

# COMMENTS AND LEGISLATIVE RECOMMENDATIONS: THE DRAFT LAW ON PRISONS

---

A LICADHO Briefing Paper

October 2011



សម្ព័ន្ធនៃខ្លួនជំរឿននិយោជន៍ការពារសិទ្ធិមនុស្ស លីកាដូ

**LICADHO**  
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).

### **For More Information Contact:**

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

Tel: (855) 23 727 102/216 602

Fax: (855) 23 727 102/217 626

E-mail: [contact@licadho-cambodia.org](mailto:contact@licadho-cambodia.org)

Web: <http://www.licadho-cambodia.org>

# Contents

**SUMMARY ..... 1**

**ANALYSIS: KEY PROVISIONS OF THE LAW ON PRISONS ..... 3**

Article 28 ..... 3

Article 41 ..... 3

Article 49 ..... 4

Article 52 ..... 4

Article 56 ..... 6

Article 59 ..... 6

Article 71 ..... 7



## SUMMARY

The National Assembly is preparing to vote on the Cambodia's new Law on Prisons, which will serve as the Kingdom's primary legal authority on the prison system<sup>1</sup>. Cambodia's prisons have previously operated without a proper prisons code, though an assortment of prakas, sub-decrees and internal guidelines do exist.

The law's stated purpose is (1) to provide for the administration of the prisons in Cambodia and (2) to provide for "the education, reformation, rehabilitation and reintegration of prisoners" and ensure "the safe and secure custody, good health and humane treatment of prisoners in accordance with the international principles and the United Nations Rules for Protection of Juveniles deprived of liberty."<sup>2</sup>

LICADHO has reviewed a draft of the law, and believes that it is a positive step toward imposing stability and uniformity in Cambodia's prison system. However, LICADHO also believes that the law falls short in several key areas. This briefing paper summarizes LICADHO's most serious concerns, and is meant to serve as a guide for the National Assembly as it debates the law this week.

The current draft takes some positive steps in terms of protecting prisoners' rights, but does not go far enough in most cases. Vagueness is a pervasive problem. The law fails in multiple instances to provide benchmarks or minimum standards in areas such as sanitation, disciplinary proceedings, cell space and recreation. Instead, the law states only that conditions must be "adequate." It also fails to provide sufficient protective mechanisms in areas such as prison discipline and prison grievances.

LICADHO believes that primary legislation must contain key minimum standards, and recommends that the law be amended as such. Ideally, the law should follow the language of the United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMR) to the maximum extent possible.

If the law is passed in its current state, it will require numerous secondary laws to clarify vague areas. LICADHO urges the Ministry of Interior and the General Department of Prisons to seek – and heed – input from civil society organizations in the drafting of such secondary laws.

The law also does little or nothing in addressing a number of core problems which have been well-documented for over a decade, including: (1) the practice of requiring visitors to pay bribes in order to visit their friends and relatives in prison; and (2) the rampant commodification of even the most basic prison amenities, from clean water to sleeping space.

LICADHO believes that the law should be amended to explicitly forbid payments for visiting privileges and basic prison amenities.

The law does little to address rampant overcrowding, although that is somewhat expected considering that the prison system has no control over who ends up in prison. There is at least one step backward in this area, however, which could make overcrowding worse. Specifically, Article 52 automatically removes *all* prisoners who commit *any* disciplinary offense – or disturb

<sup>1</sup> The GDP currently operates 26 prisons in Cambodia, including the recently-opened facility in Pailin. LICADHO regularly monitors 18 of these prisons, plus the military prison at Tuol Sleng, which is not operated by GDP.

<sup>2</sup> Draft Law on Prisons, Articles 1 and 2.

the “good order” of the prison – from consideration for amnesty or a sentence reduction for one year.

This is not to say that the draft law is a total failure, however. It contains several provisions which, if properly enforced, would protect prisoners’ rights and facilitate a more professional prison system. Article 81, for example, prohibits the commission of torture or the use of cruel treatment – ostensibly by prison staff or other prisoners – and references the possibility of criminal prosecution under the Penal Code. Article 83, meanwhile, makes it a crime for prison staff to unlawfully refuse to release a prisoner or to extend a prisoner’s sentence. This practice is common in some Cambodian prisons, and is usually used as a way to extort money from prisoners prior to their release. Other articles forbid the use of corporal punishment, the placement of prisoners in dark cells, and the practice of using prisoners to enforce discipline against other prisoners.

Article 10 is also potentially important, as it directs the Ministry of Interior to issue a prakas outlining minimum standards for prison infrastructure. Such standards have been lacking to this point.

Below is a point-by-point analysis of some of the key provisions, along with recommended amendments. Selected articles of the draft law appear in italics. The English translation is unofficial.

□□□

## ANALYSIS: KEY PROVISIONS OF THE LAW ON PRISONS

### Article 28

*Any prisoner is entitled to make a request or to complain to the Prison Chief or the Prison Director about abuses committed by a fellow prisoner or by the prison staff.*

*The request or complaint by the prisoner shall be made through the prison officer, an official visitor, relatives, attorney or representative of the prosecution.*

*No prisoner must be punished or otherwise prejudiced for having made a complaint or request.*

- **Comment:** Prisoners who complain about prison conditions or abuse are among the most vulnerable of all detainees. The implications of complaining are self-evident: prisoners are living under the control of, or together with, the persons about whom they are complaining. Their avenues of communication are also severely limited. The possibility of retaliation – and that the complaint will simply be ignored – are obvious.

Thus, an effective complaint mechanism must provide mechanisms which protect prisoners who make complaints. Such mechanisms should include, for instance, the ability to file a grievance with authorities outside of the prison, monitoring provisions, and the ability to appeal to a higher authority if they are unsatisfied with the response received at the lower level. Article 28 lacks these provisions, though the ability to complain via an official visitor, relative, attorney or representative of the prosecution is a start.

- **Recommendation:** The law should be amended to include key protections for inmates filing complaints, including procedures for filing sensitive complaints, appeals procedures and mechanisms to prevent retaliation. The law should also require the promulgation of secondary regulations setting forth detailed provisions governing the prison grievance system, such as practicalities for filing initial requests, complaint hearing procedures, and so on.

For particularly sensitive complaints, the National Assembly should consider amending the law to require a review by an independent body such as a special committee made up of government officials from other ministries and non-governmental prison monitors.

### Article 41

*Children below the age of three must be allowed to reside in the prison with their mother and must be provided with food, clothing and health care. Accompanying children above the age of three, if they have no custodians to care for them outside prison, then shall be the burden of the Ministry of Social Affairs, Veteran and Youth Rehabilitation.*

- **Comment:** Current law allows children to stay in prison with their parents until they are six. It is unclear why the age was lowered to three, but it may result in an unnecessary increase in “prison orphans.” This is especially concerning as LICADHO has noted an increase in criminal arrests which target entire families, meaning there may be no care providers left outside prison to take care of young children.

- **Recommendation:** The law should be amended to allow children to stay with their parents in prison until the age of six.

#### Article 49

*The Prison Chief may use force to ensure the safety and security of the prison. If the situation is beyond his capacity, the Prison Chief shall urgently request an intervention force from the province's or municipality's armed forces.*

- **Comment:** This provision is expansive and vague, and does not place adequate restrictions on the use of force. For example, there is no requirement that the use of force be proportional to the threat. Nor is there any distinction between situations requiring use of "immediate" and "calculated" use of force. Also, the reference to "armed forces" is unqualified, and could potentially include the military. Utilizing military forces to quash prison disturbances is also of questionable wisdom, when alternatives are available.

There is also no requirement for the issuance of a sub-decree, prakas or policy elaborating a detailed use of force policy, as is standard in prison systems around the world.

- **Recommendation:** The law should be amended to require that force be proportional to the threat posed. The law should also require the passage of binding, detailed regulations governing the use of force in prisons. Such regulations should:

- Make clear that force may never be used as a punitive or disciplinary measure.
- State that prison officials may use force against a prisoner only after all other reasonable efforts to resolve a situation have failed. Staff should ordinarily attempt to gain the inmate's voluntary cooperation before using force.
- Authorize force only in specific situations, e.g., when it is necessary to gain control of the prisoner, to protect and ensure the physical safety of prisoners, staff and others, to prevent serious property damage, and to ensure institution security and good order.
- Require that prison officers be given special training to enable them to restrain aggressive prisoners.
- Make clear that except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed.
- Provisions on the appropriate use of firearms, including a requirement only staff with appropriate training be provided with arms
- Distinguish between situations requiring immediate and calculated use of force, and prescribe different protocols for dealing with each.

The government should also consider utilizing language from the United Nations Standard Minimum Rules for the Treatment of Prisoners, Article 54.

#### Article 52

*A prisoner who commits a disciplinary offence or otherwise violates the security, safety and good order in prison, shall not be considered for a sentence reduction or amnesty for a period of one year. In case of a repeat offense, he/she must be detained in a separate cell.*

*The Prison Chief who issues a separation order shall specify the reasons for which the separation is required and shall immediately report to the General Director of Prisons.*



*The order for separate detention lasts from 14 to 20 days. In case of recidivism, such order may be further issued.*

*For the duration of the disciplinary action, the prisoner is not entitled to receive family visits, or participate in prison activities.*

- **Comment:** Article 52 stands out as an uncharacteristically specific provision in a law that is overwhelmingly vague and bereft of calls for action. It is also unduly harsh. Article 52 requires detention in a “separate cell”<sup>3</sup> in the case of *any* repeat disciplinary offense or violation of a prison’s “good order.” The law places no limits on which disciplinary offense – it presumably could apply to anything from not cleaning a cell to possessing a contraband newspaper.

Article 52 also removes *all* prisoners who commit *any* disciplinary offense – or disturb “good order” – from consideration for amnesty or a sentence reduction for one year. While LICADHO recognizes that prison administrators need disciplinary tools to manage the prison population, the automatic disqualification from amnesty and sentence reduction for *any offense* is inflexible and harsh. It is also problematic given that Cambodia’s prisons are currently operating at approximately 180% of capacity. The system needs more chances to reduce prisoners’ sentences, not less.

The law’s positive language also gives prison administrators no choice in disciplinary management: It states that repeat offenders *must* be detained in a separate cell. This is not only inappropriate from a human rights perspective, but it also represents a poor strategy for prison management. Further, the 14 day minimum for isolation could be extremely harsh in the case of less serious disciplinary infractions. Prison directors should be given more flexibility in disciplinary management.

Finally, aside from this article, the rest of the Prison Law is extremely vague. The law does not clarify key disciplinary principles and it does not contain any requirement that detailed disciplinary procedures be established by the General Department of Prisons or the Ministry of Interior. This is a serious oversight. Prison systems need rules and methods for enforcing them, and it is essential that these rules and methods are transparent and systematic. Establishing an adequate disciplinary system is a major part of any plan to bring prisons into accordance with human rights standards and the rule of law.

- **Recommendation:** The law should be amended to remove mandatory imposition of any specific disciplinary punishments, particularly solitary confinement/isolation. Instead of placing positive requirements for the imposition of specific punishments, the law should restrict specific punishments. Specific punishments can be set forth in secondary regulations.

Key principles should be clarified, such as the need to follow due process in punishing a prisoner, the possibility of appealing a disciplinary offense, and the need for proportionality in punishing transgressions.

Finally, the law should call for the promulgation of detailed rules governing the prison disciplinary system. These rules – or the prison law itself – should include, among other

---

<sup>3</sup> Presumably this phrase refers to solitary confinement, but this punishment is difficult in Cambodia due to rampant overcrowding. In practice, a “separate cell” may instead be an overcrowded punishment room with unusually poor conditions, where prisoners are not allowed to leave for a specified period.

things: a list of acts considered to be sanctionable offenses; a list of authorized sanctions linked to each specific offense category; a requirement that offenses be promptly investigated and resolved; and due process protections, including the right of a disciplinary hearing and appeal.

## Article 56

*Consular officials, embassy representatives and official representatives must give advance notice to the General Director of their intention to visit a particular prison or prisoner.*

*The relatives or friends of a foreign national wishing to visit them in prison must make such a request to the General Director through their Embassy, consular or official representatives.*

- **Comment 1:** While embassy and consular officials may ordinarily notify the prison in advance of their visits, such a requirement may be unrealistic in some emergency situations. The erection of this obstacle for foreign nationals arguably violates Article 36(1)(c) of the Vienna Convention on Consular Relations, which gives consular officers expansive rights to visit their nationals in prison.
- **Comment 2:** The second paragraph of Article 56 erects additional obstacles for foreign citizens who wish to receive visitors in prison. It requires them to arrange visits through their embassy, consulate or official representatives, as opposed to simply showing up at the prison, as Cambodians may do. While the ability to go visit prisons with the help of diplomatic representatives may be appropriate as an optional convenience, it is inappropriate to require all visitors to foreign prisoners go through diplomatic channels. This requirement is especially burdensome for citizens of the many countries which do not have diplomatic representation in Cambodia.
- **Recommendation:** The law should be amended to remove barriers to visitation for diplomatic representatives. The law should also be amended to remove the requirement that the relatives and friends of a foreign national arrange visits through a diplomatic representative.

## Article 59

*Official visitors must provide prior notice to the General Director, requesting a visit and stating the purpose for the visit.*

*The result of visit must be reported orally or in writing to the Prison Chief and to the General Department of Prisons. The information must be kept confidential, except as agreed by the Ministry of Interior.*

- **Comment:** Official visitors are defined in Article 4 to include prison monitoring organizations such as UNOHCHR, LICADHO and ADHOC. Article 59 states that these organizations may not report on their findings within a prison without prior agreement from the Ministry of Interior. This provision is a clear swipe at organizations which perform public advocacy on prison issues. It essentially bans such advocacy, if it draws upon information gleaned from a prison visit.
- **Recommendation:** Article 59 should be amended to remove the requirement that information obtained by official visitors be treated as “confidential.” Third-party prison monitoring organizations are virtually the only source of public information about

Cambodia's prisons. It is essential that the public have access to third-party information about the prisons. Monitoring and advocacy by independent groups is also essential to ensuring that prisoners' human rights are safeguarded and that prison conditions do not deteriorate. Additionally, LICADHO believes that if a prisoner reports abuse to an official visitor, it should be that prisoner's choice whether the information should be kept confidential.

## Article 71

*Following the agreement of the Ministry of Interior, the General Director is entitled to enter into a contract to allow prisoners to work for any organisation or individual for the purposes of prison industry and farming. The General Director may enter into a contract to sell products from prison industry, handicraft and farming.*

- **Comment:** LICADHO supports the creation of jobs and training schemes for prisoners, but Article 71 is inappropriate because it authorizes the selling of inmate labor to private firms. This is illegal under Cambodian and international law.

Article 15 of the Labor Law of Cambodia (1997) states that "forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on Forced or Compulsory Labour." ILO Convention No. 29 forbids the use of prison labor for the benefit of private individuals in most circumstances<sup>4</sup>. Current Cambodian prison regulations also state that prisoners "will not be directed to work for any private benefit."<sup>5</sup>

The authorization of prison labor for private firms in Article 71 is particularly unfathomable considering the recent revelation in the media that Cambodia's prisons previously harbored garment factories suspected of selling clothing to international buyers<sup>6</sup>. Speaking at a conference of international clothing labels in Phnom Penh this summer, Minister of Commerce Cham Prasidh admitted that there were "have been some cases of garments that were produced in prisons," but said that this issue was "already of the past. It is no more."<sup>7</sup>

Prasidh went on to say that such an arrangement "could result in disaster in the garment industry as a whole," due to international buyers fleeing Cambodia. This is understandable, since the import of prison-produced goods is illegal in some countries such as the United States<sup>8</sup>.

- **Recommendation:** Opening up the prisons to private labor is walking a dangerous line, not just for prisoners but for the Cambodian garment industry as a whole. LICADHO recommends that the National Assembly eliminate any provision in the prison law that authorizes the use of prison labor for private purposes. Instead, prison labor programs should perform public sector work, or focus on vocational training.

□□□

<sup>4</sup> ILO Convention No. 29 on Forced or Compulsory Labour (adopted Jun. 28, 1930, ratified by Kingdom of Cambodia, Feb. 24, 1969).

<sup>5</sup> Prison Procedure No. 11, § 3.4 (2003).

<sup>6</sup> Abby Seiff, "Officials Move to Bring Unruly Garment Subcontractors in Line," *The Cambodia Daily*, Sept. 7, 2011.

<sup>7</sup> *Ibid.*

<sup>8</sup> See Tariff Act of 1930, Section 307 (codified at 19 U.S.C. § 1307)