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Towards a Humane Prison Policy for Cambodia ¹ November 2002

INTRODUCTION

This paper is intended to initiate discussion and dialogue on prison issues. It is based on the experiences of the UN Human Rights Office in Cambodia in conducting regular visits to prisons since its establishment in 1993, as well as on reports from non-governmental organisations. The paper summarises changes in conditions that have taken place in prisons since 1994 when the Cambodia office published a report entitled *The State of Cambodian Prisons*, noting areas of improvement and areas that have worsened.

The paper puts forward several recommendations for discussion on steps that can be taken to improve the present situation. Some steps can be immediately taken, such as observing the laws on pre-trial detention, improving access to prisoners and defendants, and by stopping certain practices such as the shackling of prisoners. Others require changes in policy, and the allocation of more resources.

The Special Representative of the Secretary-General for human rights in Cambodia hopes that this discussion paper, which he sees as a work in progress, will mark the beginning of creative debate in Cambodia about penal policy and conditions of imprisonment. As in other countries, it is the poor who are the most victimised by present policies and practices. He believes that the present situation is one where marked improvement can be achieved relatively easily, and that humane policies and practices towards Cambodia's prison population can only accrue to the benefit of Cambodian society as a whole.

MAJOR ISSUES

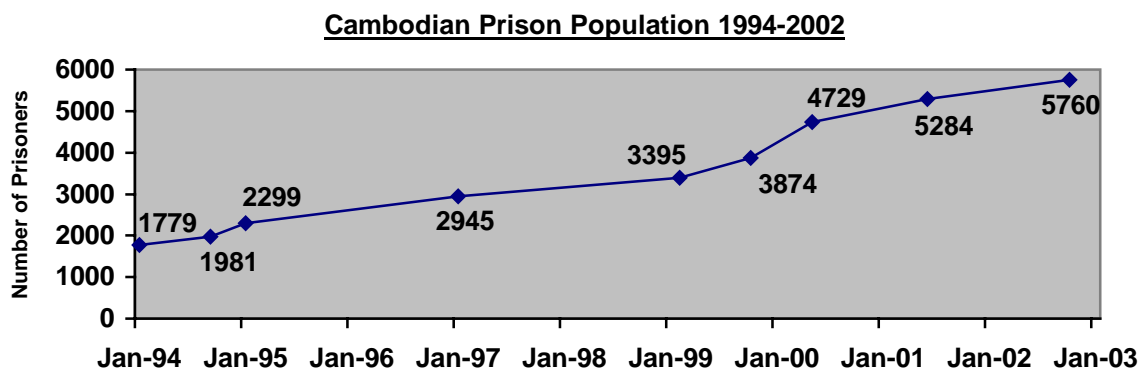
- Cambodia's prison population suffers from chronic poor health, with lack of food, water and hygiene the major causes.
- An unacceptably high number of prisoners are held in pre-trial detention, sometimes for excessive periods and often for minor offences.
- Defendants are often tried in absentia and without representation, especially in Cambodia's provinces. This is in grave breach of their human rights and risks serious miscarriages of justice.
- Heavy sentences are often handed down for minor offences, when alternative forms of sentencing would be appropriate.
- The right of appeal is severely limited in practice.

¹ Edited version. This paper was discussed with the prison authorities at a roundtable discussion in which senior officials from the Ministries of Interior and Justice as well as non-governmental organizations also participated. The discussion was chaired by the Special Representative during his seventh mission to Cambodia in November 2002.

- Access to prisons and inmates by lawyers, family members, and human rights organisations is seriously restricted.
- Pre-trial detainees are frequently mixed together with convicted prisoners; minors together with adults and men together with women.

1. OVERCROWDING AND THE PRISON POPULATION

The State of Cambodian Prisons was based on research conducted as part of regular prison visits during the months March through July 1994, and some further investigations up to November 1994.



It also included a limited survey of 85 inmates on the situation surrounding their detainment and the conditions they faced in the prisons. The report found that in September 1994, a total of 1,981 prisoners (including 93 females) were being housed in Cambodia's 24 civilian prisons.² Since that time, the population has increased nearly threefold to 5,760 in October 2002. The prisoner-to-population rate, measured in number of prisoners per 100,000 citizens, has thus increased from approximately 22 to 43, although this remains low in comparison with a worldwide average estimated at 140 in 2001.³

Several prisons are now dangerously overpopulated, notably CC1, Banteay Meanchey, Sihanoukville and Kompong Thom, where the minimal living space of 1.7m²/prisoner noted in 1998 was down to just 0.97m²/prisoner by 2001.⁴ Most prison buildings are old and seriously dilapidated. Many do not have sufficiently strong fencing to secure the prison compound. The lack of detention cells has been a persistent problem, and occupied cells are often dark or too small. Some inmates live in prison courtyards, or sleep in walkways, while others are unable to leave their cramped cells. All prisoners are entitled to at least one hour per day in the open air, but this rule is widely ignored, particularly in PJ, CC1, Kandal and Sihanoukville prisons.⁶

Overcrowding is a threat to the health of prisoners as it increases the spread of diseases such as scabies, beri-beri and viral infections such as influenza which was diagnosed in 14.1% of prisoners in 2001.⁷ Locating bathroom and sleeping areas together increases the serious sanitation problems faced by prisoners. Overcrowding often means transferring prisoners from their home areas and reduces family visits, which in turn further threatens prisoner access to food. There is an urgent need to deal with the problem of overcrowding.

² Due to a reported tendency of prison directors at the time to exaggerate the numbers of prisoners and thereby gain additional funding, the true populations may have been even lower.

³ International Prison Policy Development Instrument, International Centre for Criminal Law Reform and Criminal Justice Policy, July 2001.

⁴ 2001 Report on Prison Conditions, Licadho, 2002.

⁵ Proclamation 217 (Administration of Prisons), Article 7B.

⁶ Proclamation 217 (Administration of Prisons), Article 7B.

⁷ Human Rights and Cambodia's Prisons: 2001 Health Report, Licadho, 2002.

Reasons for Population Growth

Prison is the routine punishment for most crimes, despite a wide range of potential alternatives that have not yet been incorporated into Cambodian law.⁸ Minimal use is made of fines and suspended sentences, although no systematic guidelines for their application have been built into the law. There are no community service alternatives for minor and first-time offenders, although many in the judiciary and government would welcome such a scheme, which would also reduce costs.⁹

Cambodian Prison Population 1994 and 2002 by Individual Prison

N ^o	Prison	September 1994 ¹⁰		October 2002 ¹¹	
		All Prisoners	Female Prisoners	All Prisoners	Female Prisoners
1	T3 (closed 2000)	237	20	–	–
2	CC1 (opened 2000)	–	–	1,284	0
3	CC2 (formerly Prey Sar)	157	0	347	198
4	CC3 (formerly T5)	255	0	624	0
5	P.J.	36	10	59 [†]	3 [†]
6	Battambang	213	10	265	0
7	Banteay Meanchey	92	1	263	13
8	Kompong Cham	123	13	265	0
9	Kompong Chhnang	57	2	126	4
10	Kampot	57	8	176	12
11	Kompong Speu	59	0	205	2
12	Kompong Thom	49	1	98	3
13	Kandal	96	6	253	17
14	Koh Kong	46*	3*	79	2
15	Kratie	23	1	125	7
16	Mondulkiri	15*	1*	98	1
17	Preah Vihear	5	0	65	0
18	Prey Veng	72	1	149	10
19	Pursat	44	2	95	1
20	Ratanakiri	19	0	98	1
21	Siem Reap	97	3	566	17
22	Sihanoukville	60	3	140	14
23	Stung Treng	26*	2*	98	5
24	Svay Rieng	68	2	143	8
25	Takeo	75	5	139	10
TOTAL		1,981	93	5,760	328

* Reported figures only to June 1994

† Reported figures only to June 2002

⁸ The U.N. Standard Minimum Rules for Non-Custodial Measures recommend disposition of criminal cases by way of verbal sanctions, conditional discharge, fines, confiscation, restitution, suspended sentences, probation, community service orders, house arrest and referral to an attendance centre.

⁹ Feasibility Study on the Introduction of Formal Non-Custodial Options into the Criminal Justice System of the Kingdom of Cambodia, U.N. Centre for Human Rights, January 1997.

¹⁰ Figures from Ministry of Interior Department of Prisons

¹¹ Figures from Cambodian Criminal Justice Assistance Project

Approximately 30% of all prisoners have not been convicted of a crime, but wait in pre-trial detention. This is a consequence partly of the very slow operation of the Cambodian courts, and partly of the Cambodian judiciary's tendency to remand people in custody as standard practice. This stands in contrast to both international standards and the current Cambodian criminal law, which clearly defines the criteria under which pre-trial detention may be applied:

"Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison, and only if there is a risk of escape or non-appearance manifested by the absence of such factors as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation."

UNTAC Law Article 14.1

With these provisions consistently ignored, even those accused of very minor crimes are routinely imprisoned for lengthy periods awaiting trial.

2. HEALTH

The chronic overcrowding in Cambodian prisons is a major contributor towards poor health. However, health is also severely damaged by lack of adequate food and clean water, problems that have changed little in the last eight years.

Food and Water

The State of Cambodian Prisons found that in 1994, most Cambodian prisoners were "perpetually hungry". Of the prisoners surveyed, 78% complained that they did not have enough to eat and more than 60% gave the lack of food as the single biggest problem they faced. This situation has not changed. The daily allowance for each inmate remains at 1,000 riels, which is also used for firewood and cooking equipment. Studies show that some prisoners get as little as 1,200 calories per day, compared with the absolute minimum daily intake for male adults of 2,200 calories.

Some prisons face particularly acute water shortages, including Banteay Meanchey, Preah Vihear, and Sihanoukville. A recent project by the Prison Fellowship has established sand water filters in every cell of CC1 and CC2 prisons; however it remains to be seen whether there will be adequate water to supply those filters in the dry season. Sewage systems throughout the prisons of Cambodia need to be re-organised in order to avoid contamination of water resources for prisoners, and funds must be available to pay prison water bills.

Medical Services

The State of Cambodian Prisons noted that in September 1994, the Ministry of Health was "reportedly responsible for the provision of medical services to prisons. However, in none of the prisons visited was there any evidence of this". The report cited the bad physical state of the prisons, poor sanitation and an undersupply of cleaning agents as factors contributing to "extremely poor health", noting that many prisoners "will unnecessarily die".

The nature and extent of health problems cited by prisoners in 1994 are much the same as today. In early 2000, a Ministry of Interior Prison Health Department was established. It has received considerable funding through AUSAID. However, apart from drafting a Prison Health Manual and a plan for co-operation between the Ministries of Interior and Health, little appears to have been done to improve the care provided to prisoners. The great majority of inmates continue to rely on assistance from NGOs.

There are still no clear guidelines regarding co-operation between the two Ministries regarding health care provisions for prisoners. Medical staff assigned to the prison often lack appropriate skills

training and the necessary resources, such as basic medical equipment, medicine and transportation. Prisoners do not routinely receive health screening on entrance to the prison, and the few medical records that are kept are poorly maintained.

Hygienic and preventative materials are still sorely lacking. Prisoners are entitled to regular supplies of mats, mosquito nets, soap etc. However, the limited supplies that were provided eight years ago have now decreased to the point that little other than prison uniforms are provided. Families and NGOs are the sole source of such basic needs as soap, the lack of which is a major cause of skin diseases such as scabies. The reason for this failure to provide basic supplies is unclear, but prison directors are required to travel regularly to Phnom Penh to collect funding for food and supplies, from which travel costs are then deducted. Government departments have also been accused of taking a considerable cut from these allowances to ensure a swift payout.

Deaths in prison are only investigated if there is reason to suspect non-medical reasons. While international laws and standards require that prisoners who require specialist treatment shall be transferred to specialised institutions or hospitals, this is almost invariably done too late in Cambodia.¹³ Prisoners are often transferred to hospital only when it is clear they are about to die, although prior transfer and proper medical attention could have saved their lives. Lack of funds for transport and lack of guards are frequently given as the reason. At least 48 prisoners died of disease in 2001.

Of the 30 prisoners who died in 2001 and were listed as detained at CC1, some 25 were transferred shortly before their deaths to the Monivong police hospital. The rooms allocated for prisoners in this hospital suffer badly from overheating, and sanitary conditions are extremely poor. Plans to transfer this facility to another hospital in 2002 have not yet been realised.

No special attention is paid to prisoners with HIV/AIDS, one of the highest risk groups for the disease. In 2001 some 20 prisoners are reported to have died of confirmed or suspected AIDS-related conditions. There is no coherent policy for dealing with HIV/AIDS, and rarely are amnesties issued for those in the last stages of AIDS. Many of those suffering from AIDS succumb to tuberculosis, a highly contagious disease that is easily transferred to others in the prison population.

3. ADMINISTRATION

The State of Cambodian Prisons described the administration of Cambodia's prisons as "byzantine in its complexity...a system which inevitably contributed to many problems, such as the generally poor communication to and supply of prisons, the low morale of prison officers and the poor training they receive".

Some aspects of prison administration have improved. The separation between the prison service and police has been increased, with prison directors no longer reporting to local Deputy Police Commissioners. Provincial/Municipal Offices of Courts and Prison Affairs are now under the direct supervision of Second-Deputy Provincial/Municipal Governors. And several initiatives have been taken to improve the capacity of prison officials, including through the former Judicial Mentor Programme of the Cambodia office and the Cambodian Criminal Justice Assistance Project.

Nonetheless, serious problems remain in many areas, including financial procedures that seriously impact on the health and well being of prisoners; communication issues that delay and complicate prison administration; and ongoing issues over the poor pay, conditions and ability of prison officials.

¹² U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 22

¹³ U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 22

Transportation

One of the single biggest problems facing the Cambodian prison service is the lack of provision for inmate transport.

Court hearings are frequently postponed because prisoners are unable to attend. This increases the burden of pre-trial detention and further worsens the overcrowding situation. In many other instances, hearings are carried out *in absentia*, in breach of the right of defendants to be present at their own hearing. Prisoners who are witnesses in other cases are also rarely present to give testimony and to be cross-examined in court.

This problem is particularly acute when it comes to attendance at the Appeals Court and Supreme Court. These are based in Phnom Penh and therefore can require lengthy and costly travel for inmates in provincial prisons. Some prisoners spend years awaiting appeal hearings, time that is not compensated if they are eventually acquitted. More worrying still, prisoners awaiting appeal whose original sentences have been served are kept in detention until the appeals are heard or dropped. Substantial progress could be made towards alleviating this problem by establishing regional or peripatetic Court of Appeal.

Funding is usually cited as the major reason for lack of transport, i.e. costs for fuel and sometimes vehicle hire and additional per diems for prison staff to guard the inmates en route. As well as examining alternative courts, a system of prisoner transportation throughout Cambodia needs to be established as a matter of urgency.

The transport situation also has a major impact on the health of prisoners, since as noted above the seriously ill are rarely sent to hospital until their deaths are imminent.

4. THREATS TO PRISONER SAFETY

Failure to Separate by Age, Sex or Offence

The Standard Minimum Rules for the Treatment of Prisoners provide that "*in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate*"; and also that "*young prisoners shall be kept separate from adults.*"¹⁴ As was the case in 1994, these rules are rarely followed in prisons outside Phnom Penh. Although male and female prisoners normally have different cells, when they are outside the cells they mix freely with one another, and juveniles are usually placed together with adults.¹⁵ Little or no attempt is made to separate minor offenders from felons, or indeed pre-trial detainees from convicts, turning Cambodia's prisons into an effective crime school for the young and vulnerable. While largely a consequence of the lack of adequate facilities, the mixing of all prisoners also creates serious potential for abuse, and in particular the sexual abuse of women.

Failure to Prosecute Acts of Torture and Cruel, Inhuman and Degrading Treatment

The majority of reported cases of torture and other forms of cruel, inhuman and degrading treatment and punishment occur in police custody, but incidents also occur within the prisons. In the survey conducted for *The State of Cambodian Prisons*, 46% of respondents reported the use of torture, 65% the use of beatings, 52% the use of solitary confinement and 25% the use of excessive physical exercise as disciplinary punishments.

Reports indicate that torture within prisons may have declined since 1994, which is a welcome trend. However, incidents continue to be recorded and, most worryingly, no one has been convicted of such

¹⁴ U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 8.

¹⁵ OHCHR/Cambodia, Some general issues of concern in the prisons, 2001.

an offence since the Cambodia office began monitoring Cambodian prisons.¹⁶ The first case of prosecution took place in August 2002, when five prison guards were accused of severely beating inmates following an attempted escape. Despite compelling evidence of their guilt, the guards were all acquitted (see panel below).

Torture and cruel, inhuman and degrading treatment in prisons now appears to be mostly associated with disciplinary offences, and in particular escape attempts. Punishments arbitrarily handed out include severe beatings, restriction of food and water, shackling and use of tiny isolation cells and cages.

Illegal Use of Restraints

In the survey conducted for *The State of Cambodian Prisons*, 40% of respondents reported the use of physical restraints, such as shackles, as a punishment. Use of shackles is in violation of the Standard Minimum Rules for the Treatment of Prisoners and of UNTAC Law article 12. Usage of restraints other than handcuffs, which are permitted for transport purposes only, is also not acceptable. While the problem appears to have declined, some prisons persist in the unwarranted use of handcuffs, shackles and other restraints, as a disciplinary measure or simply an alternative to improving security measures. A recent example was the case of five prisoners shackled in CC3 prison in mid-2002, as a punishment for plotting to escape.

Inmate Violence

The State of Cambodian Prisons found that 60% of prisoners claimed there was not a significant level of inmate violence. However, today there are widespread reports of prison guards and other officials delegating disciplinary powers to certain favoured prisoners. Typically one or more inmates will be placed in charge of a cell, and will use that position to extort food and supplies from others, as well as enacting arbitrary punishments for perceived transgressions. Trivial offences such as talking after dark can be met with beatings, and new prisoners in particular are targeted for systematic attacks. In the most serious cases, inmates are directed by prison officials to punish major offences such as escaping. In Prey Veng prison in 1998, a group of prisoners including a "chief of cell" beat a fellow inmate to death, and badly injured at least four others, following an escape attempt. Prison guards were reportedly present.

¹⁶ Prior to August 2002, the last known prosecution of a prison official on charges of torture was in 1993, when the deputy director of Battambang prison, who had been arrested by UNTAC police, was convicted of violent acts including tying prisoners to a tree and burning them with a hot poker. He was sentenced to one year's imprisonment, although it is not known whether the sentence was actually enforced.

Test Case: The Torture Trial in Kompong Cham

On 13 December 1999, five prisoners in Kompong Cham provincial prison leapt over the fence in an attempt to escape, but were swiftly recaptured and brought back to the prison compound. According to testimony from other prisoners and the victims themselves, the five were then severely beaten by a group of guards. The beating allegedly took place in front of prison officials including the director and medical officer, and in clear view of many other inmates. The objective appears to have been both punishment and deterrent. All five victims were struck repeatedly with the handle of a hoe or other wooden objects, and some were punched, kicked, slapped or hit on the head with rocks.

At least two of the victims claimed to have been deprived of medical treatment by the prison clinic, one for two days and the other for a week. For some two weeks after the beatings, the five were allegedly kept stripped to their underwear and deprived of mattresses, blankets and mosquito nets. Some claim they were fed reduced rations and held in their cell 24 hours a day, in violation of prison regulations, for at least a month after the beating. Deprived of bathing water, some developed skin diseases. When interviewed by human rights NGO Licadho a month after the beatings, four of the five still had multiple wounds or scars, and one appeared to walk with difficulty.

In August 2000, five prison guards were charged with Infringement of Individual Rights under Article 57 of the UNTAC law, which prohibits torture and other violations of the rights of detainees and prisoners. This misdemeanour offence carries a sentence of one to five years of imprisonment. Since being charged, at least two of the guards resigned their positions. One had claimed in his statement to the investigating judge that he carried out the beating on the orders of the prison director. The other three suspects continued to serve as guards in Kompong Cham prison. The prison director at the time, who was not charged, has been transferred to another post.

Although the trial was originally slated for late 2001, repeated requests from the Cambodia office and from non-governmental human rights groups failed to establish a date. In June 2002, the Special Representative met with the President and Prosecutor of the Kompong Cham provincial court, and raised the issue of the long-overdue trial. Following this visit, a trial date was finally scheduled for 30 August 2002.

At the trial, observers from the Cambodia office noted that the evidence presented in court was clearly sufficient to secure convictions, yet all five defendants were acquitted. However, the court did direct that administrative action be taken against them, a decision that appears to acknowledge the liability of the defendants in the case. The trial judge has given no justification for these decisions. Meanwhile, three of the defendants continue to work at the prison.

5. THREATS TO PRISONERS' LEGAL RIGHTS

Excessive Pre-Trial Detention

"The duration of a pre-trial detention must in no case exceed four months. However, upon the decision of a judge setting out the reasons, this period may be extended to six months if justified by the requirements of the investigation..."

UNTAC Law Article 14.4

The State of Cambodian Prisons found that in 1994, 18% of the prisoners surveyed had been in pre-trial detention for over six months. Two had been awaiting trial for nine years. Although such extremes have been reduced, excessive pre-trial detention remains a serious and pressing issue in certain parts of the country. As of 31 July 2002, there were 205 excessive pre-trial detainees in three Cambodian prisons (150 in CC1, 37 in CC2 and 18 in Banteay Meanchey), making a total of approximately 3.5% of the nationwide prison population. In addition, the provision that the maximum pre-trial detention period of four months may only be extended in exceptional circumstances

continues to be routinely ignored, with six months invariably accepted as standard. Causes of excessive detention included a claimed overload of cases for the judiciary, lack of transportation resources at the prison and late completion of investigations by investigating judges. According to prosecutors, the police frequently demand that criminal charges be brought without supplying sufficient evidence, making the court reluctant to schedule trials.

There are increasing numbers of pre-trial detainees who have no access to defence lawyers, especially in the prisons located in the provinces. Some prisoners are still awaiting verdicts from trials that took place long ago. OHCHR has been informed of several cases where prisoners have been waiting more than one year for a verdict.

Failure to Separate Convicts and Pre-Trial Detainees

The Standard Minimum Rules for the Treatment of Prisoners provide that in all cases "*untried prisoners shall be kept separate from convicted prisoners.*"¹⁷ This is almost never the case in Cambodia, where pre-trial detainees, who constitute some 30% of the prison population, are routinely mixed together with convicts. Recent efforts in Sihanoukville prison to separate the two groups have now ceased due to increasing numbers of prisoners.¹⁸

Non-Attendance at Court

Due to the lack of transportation provided by the prisons, pre-trial detainees are sometimes unable to attend their own hearings. In these cases, the defendants are typically tried *in absentia*, a fundamental violation of their rights to fair trial. In addition many convicted prisoners, particularly in remote areas, were reported to miss scheduled appearances at the Appeal Court and Supreme Court. In most cases, these prisoners or their families have been asked to pay for their own transportation and guard costs from their specific prison to Phnom Penh. These costs, which should be met by the prisons, can be more than \$100 for transit from distant provinces.

Court Attendance in Prison Clothes

Those prisoners who are sent to court are often sent in prison clothes, violating the presumption of their innocence. In 2001, the Head of the Prison Department issued written instructions regarding the provision of civilian clothes to all prison chiefs. However these instructions are still not followed in a significant number of cases.

Indefinite Detention awaiting Appeal

Prisoners are required to remain in prison awaiting appeal, whether appeals filed by the prosecutor or by themselves. Due to the lengthy delay in appeals coming to court, many prisoners whose case is the subject of appeal remain in jail even though their sentences have been completed. This is a major deterrent to prisoners in launching appeals, and in some cases, is forcing prisoners to try and withdraw their appeals simply to get out of prison.

Disregard of Rules and Regulations

The Prison Department issues individual orders to different prisons throughout the country, and Prison Directors also issue their own rules. OHCHR/Cambodia found that some parts in those rules do not comply with international standards, or to the relevant Prison Proclamations and Procedures. For example, Article 9 of the Rules for CC1 Prison gives the Prison Director the right to authorise the use of weapons whenever he/she thinks the situation so requires. This conflicts with Proclamation 217 (Administration of Prisons), which sets out the specific circumstances under which firearms may be

¹⁷ U.N. Standard Minimum Rules for the Treatment of Prisoners, Rule 8.

¹⁸ COHCHR Prison Periodic Report, March 2002.

used.¹⁹ There is also a lack of enforcement of instructions from relevant ministries related to prison issues. Some instructions or orders are issued from Ministry level to prison authorities or relevant government officials but practical implementation rarely takes place.

6. ACCESS TO PRISONS

The Special Representative, the Cambodia office and many local non-governmental human rights organisations, have expressed their concern about the procedures governing access to prisons. Prison visits fall into three main categories:

Family Visits

The State of Cambodian Prisons found that the sample surveyed averaged two visits per month to each prisoner. Visits by family and friends are critical for the prisoners, not only for psychological support, but also for food and other essential materials, as well as help to return to society on completion of sentence. The law requires that all prisoners have the right to receive visits from families or friends for at least one hour each week.²⁰ This provision is systematically ignored. In practice, most families are able to visit for little more than fifteen minutes each week. Access is made even more difficult for families where prisoners are detained far away from their homes. This is an increasingly common situation as prisoners are transferred around the country in an effort to alleviate overcrowding problems in some prisons.

Even if the prison can be reached, the difficulties continue. In some prisons there is no proper visiting place for families, and the visit is conducted in the prison kitchen or clinic. And as in 1994, many prisons regularly deny the right to family visits as a disciplinary measure. Most serious of all, there is an apparent increase since 1994 in corruption associated with family visits to prisoners. Prison guards and officials frequently demand payment from family members in exchange for permission to visit. Typically, larger sums are charged on the first visit, and for visits made on non-official visiting days. Corruption also occurs when families attempt to deliver food, water, medical care and other essential supplies.

Defence Lawyer Visits

As in 1994, some prisons lack proper places for defence lawyers to meet their clients, resulting in consultations where the prisoners are not confident of confidentiality. Defence lawyers also complain that prison officials often obstruct their visits, imposing time constraints or requiring additional authorisation from the Ministry of Interior.

UN and NGO Visits

The Cambodia office and non-governmental organisations are facing serious and increasing difficulties in gaining access to prisoners and prisons in some cases. The situation varies greatly between differing prisons, with access in some very limited both in terms of time allowed, and in terms of detention cells that can be visited. Visits to pre-trial detainees are only permitted with the express written permission of the relevant judge or prosecutor, which can be very hard to obtain. Lack of co-operation from some prison officials is still reported, for example in Svay Rieng. Private interviews with prisoners are not authorised, causing serious difficulties in collecting reliable information on maltreatment or torture committed by law enforcement and prison officials.

¹⁹ Proclamation 217 (Administration of Prisons), Article 7B: "Firearms must not be used except where unavoidable in the defence of oneself, or others, in the following circumstances: where there is an imminent threat of death or serious injury; to prevent a serious crime involving a grave threat to life; or to prevent an escape only when less extreme means are insufficient, and only in the defence of a person whose life is threatened by an escaping prisoner."

²⁰ Proclamation 217 (Administration of Prisons), Article 7B.

7. RECOMMENDATIONS

Overcrowding

- Act urgently to reduce numbers in pre-trial detention through speeding up court processes
- Ensure that criminal charges are not brought if insufficient evidence can be found for a trial
- Observe UNTAC Law Article 14.1, which states that accused persons may only be remanded in pre-trial detention in specific conditions
- Observe UNTAC Law Article 14.4, which states that pre-trial detention must not exceed four months, and may only be extended to six months under special circumstances
- Ensure that prison directors fulfil their responsibilities to notify courts on expiration of pre-trial detention
- Establish regional or peripatetic Courts of Appeal
- Clarify fines and suspended sentences
- Explore alternative avenues for sentencing, and reconsider the lengths of prison sentences handed down for minor crimes.
- Investigate potential of community service orders for minor and first-time offenders, as well as educate the public about non-custodial sentences
- Replace the current early release programme with a comprehensive legislated scheme.
- Prioritise building and renovation work in Sihanoukville, Kompong Thom and Banteay Meanchey prisons

Food and Water

- Improve financial management to ensure that no food allowances are required to cover utility or service costs, and enact monitoring to ensure that a minimum 1,000 riels worth of food reaches each prisoner each day without losses to corruption
- Confirm that restriction of food allowances as a punishment measure will not be tolerated, and take disciplinary measures against any offending prison officials
- Ensure the provision of regular, uncontaminated drinking water in all prisons, with priority given to Banteay Meanchey, Preah Vihear and Sihanoukville prisons

Health and Medical Services

- Produce a clarification, through inter-ministerial ministerial order (prakas), of responsibilities for health issues between the Ministry of Interior and Ministry of Health
- Ensure payments for prisoner and allowances are received on time and in full, through transfer from the Interior Ministry Finance Department direct to provincial treasuries
- Renovate the Monivong hospital prison wing, installing appropriate sanitary facilities
- Develop a policy for prisoners with HIV/AIDS, and amnesty those in the last stages of AIDS

Administration

- Ensure that prison funding is made available in full and to schedule, especially through improved co-operation between the Ministry of Interior and the Ministry of Economics and Finance

- Offer prison officials and guards professional training, a salary that supports a reasonable standard of living, and adequate accommodation
- Ensure that administrative staff in each prison are in a number proportionate to the number of prisoners
- Ensure the provision of female guards for female prisoners
- Prioritise the transportation of inmates, with fuel and per diems provided according to need

Threats to Safety

- Strengthen efforts to separate prisoners according to sex, age (juvenile or adult), legal status (pre-trial detainee or convicted prisoner), seriousness of offence and medical condition
- Prosecute alleged perpetrators of torture, and ensure that the courts are able to reach a decision free of pressure from government
- Observe legislation concerning the use of restraints, ensuring that handcuffs are used only in transport or emergency situations, and that use of shackles is eradicated
- Prohibit the practice of favoured inmates and "cell chiefs"

Legal Rights

- Improve co-operation between the Ministries of Interior and Justice
- Ensure prisoners are provided with civilian clothes for court appearances
- Prevent hearings in absentia for prisoners who are in detention and unable to attend for lack of transportation
- Immediately release prisoners awaiting appeal but with sentence completed

Rules and Regulations

- Appoint a team of legal experts to review all Cambodian prison laws, proclamations, procedures and rules for compliance with relevant higher laws and international standards, with input from NGOs and other organisations working with prisons
- Amend relevant prison laws and regulations, and withdraw illegal orders
- Monitor all subsequently issued orders, and visit individual prisons to ensure that orders and laws are clearly understood and followed

Access

- Take urgent and effective measures to stop corruption in the prison system
- Endeavour to ensure that, to the greatest extent possible, prisoners are detained in the nearest facility to their homes and families
- Allow prison monitors to conduct private interviews with inmates, with distant but non-audible observation by prison officials (see the Prison Procedure No. 29, article 7.1)
- Advocate for adoption of the U.N. Draft Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ratify on adoption.