



BEYOND CAPACITY 2011: A PROGRESS REPORT ON CAMBODIA'S EXPLODING PRISON POPULATION

A LICADHO Report
July 2011



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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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INTRODUCTION

In July 2010, LICADHO reported that Cambodia's prisons were in the midst of an unprecedented population boom.¹ The 18 prisons monitored by LICADHO were filled to 175% of their capacity. Growth at these prisons averaged 14% per year, and the system was on track to become the world's most overcrowded by 2018. Meanwhile, the government was doing little to decrease the justice system's reliance on incarceration as the primary form of punishment.

One year later, not much has changed. And in some areas, things have only gotten worse.

As of April 25, 2011, Cambodia's total prison population stood at 15,001. That represents a 12.6% increase since March 2010², when the population was 13,325. Today, the prison occupancy rate stands at 179% – and that's a conservative figure, given increasing evidence that some capacity figures are grossly inflated.

At the same time, the root causes of overcrowding have yet to be addressed. Imprisonment is imposed for virtually every crime, from stealing a chicken to murder. Petty criminals are locked up for years on end, with little apparent thought to the proportionality of the sentence – or the impact upon the prison system. Sentences are routinely extended when inmates fail to pay fines. Parole procedures contained in the 2009 Code of Criminal Procedure have yet to be fully implemented. And pretrial detention remains overused.

The government's singular attempt to address overcrowding can only be characterized as missing the point: In April 2011, authorities in Bantey Meanchey transferred 38 accused drug users from prison to a local "drug treatment" center run by the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) – essentially another prison. A Human Rights Watch report described similar facilities run by the same ministry as being havens of torture, physical and sexual violence, and other depravity.³

All of this means that Cambodia's prisons are still bursting at the seams. At least 12 facilities are at or near double their intended capacity, and some are allocating less than one square meter of cell space per inmate. Construction of new prisons and cells continues, but it is clearly not enough.

In short, Cambodia's overcrowding crisis is far from over. And as of 2011, a solution is not even in sight.

¹ See "Beyond Capacity: Cambodia's Exploding Prison Population & Correctional Center 4," a LICADHO report, July 2010.

² The General Department of Prisons (GDP) does not provide regular public updates on the national prison population; March 2010 and April 2011 are the best available figures for showing growth over a period of one year.

³ "Skin on the Cable: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia," a Human Rights Watch report, January 25, 2010, available at <http://www.hrw.org/node/87692>.

I. OVERCROWDING: THE YEAR IN REVIEW

LICADHO noted in its 2010 report that Cambodia's prison system suffered from a combination of dire overcrowding and crumbling infrastructure. In 2011, the situation remains much the same.

Infrastructure in some areas – notably water and sanitation – has improved in some prisons thanks to sustained efforts from international organizations such as the UN Office for the High Commissioner for Human Rights and the International Committee for the Red Cross. But few prison beds have been added since July 2010.

The capacity in the 18 prisons that LICADHO monitors is now 7,554, compared to 7,194 in July 2010. The increase is due to the addition of 70 more beds at Correctional Center 4 (CC4), 90 beds at Correctional Center 3 (CC3), 50 beds at Battambang, and 150 beds afforded by the construction of a new provincial prison in Kampong Thom.

The General Department of Prisons (GDP) has not officially updated its capacity numbers since the date of LICADHO's last report, but based on available information, nationwide capacity is likely in the range of 8,360. This estimate is based on GDP's last estimate of 8,000 beds in mid-2010, plus the additional space at CC3, CC4, Battambang and Kampong Thom since then.



Inside a cell at CC4.

Despite modest capacity growth, the inmate population continues to balloon. As of April 25, 2011, the entire prison system held 15,001 inmates⁴ – 179% of the system's 8,360-inmate capacity. Pretrial detainees accounted for 5,394 of that number, or 36%.

⁴ General Department of Prisons Web Site, Official Population Statistics for April 25, 2011, available at <http://prison.interior.gov.kh/en/about-prison/2010-12-21-16-12-51>

The 18 prisons that LICADHO monitors, meanwhile, held 13,681 prisoners as of May 31, 2011, or 181% of their capacity of 7,554. In May 2011, at least 4,292 of these inmates were in pretrial status, or about 31.4%.

Both the national and LICADHO occupancy rates easily place Cambodia's prisons in the top 25 most overcrowded in the world, according to data compiled by the International Centre for Prison Studies.⁵

In January 2011, the UN Committee Against Torture expressed concern over Cambodia's "serious overcrowding in places where persons are deprived of their liberty, representing a threat to the safety, physical and psychological integrity and health of detainees. They also expressed concerns over "the lack of alternative non-custodial forms of punishment."⁶

THE EFFECTS OF OVERCROWDING



Prisoners prepare a meal at CC4. Rice is the primary food in prison; vegetables and protein are scarce.

The negative effects of overcrowding are perhaps obvious, but bear restating⁷: Cambodia's prison system operates with extremely limited resources, both in terms of infrastructure and finances. Prisoners' food rations lack sufficient protein and vitamins; potable water is in short-supply; health care is almost non-existent for those who cannot pay; educational and vocational programs are cursory at best; and cell space is so limited that some inmates take turns sleeping.

More prisoners mean there is less of everything to go around. But in Cambodia, that does not necessarily mean less for everyone. Rather, scarcity helps fuel the commodification of just about every prison amenity imaginable – medicine, sleeping space, recreation time, visiting privileges, and so on. Poor prisoners bear the brunt of the pay-as-you-go system. Inmates who cannot afford "privileges" often endure subhuman conditions. Wealthy and connected inmates may have private cells with beds, fans, refrigerators, as well as extra food, private medical care, conjugal visits and other amenities.

⁵ That study currently places Cambodia at No. 25, but uses data from 2010. See International Center for Prison Studies, "Entire World – Occupancy Rates," available at http://prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_occupancy

⁶ Concluding observations of the Committee against Torture, Second Period Report of Cambodia, CAT/C/KHM/2 held Nov. 9, 2010, and adopted on Jan. 20, 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/403/78/PDF/G1140378.pdf?OpenElement>

⁷ For further discussion, see "Prison Overcrowding," John Howard Society of Alberta, 1996, available at <http://www.johnhoward.ab.ca/pub/C42.htm>.

Overcrowding also impacts sanitation and health conditions. In some prisons, sanitation systems are being pushed to their limit, and have overflowed into common areas. Water systems – already rudimentary and unreliable – are being forced to accommodate two or three times the number of people they are designed for. This results not only in a lack of drinking water, but a lack of water for other purposes as well. Due to water shortages in one prison, LICADHO researchers witnessed prisoners watering the prison's crops with raw sewage.

Inmates living in close contact with one another, meanwhile, are more likely to spread communicable diseases such as tuberculosis and scabies. Both diseases are a serious problem in Cambodian prisons, as LICADHO's medical team has witnessed. Shortages of nutritious food and fresh water do not help the health situation. The sharing of limited space and competition for resources also increases stress, which can have an impact on inmates' mental and physical health.

Finally, overcrowding makes it more difficult for prison staff to do their jobs, from managing difficult inmates to ensuring prison safety to providing programming. Overcrowding is one of several factors contributing to the use of so-called Prisoner Self Management Committees to control inmate populations. The committees, which GDP has recently reorganized and renamed, are made up of designated prisoners who receive privileges in exchange for keeping other inmates in line. Prisoners interviewed by LICADHO say that the committees' unofficial duties include beating other inmates on behalf of guards.⁸

'A STRATEGY DESTINED TO FAIL'

In 2010, LICADHO noted that the government was attempting to address the overcrowding problem solely by building new prisons, and that this was a strategy destined to fail. The data since then have supported this assertion. Cambodia will not be able to build itself out of the current overcrowding crisis. The hole is too deep – and it's getting deeper.

The graph on the next page illustrates capacity and population figures for the 18 prisons that LICADHO monitors. The graph shows population figures for June 2010 (from LICADHO's previous report) and May 2011, the most current figures available. Virtually all prisons are more overcrowded now than they were a year ago.

⁸ Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia (Presented to the UN Committee Against Torture prior to Cambodia's second periodic report at the 45th session of CAT), October 2010, para 53 http://www2.ohchr.org/english/bodies/cat/docs/ngos/Joint_Cambodian_NGO_Report_Cambodia45.pdf
Prison authorities claim they officially "disbanded" the Self-Management Committees in early 2011, and the name and structure of the committees have apparently changed in some prisons. However, reports of abuses persist, and in committee members are still identified by special armbands in some prisons.

CAMBODIA'S PRISONS BY CAPACITY

PRISON	CAPACITY (MAY 2011)	POPULATION (JUNE 2010)	POPULATION (MAY 2011)	PERCENT OF CAPACITY (MAY 2011)
PJ ⁹	200	167	142	71%
CC1	1,600	2,644	2,848	178%
CC2	300	777	811	270.3%
CC3	810 ¹⁰	1,529	1,502	208.6%
CC4	210 ¹¹	154	196	93.3%
Takhmao	314	1,042	1,040	331.2%
Kg. Som	150	332	435	290%
Kg. Speu	180	313	338	187.8%
Kampot	160	345	428	267.5%
Kg. Chhnang	150	271	336	224%
Kg. Cham	500	798	839	167.8%
Kg. Thom	200 ¹²	208	271	135.5%
Koh Kong	150	218	237	158%
Pursat	120	229	233	194.2%
Battambang	650 ¹³	1,174	1,141	190.2%
B. Meanchey	700	816	1,085	155%
Siem Reap	1,000	1,361	1,482	148.2%
Svay Rieng	160	266	317	198.1%
TOTAL	7,554¹⁴	12,646	13,681	181.1%

FLAWED CAPACITY DATA: OVERCROWDING IS EVEN WORSE THAN IT SEEMS

The occupancy rates in the above table are disturbing enough on their face, but they look even worse when Cambodia's prison capacity calculations are examined more closely. GDP has never conducted a proper nationwide survey of prison capacities. Nor have they publicly

⁹ Inmates interviewed by LICADHO have indicated that PJ, the only facility that is comfortably under capacity, is widely perceived as a "pay-for-stay jail." This helps explain its consistently low occupancy rate.

¹⁰ This number reflects an additional 90 beds added since July 2010.

¹¹ This number reflects an additional 70 beds added since July 2010.

¹² This number reflects an additional 150 beds added since July 2010, via the completion of a new prison. The former Kampong Thom prison, a nearly 100-year-old colonial relic, has now closed.

¹³ This number reflects an additional 50 beds added since July 2010.

¹⁴ GDP also has plans to expand CC1, CC4, Kampong Cham, and other prisons not monitored by LICADHO. There are also plans to relocate prisons in Pursat, Prey Veng, Takeo and Ratanakiri, and to build new prisons in Pailin and Uddor Meanchey. GDP has not provided estimated completion dates for the other projects, but many are likely to be years away. See General Department of Prisons, "Report on Work Achieved in 2010 and Plans for 2011," published January 2011.

adopted a space-per-prisoner standard. Thus, the accuracy of capacity figures in Cambodia's prisons varies widely. Some might be complete fiction, while others are probably closer to the mark.

Bantey Meanchey, for example, is rated as having capacity for 700 inmates.¹⁵ During a May 2011 visit to that prison, LICADHO found that the population had surpassed 1,000. That put occupancy at about 145% officially, which is on the low end of the figures cited in the table above. A look at the physical conditions in the cell blocks, however, told a much different story. Dozens of prisoners were sleeping in cellblock corridors, the staff-to-prisoner ratio was stretched to its limit, and the prison was dangerously overcrowded.

It was apparent that the prison did not have the capacity to properly house 700 inmates, and a measurement of the cells confirmed this. A typical cell in the building LICADHO visited was 16 square meters. While there is no international standard governing the appropriate space that should be provided to each prisoner, there are some guidelines: The European Committee for the Prevention of Torture has recommended at least four square meters per inmate for cells with several prisoners.¹⁶ The International Committee for the Red Cross has stated that "even in exceptional crisis situations, the floor space in cells and dormitories must never be less than two square meters per person."¹⁷

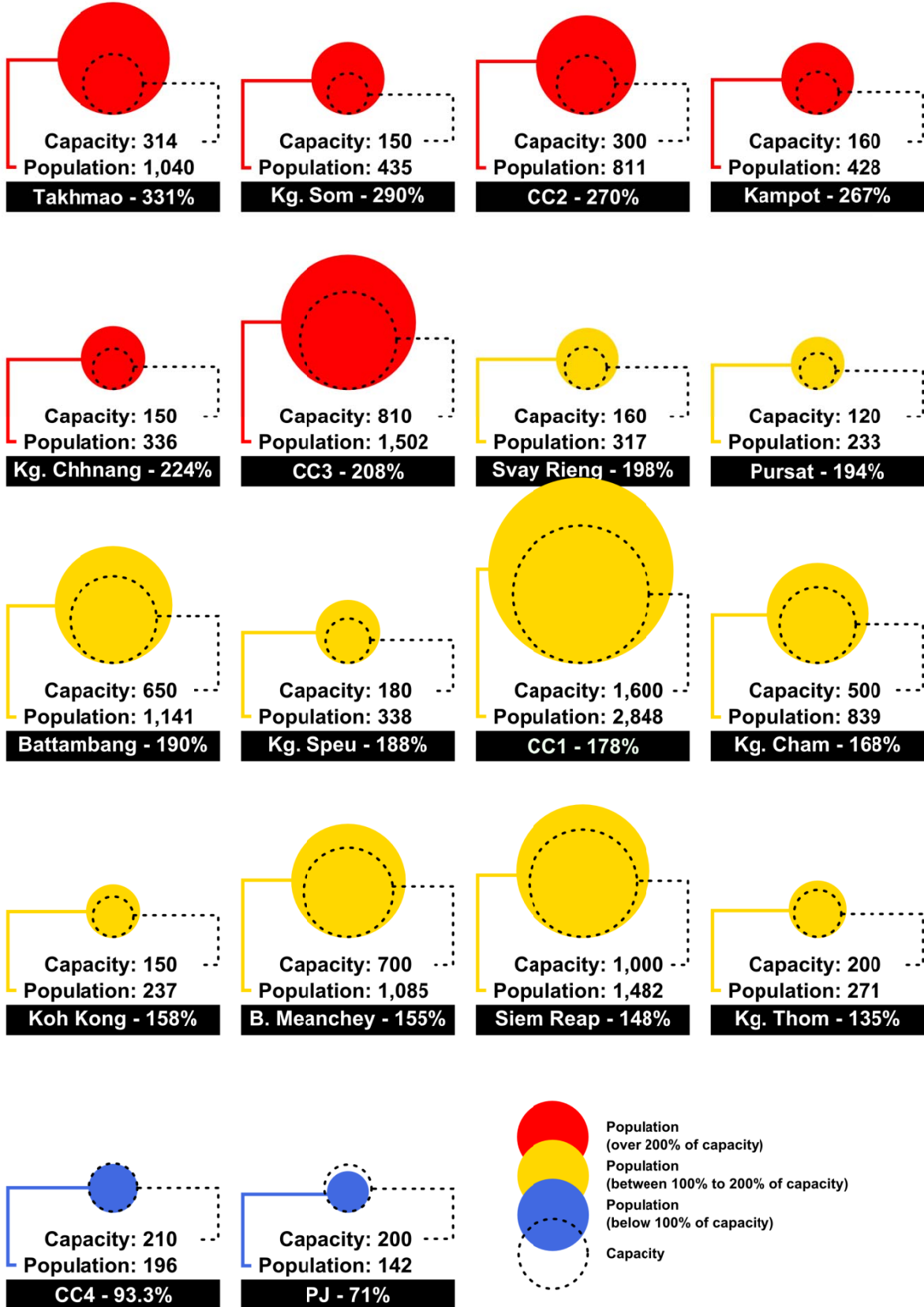
At Bantey Meanchey, these 16-square-meter cells held between 20 and 22 inmates, leaving each person a mere 0.73 square meters. An appropriate capacity would be between four and eight inmates per cell (or even slightly less, as the cell measurements include toilet and washing areas, which typically take up one to three square meters of space that cannot be used for sleeping). Using proper estimates, the cells were in fact filled to between 550% and 275% of their capacity.

¹⁵ This number was drawn from official GDP estimates, but staff admitted that 420-450 was a more appropriate capacity. In fact, it may be even lower than that.

¹⁶ http://www.coe.int/t/commissioner/Viewpoints/070305_en.asp

¹⁷ International Committee of the Red Cross, "Water, Sanitation, Hygiene and Habitat in Prisons," Aug. 2005, p. 21.

**VISUAL REPRESENTATION OF PRISON POPULATION & OVERCROWDING
(MAY 2011 DATA)**





A cell for male prisoners at Kampong Chhnang prison.

Capacity figures at other prisons are somewhat closer to reality. An 85-square-meter cell at Takhmao prison, for example, recently held 97 inmates – still only 0.88 square meters per person. Such a cell should properly house only 21 to 42 inmates, meaning it was filled to 462% to 231% of capacity. But Takhmao’s official capacity and occupancy rates reflect this reality: According to LICADHO statistics, the prison as a whole is filled to 331% of its capacity.

Capacity numbers at CC4, as well, roughly conform to a standard of two square meters of floor space per inmate, though the estimates take into account all floor space, including non sleeping areas such as aisles and toilets.

The true capacity of Cambodia’s prison system remains unknown for the moment. What is certain, however, is that the current figure of 8,360 appears generous. Just how generous remains to be seen, but by way of example, a 25% decrease in capacity figures would mean that Cambodia’s prisons are actually filled to approximately 240% of their capacity.

LICADHO urges GDP to immediately conduct a nationwide survey of its prisons – preferably with the assistance of an international partner – in order to calculate the system’s true capacity. We believe this will further underscore the severity of the overcrowding crisis, and the urgency with which solutions must be pursued.

PRISON POPULATION: GROWTH IS SLOWING BUT STILL MOVING TOO FAST

Despite the wave of bad news, there has been one bright spot since July 2010: Prison population growth rates have eased slightly. In the 18 prisons monitored by LICADHO, the average annual growth since December 2004 now stands at 12.9%. That is slightly lower than the five-year average of 14.2% that LICADHO documented in its July 2010 report.

The improvement was due partly to the fact that the population in the 18 prisons monitored by LICADHO actually *shrank* by a fraction between July and December 2010. Growth for the calendar year 2010 was a modest 5.2% nationwide and 2.6% in the prisons that LICADHO monitors.

Those would be encouraging figures, if not for the fact that growth has exploded since the end of 2010. Nationwide, the prison population grew by 8.6% in the first five months of 2011 alone. The prisons monitored by LICADHO saw a 9% increase during the same period. This late upswing resulted in a 12.6% total increase in the national prison population between March 2010 and April 2011.

Even the 12.6% figure is a slight improvement over the long-term average, but growth remains too high for the government to accommodate by building new prisons alone. No prison system can add enough space to accommodate 13% annual growth, let alone one such as Cambodia's, which is resource-starved and already operating at almost double capacity.

LICADHO's 2010 report included a table illustrating projected growth rates for both prison population and capacity. The table showed three projected population growth rates – 5%, 10% and 14% (the five-year average at the time) – alongside three projections for the increase of capacity – 400, 1,000 and 2,500 beds¹⁸ per year.

The table on the next page updates LICADHO's previous calculations, showing actual data for 2011 and projections through 2019. We have also adjusted two figures: (1) the final projection for population growth, lowering it from 14% to 13% to reflect the current six-year average, and (2) the first projection for capacity growth, lowering it from 400 to 390 to reflect the current six-year average.

¹⁸ The 2,500 figure represented the number of beds planned for GDP's new super-prison, Correctional Center 4, which is partially-occupied but still currently under construction. After more than 18 months of construction, it only has capacity for 210 inmates. The slow progress at CC4 underscores the impossibility of GDP ever adding anything close to 2,500 beds per year.

YEAR	CAPACITY GROWTH WITH 390 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 @ 13% ANNUAL GROWTH (CURRENT 6-YEAR AVG.)
2011	8,360	8,360	8,360	15,001	--	--
2012	8,750	9,360	10,860	15,751	16,501	16,951
2013	9,140	10,360	13,360	16,538	18,151	19,154
2014	9,530	11,360	15,860	17,365	19,966	21,644
2015	9,920	12,360	18,360	18,233	21,962	24,458
2016	10,310	13,360	20,860	19,145	24,159	27,683
2017	10,700	14,360	23,360	20,102	26,575	31,231
2018	11,090	15,360	25,860	21,107	29,232	35,291
2019	11,480	16,360	28,360	22,163	32,155	39,879

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

The table shows some areas of improvement since 2010, but there is still great reason for concern.

LICADHO reported in 2010, for example, that a continuation of the status quo could lead to Cambodia having the most overcrowded prison system in the world by 2018.¹⁹ Thanks to the slightly reduced growth rate in 2010, the date has been pushed back to 2019.²⁰

However, it remains true that if the inmate population maintains a 10% annual growth rate, Cambodia could add 2,500 prison beds per year and never catch up with the total inmate population. And even assuming a more conservative view -- the addition of 390 new beds per year, and a population growth rate of 5% over that time -- Cambodia's prison system would still be at 193% of capacity in 2019. That is a worse outcome than a similar estimate last year.

And the above figures do not even take into account the dubious capacity figures currently used at many of Cambodia's prisons. A proper calculation of capacity would likely reflect a worse reality.

Finally, there is reason to believe that the prison population boom could continue, at least until decision makers reassess the criminal justice system's overreliance on incarceration.

Cambodia's national incarceration rate now stands at 98.1 prisoners per 100,000 citizens. Although this rate has increased steadily since 2006, it remains quite low by world standards. According to one study, Cambodia's incarceration rate of 98.1 would rank in the 140th

¹⁹ See International Center for Prison Studies, "Entire World - Occupancy Rates," available at http://prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_occupancy

²⁰ Of course actually attaining this position also depends on the prison population growth rate of other countries.

position worldwide, out of 216 prison systems surveyed.²¹ The countries in the middle of the list, including ASEAN neighbors Vietnam, Myanmar and Malaysia, incarcerate at a rate of about 120 to 130 per 100,000.

CAMBODIA'S NATIONAL INCARCERATION RATE SINCE 2006

YEAR	NATIONAL POPULATION ²²	INMATE POPULATION	INMATES PER 100,000
2006	14,091,823	10,338	73.4
2007	14,323,842	10,902	76.1
2008	14,562,008	11,688	80.3
2009	14,805,358	13,345	90.1
2010	15,042,243	14,043	93.4
2011	15,297,961	15,001 (MAY)	98.1

(Prison population data represents nationwide figures in December of each year, except for 2011. Note that previous years' data has been revised from LICADHO's 2010 report, which used figures for LICADHO-monitored prisons only)

²¹ International Center for Prison Studies, "Entire world - Prison Population Rates per 100,000 of the national population," available at http://prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate

²² Population data represent estimates drawn from the World Bank World Development Indicators, available at <http://data.worldbank.org/indicator/SP.POP.TOTL>. It is worth noting that other credible sources estimate a much lower population figure for Cambodia. The CIA World Factbook, for example, estimates the population at 14,701,717 as of July 2011. See CIA World Factbook, People, Cambodia, at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html>. That would make Cambodia's incarceration rate 102 per 100,000. Cambodia's own National Institute of Statistics, meanwhile, estimates that the population was 13,395,682 in 2008. Averaging 1.7% growth, that would put the population at 14,090,541 in 2011. That works out to a 106.5 incarceration rate per 100,000. See <http://www.nis.gov.kh/>

II. FACTORS CONTRIBUTING TO OVERCROWDING

LICADHO's 2010 report highlighted several factors contributing to prison overcrowding, all of which continue to be a problem.²³

Since 2010, there has been little change in how the criminal justice system punishes people for violating the law. Prison is still the default punishment, and pretrial detention is imposed as a matter of course.²⁴ Some prisoners are also held in pretrial detention beyond the time limits prescribed by law, while others are held in prison past the expiration of their sentences.²⁵ Inmates in the midst of appeals proceedings are sometimes imprisoned beyond the maximum punishment prescribed for their crime, even if they were acquitted at the court of first instance.²⁶

LICADHO has also identified new areas for concern over the past year, three of which are highlighted below: The practice of imprisoning those who cannot – or do not – pay their criminal fines; the transfer of pretrial inmates to a local drug center where they are detained on the pretense of being “treated”; and the use of prison sentences that are disproportionate to the crimes for which they are imposed.

CRIMINALIZING POVERTY: EXTRA TIME IF YOU CAN'T PAY THE FINE

An unknown number of prisoners are held in prison past the expiration of their sentence because they cannot afford to pay their criminal fines. Under Cambodian law, criminal prosecutors have the power to impose up to two years additional prison time in such cases.²⁷ The principle behind this provision is that the threat of prison time helps prosecutors collect criminal fines from hesitant parties. While the threat of imprisonment may be useful in some cases where no prison term is originally imposed, it makes little sense to use it against people who are already incarcerated.

First, imprisonment in lieu of fines is imposed regardless of ability to pay; thus the poor bear the brunt. The practice of keeping poor inmates – who cannot afford to pay their fines – in prison does nothing to help the state collect its money.²⁸ It simply costs the state *more* money by way of incarceration costs.²⁹

²³ For further discussion on this subject, see “Beyond Capacity: Cambodia's Exploding Prison Population & Correctional Center 4,” *supra*, at pp. 9-10.

²⁴ The elephant in the room with regard to overcrowding is corruption at various points in the criminal justice process. LICADHO research suggests that corruption can play a role in who is arrested, who is convicted, who is held in pretrial detention, whose case goes to trial on time, and even who gets the opportunity to apply for early release. One example of the latter is the applications for amnesties and sentence reductions, which are filed by prison authorities on behalf of inmates during key Cambodian holidays. Prisoners told LICADHO that the price of the applications at Khmer New Year 2011 ranged from US \$200 to US \$1,300, depending on the prison and length of sentence already served. That price was just for the application; success was not guaranteed.

²⁵ The latter problem seems due to a mix of poor recordkeeping and corruption. Court verdicts are rarely forwarded to prisons in a timely fashion, and some prison officials may need extra “motivation” to obtain them when an inmate is up for release.

²⁶ Code of Criminal Procedure, Article 398.

²⁷ Code of Criminal Procedure, Articles 524 and 530; the latter states that the additional term of imprisonment may range from 10 days for fines of 250,000 riel (US \$62.50) and below to two years for fines over 50 million riel (US \$12,500).

²⁸ It is not necessarily the most effective way to collect fines from wealthy defendants either. The government has other options at its disposal, such as asset seizure and wage garnishment (as in the case of Mu Sochua, the Sam Rainsy Party MP whose government salary was garnished to pay a fine in a defamation case).

²⁹ Meanwhile, the prisoner could be on the outside potentially earning money to pay his fine. It should be noted, as well, that fines are not forgiven once the extra prison time is served. See Article 532.

Second, although the Code of Criminal Procedure makes imprisonment for nonpayment of fines automatically *enforceable*³⁰, it also makes clear that the prosecutor must take certain steps before a detention order can be issued.³¹ Thus, imprisonment should not be *automatic* in practice.

The steps required to issue a detention order for nonpayment of a fine are extensive. They require the prosecutor to set a deadline for payment, notify the convicted person of the deadline, make a written record of the notification, obtain the signature of the convicted person on the notification, give the convicted person at least 10 days to pay after notification, and finally issue a "special detention order" if the convicted person does not pay.³² The convicted person may also object to the issuance of the order, bringing the matter before court.³³ Or the prosecutor may simply decline to issue an order on "humanitarian grounds."³⁴ The law does not explicitly say what happens if the prosecutor fails to take these steps, but as a matter of legal principle it is clear that further detention should be technically illegal. After the expiration of a sentence, the GDP no longer has a valid detention order to keep the convicted person.

Inmates interviewed by LICADHO have said that in practice prosecutors rarely take the formal steps required to issue a special detention order. They simply fail to issue a release order. And if prison officials do not receive a release order, they apparently presume that a prisoner's sentence has been extended for nonpayment of a fine.

This is problematic not only because it demonstrates a total and systematic disregard for the rule of law, but also because it deprives defendants of key due process protections. And perhaps most alarmingly, it contributes to the criminalization of poverty, extending the prison sentences of untold hundreds of prisoners.

A recent case illustrates the absurdity of the system, and how it needlessly contributes to overcrowding.

In 2010, LICADHO met with a prisoner who had been convicted of a minor drug offense. At the time of his arrest, he was also in possession of approximately US \$500 in counterfeit US currency. The court imposed an 18-month sentence for the drug offense, and a fine of US \$50,000 for possession of the counterfeit currency.

The prisoner could not pay his fine, and upon completion of his drug sentence, prison officials told him that he had to serve an additional two years³⁵ - more than doubling his original sentence.

The prisoner informed LICADHO researchers that the prosecutor in his case had not followed the procedure for a special detention order set out in the Code of Criminal Procedure. LICADHO intervened, and helped the prisoner file a request to the prosecutor, asking him to waive his right to impose the additional prison term.

³⁰ *Ibid*, Article 524 ("imprisonment in lieu of payment shall be automatically enforceable and it does not require the court to issue a decision.")

³¹ *Ibid*, Articles 525-533.

³² *Ibid*, Articles 525-526.

³³ *Ibid*, Article 527.

³⁴ *Ibid*, Article 526. The law does not provide explicit restrictions on what "humanitarian grounds" are appropriate. LICADHO strongly recommends, however, that alleviating overcrowding in the prisons should be considered sufficient humanitarian grounds for a prosecutor to decline issuance of a special detention order.

³⁵ Unpaid fines of 50 million riel (US \$12,500) or more can lead to an additional prison term of two years. Code of Criminal Procedure, Article 530.

After a lengthy delay, prison officials finally presented the prisoner with a written notification of the fine and payment deadline. The prisoner was pressured to sign the document. He was not released from prison pending the expiration of the 10-day payment deadline, nor did the prosecutor decline to issue the special detention order. In the end, he received an extra two years imprisonment, bringing his total sentence three-and-a-half years.

What exactly is the criminal justice system's goal in imposing additional prison time on poor people who cannot afford to pay their fines? The government would be better off in every respect if prisoners were simply released on time, regardless of whether their fines are paid. Releasing an inmate means there is one less prisoner that the government must feed and house. It also means that the prisoner can get back to work and attempt to pay off his fines.

Alternatively, the government could implement a system of concurrent sentencing for imprisonment in lieu of fines. Under such a system, defendants sentenced to prison could be required to pay their fines immediately upon entering prison. If they are not able to pay, additional imprisonment could be imposed. However, this additional sentence would run concurrently with their ordinary prison sentence. Thus, an individual with an 18-month sentence and an unpaid US \$50,000 fine would serve *two years total*, rather than 18 months plus an additional two years.

ALTERNATIVES TO IMPRISONMENT: MISSING THE POINT



Phnom Bak drug center's sleeping area for male detainees.

LICADHO recommended in its last report that greater use of alternatives to imprisonment, such as community service, bail and suspended sentences would help reduce the prison population. Very little progress has been made on this front, which is evident by the statistics in this report. Non-custodial sentencing remains unheard of, bail is underutilized (pretrial detainees still make up over one-third of the prison population) and the parole

system authorized in the Code of Criminal Procedure³⁶ has not been implemented.³⁷

³⁶ *Ibid* Articles 512-522.

³⁷ This is presumably due to the failure of the Ministry of Justice to issue a Prakas required by the law. See Article 522 ("The modalities of monitoring, supervising, and reintegrating a convicted person into society shall be determined in the Prakas of the Ministry of Justice. This Prakas may entrust public or private institutions with the social reintegration of the convicted person.")

Detention in disguise

The one exception to the above is an experiment that is currently ongoing in Bantey Meanchey Province. But it is hardly a model to be duplicated nationwide. It involves transferring pretrial detainees to a local “drug treatment” center where they are detained on the pretense of being treated.

Ordinarily, drug rehabilitation centers are not meant to function as pretrial detention centers. But prosecutors and judges in Bantey Meanchey overcame that problem with the help of some legal acrobatics: In April 2011, a total 38 pretrial detainees – all of whom were arrested on drug use charges – were first released on bail. One of the conditions of their release was completion of a drug treatment program. Thus, upon release, all of the inmates were taken directly to the Chivith Thmey Phnom Bak Drug Rehabilitation Center. The center is jointly operated by provincial authorities and the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY).

The bail order appears technically legal under current law. Article 223 of the Code of Criminal Procedure permits a judge to order certain conditions for pretrial detainees released on bail. Those restrictions include the obligation “to undergo a medical examination and/or treatment.”

But the apparent legality doesn't make it an appropriate solution.

The realities of the Phnom Bak center suggest that the provisional release scheme was nothing more than a perverse scheme designed to mask a severe overcrowding crisis at Bantey Meanchey's prison – an overcrowding crisis caused in part by the government's recent crackdown on drug users.³⁸



Photos on the walls of the Phnom Bak drug rehabilitation center show detainees who appear to be under the minimum age of 15.

³⁸ The Phnom Penh Post reported that 517 people were arrested on drug charges in Phnom Penh alone between January 1 and May 2011. Chhay Channyda and Buth Reaksmeay Kongkea, “Massive drug haul revealed,” *Phnom Penh Post*, May 10, 2011.

'Limited programming and a questionable philosophy'

LICADHO researchers who visited the Phnom Bak center in May 2011 found that it offered limited programming and operated under a questionable rehabilitation philosophy. None of the vocational programs offered – electronics, farming, welding and haircutting – appeared to be active. Devices in the electronics room were covered in a thick layer of dust, while the welding room was completely empty. Exercise and sports seemed to be the main activity, as the center's staff told us that the detainees needed to "sweat the drugs out of their system."

MoSAVY cannot even manage to staff the center. Although Phnom Bak once had seven employees, it now has only three – a director, deputy director and head of programs. There are also eight security staff, provided by provincial police, including a head of security who doubles as the center's doctor.

The center, like all of Cambodia's drug treatment centers, is simply a warehouse for drug users – a parallel prison system. And in some ways the country's drug detention centers may be worse than regular prisons. The detainees have not been convicted of a crime and have no clear release date. Often they're picked off the street and brought straight to these centers. There's no due process of law and no chance to present evidence of innocence.

The center, like all of Cambodia's drug treatment centers, is simply a warehouse for drug users – a parallel prison system.

And these observations are only the tip of the iceberg. The problems surrounding Cambodia's government drug treatment centers – including torture, forced labor, and a complete absence of legitimate drug treatment programs – were extensively documented in "Skin on the Cable," a Human Rights Watch report released in January 2010.³⁹

The recent transfer is also problematic because it places the 38 transferees in uncharted legal territory. Although the normal drug treatment course runs approximately six months, that presumes "successful completion" as certified by the center's staff. There is no guarantee that the 38 transferees will be out in six months. Nor is there any guarantee that their criminal charges will be officially dropped. If they are not dropped, the charges could linger for the statute of limitations period – 15 years for a felony and five years for a misdemeanor.⁴⁰

Meanwhile, LICADHO was told by a judge that if the transferees were indeed sentenced to imprisonment, their time at Phnom Bak would not be counted against their sentences.

Overcrowding and the drug-crime link

Then there is the larger issue of overcrowding.

The population at Bantey Meanchey's prison has exploded recently, jumping from 816 in May 2010 to 1,085 in May 2011, an increase of 34%. Its capacity has been estimated to be

³⁹ "Skin on the Cable: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia," a Human Rights Watch report, January 25, 2010, available at <http://www.hrw.org/node/87692>.

⁴⁰ Code of Criminal Procedure, Article 10.

between 420 to 700 beds, depending on the standard used. There is no doubt that something must be done to reduce its population.

But in a cruel twist, the recent transfer made Phnom Bak overcrowded as well. The center is designed to house 100 individuals; it now holds 119. It was already too understaffed to provide adequate treatment to detainees, and now the situation has worsened. Infrastructure conditions are also less than ideal: Men and women sleep in separate rooms, but mix during the rest of the day. Children as young as 15 – and possibly younger⁴¹ – are completely integrated with adults.

The Bantey Meanchey prison, meanwhile, is still overcrowded, and new detainees continue to flow in. One culprit appears to be the recent crackdown on drug crimes ordered by the national police chief in April 2011. By some estimates, nearly 400 people were arrested nationwide in the month that followed the order.⁴² But the surge in drug cases goes back further than that. Bantey Meanchey prison officials say that they have admitted some 200 new inmates on drug charges since January 2011.

'Hiding inmates' is not a solution to the overcrowding problem

Although the goal of reducing overcrowding at the Bantey Meanchey prison is commendable, the transfer of inmates to Phnom Bak represents a repackaging of the same crime solution Cambodia has used – and overused – for some 20 years: Incarceration. It aims to solve the overcrowding problem by hiding inmates. Rather than seek out new warehouses for society's "undesirables," the government should seek more innovative solutions.

Drug users don't belong in detention.⁴³ Imprisoning drug users is an expensive, ineffective and dysfunctional approach to treatment.

If the government is serious about drug treatment as an alternative to prison, it should consider community-based treatment programs, where participants are free to go home at night. There are at least 10 such programs currently operating in Bantey Meanchey province at the moment, including at Serey Sophorn Referral Hospital, Poipet Referral Hospital, Banteay Neang Health Center, Toek Thla Health Center, Oh Ampel Health Center, Kampong Svay Health Center, Preah Ponlea Health Center, Malay Health Center, Poipet I Health Center and Oh Bey Chon Health Center. Prosecutors should explore utilizing one of the drug treatment options at these centers, rather than look only for detention options.

The community-based approach has multiple advantages: It's cheaper, since the center does not have to house and feed participants; it encourages personal responsibility; and it helps participants maintain – or create – links with their communities. The programs can still be court-ordered and incorporate escalating sanctions for those who fail to participate. But they should not start with forced imprisonment as the default⁴⁴. Such programs should also

⁴¹ See photo, p.15.

⁴² Vong Sokheng, "Police warned over drug leaks," *the Phnom Penh Post*, May 25, 2011.

⁴³ In fact the entire "war on drugs," with its emphasis on criminalizing drug use, has recently come under serious scrutiny. A global panel made up of former heads of states and United Nations officials called it an outright "failure" in June 2011. "There are an estimated 250 million drug users in the world, according to UN estimates. 'We simply cannot treat them all as criminals.'" Tu Thanh Ha, "War on drugs 'a failure,'" international panel declares, *The Globe and Mail*, June 2, 2011. The group's report is available at <http://www.globalcommissionondrugs.org/Report>

⁴⁴ The future does not look bright on this point, especially with the new law on drugs expected to be enacted sometime in 2011. Although the most recent versions of the draft have not been publicly shared, earlier drafts were riddled with misguided measures. Among other things, the earlier draft defined a "drug addict" as anyone who "consumes drugs and is under the influence of drugs" and allowed drug users to be forced

include legitimate treatment programs based on scientific evidence, not the folkloric “sweat it out” approach that is currently used.

DROPPING THE HAMMER: SMALL CRIME, BIG TIME

One final area of concern for 2010 was the authorities’ continued insistence on imposing severe sentences – and pretrial detention – for minor crimes. The system seems to have no ability to divert minor cases out of the court system, and this has long been an issue. But it is becoming increasingly problematic as the prison population explodes.

The problem is not limited to long sentences. Another driver of prison overcrowding may be the excessive number of short sentences for crimes which should not necessarily carry prison terms at all. Recent GDP data shows, for example, that the prison system processed 6,836 new admissions during 2010⁴⁵. That’s a significant number, considering that the entire prison population in December 2010 was 14,043.

This statistic is actually encouraging in terms of future possibilities: It means that a concerted effort by judges and prosecutors could not only stop prison growth, but actually reduce the prison population relatively quickly. If prison admissions were cut in half for 2010, the prison population could have shrunk significantly over the course of the year.

Here are some examples of disproportionate sentences and questionable uses of pretrial detention that LICADHO has documented in recent years:

- **Sihanoukville:** In early 2010, a juvenile was sentenced to six months imprisonment for breaking a window.
- **Bantey Meanchey:** A juvenile junk collector was charged with robbery for taking a used car tire that was left outside a house; he presumed it was trash; he has been in pretrial detention since December 2010.
- **Bantey Meanchey:** Three individuals were arrested in early May 2011 and charged with robbery for stealing one kilogram of cashew fruits and nuts from an orchard’s trees; all are currently in pretrial detention.
- **Svay Rieng:** A man who claims to have fallen asleep in a cattle pasture was accused by the owner of the pasture of being an attempted thief. He was arrested in January 2011 and later convicted and sentenced to 18 months in prison.
- **Svay Rieng:** An 18-year-old man was arrested in December 2010, and charged with stealing one chicken. He was sentenced to a year in prison.
- **Kampong Cham:** A man was arrested in October 2010, and charged with stealing a bottle of cooking oil. He was later convicted and sentenced to seven months imprisonment for theft.
- **Kampong Cham:** A man was arrested and charged with stealing a few pieces of iron rebar; he has been held in pretrial detention since February 2011.
- **Kampong Cham:** A man was arrested and charged with stealing approximately one kilogram of raw rubber latex; he has been in pretrial detention since December 2010.

into involuntary treatment for up to two years. See Chhay Channyda and James O’Toole, “Drug law in final stages,” *Phnom Penh Post*, June 2, 2011.

⁴⁵ Figures dated Dec. 15, 2010. See General Department of Prisons, “Report on Work Achieved in 2010 and Plans for 2011,” published January 2011.

LICADHO has also documented a number of excessive sentences for people who have not committed crimes at all, such as human rights defenders, victims of land-grabbing, activists and others involved in politically-sensitive activity. Their cases have been documented extensively in LICADHO's recent reports on Human Rights Defenders⁴⁶ and Freedom of Expression.⁴⁷

The purpose of highlighting these cases is not to minimize their impact upon victims. Rather, they serve as a reminder that prison and pretrial detention are used as punishment for virtually every criminal transgression in Cambodia. The data in this report shows quite clearly that this is unsustainable. Prison space is a scarce resource, and it is only getting scarcer. The criminal justice system should take this fact into account. Surely prison is not the only way to deal with the theft of a US \$5 chicken.

⁴⁶ "Attacks & Threats Against Human Rights Defenders in Cambodia 2008 - 2009," a LICADHO report, published Sept. 2010, *available at* <http://www.licadho-cambodia.org/reports.php?perm=143>

⁴⁷ "Freedom of Expression in Cambodia: The Illusion of Democracy," a LICADHO report, published Dec. 2010, *available at* <http://www.licadho-cambodia.org/reports.php?perm=149>

III. RECOMMENDATIONS IN REVIEW

LICADHO's last report on prison overcrowding offered several recommendations to reduce prison overcrowding. Below, LICADHO renews five key recommendations and briefly reviews what – if any – action the government has taken on them.

►► **The government should 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 sentence length, commitment offense and the age of offenders – to help inform criminal justice policy decisions.**

Several government officials have publicly recognized the problem of prison overcrowding and the need to address it. GDP itself has made it a core issue in its efforts to improve the prison system. These are positive steps. Unfortunately, GDP does not control how many prisoners it receives, and the important players in criminal justice reform – the Ministry of Justice, prosecutors and the courts – have yet to implement serious reforms.

But GDP does bear some blame in one area: The prisons seem to have taken a step backwards in the realm of accurate data, which is important in assessing the causes and extent of the overcrowding problem.

LICADHO researchers have been told by prison officials that there is confusion about which inmates should be classified as pretrial detainees or convicts. As a result, LICADHO appears to have received flawed data from some prisons. In December 2010, for example, LICADHO data showed 3,344 pretrial inmates in the 18 prisons LICADHO monitors. Official GDP data from the same month, however, showed 4,830 pretrial detainees – a difference of 1,486. Although the GDP included seven prisons that LICADHO does not cover, the total population of those prisons was only 1,496. That number clearly did not include 1,486 pretrial inmates; obviously there was confusion in classifying some inmates.

LICADHO reiterates its recommendation from 2010 and recommends that GDP unify its definition of pretrial detainees across all prisons, so as to ensure consistent and accurate population data.

In addition, LICADHO urges GDP to immediately conduct a nationwide survey of its prisons – preferably with the assistance of an international partner – in order to calculate the system's true capacity. We believe this will further underscore the severity of the overcrowding crisis, and the urgency with which solutions must be pursued.

►► **MOJ, MOI and relevant partners should 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.**

No progress noted in this area. The use of alternative sentences remains rare.

LICADHO thus reiterates its recommendation from 2010.

►► **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 three years or less, which is the threshold for community service.**

No progress noted. *LICADHO reiterates its recommendation from 2010.*

►► **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; [pretrial freedom] should be the rule - not the exception - for minor and non-violent offenses [in line with Code of Criminal Procedure Article 203].**

Regression has been observed. Precise comparisons are difficult due to the irregularity with which GDP releases national figures, and the confusion over prisoner classification noted earlier in the report. However, as of April 2011, GDP reported 5,394 pretrial detainees nationwide. This means that pretrial inmates made up 36% of all prisoners. This compares to 32% in June 2010.

(Note: the 3,800 number cited in the original recommendation referred to the number of pretrial inmates as of June 2010 in the 18 prisons monitored by LICADHO, not national totals.)

The one attempt at reducing the pretrial population can only be deemed a failure. Sending pretrial detainees to be held in drug detention centers is a dead-end solution: It simply feeds the creation of a parallel prison system.

LICADHO reiterates its recommendation from 2010.

If the government continues to use drug treatment as an alternative to pretrial detention, we also recommend that such treatment be (1) voluntary, (2) community-based, and (3) based upon clinically-proven methods. Potentially hundreds of pretrial detainees could be released to participate in these programs, which would significantly ease overcrowding. Judges and prosecutors should also consider structuring the treatment option as a diversion program, i.e., they should agree to drop criminal charges in exchange for successful completion of a community-based drug treatment program.

►► **Imprisonment should be viewed as a punishment of last resort, and not the default option for every offense.**

No progress noted. *LICADHO reiterates its recommendation from 2010, and urges progress in two specific areas:*

- (1) Reducing the severity of prison sentences for minor crimes not involving violence against another person, and*
- (2) abolishing the practice of imposing additional prison time for nonpayment of criminal fines or imposing such sentences concurrently with ordinary prison terms.*

