lung disease
- Tuberculosis
- Meningitis
- High blood pressure
- Hepatitis B
- Typhoid fever
- Asthma
- Malaria
- Suicide
- Starvation

LICADHO medical staff were often unable to ascertain whether diseases were contracted prior to entering prison or whilst in prison. However, most prisoners lose a significant amount of weight due to malnutrition which consequently makes prisoners more susceptible to contracting diseases.

HIV and lack of nutrition a cause of death within prisons

HIV/AIDS was a prevalent cause of death amongst prisoners in 2004, accounting for at least 10 deaths. It is also suspected that other prisoners, although not officially diagnosed, showed symptoms of HIV/AIDS such as an inability to eat, excessive weight loss, paleness, diarrhea and faintness.

Recommendations

1. Prisoners should have access to preventative health measures. Cambodian law and international norms require preventative measures to be taken to avoid the premature death of prisoners. This means that medical treatment should be given to prisoners with illnesses, and adequate food, water and hygienic living conditions should be provided.
2. Increase medical attention for sick prisoners. Access to doctors, hospitals and medication should be increased.
3. Nutritious meals should be provided to avoid malnutrition and disease in prisoners.
4. Deaths should be treated as suspicious until proven otherwise.
5. A program should be initiated to educate prison officers and health officers about early intervention to deal with disease.

Prison Population

The Growing Prison Population

Since 1996, the number of prisoners has increased substantially. The population of adult prisoners monitored by LICADHO has doubled since 1998, but the Government has done little to accommodate the growing population. Only in Kandal province is construction underway for a new prison.

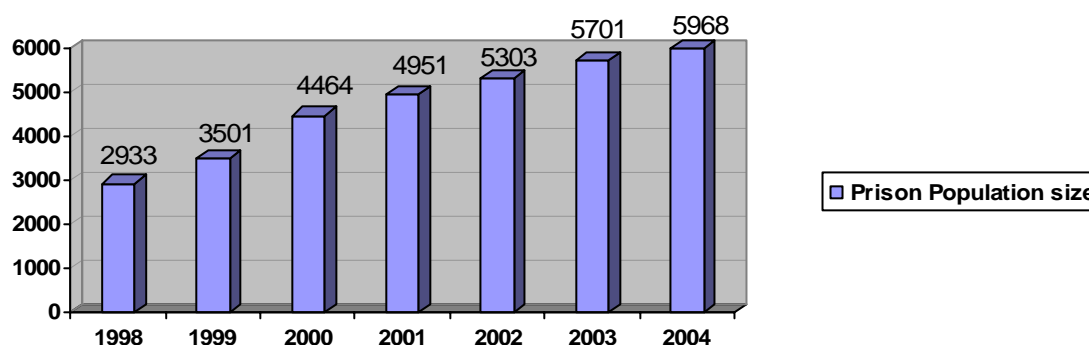


Figure 1: Increase in total of prison population of adults over the age of eighteen in 18 prisons which LICADHO has monitored since 1998.¹⁰

Gender balance and minors

The overwhelming majority of inmates are still men. Of the totals mentioned above, in 2004, 5,623 were men (94.2%), and 345 were women (5.8%). Out of the male inmates, 1,778 (30%) were pre-trial detainees and 3,845 (64.2%) convicts. From the women, 150 (2.5%) were pre-trial detainees and 195 (3.3%) were convicts. The majority of minors in prison were also predominantly male.

Table 3: Prison population of the 18 LICADHO-monitored prisons in December 2004

	Pre-trial	Convicted	Total
Male	1778	3845	5623
Female	150	195	345
Male (minors under 18)	162	157	319
Female (minors under 18)	4	5	9
Total	2094	4202	6296

Rate of prison population growth

While the prison population continues to grow, the *rate* at which the population has grown has decreased in recent years. Between 1999 and 2000 there was a 21.4% increase, while in between 2003 and 2004 there was a 4.7% growth rate.

¹⁰ The prison population over the year 2004 has steadily increased from January beginning with 5,442 prisoners. Note that this only accounts for male and female adults over the age of 18. According to LICADHO's statistics, there were 328 minor (male and female) within the prisons in December 2004.

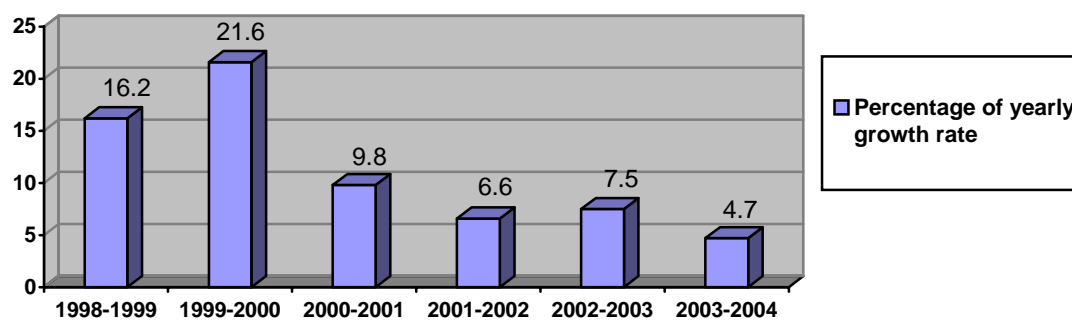


Figure 2: Annual growth rate of prison population 1998-2004

Prison Capacity and Overcrowding

As a result of the increasing prison population, and extremely limited expansion of prison capacity, overcrowding is a tremendous problem for the Ministry of Interior's Prisons Department. There are various prisons that are seriously overcrowded, giving rise to problems such as escapes, violence between prisoners, spreading of diseases and longer waits for trials.

Table 4: Statistics of intended prison capacity and the actual number of prisoners

Prison	Prison Capacity	Total Population (adults and minors) in Jan 2004	Total Population (adults and minors) in Dec 2004	Percentage of overcrowding (intended and Dec 2004 figures)	Provincial Population ¹¹
PJ	100	74	75	No	1,184,945 ^(*)
CC1	1500	1437	1605	7%	As above ^(*)
CC2	350	322	366	4%	As above ^(*)
Tra Plong (T5)	1200	732	824	No	As above ^(*)
Toul Sleng	5	2	4	No	As above ^(*)
Takmao	300	301	316	5.3%	790,168
Kg Som	100	151	188	8.8%	161,779
Kg Speu	200	211	203	1.5%	681,456
Kampot	180	151	156	No	588,583
Kg Chhnang	120	141	136	13.3%	423,016
Kg Cham	250	369	386	54.5%	1,800,499
Kg Thom	60	142	141	135%	642,932
Pursat	100	88	70	No	418,303
B. Bang	200	517	581	190%	889,556
B.M. Chey	200	315	380	90%	703,356
Siem Riep	550	537	608	10.5%	732,111
Svay Rieng	200	153	165	No	531,072
Koh Kong	80	72	92	15%	164,707

(*) Prisons located in Phnom Penh

¹¹ Who's Who In Cambodia. Special Focus on the Royal Family, 2005-2006. MBN International.
<http://www.cambodia.gov.kh/unisql1/egov/english/organ.admin.html>

Serious overcrowding in Battambang and Kampong Thom prisons

The most overcrowded prisons in 2004 were in Battambang and Kampong Thom, holding 190% and 135% over the intended prison capacity, respectively. There are other prisons which are significantly overpopulated: Banteay Meanchey (90%), Kompong Cham (54.5%), Koh Kong (15%) and Kompong Chhnang (13.3%).

The prison capacity is not proportional to the provincial population size

Another issue is that the growing population of the provinces means that prison capacities are not proportional to the provincial populations. For example, the capacity of 60 prisoners in Kampong Thom prison is too small relative to the population size of 642,932.

The prison in Siem Riep houses 550 prisoners while the provincial population is 732,111. Siem Riep's prison capacity is much larger than the prisons in Battambang (pop. 889,556) and Banteay Meanchey (pop. 703,356) which each house 200 prisoners. This imbalance in prison capacities places great strain on inmates and guards, leading to severe overcrowding and exacerbating human rights abuses.

Tension between prison guards and inmates

The overcrowded and claustrophobic nature of the prison can cause tensions between inmates and prison guards. According to interviews with prisoners, the lack of fans, proper ventilation and insufficient food encourages violent confrontations. Since overcrowding promotes an environment where it is more difficult for prison staff to monitor and control inmates, physical violence is more likely to occur.

Prisoners' rights to recreation and fresh air

It is stated in the UN Standard Minimum Rules for the Treatment of Prisoners, that prison chiefs must provide recreational time for prisoners (article 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 weather permits."¹²

Generally, prisoners are given one hour of recreational time outside of their cell. However, there have been reports that problematic behavior by prisoners led to the denial of recreational time.

Recommendations

1. Seek increased funding. The Ministry of Interior's Prisons Department should seek increased funding from the Government to ensure that prisons have adequate capacity.
2. Expand Battambang and Kompong Thom prisons. As a top priority, the Ministry of Interior's Prisons Department should immediately renovate or rebuild these two prisons, as they are severely overcrowded.
3. The capacity of prisons should be proportional to the province's population. Provinces with larger population sizes should be given more funding to create prisons with larger capacities.
4. 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, coordinate efforts to rebuild or improve insufficient prison facilities.

¹² Standard Minimum Rules for the Treatment of Prisoners [herein Rules for 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 resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Vulnerable Groups in Prison

Women

The number of female inmates was significantly lower than that of men in 2004, however the number of female inmates rose in 2004. The most common crimes committed were domestic violence, human and drug trafficking, theft, acid attacks and murder.

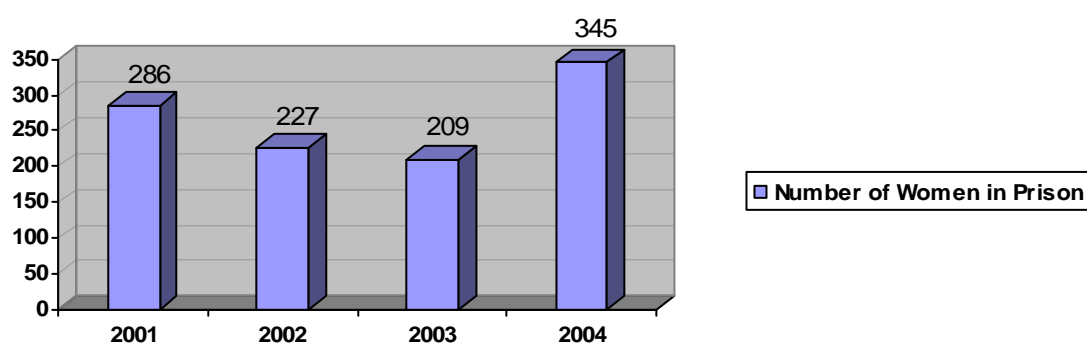


Figure 3: Women in prison

Living Conditions

The UN Standard Minimum Rules for the Treatment of Prisoners section 8(a) states that “men and women shall, so far as possible, be detained in separate institutions. In the case of an institution that receives both men and women, the whole of the premises allocated to women shall be entirely separate.”¹³

According to Cambodian Prison Procedure No. 3, women are supposed to be housed in separate facilities to men. However, these regulations are frequently violated. Women are usually accommodated with men and attended by male prison guards:

- In Svay Rieng, there are five females in a total prison population of 165; four of whom have children. Women and children are all housed in one cell, which is surrounded by cells occupied by men.
- In Banteay Meanchey, there are 21 females out of 380 prisoners. Again, the women's cells are amongst the men's cells.

One of the few exceptions is Correctional Center 2 (CC2) where there is a separate prison for women and minors. More prisons should be developed to separate women and minors like CC2 in order to comply with Cambodian law and international obligations, particularly in provinces with large prison populations.

Health and Food

Access to proper health care is very low, particularly for nursing or expectant mothers. Prisons are generally very unsanitary, and prisoner malnutrition often leads to illness and infectious diseases.

There is an inadequate supply of food, particularly for women who have recently had a baby or for elderly women. Women are at greater risk of malnutrition because they are less likely

¹³ Ibid, article 8a.

than men to receive supplementary food from their families. LICADHO currently provides on an emergency basis supplemental food and material provisions to female prisoners such as dried fish, rice, milk, fruits, washing powder and sanitary napkins. Some women wash the clothes of guards to earn extra money for food.

Pregnant women in prison

In December 2004, there were seven pregnant women in prison. Pregnant women should receive extra food and regular check-ups by medical staff, so as to maintain the health of the woman and baby.

Potential abuse of women in prison

Over the years, there have been several reported incidents of women subjected to sexual and physical assault in prison. However, the monitoring teams did not record any cases of abuse occurring in 2004. This does not necessarily reflect an absence of sexual assault in prisons; only that none were reported. Coercion is one possible reason for no reported incidents. The possibility of sexual assault, rape or other physical abuse remains high.

Recommendations

1. Women must be housed in cells that are a safe distance away from men's cells.
2. Careful attention must be given to protect incarcerated women from sexual assault and rape.
3. Provide medical services for women who are about to give birth and allow the woman to have the option of giving birth in a hospital.
4. Pregnant women should be given extra food and water, and access to a doctor or midwife.
5. Policies for women must be adopted and enacted.

Innocent Children – Adopt a Prison Project Update

Children living with incarcerated mothers

According to Cambodian Prison Procedure 34 (article 3.2)¹⁴, children under the age of six are allowed to live with their incarcerated mothers in prison. In December 2004, 22 children under the age of six were living with their mothers in prison. Researchers also indicated that several children aged between seven and nine were also living with their mothers in 2004. Most mothers reported that children lived with them because they did not have the finances or family network to look after the child.

The majority of the children belonging to incarcerated mothers are under the age of six. This is a critical age for a child's physical, social and psychological development. Subsequently, prison authorities are required to provide children basic provisions in order to meet Prison Procedures No 34 (4.1).¹⁵

Currently, children living in prison lack vital resources and nutrients for proper development. There are no resources for educating these children. In addition, children are subjected to physical dangers when housed with offenders who have committed serious crimes, and are at risk of mistreatment by the guards.

¹⁴ Ibid, Prison Procedure No. 34 "Pregnant Women and Children in Prison," article 3.2 states that: "children may live with their mother in prison until they are six year of age when it is considered that it is in the best interest of the child."

¹⁵ Ibid

Update on the Adopt-a-Prison Project¹⁶

In 2004, the Adopt-a-Prison Project has shown some success in providing basic needs and training for women and their innocent children in prison. Approximately 25 children and ten pregnant mothers received food and hygienic care through various partner organizations:

- The Embassy of the Order of Malta made bi-monthly visits to women and children in CC2. Provisions for food, materials (plates, mosquito nets, cleaning materials, clothes, etc.) and medicine to pregnant women and mothers with children were also provided. This has been ongoing since 2002.
- Save the Children Australia has been providing weekly supplies of food and other materials to Kompong Cham prison.
- The Starfish Project provided support for a woman during pregnancy and after the birth in Kompong Som. They used their expertise to adapt the assistance; rather than give the baby powdered milk, they provided food support and vitamins so that the mother could better produce breast milk and feed her child.

The most pressing concern for mothers and innocent children remains the need for nutritious food and clean water. Nevertheless, the project is also concerned with the lack of education provided to incarcerated children and is planning a second phase to develop solutions to this problem.

Recommendations

1. Children and mothers should be housed separately from men to reduce the possibility of abuse.
2. Children should be given special attention in the areas of health, education and food.
3. Create nurseries and educational programs. The Government, NGOs and donors should explore the option of allowing children to attend pre-school or primary school while staying with their mothers in prison.
4. Allocate additional funds. The Government should provide more funding to this vulnerable group of innocent children who should not be in prison in the first place.

Incarcerated Minors and Juvenile Justice

Cambodia has ratified the Convention on the Rights of the Child¹⁷ (CROC) and by virtue of article 31 of its Constitution¹⁸, it should abide by it. Nevertheless, in practice many of the provisions in the Convention are being breached. Many minors between the ages of 13 and 18 are incarcerated for crimes. In recent years, there has been a gradual increase in the number of minors in pre-trial detention or convicted.

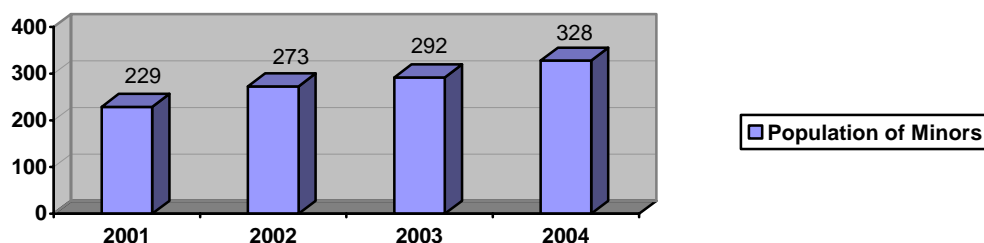


Figure 4: Minors in prison

¹⁶ For more information on the Adopt-a-Prison project see <http://www.licadho.org/programs/adoptaprison.php>

¹⁷ Convention on the Rights of the Child. General Assembly Resolution 44/25 of 20 November 1989.

¹⁸ *Constitution of the Kingdom of Cambodia*, adopted by the Constitutional Assembly September 21, 1993, [hereinafter "Constitution"] Art. 31.

Cambodia needs a minimum age of criminal responsibility

Even though Cambodia has ratified the CROC, the protections that are supposed to be endowed on children charged with criminal offences are minimal. This means that any criminal charge can be laid against children of any age. In practice, however, children under the age of 13 are not incarcerated as a result of a prohibition against *detaining* children under the age of 13 (UNTAC law art. 14.4).¹⁹

Prohibition Against Torture must be followed

Article 37 in the CROC²⁰ prohibits torture or other cruel, inhuman or degrading treatment. However, torture continues to occur when children are detained.

Case Study: Incident of Torture of a Minor

October 10, 2004: A 13-year-old boy in Takmao was arrested and detained in police custody for breaking the lock on a motorcycle in Takmao market. He was brought to the police station, where a police officer used his knee to kick the boy once in the chest. Then the police officer took a stick the thickness of his thumb and hit the boy in the head four or five times. This form of torture was used to extract a confession from the boy.

Minors must be separated from adults

Article 37(c) of the CROC²¹ also states that children must be placed separately from adults in prison: "in particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances." Minors, however, are still housed with adults. Detention of minors in shared facilities with adults is dangerous to the development of minors. The prison conditions make minors susceptible to disease, food shortages and also encourages future criminality.

Lack of separate juvenile justice system

There are no juvenile courts in Cambodia and no separate detention centers for children who break the law. When facing court, minors are treated like adults, but given lesser sentences. This practice should be amended to follow article 40(3) on the CROC²² which states: "State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law..." New laws should create a separate but parallel juvenile justice system which considers first and foremost the best interests and rights of a child.

¹⁹ 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"]

²⁰ Article 37 of the *Convention on the Rights of the Child*.

²¹ Article 37(c) of the *Convention on the Rights of the Child*.

²² Article 40(3) of the *Convention on the Rights of the Child*.

Treatment in police detention

The Law on Criminal Procedure states in article 38 that “juveniles under 13 years cannot be detained for more than 36 hours.” Article 38 also prohibits persons under the age of 18 from being detained in police custody in excess of 48 hours.²³

Case Study: Unlawful Detainment of a 10-year-old Boy

According to a LICADHO interview, a young boy in Kompong Thom was suspected of stealing cashew nuts from the farm he was working on. He was captured by a police officer and was detained in the Kompong Thom police station for one day. The prosecutor charged the boy with theft and he was sent to Kompong Thom prison. LICADHO followed up and demonstrated his real age by providing the boy's family book certificate to authorities revealing he was only 10 years old. The boy was released soon after.

Treatment in pre-trial detention

Article 14(4) of the UNTAC Law states that “minors less than 13 years cannot be placed in pre-trial detention; minors 13 to 18 years of age may not be placed in pre-trial detention for more than one month.” This article also states that the period can be doubled to two months if the minor is charged with a felony (not a misdemeanor).

Access to legal representation and the right to silence

Under articles 75 and 76 of the Law of Criminal Procedure²⁴, when the accused first appears before the investigating judge, the judge is required to inform them of their rights. This provision states that the judge must suspend the interrogation until the accused has a lawyer. Article 76 also states that a lawyer must be automatically appointed by the judge when the accused “is a minor without defence.” This should be done in practice.

Sentencing

Article 68(2) of UNTAC Law²⁵ outlines certain circumstances when a sentence shall be reduced. Accordingly, for accused persons under 18, the punishment should be reduced by half.

Youth rehabilitation centers

The Sub-decree on the Roles, Duties and Organizational Structure of the Rehabilitation Centre for Juvenile Delinquency (1994) outlines that the youth rehabilitation centre (YRC) is a centre which according to article 1:

“...is a mixed governmental institution with the competence to administer minors between 7 to 17 years of ages who committed vices and theft in the country, and has the role to rehabilitate and develop human resources for the development of the living standard, mentality and materials by rehabilitating them from undisciplined and immoral persons to be good, disciplined and moral abiding citizens.”²⁶

²³ SOC Law on Criminal Procedure Law adopted by the National Assembly of the State of Cambodia on 28 January 1993 and promulgated by Decree No. 21 of Council of State of the State of Cambodia.

²⁴ Ibid., Article 75 and 76.

²⁵ UNTAC, Article 68(2)

²⁶ Sub-decree on the Roles, Duties and Organizational Structure of the Rehabilitation Centre for Juvenile Delinquency (1994)

However from article 1 it is unclear whether an investigating judge can convict minors and sentence them to the YRC *instead* of sending them to prison.

Under article 79 of the UNTAC law it is stated that “right after first appearance of the accused person, the investigating judge has the rights to decide whether the accused person shall be put in liberty or in temporary detention.”²⁷

Temporary detention is not specifically defined, however LICADHO proposes that the YRC should act as an alternate sentencing option the investigating judge can give rather than a prison sentence. Minors are still in their formative years and should be given a chance to become good citizens. The YRC should not only provide refuge and accommodation for children who are at risk of offending, but should also rehabilitate convicted minors. LICADHO also advocates for further youth rehabilitation centers to open in provinces.

Recommendations

1. Create a provision in the law that children under the age of 13 cannot be incarcerated.
2. House minors and adults separately. The Ministry of Interior should ensure that all correctional institutions provide accommodation for minors that is separate from adults.
3. Judges should be able to sentence minors to youth rehabilitation centers.
4. The Ministry of Interior should provide adequate food, medical attention and education to minors who are still in need of physical and mental development.
5. Develop a juvenile justice system for children who break the law. This includes the creation of a special children’s court, separate sentencing laws for children and the introduction of non-custodial sentencing.

Pre-Trial Detainees

Roughly one-third of Cambodia’s prisoners have not been convicted of a crime. According to December 2004 figures, 32.2% of the adult prison population were pre-trial detainees, while 50.6% of the under-18 prison population were pre-trial detainees.

There was an increase in the number of pre-trial detainees over the course of 2004.

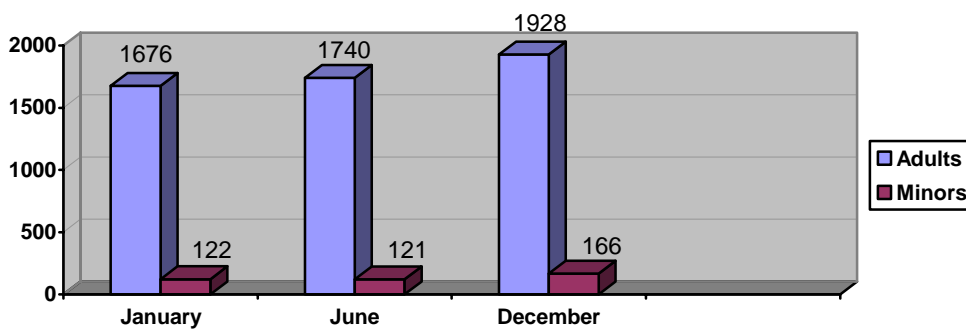


Figure 5: Pre-trial detainees in 2004

The UNTAC laws (article 14(4)) provide guidelines on pre-trial detainees, as below.

²⁷ UNTAC Article 79

Table 5: UNTAC pre-trial detention guidelines

Age	Months of Detention
Under 13 years old	Not allowed to be placed in pre-trial detention
Minors 14 to 17 years old	1 month (up to 2 months if minor is charged with a felony)
Eighteen 18 years and over	4 months (up to 6 months in special circumstances)

Despite these restrictions on pre-trial detention, LICADHO researchers found many cases of excessive detention before trial. In total, seven out of the 18 prisons violated this law.

Table 6: The number of pre-trial detainees who have been detained over the statutory limit (includes both adults and minors)

Month	CC1	CC2	PJ	Kampot	Takmao	Kg.Speu	Pursat	Total
Jan	-	-	-	5	-	-	8	13
Feb	60	37	3	1	-	8	-	109
March	-	-	-	3	-	-	1	4
April	-	-	-	6	-	25	-	31
May	-	-	-	1	-	-	1	2
June	62	49	-	-	2	-	-	113
July	-	-	-	2	-	-	2	4
Aug	-	-	-	5	-	7	1	13
Sept	-	-	-	6	-	-	-	6
Oct	-	-	-	-	-	5	-	5
Nov	-	-	-	3	-	-	-	3
Dec	48	44	-	8	-	7	-	107
Total	170	130	3	40	2	52	13	410

N.B. Figures represent additional prisoners for that particular month that were detained over the statutory limit. Blank figures represent months where no data was collected.

Generally, the highest numbers of pre-trial detainees over the statutory limitation were in CC1, CC2, Kampot and Kompong Speu. CC1 and CC2 have the highest number of pre-trial detainees over the statutory limit because many prisoners are transferred there from provincial prisons awaiting trial in Phnom Penh.

Reasons for excessive pre-trial detention

There were various reasons given by prison staff and court officials for excessive pre-trial detention:

- Judges and investigators said they have heavy workloads, so there are too few judges to hear cases.
- Prison officials said they lack funds and vehicles to bring the prisoners to court.
- Trial judges stressed that pre-trial detainees often require several trips to court (interviewed by a prosecutor, investigating judge, appear to trial) and the court cannot pay for all of this.
- The particular nature of some cases requires complex criminal investigations, which take a long time.

Recommendations

1. The Government should provide prison staff with a larger budget for transporting prisoners to court.
2. It should appoint new judges and provide the means for investigations to be more efficient.

Corruption

Interviews with prisoners have revealed that corruption remains an ongoing part of prison life, which can affect access to additional food or clean water, family visits, recreational time and transportation to court.

Insufficient prison budget

Corruption can be seen as a direct result of the low budget provided by the Ministry of Interior. The amount of 1,000 riel (USD \$0.25) per prisoner per day is inadequate and has not increased with inflation, remaining the same for more than a decade. According to prison officials, this amount is intended to cover the cost of prisoners' food, transportation, sanitation, cooking fuel (wood), water, electricity and administration. In reality this amount does not even cover the costs of electricity and nutritionally sufficient meals.

According to Prison Procedure No. 6 (article 4.1) prison chiefs are to ensure that prisoners receive at least two meals a day with the minimum food allowance being as follows:

Items	Quantity
Rice	550g
Fresh or salted fish or meat	150g
Vegetables	150g
Cooking oil	10ml
Salt or fish sauce	10g
Soup ingredients	20g

However, only small amounts of rice and vegetables are provided to prisoners. Subsequently, prisoners suffer from malnutrition. Some prisoners who have family and relatives nearby receive extra food, but this is not the case for all prisoners.

Bribes for family visits

According to Prison Procedure no 8, article 4.1 (n), "the collection of goods or money from visitors by any prison official for the privilege of visiting a prisoner is expressly forbidden." Also, "all prisoners have the right to receive visits from families or friend for at least one hour each week at times designated in the prison rules by the prison chief."²⁸ Many families have indicated to LICADHO researchers that they were required to pay prison staff for permission to visit and provide food for the family member in prison.

According to interviews conducted at several prisons with family visitors, bribes to meet a prisoner are as follows:

²⁸ Prison Procedure no. 8, 3(1)(n)

Table 8: Bribes to access prisons

Fee at first checkpoint	2,000r
Entrance to prison building	2,000r
Administration office	3,000r
Visiting room (Direct talking)	30,000r
Visiting room (Telephone talking)	5,000r
Gate to enter further into prison to hand food to prisoner	3,000r
Second gate further into prison	3,000r

Note: USD\$1 = 4200 riel approximately

Generally, family members of inmates are motorbike taxi drivers, farmers, vendors and factory workers who cannot afford frequent visits to prison cells. Subsequently, family members tend to only visit inmates once a month to bring rice, fish, meats, vegetables, water and money.

Bribes for recreational time

Prisoners have the right to recreational time. According to the UN Standard Minimum Rules for the Treatment of Prisoners in article 21, s. 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." Despite this article it has been reported that some prisoners are denied their one hour and must therefore bribe the prison guard to get recreational time.

Court-related bribes

Prisoners and their families have repeatedly reported that prison guards demand bribes to transport prisoners to court to attend their trials or talk with the investigating judge. The cost for transportation from CC1 to the Phnom Penh Municipal Court is between USD\$5 and USD\$20 depending upon how much the prisoner can pay.

Recommendations

1. More funds must be allocated to the Prisons Department to ensure that prisoners have their basic needs met. The ration of 1,000 riel per day must be increased to at least 4,000 riel to ensure that basic needs such as sufficient food and clean water are met.
2. Additional funds should be added to provide higher salaries for the prison staff. This would reduce the need for corruption by prison staff.
3. Regularize the distribution of funds. Funds from the Ministry of Interior to the prisons should be given on time through banks so that prison guards and staff are paid regularly and not relying on bribes from prisoners for extra cash.
4. Perform regular independent audits of prison budgets. An audit would help eliminate corruption within the prison finance office.
5. Monitor prison staff. The Prisons Department should monitor prison staff, especially guards, to ensure that they do not accept or demand bribes from prisoners and their families.
6. Bribes for recreational time and transportation to courts should be stopped. Every prisoner has the right to attend their own trial. Increase the budget for each prisoner so that transportation costs are included.

Torture

Torture continues to be one of the gravest violations of prisoner rights documented in Cambodian prisons by LICADHO researchers. Prisoners are protected against torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 12(1) of the UNTAC law which states that "no detainee shall be subject to cruel, inhuman or degrading treatment or punishment, nor be beaten or tortured."²⁹ LICADHO investigations reveal allegations that torture occurs in police custody and in prison.

Table 9: Alleged torture cases reported in interviews categorized by month, pre-trial/convicted (2004)

Prisoners	Pre-Trial Males	Convicted Males	Total
January	2	2	4
February	10	2	12
March	5	0	5
April	4	14	18
May	10	1	11
June	3	3	6
July	9	11	20
August	2	4	6
September	7	0	7
October	2	2	4
November	3	0	3
December	8	2	10
Total	65	41	106

N.B. No women reported torture in 2004

In interviews LICADHO conducted, all alleged incidents of torture within prison or in police custody were reported by men. The number of men allegedly tortured varied from month-to-month, but the total was 106 alleged cases.

Table 10: number of alleged torture incidences categorized by prison

Province	In Police Custody	In Prison Detention	Total
P.J.	0	0	0
CC1	8	1	9
CC2	9	11	20
CC3 (T5)	2	0	2
Toul Sleng	0	0	0
Takhmao	4	0	4
Kompong Som	0	0	0
Kompong Speu	14	0	14
Kampot	3	0	3

²⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. General Assembly resolution 39/46 of 10 December 1984; UNTAC, Article 12 (1)

Kompong Chhnang	5	0	5
Kampong Cham	2	0	2
Kompong Thom	2	16	18
Koh Kong	1	0	1
Pursat	6	12	18
Battambang	0	0	0
Banteay Meanchey	0	0	0
Siem Reap	9	1	10
Svay Rieng	0	0	0
Total	65	41	106

According to information collected by LICADHO there were more alleged tortures in police custody than in prison. In prison, the majority of the alleged tortures occurred in the larger prisons such as Kompong Thom, Pursat and CC2.

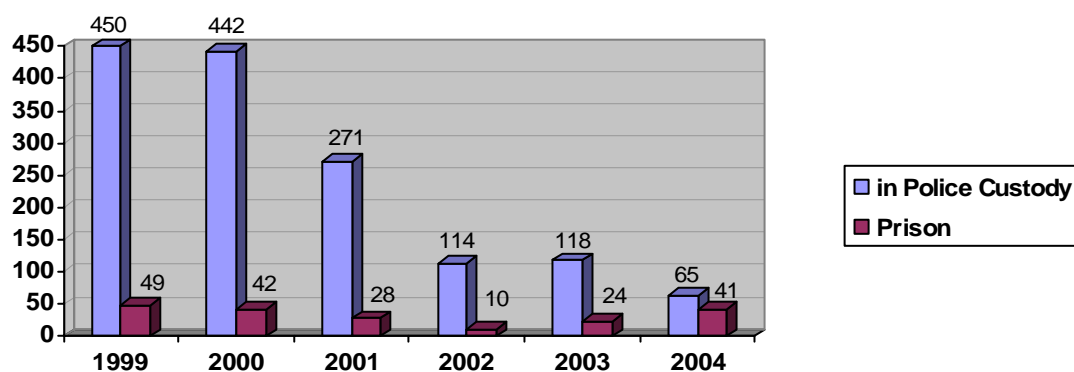


Figure 6: Alleged Torture in Pre-trial and Prison Reported in Interviews 1999-2004

These figures show that the number of alleged torture incidences in police custody has decreased over the years. However, the increase in alleged torture within prison in recent years is cause for concern.

It should be noted that gathering allegations of torture is difficult because some victims will not report incidents due to fear of reprisals, shame or psychological reasons. Interviews between LICADHO monitor and prisoners are sometimes conducted while guards are within earshot. It is therefore possible that torture in prisons remains under-reported.

Torture in Police Custody

In 2004, 65 incidents of alleged torture in police custody were reported. Torture can occur quite easily because prisoners are often detained *incommunicado*, without access to family members, human rights workers, lawyers or medical staff. Police stations are closed to outsiders, so there is ample opportunity for torture without being scrutinized.

Case Study: 50-year-old Man Allegedly Tortured in Police Custody

A pre-trial man detainee in Koh Kong, aged 50, was allegedly tortured on August 28, 2004 in the Srae Ambel district police station. The man was taken to the police station for alleged robbery and questioned by five policemen, including the chief of district police and the deputy chief. It was alleged that they shouted at him, and hit

him with a stick five times.

It was alleged that the reason for the torture was that the police wanted him to confess to the robbery.

As a result, the man experienced ringing in his ear and had difficulty hearing clearly. He also encountered psychological trauma.

Torture in Prisons

The UNTAC law (article 12), under the Treatment of Detainees, states that “prisoners must not be shackled or kept in isolation, whether they are in pre-trial detention or already sentenced.”³⁰ This means that shackles cannot be used in any way on prisoners as a form of punishment. It is only suppose to be used as a security device for restraining a prisoner.

In the Proclamation on Administration of Prisons (article 25) states that “handcuffs shall be the only instruments used for restraining prisoners and shall never be used as a form of punishment.”³¹ It also states that “prison chiefs may only order that handcuffs be used a) as a precaution against escape, or b) if other measures have failed to prevent a prisoner from injuring themselves or others, or from damaging property.”

Various prisoners indicated that they were shackled for several days because they had disobeyed guards or fought with other prisoners. In Kompong Thom there were several cases where prison officers shackled prisoners. One prisoner was handcuffed for four or five days because he escaped and was recaptured. Another incident includes three prisoners who were handcuffed for misconduct in prison.

Case Study: Cuffs on the Legs for 16 Days

On August 1, 2004, at 4:34pm, a new prisoner accused of rape was detained in room number five in Kompong Thom prison. When he arrived in the room, he was hit two or three times and kicked once in the back by another prisoner. On August 3, 2004, at 8pm, a prison officer and chief prison officer investigated the event and decided to punish the prisoner who beat the newcomer by putting cuffs on both of his legs.

During the time of punishment, the prisoner could stand up and get food as usual, but when he needed to bathe or go to the toilet, he needed help. His legs became numb as a result of the shackling.

On August 10, 2004, the chief prison office said he performed this punishment to the prisoner so that he would stop hitting and kicking the new prisoner. On August 17th, 2004, LICADHO made a request for the cuffs to be taken off the prisoner and for LICADHO medical staff to examine him. Finally, on August 19th, 2004 the cuffs were taken off the prisoner.

Effects of torture

- Tortures can carry long-term physical and psychological effects on the victim.

³⁰ UNTAC law Article 12

³¹ Prakas on the Administration of Prisons (1998)

- A culture of torture can promote prisoner-to-prisoner torture, as sometimes a dominant inmate is assigned by the prison guard to torture a fellow inmate.

Recommendations

1. Authorize private interviews between prisoners and human rights organizations.
2. Detail and report injuries upon arrival in prison. Prison Procedure 1.3.3 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 the prisoner being placed in a cell. This information should be provided to human rights organizations.
3. Prison staff should be trained and must abide to the minimum standards of treatment stated in Cambodian and international law.
4. Abolish prisoners-against-prisoner discipline. The Prisons Department should instruct prison guards to eradicate the practice of certain prisoners being given powers to discipline other prisoners.
5. Guards and prisoners who perform torture should be held accountable for their actions.
6. Eliminate *incommunicado* detention in police custody. The Government of Cambodia should eliminate the practice of 48 hour *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.
7. Draft safeguards against torture in the Criminal Procedure Law. In conjunction with local and international organizations, the Government of Cambodia should include in the new draft Criminal Procedure Law, practical safeguards against torture, including guaranteed access to police stations by detainees families, lawyers and human rights defenders.
8. 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. Further, judges must investigate such allegations and prosecute where there is adequate evidence.

Appendix: Intake Questionnaire for Prisoners

Introduction

1. ID
2. Prisoner Code
3. Date of Interview
4. Prison
5. Interview (with guard, with prisoners, or private)
6. Previous interviews?
7. Released, Escape or dead (yes or no)
8. Date of Release
9. Reason not in police [sentence served, found not guilty, escaped, dead, transferred etc...]
10. comments

Biography

1. Name
2. Name in Khmer
3. Sentenced (yes, no)
4. Gender
5. Nationality
6. Date of birth
7. Family address
8. Profession
9. Political affiliation
10. Weight (initially)
11. Weight (at last interview)
12. Name of spouse
13. Names of parents
14. Address after release
15. Child in prison
16. Number of child in prison
17. Data about child in prison
18. Others

Arrest Information

1. Date of arrest
2. Arresting authority
3. Place of arrest
4. Proper arrest warrant?
5. Description of arrest [invited to come to the police, after police search, at the place of the event, other]
6. Charged offense
7. Prisoner's narrative
8. Mistreated while in custody?

9. Description
10. Police asked for bribe
11. Description of bribe
12. Thumbprints on statement
13. Statement read before signing
14. Other information

Detain Information

1. Date of detention
2. Detained elsewhere
3. Info on detention
4. Mistreated in prison?
5. Describe mistreatment
6. Currently represented
7. Name of defender
8. If defender from NGO, which?
9. Paid defender?
10. If Yes, why?
11. Final comments

Trial Information

1. First trial date
2. Trial date—appeals court
3. Trial date- supreme court
4. Named used at trial
5. Address
6. Court asked for bribe?
7. Description of court bribe
8. Court name
9. Court decision number
10. Offense
11. Sentence length
12. Fine
13. Suspended sentence
14. Had defender at trial
15. Name of attorney
16. If trial lawyer from NGO, which?
17. Appeal?
18. Date of appeal
19. Reasons for No Appeal
20. More information