



BEYOND CAPACITY: CAMBODIA'S EXPLODING PRISON POPULATION & CORRECTIONAL CENTER 4

A LICADHO Briefing Paper
July 2010



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CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through two programs:

Monitoring and Protection Program:

- **Monitoring of State Violations and Women's and Children's Rights:** monitors collect and investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.
- **Paralegal and Legal Representation:** victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.
- **Prison Monitoring:** researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- **Medical Assistance:** a medical team provides assistance to prisoners and prison officials in 12 prisons, victims of human rights violations and families in resettlement sites.
- **Social Work:** staff conduct needs assessments of victims and their families and provide short-term material and food.

Promotion and Advocacy Program:

- **Training and Information:** advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.
- **Public Advocacy and Outreach:** human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual).

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Cover Photo: A sign outside a men's cell at Kompong Chhnang provincial prison. Translation: "Cell Count 100, 1 at hospital."

Content

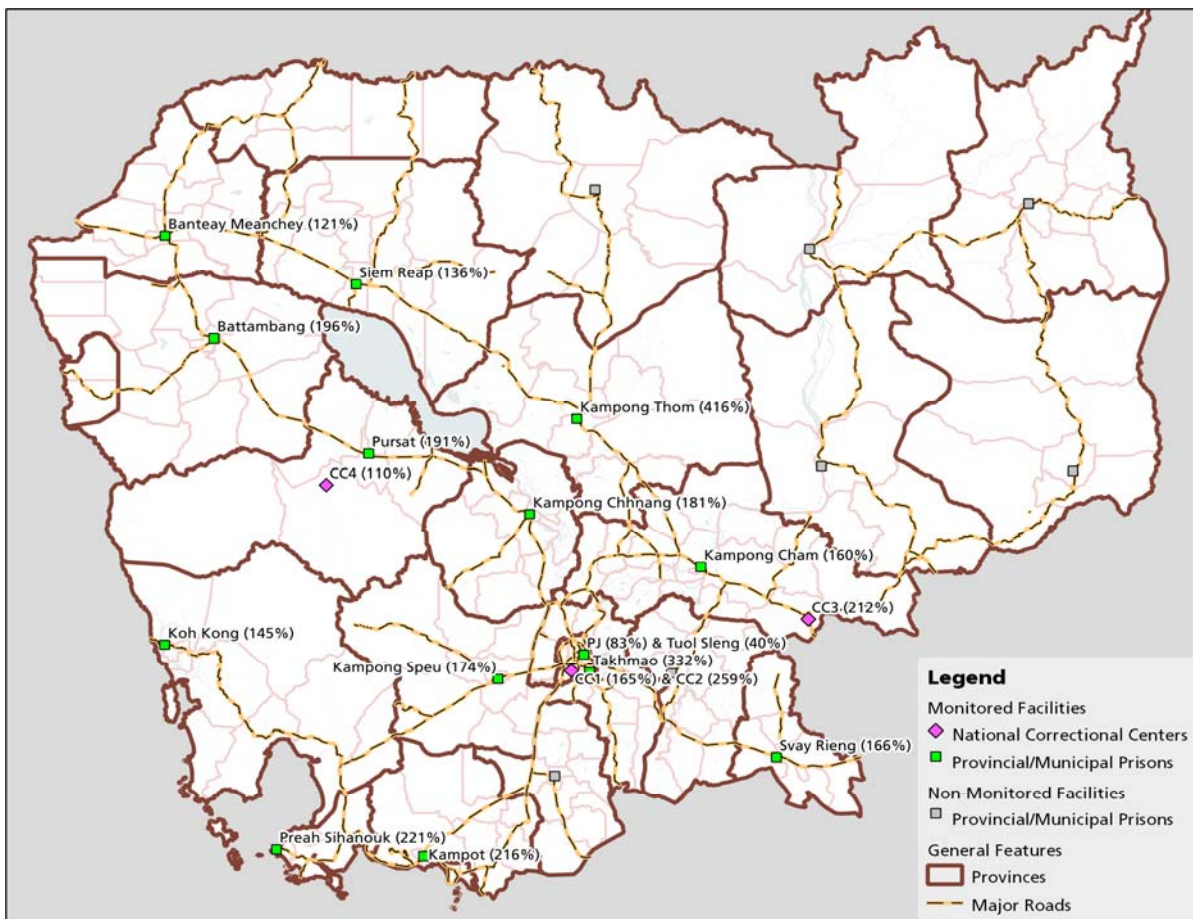
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Introduction

Cambodia's prison population is in the midst of an unprecedented population boom. Just six years ago, the 18 prisons monitored by LICADHO were at roughly 100% of their collective capacity¹. Since then, the population has exploded, growing at an average rate of 14% per year. Prison capacity has also increased, but not nearly enough to keep pace with growth.

The General Department of Prisons (GDP) reported in March 2010 that the entire prison system held 13,325 inmates – 167% of the system's 8,000-inmate capacity. The 18 prisons LICADHO monitors, meanwhile, were filled to 175% of capacity as of June 2010. As of December 2009, one third of all Cambodian prisoners – over 4,000 – were in pretrial status.

THE 18 PRISONS MONITORED BY LICADHO (WITH OCCUPANCY RATES)



¹ Figures cited are based on figures provided by the 18 prisons monitored by LICADHO, unless otherwise noted. These 18 prisons house approximately 90% of Cambodia's total inmate population.

Thus far, the government's sole response to the overcrowding crisis has been to construct additional prisons and expand existing ones². The GDP's latest attempt to ease overcrowding is the construction of Correctional Center 4 (CC4). This new prison in Pursat Province, opened in January 2010, is designed to eventually house 2,500 inmates.

While Cambodia is certainly in need of upgraded detention facilities, a building boom alone will not eliminate overcrowding. Cambodia's prison population is simply growing too fast. New prisons are routinely opened at or beyond capacity, while older prisons continue to overflow. CC4s is not the answer to this problem; alternatives are needed. This briefing paper explores some of those options.

It is important to note that the motivation behind the construction of CC4 is not limited to increasing capacity. The GDP plans to operate the institution as a large-scale prison farm. Thus, the activation of CC4 could mark a major step in Cambodia's march toward a rehabilitation-focused prison system, with labor as its apparent centerpiece. This is potentially a significant and positive shift in the country's criminal justice policy.

LICADHO supports this goal in the abstract, as rehabilitation should always be an important part of any penal system. However, the keys to the program's success lie in the details. To that end, this briefing paper also identifies areas of concern as Cambodia expands its prison labor program at CC4 and elsewhere.

² This has been due partly to the lack of viable sentencing alternatives, which were recently expanded under the new Criminal Code. *See* Section II, *infra*. However, the UNTAC law did provide at least two such options: Suspended sentences (UNTAC Article 70) and conditional release (Article 71). These, along with pretrial release measures, were rarely used.

I. Correctional Center 4: Background

The GDP has studied the idea of building a large prison farm in Pursat province for at least two years. Construction began in August 2009, and the facility was officially activated on January 17, 2010, with the arrival of the first inmates.

CC4 is Cambodia's 25th civilian prison and fourth national prison. It will eventually be the country's largest correctional institution. The facility sits on 846 hectares³ of partially-forested land, and as of June 2010 housed a reported 154 inmates in two wooden buildings. The government plans to build five separate housing "branches" on the land, each with a capacity of 500 prisoners. Sources have indicated that one of these branches may be dedicated to housing convicted juvenile inmates. Construction will be performed by prisoners. The government has not provided an estimated date of final completion.

The majority of the prison land will be dedicated to agriculture, with inmates performing all of the labor. Government officials have reported at varying times that crops could include sugarcane, rubber, corn, beans, cassava and sesame⁴. The Phnom Penh Post reported that agricultural production began on March 16, 2010, with the plowing of 12 hectares of land⁵.

GDP has identified three goals in constructing CC4: (1) to reduce overcrowding within the prison system; (2) to enhance its vocational training program so that prisoners are better prepared to reenter society; and (3) to achieve the goal of housing the majority of long-sentence convicted prisoners in its national Correctional Centers (CC1, CC2, CC3 and CC4), so that provincial prisons can focus primarily on housing pretrial inmates⁶.

While many of Cambodia's aging prisons are in need of replacement, LICADHO has several concerns about the implementation of the CC4 project and the manner in which this new facility fits with GDP's goals, as well as the objectives of the greater criminal justice system. We believe that it is most helpful to express these concerns now, before the project is completed, so that the details of CC4's construction can be fully explored by the government, civil society, and the public at large.



A stone marks CC4's property line. The prison sits on 846 hectares of partially-forested land. Most of the property will be dedicated to agriculture.

³ The original concession was nearly 1,000 hectares, and overlapped with 200 hectares of farmland used by more than 100 families surrounding the prison site. The GDP now claims to have reduced the prison's footprint to 846 hectares. However, at least 27 families from two villages in Pursat Province still claim that that prison officials illegally seized 78.5 hectares of their farmland. See Phnom Penh Post, "Prison Accused of Land-Grabbing," by May Titthara, July 7, 2010, page 4.

⁴ See Phnom Penh Post, "Inmate Work Training Begins," by May Titthara March 17, 2010, Page 1; additional information also obtained from LICADHO interviews with prison directors.

⁵ *Id.*

⁶ See "Annual Report of General Department of Prison - 2007 and Direction for 2008," [hereinafter "GDP Annual Report 2007"] Ministry of Interior, Feb. 4-5, 2008, supplement titled "Policy Framework for Prison Reform," Jan. 29, 2008, at page 3 and PowerPoint presentation, slide 12; see also "Progress Report of General Department of Prison and Challenges in Prison Management in the First Six Months 2009," [hereinafter "2009 GDP Progress Report"] Sept. 2009, page 6.

II. CC4 & The Reduction of Overcrowding

CAPACITY IS NOT THE ONLY PROBLEM



A cell building at CC4 (Photo Supplied)

Cambodia's prison system suffers from a combination of dire overcrowding and crumbling infrastructure. The GDP reported in March 2010 that the entire prison system held 13,325 inmates – 167% of the system's 8,000-inmate capacity. The 18 prisons LICADHO monitors, meanwhile, held 12,646 prisoners as of June 2010, or 175% of their capacity⁷. In December 2009, a full one-third of these inmates were in pretrial status. Some of these prisons date back to the early 1900s, and are scarcely fit for habitation. Cambodia's prisons are already starved for resources; overcrowding only makes the

situation worse⁸.

Clearly, the government must address the twin ills of overcrowding and outdated infrastructure. However, addressing the problem solely through the construction of new prisons is a strategy destined to fail. History has shown time and again that prison systems cannot simply build their way out of an overcrowding crisis.

⁷ Using the 175% number, Cambodia's prisons would place in the top 25 most overcrowded in the world according to data compiled by the International Centre for Prison Studies. That study places Cambodia at No. 42, but uses data from July 2009, covers all of Cambodia's prisons and uses a slightly higher total capacity number. See King's College of London International Center for Prison Studies, "Entire World – Occupancy Rates," available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_occupancy

⁸ For a detailed description of the poor conditions in Cambodia's prisons, see *A LICADHO Report: Prison Conditions in Cambodia, 2005 & 2006*, supra and *A LICADHO Report: Prison Conditions 2004*. Since the publication of these reports, overcrowding has only increased.

CAMBODIA'S PRISONS BY CAPACITY

PRISON	CAPACITY	POPULATION (JUNE 2010)	PERCENT OF CAPACITY
PJ	200	167	83.5%
CC1	1,600	2,644	165%
CC2	300	777	259%
CC3	720	1,529	212%
CC4	140	154	110%
Toul Sleng ⁹	5	2	40%
Takhmao	314	1,042	332%
Kg. Som	150	332	221%
Kg. Speu	180	313	174%
Kampot	160	345	216%
Kg. Chhnang	150	271	181%
Kg. Cham	500	798	160%
Kg. Thom	50	208	416%
Koh Kong	150	218	145%
Pursat	120	229	191%
Battambang	600	1,174	196%
B. Meanchey	700	816	121%
Siem Reap	1,000	1,361	136%
Svay Rieng	160	266	166%
TOTAL	7,199	12,646	175.7%

⁹ Military prison monitored by LICADHO, but not administered by Ministry of Interior/GDP.

THE PRISON POPULATION IS GROWING TOO FAST

Between December 2008 and December 2009, LICADHO recorded a 15.5% population increase in the 18 prisons it monitors. During the period of December 2007 to December 2008, the population jumped 9.7%. Since 2004, the population has nearly doubled. Going back to December 1999, the prisons monitored by LICADHO held roughly 3,500 inmates¹⁰, meaning population has increased by almost 350% in ten years¹¹.

The following graph illustrates the growth in the prisons that LICADHO monitors over the past five years:

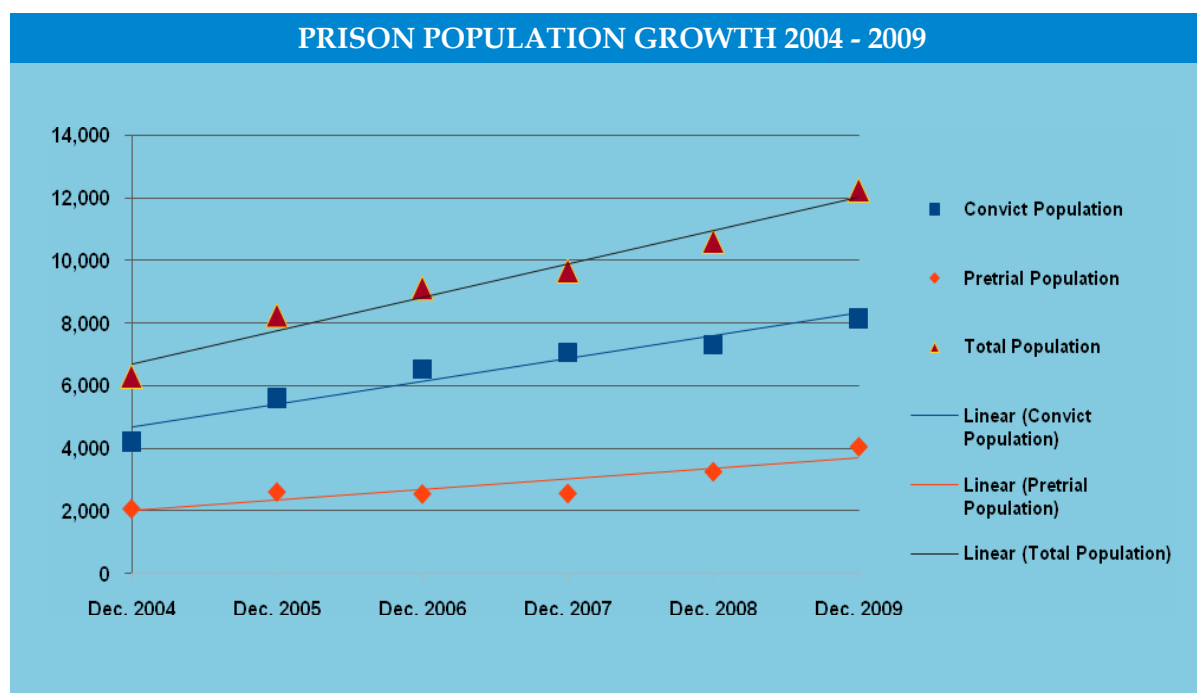


The lone men's cell at Kompong Thom Provincial Prison holds some 100 inmates, over double its intended capacity. The remainder of the male inmates sleep outdoors, under a plastic tarp.

YEAR	CONVICT POPULATION	PRETRIAL POPULATION	TOTAL POPULATION
Dec. 2004	4,202	2,094	6,296
Dec. 2005 [change vs. previous year]	5,611 [33.5% ↑]	2,627 [25.4% ↑]	8,238 [30.8% ↑]
Dec. 2006 [change vs. previous year]	6,545 [16.6% ↑]	2,561 [2.5% ↓]	9,106 [10.5% ↑]
Dec. 2007 [change vs. previous year]	7,075 [8.1% ↑]	2,579 [1% ↑]	9,654 [6% ↑]
Dec. 2008 [change vs. previous year]	7,325 [3.5% ↑]	3,267 [26.7% ↑]	10,592 [9.7% ↑]
Dec. 2009 [change vs. previous year]	8,173 [11.6% ↑]	4,058 [24.2% ↑]	12,231 [15.5% ↑]
Average growth 2005-09	14.23% ↑	14.15% ↑	14.2% ↑

¹⁰ See Human Rights and Cambodia's Prisons: Prison Conditions 2002 & 2003, LICADHO, October 2004, page 6.

¹¹ Interestingly, roughly 35% of Cambodian inmates in 1999 were in pretrial status. In the intervening years, LICADHO data shows that this number dropped – to 28.1% in 2006 and 26.7% in 2007. The number then shot up to 30.8% in 2008, 33.2% in 2009, and back down to 30% as of June 2010.



This growth rate has strained even the newest of Cambodia's prisons, which were ostensibly built to combat overcrowding:

- The new prison in Siem Reap – the city's second new facility since 2000 – was completed in 2009 and designed to house 1,000 inmates. It replaced a facility with a capacity of 550. By the time the new Siem Reap prison was completed, the inmate population had already swelled to 1,200. As of June 2010, it held 1,361 prisoners.
- Bantey Meanchey also received a new prison in 2009, with a rated capacity of 700. At the time of its activation, it housed approximately 550 inmates. Just one year after its construction, it is already over capacity, holding 816 prisoners.
- The so-called "model prison" at Takhmao, built with assistance from the Australian government, was completed in 2006 with a capacity of 314 inmates. It houses some 1,042 as of June 2010.

CAMBODIA'S INCARCERATION RATE: INMATES PER 100,000 PEOPLE¹²

YEAR	NATIONAL POPULATION	INMATE POPULATION	INMATES PER 100,000
2006	14,091,823	9,106	64.6
2007	14,323,842	9,654	67.4
2008	14,562,008	10,592	72.7
2009	14,800,000	12,231	82.6
2010	15,036,800	13,454	89.4

Note: 2010 data projected with 1.6% population growth rate and 10% inmate population growth. Prison population includes only those facilities monitored by LICADHO.

The prospect of keeping future prisons under capacity does not look much brighter: If the prison system maintains a 10% growth rate¹³, Cambodia could build a new CC4-sized prison every year, and *never* catch up with the total inmate population. Even assuming a more conservative view – i.e., the addition of 400 new beds per year for nine years¹⁴, and a population growth rate of 5% over that time – Cambodia's prison system would still be at 165% of capacity in 2019.

Assuming the worst case scenario – a continuation of the 14% average growth rate of the past five years, plus the addition of 400 beds per year on average – Cambodia could have the most overcrowded prison system in the world by 2018¹⁵.

The graph below represents three projected growth rates – 5%, 10% and 14% (the current five-year average) annually – alongside three projections for the increase of capacity – 400, 1,000 and 2,500 beds per year. “Current” figures are based upon capacity and population for the entire prison system reported by GDP in March 2010:

¹² Total Population – World Bank, World Development Indicators database, available online at:

<http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2009>; Prison Population – LICADHO research.

¹³ A 10% growth rate – or higher – is increasingly likely, particularly when the remainder of the new Penal Code comes into effect in late 2010. The Code's penalty provisions specify over 300 crimes, while the former UNTAC code specified only 35. (Compare UNTAC Code, Titles IV & V and Penal Code, Titles II-V). Further, the imposition of a fine is now mandatory for many crimes, which may increase the number of defendants imprisoned for inability to pay.

¹⁴ The addition of 400 beds per year is roughly the current growth rate. This rate may be optimistic, though, because it came in the midst of a significant building boom buoyed in part by foreign aid. Between 2007 and 2009, the Cambodian prison system only added an average of 300 beds per year. Adding 2010, the average rises to 400, assuming the completion of a new prison at Kampong Thom and the addition of 200 more beds at CC4.

¹⁵ See King's College of London International Center for Prison Studies, “Entire World – Occupancy Rates,” available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_occupancy

YEAR	CAPACITY GROWTH WITH 400 NEW BEDS PER YEAR (CURRENT RATE)	CAPACITY GROWTH WITH 1,000 NEW BEDS PER YEAR	CAPACITY GROWTH WITH 2,500 NEW BEDS PER YEAR (1 "CC4")	POPULATION @ 5% ANNUAL GROWTH	POPULATION @ 10% ANNUAL GROWTH	POPULATION @ 14% ANNUAL GROWTH (CURRENT 5-YEAR AVG.)
2010	8,000 (current)	8,000 (current)	8,000 (current)	13,325 (current)	--	--
2011	8,400	9,000	10,500	13,991	14,657	15,190
2012	8,800	10,000	13,000	14,690	16,123	17,317
2013	9,200	11,000	15,500	15,425	17,735	19,741
2014	9,600	12,000	18,000	16,196	19,508	22,504
2015	10,000	13,000	20,500	17,006	21,459	25,654
2016	10,400	14,000	23,000	17,856	23,605	29,245
2017	10,800	15,000	25,500	18,749	25,966	33,339
2018	11,200	16,000	28,000	19,687	28,562	38,006
2019	11,600	17,000	30,500	20,671	31,419	43,326

(Figures in **RED** represent projection population totals that would exceed prison capacity, even in the nearly impossible event that GDP added 2,500 prison beds per year)

Cambodia cannot build prisons fast enough to keep up with its current inmate growth rate. Nor can it afford to. Building prisons and housing inmates in conditions which meet international standards is expensive. Already, prison officials interviewed by LICADHO have stated that the construction of CC4 is underfunded. And it is rare to find a new prison whose construction was actually "finished" by the government or its contractors; new facilities typically require significant improvements from NGOs and IGOs¹⁶. Where will money for additional facilities come from?

FACTORS CONTRIBUTING TO OVERCROWDING

Overcrowding is the result of a complex combination of factors. But a significant culprit is the overreliance on prisons to address crime.

¹⁶ For example, one high-ranking prison official told LICADHO in January 2010 that the new prison in Kampong Thom - scheduled to open this summer - would lack sufficient water, electricity, cells, and auxiliary buildings such as a health center and vocational training rooms. The reason cited was cost. The lack of water and electricity was particularly inexcusable, as the city water main and electricity grid were less than 1 kilometer away from the site. The official stated that he would have to ask "an organization" to finish construction for him. Construction of the primary prison structures was reportedly finished in April 2010, but as of early July, the prison had yet to open.

Currently, Cambodia's criminal justice system is focused almost entirely on incarceration, both of convicted criminals and defendants awaiting trial. The default punishment for nearly any crime is imprisonment – even for minor offenses, and often for an extended time period. Likewise, release pending trial is rare for criminal defendants; they typically end up in pretrial detention.

LICADHO has also documented many cases of excessive detention. The routine imprisonment of individuals who should be released as a matter of law is unconscionable considering that the prison system is already bursting at the seams. This group includes:

- Inmates who are held in pretrial detention beyond the time limits prescribed by law¹⁷. As of May 2010, there were at least 91 such cases in the prisons LICADHO monitors¹⁸.
- Inmates imprisoned past the expiration of their sentence¹⁹.
- Inmates detained in pretrial status beyond the maximum punishment for their charged crime.
- Inmates in the midst of appeals proceedings who are held in prison beyond the maximum punishment prescribed for their crime; the worst cases involve inmates who are actually *acquitted* at the trial court level, but who stay in prison pending the prosecutor's appeal²⁰.

“If the prison system maintains a 10% growth rate, Cambodia could build a new CCA-sized prison every year, and never catch up with the total inmate population.”

The inevitable consequence of such an incarceration-focused system is runaway overcrowding.

ALTERNATIVES TO IMPRISONMENT: AFFORDABLE, EFFECTIVE, AND MORE HUMANE

The GDP cannot solve the overcrowding problem on its own. A more effective approach requires a fundamental shift on the part of the Cambodian justice system. One solution to the overcrowding problem is for courts and prosecutors to begin making greater use of non-custodial sentences and non-custodial pretrial measures.

The government should start immediately with the latter²¹. Roughly 3,800 pretrial inmates are currently detained in Cambodia's prisons. Their presence presents an immense strain on resources.

¹⁷ See, *Human Rights and Cambodia's Prisons: Prison Conditions 2004*, December 2005, page 20. Current limits range from two months for juveniles charged with misdemeanors to 18 months for adults charged with felonies. See Code of Criminal Procedure, Articles 208-214.

¹⁸ The GDP itself claimed in August 2009 there were 755 cases of “excessive pretrial detention,” but their methodology for calculating that number was unclear. The period of pretrial detention may be extended by the court – though not indefinitely – and this number may include cases where prosecutors and courts did not apply for such an extension in a timely manner. See 2009 GDP Progress Report, page 6.

¹⁹ This scenario may occur because administrative procedures to secure release papers are delayed, because the process is obstructed by prison officials seeking payment from prisoners, or both.

²⁰ Article 398 of the Code of Criminal Procedure states that the accused shall be detained pending the resolution of an appeal. But the same provision also states that the prosecutor “may agree to release the accused before the expiration of the time limit for appeal” if the defendant was acquitted at the lower court, or was “sentenced to imprisonment equal to or less than the time spent in provisional detention.” The law is ill-conceived in that it provides absolute discretion to an inherently biased party – the prosecutor who brought the charge. Nonetheless, LICADHO urges prosecutors make more use of this provision.

Cambodian law defines pretrial detention as an “exceptional” measure, and states that in principle, all defendants “shall remain at liberty.”²² In other words, release pending trial is the default option. It should be virtually automatic for defendants accused of misdemeanors. It should also be the preferred option for defendants accused of non-violent felonies who do not pose a flight risk or a danger to their community²³.

For convicted inmates, the newly-enacted Penal Code²⁴ provides a host of options, both full-fledged non-custodial sentences, and mechanisms whereby an inmate’s time in prison can be reduced or minimized:

- Community service (for offenses punishable by up to three years imprisonment)²⁵;
- Reprimand (for offenses punishable by up to three years imprisonment, and when three conditions are met – (1) disturbance to public order has ceased, (2) prejudice is repaired, and (3) the offender is assured successful social rehabilitation)²⁶;
- Suspended sentence, without conditions or with conditions²⁷;
- Deferred pronouncement of the sentence (when disturbance to public order has stopped, the offender is assured successful social rehabilitation and asks for a delay in order to be able to repair the damage caused)²⁸;
- Semi-liberty for prison term of up to six months so that convicts can continue their professional activity, training or education, go through medical treatment or take care of their family²⁹;
- Split sentences for prison term of up to one year – with each portion of prison time being a minimum of one month, and a total duration running over a maximum of two years³⁰; and
- Numerous “complimentary” sanctions, which may be substituted for primary punishments (i.e., imprisonment) in certain circumstances³¹.

The government should also consider developing mechanisms to:

- Divert minor cases away from the criminal justice system, through informal or traditional systems that respect human rights norms. This allows a perpetrator to make amends with the community without burdening the criminal justice system and the prisons;

²¹ Although the Code of Criminal Procedure provides that defendants may request their own release pending trial, the decision-making power lies with the court, and to a lesser extent, the prosecutor. Code of Criminal Procedure, Articles 215-18.

²² Code of Criminal Procedure, Article 203.

²³ Article 205 of the Code of Criminal Procedure provides that provisional detention “*may* be ordered when it is *necessary* to: (1) stop the offense or prevent the offense from happening again; (2) prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices; (3) preserve evidence or exhibits; (4) guarantee the presence of the charged person during the proceedings against him; (5) protect the security of the charged person; and (6) preserve public order from any trouble caused by the offense.” An order for provisional detention requires a written statement of reasons based on the factors set out in Article 205. *See* Code of Criminal Procedure, Article 206.

²⁴ The sentencing provisions went into effect in December 2009; the remainder of the code will go into effect in late 2010.

²⁵ Penal Code, Articles 72-75.

²⁶ *Id.*, Article 76.

²⁷ *Id.*, Articles 117-123

²⁸ *Id.*, Articles 124-26

²⁹ *Id.*, Articles 127-131.

³⁰ *Id.*, Articles 132-135

³¹ *Id.*, Articles 53-71, 100.

- Focus on providing alternative, non-custodial arrangements for youth offenders to keep them out of prisons. Cambodia currently incarcerates 788 juvenile offenders, 375 of them in prisons where they are fully integrated with adult prisoners³².

An increased use of non-custodial sentences and pretrial measures will aid the government in attaining one of its other goals as well: the shift toward a more rehabilitative criminal justice system. Even in the best of circumstances, prison can be a dehumanizing experience that negatively impacts a person's ability to function in normal society. Non-custodial sentences, on the other hand:

- Facilitate successful reintegration by not removing the offender from society;
- Allow offenders to continue their education, work and meet family obligations, thus minimizing the burden on society;
- Allow offenders to continue supporting their dependants. Many inmates in Cambodia may be the primary providers, and their incarceration can have extreme economic effects on their families; and
- Keep young and impressionable offenders away from hardened criminal elements, which is a significant factor in preventing future crime; Cambodian prisons routinely mix juvenile and adult offenders.

Non-custodial options admittedly cannot be implemented overnight. Their implementation requires the examination and reform of the justice system as a whole. A sentence of imprisonment is the result of a long chain of decisions involving a variety of actors, from policymakers to police. Significant change will only happen through the cooperation of all of these actors.

Alternatives such as community service and suspended sentences require staff and infrastructure to monitor and track offenders, and to ensure that conditions of release are met. Prosecutors, judges and defense attorneys may require training as to the appropriate manner in which to use or recommend non-custodial sentences. All of this must be prioritized and funded.

But this is a case where short-term expenditures will lead to long-term savings. Non-custodial sentences are cheaper than custodial sentences, for the obvious reason that the government does not have to house, feed and clothe the offender. Offenders take care of themselves, while being allowed to function normally in society under the periodic supervision of state authorities.

RECOMMENDATIONS

LICADHO recommends that:

- The government evaluate its criminal justice policy from a more systemic perspective, so that MoI and GDP are not left alone to deal with the back end of the problem, i.e., the exploding prison population. As part of this systemic approach, the government should compile a reliable and accurate profile of the prison population – including details such as

³² Correctional Center 2 is sometimes referred to as a "juvenile" prison because juvenile males are not mixed with adult males, as they are in Cambodia's other prisons. But the facility is not entirely dedicated to juveniles, as it also houses 389 adult females.

sentence length, commitment offense and the age of offenders – to help inform criminal justice policy decisions.

- Ministries of Justice (MoJ) and Interior (MoI) and relevant partners take steps to establish the infrastructure necessary to implement non-custodial sentences on a broad scale. These steps could include: the training of judges, prosecutors, staff and defense attorneys on the proper use of non-custodial sentences; and the development of a probation department or similar government office dedicated to the supervision and rehabilitation of non-custodial offenders.
- MoJ should take immediate steps to implement on a trial basis non-custodial sentences for certain types of offenders. This trial could start with a task force to review the cases of all prisoners currently sentenced to 3 years or less, which is the threshold for community service.
- MoJ and the courts should immediately begin increasing their use of non-custodial pretrial measures among the roughly 3,800 pretrial detainees now burdening Cambodia's prison system; release should be the rule – not the exception – for minor and non-violent offenses.
- Imprisonment should be viewed as a punishment of last resort, and not the default option for every offense.
- MoI should focus on quality, rather than quantity, when constructing prisons. All too often, new prison infrastructure is woefully inadequate, requiring significant capital improvements from international aid groups to make the facilities habitable. The current arrangement increases the prison system's reliance on external aid, which is not sustainable.

III. CC4 & Vocational Training

LICADHO supports the GDP's plan to shift from punitive to rehabilitative prisons. Vocational training is an essential part of any rehabilitative effort. In addition, the prisons are in dire need of activities which get inmates out of their cells.

However, the ultimate social value of such programs lies in the details. LICADHO has several specific concerns regarding the specific arrangements of the CC4 labor program.



An inmate at Kompong Som Provincial Prison participates in a welding training program sponsored by the Don Bosco Foundation of Cambodia.

TRANSPARENCY

At this stage, relatively little is known about the details of the CC4 vocational training program, as the project is still in an early stage of development. As the project progresses, however, LICADHO urges the GDP to take the following steps to ensure the transparency and effectiveness of its vocational program:

1. Provide regular public reports on the type of work being performed by inmates;
2. Regularly publish the program's financial figures, including a detailed accounting of income, expenses, and income reinvestment;
3. Provide a regular accounting of how agricultural products are used, i.e., whether they are being consumed at Cambodia's prisons or sold at market for cash income;
4. Provide list of partners, subcontractors or buyers (including details of these parties' involvement in the project), if any;
5. Publish official regulations regarding inmate pay, and implement a system to record, in detail, inmate pay and working hours;
6. Allow monitoring of working conditions by NGOs and labor organizations; and

7. Enact a detailed set of binding regulations governing the program, including rules to ensure the implementation of the steps above.³³

USE OF PRISON LABOR FOR PRIVATE BENEFIT

Media reports indicate that prisoners have begun growing rubber trees and sugarcane at CC4³⁴. Government sources have indicated to LICADHO that they are considering developing the prison as a large-scale rubber plantation. GDP also stated in 2008 that it wanted to “explore national and international business partnership[s] to assist in the further development of prison industries and farming.”³⁵ Due to the expertise required to implement rubber plantations, as well as the nature of the rubber production and processing industry, LICADHO is concerned that such a venture may be operated with the help of a private entity. Commercial sugarcane farming presents similar concerns.



Inmates labor is being used to construct CC4. (Photo Supplied)

Cambodian law explicitly forbids the use of prison labor for private benefit³⁶. International law – specifically ILO Convention No. 29 – makes the same prohibition³⁷, save for very narrowly-defined exceptions. The Cambodian Labor Law incorporates ILO Convention No. 29 as domestic law³⁸. In addition, countries such as the United States ban the importation of any goods produced by prison labor³⁹. GDP should also consider the impact of operating a vocational program which may compete with private industry, which is already suffering from the global economic downturn.

LICADHO urges the government to ensure that prison labor is not exploited for private benefit – whether at CC4, or any other prison. The GDP must guarantee that all vocational training at CC4 is performed under public supervision, and for the public benefit.

³³ The GDP pledged in 2008 to “develop accountable and transparent financial management mechanisms, procedures and internal rules to manage the income generated from prison industry/farm and to manage the employment conditions for the prisoners.” See GDP Annual Report 2007, page 8. However, beyond prison officials reciting the supposed breakdown of revenues – with 20% guaranteed for inmate wages – LICADHO has not seen any strong evidence of transparency in the program. To the contrary, prison directors tend to be secretive about their private partners, and LICADHO receives regular reports that some prisoners go unpaid or are paid the equivalent of a few dollars per month.

³⁴ See Phnom Penh Post, “Guards Thwart Pursat Jailbreak,” by May Titthara & Mom Kunthear, July 2, 2010, Page 3

³⁵ GDP Annual Report 2007, Draft Policy Framework for Prison Reform, page 5.

³⁶ GDP’s regulations state that prisoners “will not be directed to work for any private benefit.” See Prison Procedure No. 11, Section 3.4 (Issued May 20, 2003).

³⁷ International Convention No. 29 on the Forced or Compulsory Labour, adopted on June 28, 1930, by the International Labour Organization and ratified by the Kingdom of Cambodia on February 24, 1969. See Article 2(c) (convention does not prohibit “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that ... the said person is not hired to or placed at the disposal of private individuals, companies or associations); Article 4 (Government “shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations”); and Article 5 (“No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.”)

³⁸ Cambodian Labor Law, Article 15.

³⁹ U.S. Tariff Act of 1930, Section 307 (codified at 19 U.S.C. § 1307)

INMATE PAY

LICADHO was told in February 2010 that inmates at CC4 are currently not being paid for their work because the agricultural program is not producing income. In lieu of pay, a CC4 source stated that GDP may recommend to MoJ that the sentences of inmate workers be reduced in exchange for their help in constructing the prison.

LICADHO urges MoI and MoJ to cooperate on this issue. Preferably, the plan should prescribe a specific rate of sentence reduction for time worked, i.e., one day off an inmate's sentence for every week worked.

LICADHO also urges GDP to implement and publish inmate pay as soon as possible, so that inmates can be paid fairly and properly when the prison farm begins producing income.

SELECTION OF APPROPRIATE VOCATIONAL PROGRAMS

Lastly, LICADHO is concerned that agriculture may be the sole vocational training program at CC4.

It is estimated that up to 80% of Cambodians are farmers⁴⁰. This fact is a double-edged sword when it comes to training inmates in agriculture. On the one hand, up to 80% of inmates may already have expertise in agriculture and find the training duplicative of their existing skills. Certain aspects of agriculture involve a limited skill set. If the program simply exploits inmates as a cheap source of labor to fund the prison system, inmates will not necessarily be better equipped to support themselves upon release.

On the other hand, if the program is true to its mission, it must endeavor to teach inmates new agricultural techniques which they can bring back to their farms upon release.

Finally, even if the agricultural program is expertly run, inmates should still be given choices. The program is less likely to help reintegrate city-dwellers. GDP should consider a more comprehensive program that teaches multiple skills.

There are some early positive signs: GDP has indicated that it intends to include a "marketing" aspect in its farming program at all prisons⁴¹. This offers the possibility of training inmates in a variety of areas, including: finance and bookkeeping; various aspects of commerce related to buying materials and wholesaling produce; and sales at market.

LICADHO urges GDP to follow through on its plans, and ensure that CC4's vocational training program goes beyond simply putting inmates in the field to do low-skill, labor-intensive work.

⁴⁰ See Deutsche-Welle Online, "Cambodia mulls over massive agro-deal," Feb. 9, 2010, available at: <http://www2.dw-world.de/southasia/SoutheastAsia/1.236014.1.html>

⁴¹ See General Department of Prisons, "Corrections Management System," Draft Model, published July 2005, p. 12.

IV. Concentration of Inmates in National Correctional Centers

While LICADHO supports the principle of separating pretrial and convicted inmates, herding the latter into distant provincial mega-prisons is not the best way to achieve this goal.

Cambodia's prison system currently lacks the financial resources to properly provide for inmates. Thus, prisoners rely on their friends, family and NGOs to bring them food, medicine, water, and other material necessities⁴². Incarcerating 2,500 inmates in a distant corner of Pursat Province all but eliminates this lifeline. The majority of the inmates at CC4 will not be from Pursat, meaning their families will have to travel long distances.



The final section of road leading to CC4 is in poor condition, making it even more difficult for family and friends to visit prisoners.

CC4 is located 1.5 hours from Pursat town, and the road to the prison is in very poor condition. Even paying for the trip to Pursat would be difficult enough for a typical Cambodian family. Adding the cost of a hotel, food, and a round-trip ride from town to CC4 makes the trip nearly impossible.

A lack of family visits may also have a negative effect upon prisoners' ability to reintegrate upon release. This directly conflicts with GDP's stated goal of shifting toward a rehabilitative prison system. Already, there is some indication of

restlessness among the CC4 inmate population. In June, prison authorities reported two escape attempts, the largest involving 10 prisoners⁴³.

Lastly, LICADHO is concerned about GDP's plan to possibly dedicate one 500-inmate unit to convicted male juvenile prisoners. As of June 2010, there were a total of 538 convicted juvenile males in the prisons LICADHO monitors. Thus, virtually all of them would need to be transferred to CC4 to fill the housing unit. Family ties are even more crucial for the rehabilitation of juveniles. The government should redouble its efforts to pass an effective juvenile justice law which concentrates on diversion and non-custodial measures. The warehousing of juvenile offenders does little but decrease their chances for successful reintegration.

⁴² See generally, *A LICADHO Report: Prison Conditions in Cambodia, 2005 & 2006*, supra and *A LICADHO Report: Prison Conditions 2004* (describing lack of food, water and health care; also corruption among prison staff, who demand money for basic necessities).

⁴³ See Phnom Penh Post, "Guards Thwart Pursat Jailbreak," by May Titthara & Mom Kunthear, July 2, 2010, Page 3.

In light of these serious concerns, LICADHO recommends the following:

- GDP should consider the inmate's home province when making transfers to CC4; the prison should house primarily inmates from Pursat and surrounding provinces.
- GDP should focus on upgrading the roads leading to CC4; as of now, they are in a very poor state - particularly the last 10 km - and may be nearly unusable during and after heavy rains.
- Most importantly, MoI should reevaluate its plans to house 2,500 inmates at CC4. This constitutes nearly 20% of the Cambodia's current inmate population, and about 30% of Cambodia's convicted inmates. Money used for construction of CC4 should instead be used to build or upgrade smaller prisons in more dispersed locations, or to implement increased use of non-custodial sentencing, particularly for children.

