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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



MOTHERS BEHIND BARS:

THE IMPACT OF DETENTION ON
WOMEN AND THEIR CHILDREN

A report issued in
May 2015



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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 13 provincial offices.

MONITORING & PROTECTION



Monitoring of State Violations & Women's and Children's Rights:

Monitors 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.

Medical Assistance & Social Work:

A medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites. Social workers conduct needs assessments of victims and their families and provide short-term material and food.

Prison Monitoring:

Researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.

Paralegal & Legal Representation:

Victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.

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Supporting Unions & Grassroots Groups and Networks:

Assistance to unions, grassroots groups and affected communities to provide protection and legal services, and to enhance their capacity to campaign and advocate for human rights.

Training & 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 & 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) or used for other advocacy.

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COVER: Children with their grandmother, March 2015.



Introduction



In recent years considerable resources have been spent on developing guidelines on the implementation of non-custodial sentencing alternatives in Cambodia, yet such alternatives are rarely considered, even for obvious priority groups such as pregnant women and mothers with young children.

Similarly, judges are required to consider the personal circumstances of a suspect before ordering pre-trial detention, including whether they are pregnant or have young children. However, in practice, Cambodia's criminal justice system is focused almost entirely on incarceration for pre-trial detainees.

As a result, thousands of children are separated from their imprisoned mothers unnecessarily and the impact can be devastating. Yet to date there has been very little research into this in Cambodia and almost no consideration of ways to minimise the negative consequences for children.

There are also very few resources available in Cambodia to support children of incarcerated parents. Whilst there are some NGOs which provide support to children in prison and those who used to live in prison¹ LICADHO is aware of only one organisation² which has a specialized program dedicated to supporting children of prisoners outside prison.

To address this LICADHO embarked on a new research project in February 2015 with the support and participation of WeWorld,³ focusing on the overuse of pre-trial detention and lack of alternative sentencing for pregnant women and women with dependent children who are imprisoned for minor offences in Cambodia.

This report presents the findings of the research, giving concrete examples of the harmful implications of unnecessary detention on imprisoned women and their children. LICADHO's findings demonstrate that by simply reducing the numbers of mothers in detention authorities can dramatically improve the lives of many children.

With the publication of this report, LICADHO aims to increase awareness of the situation of children of prisoners in Cambodia and remind judges and prosecutors of their responsibility to properly comply with existing legal procedures in order to reduce unnecessary, harmful detention.

LICADHO concludes the report with a set of recommendations on arrest and detention, trial, and sentencing of mothers. LICADHO also provides recommendations on best practice when imprisonment is the only option. In such cases, LICADHO details when it would be appropriate for a child to remain with its mother and the safeguards which must be in place to ensure the safety and welfare the child.

¹ For example <http://www.ilnodoonlus.org> and <http://www.oecbtb.org>

² <http://www.thislifecambodia.org>

³ WeWorld is an Italian NGO, supporting Cambodian civil society partners to implement child rights oriented projects and child rights protection and child friendly school programs. For more information see <http://weworld.it>



Family store closed since the mother's imprisonment.

Background



Field research for the new project began on the same day that Prime Minister Hun Sen announced the establishment of a committee of high ranking officials to provide amnesties to pregnant women and women who were in prison with their young children.

This move followed the publication on February 15 of LICADHO's report "Childhood Behind Bars: Growing up in a Cambodian prison – Dara's story",⁴ the second case-study issued by LICADHO which drew attention to the gap in knowledge about young children in Cambodian prisons.

Soon after the Prime Minister's announcement, Cambodian authorities released 22 women from prison, including one pregnant woman and 21 women with their 23 young children. A further 37 women were released ahead of Khmer New Year 2015. Sixteen of those released were pregnant, whilst 23 were in prison with their 24 young children. Two of the women were pregnant and also had another child with them in prison and one woman has two children.

In a welcome move, the Ministries of Justice and Interior were soon tasked with discussing longer term solutions to ensuring the welfare of children whose mothers face prison sentences. Government officials also noted that efforts would be made to expedite the trials of those held in pre-trial detention.

LICADHO welcomed the fact that some children were spared further time in prison but cautioned that those leading the reform efforts should focus their attention on the courts where the real long term solutions lie. That rather than releasing pregnant women and women with children in prison every year, efforts would be better spent on finding alternatives to imprisonment so that children never have to see the inside of a prison wall.

In this respect, LICADHO notes that whilst there are already procedures and guidelines in place in Cambodia to make this possible, alternatives are rarely considered even when the welfare of a small child is at stake.

⁴ See http://www.licadho-cambodia.org/collection/26/childhood_behind_bars_data

Methodology



LICADHO conducted a survey of administrative procedures related to mothers and their children in 14 prisons⁵ to determine the extent to which prisons had information about children of prisoners, their locations, caregiver arrangements and whether any special procedures were in place for children to visit their mothers in prison.

LICADHO also interviewed a total of 96 imprisoned mothers or those who had recently been released and 36 caregivers in twelve provinces and in Phnom Penh. All those interviewed were mothers in prison who had been accused or found guilty of minor or non-violent offences and who have dependent children under the age of 18.

The interviews were designed to gather information about the mothers' and children's experiences of arrest and detention, including prison visiting, contact with and access to information about each other, and the specific impact on the child when a mother is sent to prison.

Of those interviewed 47 had not yet been tried. With the exception of one Thai national, all the interviewees were Cambodian nationals or long-term residents of Cambodia of Vietnamese descent.

In order to better understand the implications of the 2011 change in law, LICADHO included interviews with some imprisoned mothers whose children had been removed from prison as a result of that change.

Similarly, with a view to better understanding the needs of children of imprisoned mothers and to compare the experiences of those who received external help against those who didn't, LICADHO, with the assistance of WeWorld, included interviews with some women who had received, or continue to receive the support of This Life Cambodia (TLC) in Siem Reap and Banteay Meanchey provinces.

In order to minimize the disruption to the family's daily life and the children's schooling, LICADHO did not specifically request that children attend the interviews, instead leaving this decision to their caregivers. The purpose of the interviews was clearly explained in advance and all participants were given the option to participate or not.

When meeting with the families of imprisoned mothers, LICADHO first gained the consent of the mothers and checked in advance that the children were aware of their mother's imprisonment and any other sensitive details, such as the nature of the accusation against her, before proceeding with the interviews. When children were present, LICADHO tailored the interview questions accordingly and allowed children the opportunity to put forward their own views and ask questions if they so wished.

Interviews with mothers in prison took place under varying circumstances, depending on the prison. Some meetings were held in private settings whilst others took place behind bars and, in some cases, guards were present during the interviews.

Whilst LICADHO recognizes that children are regularly affected by the imprisonment of other family members and primary caregivers, such as other parents, grandparents, older siblings, step parents or adopted parents, the scope of this research project was limited to the imprisonment of a child's birth mother. This is because, in Cambodia, birth mothers are most often the main caregivers and when they are sent to prison there is more likely to be disruption to the child's life, including moving home and school.

Similarly, whilst LICADHO's research findings showed that the incarceration of a mother inevitably impacts others, such as sick or elderly relatives, these findings are included in this report only where they have a direct bearing on the children of the incarcerated mother.

⁵ Correctional Center 2 (CC2), Takhmao, Kampong Som, Kampong Speu, Kampot, Kampong Chhnang, Kampong Cham, Kampong Thom, Pursat, Battambang, Banteay Meanchey, Siem Reap, Svay Rieng and Koh Kong.

“Sometimes when I get back from school there is nothing to eat, not even rice. My mum used to do all the cooking, but now there is no-one to prepare the meals.”

Statistics

Of the **96** mothers interviewed:

70%
had no lawyer.

56%
had been accused or convicted of drug-related offences.

97%
had never been in prison before.

100%
of those convicted had been detained before trial.

32
had received no prison visits from their children.

94%
of families had to pay for prison visits.



Basic Information Lacking



The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)⁶ state that, when a woman is admitted to prison the number and personal details of her children should be recorded, including their names, ages and, if not accompanying the mother to prison, their location and custody or guardianship status.⁷

LICADHO's research reveals that, in Cambodia, the majority of prisons surveyed do not have such information available and prison admission procedures, which date back to 2003, do not require that such information be recorded in the official prisoner record.⁸ In fact, only one prison was found to have comprehensive information about inmates' children including their ages and current place of residence.

LICADHO believes that recording such information is crucial in ensuring that a mother can maintain contact with her children and be kept informed of their welfare and any changes in family circumstances. On the other

hand, such record keeping should also allow for children and their caregivers to be kept informed of developments related to their mothers' imprisonment, such as key legal decisions, health concerns or changes of location within or between prisons.

Such administrative information is also important for a prisoner's pre-release preparation, so that the most appropriate family members can be informed in advance of scheduled release dates, make arrangements and prepare the children for their mother's return home.

LICADHO recognises that it can be difficult for prisons to keep accurate information about family circumstances if they do not receive the correct information from judicial authorities. LICADHO also acknowledges that it can be hard to maintain up-to-date records without cooperation from the families themselves. Thus, whilst prison authorities should make all possible efforts to keep and maintain accurate records, families must also take responsibility to ensure prisons are informed of relevant changes.

⁶ <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>, adopted by the United Nations General Assembly in December 2010.

⁷ Women should not be forced to disclose this information if they do not wish to do so.

⁸ Prison procedure 1: Prison admissions.

No Standard Policy



Whilst fortunate for those who have been released because their children were living in prison with them, and for those whose trials have been expedited for the same reason, the recent amnesties also exposed some fundamental flaws in the processes that determine whether or not a child ends up living with their mother in prison.

It would appear that, to date, there are no proper procedures in place to determine when or why a young child will live in prison with its mother. Instead the chain of events and decisions leading to a child accompanying the mother to prison are random and, in the light of recent releases, seemingly unfair. Geographical location and the presence of other adults at time of arrest, the identity of arresting authorities and the policy of individual prisons are decisive factors, often prevailing over the wishes of the mother and, more importantly taking precedent over considerations of the best interests of the child.

Some women interviewed by LICADHO reported that their child stayed with them simply because they were together at the point of arrest and there was no one else immediately present to care for the child. Others reported that police actively prevented them from taking their young children with them to the police station even if there was no alternative care in place. In some prisons, children were allowed to join their mothers in prison at a later date following a request to prison authorities. In others, prison authorities denied such requests.

The disparities in the way such cases have been handled explain why some mothers had been able to keep their children in prison and others had not. LICADHO also notes that some women who had decided to find alternative care arrangements for their children outside prison unwittingly jeopardised their chances of early release or expedited trial.



Children with their caregiver, March 2015.

Case Study – Sasa

Sasa has two children, a son now aged five and a daughter who was just six months old when her mother was sent to prison. Sasa was arrested whilst walking along the street carrying her baby and, because the child was still breastfeeding at the time, Sasa took her along to the police station.

When Sasa's husband came to visit her later that day at the police station, a police officer handed the baby to him and told him to take her home. Sasa was not offered the option of keeping her baby and, when she later asked in prison if the child could join her, she was told this would not be possible.

Sasa's family live a two-hour drive from the prison and her children were each able to visit her two or three times during her one year imprisonment. They met in the communal meeting area but were never allowed any private time together.

Sasa had been arrested in April 2014 on suspicion of theft and detained for ten months before eventually being tried and sentenced to one year in prison. She was released four days after LICADHO interviewed her.

Welfare of the Child Ignored



Case Study – Phalla

At the time of her arrest Phalla was at home with her nine-year-old son, her seven-year-old grandson and his mother, Phalla's 26-year-old daughter, Sovanna.

Military police arrived at Phalla's home after dark, at 8pm on a Sunday evening when the two children were playing inside. As soon as the children saw the police, they began to cry and ran outside. Police, who had seen the children, immediately arrested the two women and took them to the local military police station.

Phalla told LICADHO that she pleaded with the police, "Please let me find my son and grandson before you take me away, after that I will come with you." But they refused.

At 10pm that evening Phalla was able to make a phone call to inform her family of her arrest and check on the safety of her son and grandson. Her daughter informed her that a neighbour had found the children hiding in a hole in a rice field behind the house.

At no time during their arrest and detention did police ask Phalla or Sovanna how many children they had, where they were or who might look after them. Sovanna was released after one night in the military police station but Phalla was eventually tried on charges of drug trafficking and sentenced to three years in prison. At court no mention was made of her children.

Whenever law enforcement and judicial officials have to deal with children in their professional capacity, they should exercise care and sensitivity, paying particular attention to their age, needs and specific vulnerability and treat them in an appropriate manner.

Whilst LICADHO did not record any instances of police violence towards women in the presence of their children, in most cases when children were present at the time of arrest, the arresting authorities simply acted as if the child was not there, taking their mother away without explanation, often leaving the children upset, frightened and confused. Some children fled or hid at the first sight of the police and others were left with no-one to care for them.

At arrest, police generally appeared unconcerned about family circumstances and the welfare of any dependent children. If no children were present at the time of arrest police often did not ask if there were children in the family. Similarly, if one or more children were present, they did not usually ask if there were any others. Even in cases where police did ask about the numbers and ages of any children, they usually paid no attention to what would happen to them in their mothers' absence, even if they knew that there was no responsible adult immediately available.

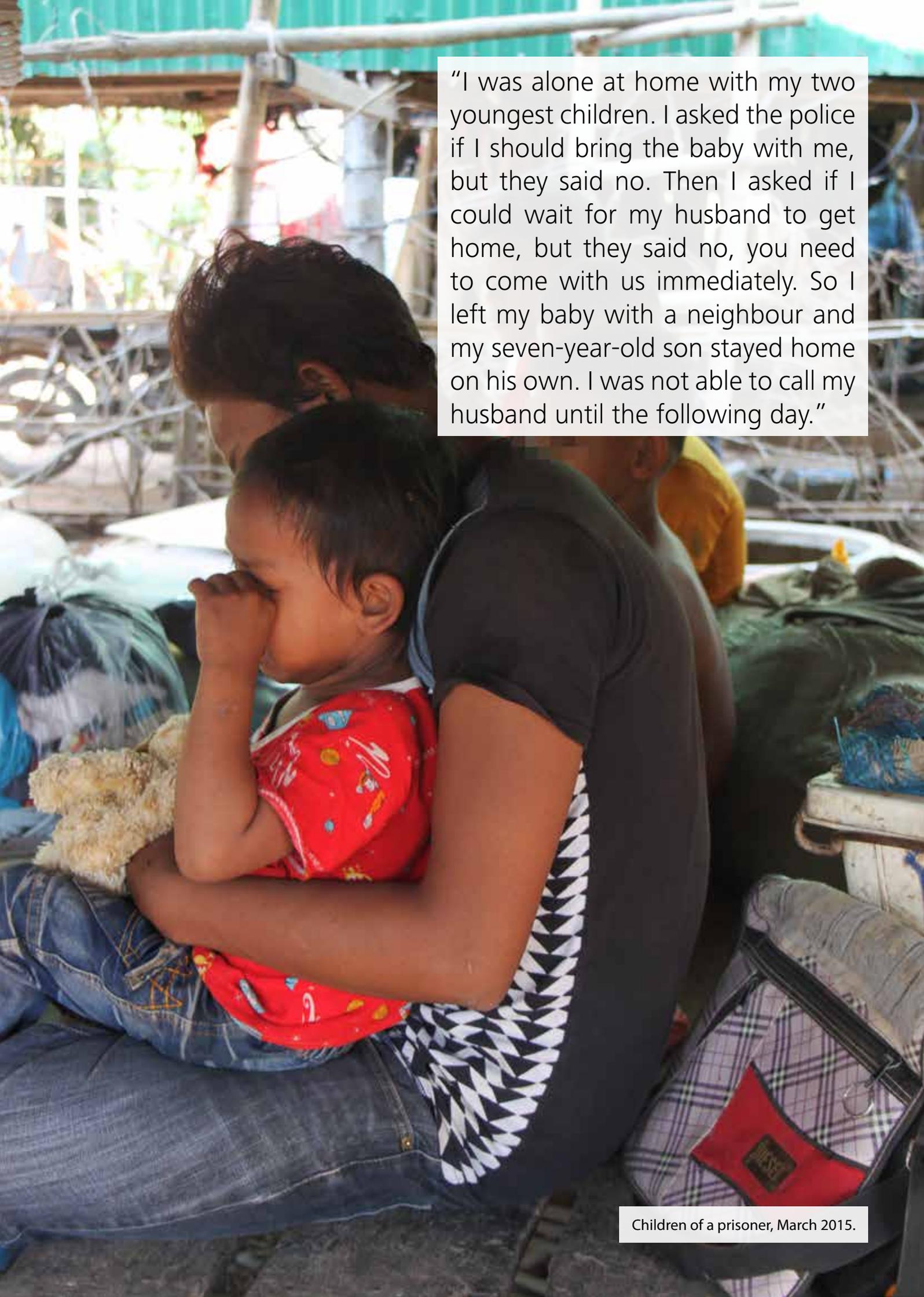
LICADHO recorded cases of police knowingly leaving children with strangers or adults with whom they had little close connection. Some children were left on their own with absolutely no arrangements in place for alternative care and no attempts made to inform family members of their mother's arrest. It was sometimes assumed without question that older siblings, children themselves, would take on the responsibility for their younger sisters or brothers.

When women were called to the police station for questioning before their arrest, they often had no indication that they would be taken into custody and had not therefore considered any short or long term care-arrangements, sometimes leaving their children alone assuming they would be back after only a short while.

Opportunities for mothers to organise appropriate childcare arrangements after their arrest were also found to be lacking in many cases, with some women telling LICADHO that they were not allowed to phone their families from the police station, even if their children had been left unattended or with a non-family member.

Some women told LICADHO that the police did not ask about their family situation but that this was probably because the local authorities already knew the family set-up and who would likely take care of the children in her absence. In LICADHO's view, such an approach is wholly irresponsible given the changing nature of family relationships and authorities' lack of knowledge of specific family dynamics and possible harmful implications for the child.

LICADHO's findings reveal that the welfare of the child is not only ignored at the time of arrest, but throughout the whole judicial process. Many of the women interviewed said they were never asked about their family situation when pre-trial detention was ordered or during their trial and sentencing. Of those who were asked, only a few were also asked about the child's location and childcare arrangements. Sadly, this was equally the case for those few women who had legal representation, with many reporting that even their own lawyer did not ask them whether or not they had children.



“I was alone at home with my two youngest children. I asked the police if I should bring the baby with me, but they said no. Then I asked if I could wait for my husband to get home, but they said no, you need to come with us immediately. So I left my baby with a neighbour and my seven-year-old son stayed home on his own. I was not able to call my husband until the following day.”



The Impact on the Child



There is no doubt that, in the majority of cases, the imprisonment of a mother can have deep and long-lasting psychological and developmental consequences for her children and may increase the likelihood that the children themselves later come into conflict with the law. In the section below, LICADHO details the different ways in which the children of the families interviewed have been affected, as identified by the families and children themselves.

MOTHER-CHILD RELATIONSHIP

When a mother is sent to prison and separated from one or more of her children, one of the most obvious consequences is the impact on the mother-child relationship itself.

All of the women interviewed by LICADHO either lived with or had regular contact with their children prior to their arrest. Yet once they were arrested some of them had no communication with their children whatsoever. 32 had received no visits from their children in prison and many had not been able to speak to their children on the telephone. Only a small number of women reported that their children had been able to visit them on a regular basis with many having visited just once or twice throughout the incarceration period.

Families gave different reasons for the lack or rarity of prison visits by children. The most common reason given was that the family simply could not afford to visit or could only afford to visit occasionally. For others, the prison was just too far, especially if the child had moved to another province, or adults could not take the time off work to accompany the children.

Where the primary caregiver was an elderly relative, travel to the prison was sometimes either impractical or impossible. Children's schooling was also given as a reason for the lack of visits and, in some cases, the children had taken up employment to support the family and could not take time off work. LICADHO recorded only a few cases where children had not visited the prison because they did not want to.

For those mothers and children able to meet, the visit conditions were difficult, particularly if behind bars or a screen, and meetings were usually very short and always lacked privacy. None of the mothers interviewed had been able to spend one-on-one or private time with their children during family visits and many had been allowed no physical contact at all.

Sadly, some mothers told LICADHO that their children did not recognize them when they visited, especially those

who could only visit infrequently. Other mothers reported that their children appeared visibly distressed during the meetings. None of the women were given the choice to wear their own clothes when meeting their children and uniformed guards were usually present throughout, adding tension to the already hostile, unfamiliar and uncomfortable surroundings.

Whilst most families noted that the children were happy to see their mothers, many reported that the children were upset before, during and after visits and that the visiting conditions were unnecessarily strict.

“I’m happy when they come to visit me, but my son seems to forget me. He doesn’t recognise me.”

OTHER FAMILY BONDS

The family structure and relationships between other individuals within the family are also clearly at risk when one or more members are sent to prison. And, because a child is more likely to move home when the mother is arrested, the broader impact on the family may be more pronounced.

In 38 of the families surveyed, one or more of the children had moved out of the family home as a direct result of their mother’s imprisonment. Some had moved to another province and a few had moved to a neighbouring country. Siblings had been separated from each other in at least eleven families, either because one child lived in prison with its mother or because they now had different primary caregivers.

In the majority of cases the children were cared for by one or more family members after their mother was arrested, with a small number of children living with family friends, neighbours, landlords or at an NGO centre. Children in four families did not have any adult taking care of them.

LICADHO recorded only 18 families in which the father played a leading role in his children’s care and upbringing. This was because the fathers were too busy working, had left to find work elsewhere or because the parents had separated before or since the arrest. LICADHO recorded several cases in which the father had not been in contact with or provided his children with any support since the arrest of their mother.

EDUCATION

Many of the mothers interviewed by LICADHO expressed concerns about the impact of their imprisonment on their children’s education. Some did not know if their children were still attending school whilst others had heard that their children were no longer able to concentrate at school and their grades were suffering as a result.

Case Study – Sopheap

Sopheap has three sons aged nine, seven and two. Before her arrest she lived with her husband and three children and worked as a housewife. Her husband earned money for the family as a local motodop.

When she was arrested on charges of theft in January 2014, Sopheap’s youngest son was just nine months old. She was arrested from her home and, not knowing she would eventually be sent to prison, took him with her to the local police station. He remained with her in prison up until her release in April 2015.

At the time of her arrest, her husband and other two children were also at home but did not make their presence known to the police and police did not ask about them.

Sopheap was tried less than six weeks after her arrest, convicted and sentenced to four years in prison. Her family had hired a private lawyer to defend her but throughout her arrest and sentencing, neither the police, the court or the lawyer himself asked Sopheap how many children she had or if there was anyone to look after them should she be sent to prison.

Sopheap does not know how much her family paid for the services of the lawyer, but soon after the trial both her parents and her husband decided to travel across the border to Thailand in search of construction work in order to meet the costs associated with her imprisonment. The oldest boy was sent to live with an aunt in another province, where he is able to continue his education, whilst the middle child travelled with his grandparents to Thailand where he accompanies his grandparents to the construction site every day.

At the time of LICADHO’s meeting with Sopheap, neither she nor her husband had any direct contact with the children in Thailand and Battambang. Her husband travels back and forth to Thailand for work and is able to send some money to support the children, but has not been able to visit them. Sopheap herself is only able to speak to her children irregularly from prison using a prison guard’s mobile phone.

On the advice of her lawyer, Sopheap appealed against her sentence but after waiting a long time with no sign of a hearing, decided to withdraw the appeal. She was due to be released in January 2016 but received a royal pardon and was released along with 36 other women ahead of Khmer New Year in April 2015.

As LICADHO discovered, these concerns were well-placed. The research findings showed that when a mother is imprisoned, their children's education almost always suffers as a result. Some drop out of school whilst others take on paid work during out-of-school hours in order to support the family financially. Those who moved out of the family home often had to change schools and even those who stayed at the same school were often reported to be struggling with their lessons. Many families noted that, since the mother was arrested, there was no-one available to help with the children's homework or prepare them for the school day.

“Since my arrest he skips school and goes to the restaurant to collect empty cans. He has to do this now because he doesn't have enough food to eat.”

FINANCIAL IMPACT

When a family member is arrested and sent to prison, the financial impact on the family is often immediate and lasting. Due to the deep-rooted corruption in Cambodia's policing and judicial structures,⁹ suspects with access to money are often able to pay their way out of court and prison. As a result those sent to pre-trial detention and eventually convicted almost always come from poor families who are most vulnerable to any drop in income.

Some families reported that at arrest police stole money from the family and permanently confiscated property not linked to the investigation. If the mother was a wage earner then the family instantly lost a regular source of income and, in some cases, other family members had to give up their job in order to look after the children and take on the housework.

In the few cases where women or their families had paid for private legal representation, the exorbitant lawyer's fees drove the families into further poverty, often with very little to show in return. Some families reported having to sell their land or other property in order to cover legal fees and other prison-related expenses.

Prison visit costs were also a major financial strain for many families, particularly for those who lived in remote, rural areas. In addition to the usual costs of transportation to prison, time off work and childcare arrangements, in most Cambodian prisons, visitors are required to pay a fee to the prison on each visit.

Because of the lack of nutritious food, effective medicine and other basic supplies available in Cambodian prisons, visitors usually bring money, food or other materials to inmates. To do so they are often required to pay more money or give a percentage cut to the prison guards.

“We paid the lawyer \$1,000 but I met him only once, the day after my arrest. He never visited me in prison and, even though he was present at the trial, he said nothing. He never asked me if I had any children.”

HEALTH

LICADHO has already documented the negative impact of prison life on the health of pregnant women, mothers and children in prison due to the lack of medicine and nutritious food in prison, but little attention has been paid to the implications for children outside prison who were previously dependent on their mothers for meals, healthcare and emotional support.

Many of the women and families interviewed by LICADHO were worried that the children's health had suffered as a result of their mothers' imprisonment, particularly those children who were still breastfeeding when their mother was arrested.

When babies were separated from their mothers, some caregivers told LICADHO that they could not afford to buy them powdered milk. For older children, several families reported that they did not have enough money to buy sufficient food for them and that, when the children were sick, they could no longer afford to take them to the doctor or buy them medicine.

When the child's primary caregiver was an elderly relative, they often reported that the demands of childcare were negatively impacting their health and their subsequent ability to look after the children safely and effectively.

In addition to the physical health impact on children, LICADHO also heard many reports of children suffering the psychological consequences of their mothers' imprisonment. Amongst other things, children experienced lack of sleep, emotional detachment, and the inability to concentrate at school.

⁹ For more information about corruption in Cambodia's prisons see “Rights at a Price: Life inside Cambodia's Prisons” a LICADHO report, January 2015, available at: http://www.licadho-cambodia.org/collection/25/life_inside_cambodia_prison

DAILY LIFE AND SOCIAL INTERACTION

The impact on a child's daily life and the stigma faced by children from their friends, neighbours and schoolteachers were also noted as concerns by mothers, caregivers and the children themselves.

Because women usually played a central role in the family household before arrest, their absence was keenly felt when it came to household chores, school preparation and other routine daily activities, with children themselves often having to carry out tasks in place of their mother.

The mothers' imprisonment was raised by some families as a source of shame and stigma for the children in their daily interactions at home or at school, with some reporting that the children did not want to leave the house or talk to their friends or neighbours. One mother told LICADHO that her child was told she could no longer play with his friends because their parents did not want them playing with 'the child of a thief'. Other children were bullied at school because their mother was in prison.

"He is so sick now and he cries so much during the night. We were giving him powdered milk, but now we cannot afford to buy any more."

GENDER SPECIFIC IMPACT

Children are, without doubt, negatively affected in many ways when a close family member is sent to prison, but as LICADHO's research demonstrates, the impacts are likely to be more pronounced when that person is their mother.

Due to women's status in Cambodian society and because they are often not wage earners themselves, particularly if they are mothers, they are generally less likely to be able to afford to bribe themselves out of detention or pay towards a more lenient sentence. On the other hand, families may be less inclined to pay for their release or to hire the services of a lawyer than if the primary wage earner, most usually a man, had been arrested.

As women tend to take on most child-care responsibilities and household duties, the day-to-day life of the family is more profoundly affected when they

are imprisoned, with fathers often having little previous involvement in a child's schooling, daily routines and basic physical needs. Because children often spend much more time with their mothers and develop closer bonds, the longer-term implications of their absence are also likely to be more pronounced.

LICADHO's findings also demonstrate that a child's stability is at greater threat when his or her mother is imprisoned, with a greater chance that they will leave the family home to live with someone else, perhaps in another village or even another province and, in some cases, siblings are separated. As a result they are also more likely to change schools and live apart from both parents.

Family prison visits also tend to be more difficult to organise when the mother is in prison. Not only because of their geographical location but also because children often go to live with elderly relatives who do not have the means, practical or financial, to organise prison visits.

Some of these relatives are physically incapacitated or otherwise incapable of making the regular journey to prison themselves, let alone to consider making the journey with young children. Additionally women are much less likely than men to be offered paid work inside prison¹⁰ and are therefore less able to contribute financially to family visits or to pay for telephone calls.

LICADHO's research showed that, in general both girls and boys were equally affected by their mother's imprisonment, but that the practical implications tended to vary. Boys were more likely to play truant from school or to be required to take on paid work to support the family, whilst girls were more likely to have to take on household or childcare responsibilities for their younger siblings.

"First they arrested my husband and, when I went to visit him, they arrested me too. After two nights in custody we borrowed money from the bank and gave the police \$1,000 to release my husband. They asked for money to release me too, but we didn't have any more."

¹⁰ Such as construction work, furniture making, welding and farming.



Kanha's 13-year-old daughter, February 2015.

Case Study – Kanha

Kanha has four children, aged 15 (m), 13 (f), 10 (f) and three (m). Both she and her husband are in prison, convicted on drug trafficking charges. According to Kanha her husband had bought the drugs in Phnom Penh, but police followed him home and arrested her too, simply because she was present at the time of arrest.

All of Kanha's children were at home along with their grandmother when the police arrived. But police did not ask who would look after them, instead instructing them all to remain still and say nothing as they handcuffed their parents and took them to the local police station. At the time of Kanha's arrest her youngest son was two years old but police did not give her the option to bring him with her. Later, when she requested that he join her in prison, she was told that this would not be possible.

Kanha's 81-year-old mother is now the sole caregiver for all four children. She suffers from ill-health and, when LICADHO met her, had recently suffered a severe burn to her leg after falling onto a pot of boiling water as she rushed to get the children's lunch ready before they returned home from school. She was still in considerable pain when LICADHO visited, was barely able to sleep at night and had not been able to afford to see a doctor.

Since the accident, Kanha's 13-year-old daughter does most of the cooking, housework and laundry when she returns home from school. She also assumes some of the care responsibilities for her younger siblings. Kanha's oldest son no longer goes to school and instead works at a nearby farm.

Before her arrest, Kanha ran a small grocery store from her home but once they had sold all the remaining merchandise, the family could no longer afford to restock due to the costs associated with imprisonment. Their store is now closed. With no regular source of income except the 15-year-old boy's wages, the family was also forced to sell some land in order to meet their basic living costs.

Kanha's mother has only been able to visit her daughter twice in prison, taking the three-year-old boy with her each time. The family cannot afford to visit more regularly as it takes them an hour-and-a-half to get to the prison in a taxi and costs \$7 for the return journey. Once at the prison they have to pay \$3 for a 15-minute meeting behind bars and, if they want to visit both parents, have to pay double the visiting fees. The family cannot afford to pay the \$5 for a meeting where they can have physical contact.

Kanha told LICADHO that when her youngest son first came to visit, he cried when he saw her and did not seem to recognize her in the prison uniform. She is not able to speak to her family on the telephone regularly as, during the arrest, police took the family's mobile phone, along with all their money, jewellery and other items not related to the alleged crime. They are able to speak on the phone only occasionally using a neighbour's telephone.

At trial, Kanha was sentenced to two years in prison with one year suspended. Her husband was sentenced to four years in prison with one year suspended. Neither had a lawyer to represent them and, because the family had not been informed about the trial in advance, they were not able to attend, learning about the verdict later over the telephone.

Kanha is due to be released in July 2015 and hopes to return home immediately to be with her children and ease the pressure on her mother. However, a timely release remains unlikely because the prosecutor has appealed against her sentence and, as yet, she has heard nothing about when the appeal will take place.¹¹

¹¹ In Cambodia, if a prosecutor appeals against a sentence, the prisoner must remain in detention awaiting the appeal hearing even when their period of incarceration extends beyond the expiration of their original sentence. Even if acquitted by the Court of First Instance, those who were held in pre-trial detention must remain in prison if the prosecutor decides to appeal against the acquittal.

The Right to Family Contact



In a recent report,¹² LICADHO noted that regular contact with family and friends is crucial for prisoners' emotional well-being and plays a major role in eventual reintegration into family and community. In Cambodia, prison visitors are also a vital, and often the only, source of nutritious food, medicine and financial support.

Whilst all prisoners and their families have the right to communicate with each other, including through direct visits, certain groups are more likely to be adversely affected when visits and other forms of contact are denied or restricted. Mothers and their children are one obvious such example and, because of the nature of their relationship, special measures must be in place to facilitate regular, unhindered communication.

Unfortunately, in Cambodia the right to receive visitors and make telephone calls is dependent on financial circumstances. Visitors must pay for each visit and amounts requested vary according to length of visit, meeting location, day of visit, and the perceived financial capacity of the visitor.

Typical amounts cited by prisoners and families are between \$2.50–\$5.00 for a 15-minute visit behind bars rising to \$10 to meet inside the prison compound and \$15 dollars or more for a private meeting. LICADHO's findings revealed that the families of many women often could not afford to pay for longer or direct contact visits and many travelled for several hours just to have a ten or fifteen minute meeting behind bars.

Even those who paid for contact visits were never given the opportunity for private meetings, with visits usually taking place in the presence of guards and other families. In cases where more than one family member is in prison, visitors are often required to pay double the fee, even if it is for a child to visit his or her imprisoned mother and father. Telephone calls from prison are also out of reach for some, with inmates often having to pay prison guards for the use of their mobile phones.

Given that many prisoners in Cambodia, including the majority of female prisoners, come from poor families, prison visit fees are often prohibitive, especially when

taking into account other visit-related costs such as transportation, accommodation and time off work. As a result many families can visit only occasionally and others not at all.

“My husband has visited with my 12-year-old son twice. He can only come at the weekend because he cannot take time off work. It takes them four or five hours to get here on the bus and costs 50,000 riel. If they pay 10,000 riel I can meet them for only 15 minutes. We have no privacy.”

Of the 14 prisons LICADHO surveyed, only two reported any special arrangements in place for visiting children, both stating that unlike other visitors, children can have physical contact visits with their mother. A third prison reported that when a child visits his or her mother, the standard visit fee was waived in January 2015 and a fourth noted that children who used to live in prison with their mothers are exempted from having to pay for visits.

The imposition of expensive prison visit fees and high telephone costs means that the poorest inmates are effectively denied their right to have contact with their families and runs counter to the prison administration's responsibility to ensure that family relationships are maintained and developed during a period of incarceration. Rather than making family contact more difficult, prison authorities should put in place arrangements that allow the best possible access to family. This should include measures which facilitate an ongoing bond between mother and child.

“Since my arrest I am totally disconnected from my family. No-one visits or calls me. I have no information about what has happened to my children.”

¹²“Rights at a Price: Life inside Cambodia's Prisons” a LICADHO report, January 2015, available at: http://www.licadho-cambodia.org/collection/25/life_inside_cambodia_prison



Case Study – Socheata

Socheata was arrested in January 2015. She told LICADHO that she was not able to contact her family until two weeks after her arrest as neither she nor they had access to a telephone. Instead her children aged 12, nine and three learned of her imprisonment through Facebook. By the time LICADHO met her more than one month later her children had still not been able to visit as they live a two-hour drive from the prison. She had only been able to speak to them over the telephone once.

Shortly after she was arrested Socheata's youngest daughter, was admitted to hospital for one week with a kidney problem. Socheata heard about this from another inmate, a neighbour of hers, who had passed on the information from one of her visitors via Socheata's husband. Socheata told LICADHO that prison authorities have offered her no help in contacting her family, her only phone call made using another inmate's unauthorised mobile phone.

During the arrest, police did ask Socheata if she had children and how many, but they did not ask her where they were or who was looking after them. She told LICADHO that instead they told her "You should have thought about your children when you committed the crime." Socheata also told LICADHO that police put the incorrect home province down in her file at arrest and that as far as she was aware this has still not been rectified.

It is a fundamental right of all detained persons to be given the opportunity to inform their families of their whereabouts as soon as possible. This must be applied whenever that person is moved to another place of detention, including when they are sent from police station to prison. Prompt access to information about a detained person's whereabouts is particularly important in cases where that person has responsibility for other family members, such as young children.

Unfortunately many women told LICADHO that they were not able to contact their families when they were first arrested or when they were sent to prison, either because they had no access to a telephone, could not afford a phone call or because their families were unable to visit them. Similarly LICADHO found that many families were not provided with information about the mothers' legal status, health situation and other important information.

LICADHO heard cases of children learning about the detention of their mother via the television, Facebook or from a neighbour who had been visiting another inmate in the same prison. LICADHO also spoke to families who had been unable to attend court hearings because they had not been informed of the trial date, those who did not know that the accused had already been tried and convicted and others who were unaware of the length of prison sentence or the release date of the mother.

Whilst families themselves sometimes kept information from the children, the lack of information available about court processes and their mother's situation inside prison also left some children feeling confused about what had happened to their mother, why she was no longer at home or when she would be back.

Sometimes even inmates themselves are not provided with timely information about legal developments in their cases, such as dates of trials, appeal hearings and notifications of prosecutor appeals. Sadly this even applied to some inmates who had paid for the services of a lawyer. Some women told LICADHO that they had never been informed of their right to appeal or about the process by which they could apply for amnesty or sentence reduction.

Unfortunately it was also often the case that mothers themselves received little or no information about their children outside prison. Some of those interviewed did not know where their children were or what had happened to them since the arrest. Others knew only where their children were but did not know how they were coping, whether they were still attending school or whether their father was in touch with them. Some of those who did receive information did so via third parties, such as other inmates who happened to receive visitors from the same village.

"I want to attend her trial to find out what will happen, but I just can't afford it. I don't know anything about the court process. I don't even know where the court is."



Children of a prisoner, March 2015.

No Support Available



In addition to the lack of information about the impact of mothers' imprisonment on their children, it soon became apparent to LICADHO when conducting initial research into this area that there are also very few support networks available to children of prisoners in Cambodia. As it is, children from the poorest and most rural families are rarely able to visit their mothers in prison, the costs associated with imprisonment can be debilitating for many families and, in some cases, entire livelihoods are lost when one family member is sent to prison.

Yet LICADHO's research findings show that just a small amount of help can make a huge difference in maintaining basic physical and emotional family links, ensuring that children remain in education and keeping the family

business afloat. All these factors will also limit the likelihood that other family members will turn to crime and limit reoffending rates once women are released from prison.

"My five-year-old son is epileptic. Before my arrest I used to take him to hospital for regular check-ups and get his medicine but now he doesn't have any medicine. No-one takes him to hospital."



Successful Family Reintegration

Sokleang was arrested in 2011 and sentenced to three-and-a-half years in prison on charges of drug trafficking. She has four children, all girls, three of whom were in her care at the time of arrest, aged 13, nine and five.

After Sokleang's arrest, the family decided that her children should live at their grandmother's house at a plot of land close to their family home. Their father is a heavy drinker with a history of violence and was often not at home. Before her arrest Sokleang travelled back and forth to the border where she could occasionally find work as a farm labourer.

With the loss of Sokleang's income and the costs related to her imprisonment, her family soon began to struggle financially. Sokleang's younger brother was sometimes able to send money to support them but they found that, increasingly, they were unable to pay for basic living expenses and schooling costs.

After Sokleang had been in prison for two months, her then 13-year-old daughter quit school because she was ashamed of having no money or transport to school. After a brief return to education, at 16 she quit school again and left home to find work in Thailand where Sokleang's younger brother was living. She currently works as a housemaid in Thailand where she says she earns just enough money to survive.

TLC began to help the family in March 2013, supporting the two youngest children to continue their education. TLC provided health care assistance and emergency support packages. Crucially the organisation also provided the family with transport costs so the children could visit their mother in prison once a month. They also intervened with prison authorities so the family did not have to pay any prison visit fees and provided Sokleang with the costs of her transport home when she was released.

The family also received longer-term support in the form of an income generation program. TLC helped the family set up what is now a successful small scale pig farm and provided them with training on how to care for the pigs. Sokleang, who was released in January 2015, now takes the main responsibility for the animals, supplementing the family's income and allowing her to stay home and spend more time caring for her children.

Sokleang's mother told LICADHO, "Before [TLC] supported us it was such a heavy burden. It was so hard. Sometimes I didn't have enough food for myself and I had to look after the three children. We had no money to send them to school and they didn't have enough to food to eat or clothes to wear. It was almost impossible for us to visit her in prison."

Established in 2007, TLC focuses on providing opportunities for communities to develop the infrastructure, skills and knowledge to make positive change in their lives and break free from poverty. With a head office in Siem Reap, TLC currently operates four programs across Siem Reap, Banteay Meanchey and Oddur Meanchey provinces, including This Life Beyond Bars (TLBB),¹³ a program that works with children, families and communities affected by the justice system in Cambodia.

As far as LICADHO is aware, TLC is the only organisation in Cambodia with a dedicated and comprehensive program of support for the children and families of prisoners. LICADHO's findings correspond closely to the areas of concern already identified and addressed by the TLBB family support program and demonstrate the urgent, ongoing need for such projects.

The program delivers support services to families with a parent in prison, preventing unnecessary child-family separation and building family resilience. TLBB supports caregivers of vulnerable families to provide for children's fundamental needs and wellbeing during their parent's incarceration, allowing children to remain in the care of their immediate family.

The TLBB project reduces pressure on caregivers and safeguards children's futures by providing scholarships, family income generation activities, healthcare and emergency provisions. In addition, monthly visits to parents in prison ensure that fundamental relationships are not severed. This affords caregivers the reassurance they need and enhances their capacity to provide for the fundamental needs of children in their care.

To date, of the 31 families supported by the project, 24 have been in a position to start up or build on an income generation activity of their choice. Of the 84 children in these families, 60, including 35 girls, have received scholarships to continue their public education. Each month, an average of 93% of the families participating in the project have taken the opportunity to visit their parent in prison.

¹³ <http://www.thislifecambodia.org/programs/this-life-beyond-bars>



Long-Term Solutions Within Reach



Current practice relating to the arrest and detention of mothers is clearly at odds with existing law and procedures which provide for alternatives to detention where possible, especially in cases of women with children or pregnant women.

When Prime Minister Hun Sen called on the Ministries of Justice and Interior to find long-term solutions to the issue of female inmates with children in prison, LICADHO responded by noting that, in Cambodia, there are already procedures in place in Cambodia which can contribute to such solutions.¹⁴ LICADHO also notes that in recent years steps have already been taken towards the promotion of rehabilitative imprisonment, pre-trial detention alternatives and non-custodial sentencing. Unfortunately, implementation of reforms has been slow.

As clearly set out in Cambodia's Code of Criminal Procedure, in principle a charged person should remain at liberty.¹⁵ Pre-trial detention should only be ordered exceptionally and only in cases of a felony or a misdemeanor involving a punishment of one year or more.¹⁶

When it comes to decisions on pre-trial detention, Ministry of Justice guidelines categorically state that investigating judges should always ask for all relevant information about the charged person before deciding whether or not to order pre-trial detention. This should include whether the charged person is a pregnant woman or a woman with young children. The guidelines make it clear that if a woman is pregnant or if she has children and there are no suitable alternative care arrangements, pre-trial detention should not be imposed unless absolutely necessary.

Sadly, LICADHO's research findings demonstrate that the Ministry of Justice guidelines are clearly not being properly or consistently followed. In fact, the majority of women interviewed reported that neither police nor judicial authorities asked them whether they had children at the time of their arrest or during their pre-trial hearing.

If they did ask, most often they did not enquire as to who would look after any children in the event of arrest and imprisonment.

Whenever a judge does decide to send a suspect to pre-trial detention, forms issued by the Ministry of Justice in early 2014 also require that they must demonstrate they have carefully considered all the relevant facts. They should also clearly explain which of the six reasons for pre-trial detention, as set out in Article 205 of Cambodia's Code of Criminal Procedure, apply to the case to ensure that pre-trial detention is only used as a last resort. However, information received by LICADHO suggests that only some judges are using the new forms and that those who do often fail to provide strong reasoning for their decision.

At sentencing, LICADHO believes that many persons convicted of minor offences, especially mothers and pregnant women, should be considered for the non-custodial alternatives already set out in Cambodia's Code of Criminal Procedure and Penal Code, such as judicial supervision, suspended sentences and community service. However, alternatives to prison are rarely considered at sentencing and non-custodial measures are still regarded with suspicion and skepticism.

To address this issue the government set up a working group on alternative sentencing which distributed three circulars in early January 2014 aimed at providing judicial officials with additional guidance on the implementation of non-custodial sentencing alternatives.

The aim was to ensure that investigating judges and prosecutors comply with legal principles by looking thoroughly into the nature of the crime committed and the personality and personal circumstances of the accused person when determining whether a prison sentence is really necessary. However LICADHO has yet to see any evidence of positive outcomes or real commitment to making concrete improvements.

¹⁴ See "Release of Imprisoned Mothers and Pregnant Women Will Provide Some Relief but Does Not Address Underlying Issues" a LICADHO Statement, March 2, 2015, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=375>; and "Long-term Solutions Necessary for the Welfare of Children whose Mothers Face Imprisonment" a LICADHO Statement, March 18, 2015, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=379>

¹⁵ Code of Criminal Procedure, articles 203 and 204.

¹⁶ According to the article 205 of the Code of Criminal Procedure, pre-trial detention should only be ordered when necessary to stop the offense or prevent the offense from happening again; prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices; preserve evidence or exhibits; guarantee the presence of the charged person during the proceedings against him; protect the security of the charged person, or to preserve public order from any trouble caused by the offense.

Ending Unnecessary Detention



LICADHO has long maintained that for a lasting and meaningful solution to the problems in Cambodia's prisons there needs to be a fundamental shift away from the blanket use of pre-trial detention and a country-wide increase in non-custodial alternative sentencing for less serious offences. Such changes will not only reduce prison overcrowding, cut prison running costs and increase staff capacity, but will also minimize the negative impact imprisonment can have on children as well as other individuals, families and communities.

As LICADHO has previously reported, the pre-trial incarceration rate for women and juveniles is currently much higher than for adult males. As of December 2014, 70% of women in prison were in pre-trial detention, including those awaiting appeal or final verdict. Whilst LICADHO does not have data on how many of these women have childcare responsibilities, the number is likely to be high and LICADHO believes that a large proportion of the women could be spared pre-trial detention.

Even if those women accused are subsequently convicted at trial and sentenced to imprisonment, the negative impact on their children will be significantly reduced. Amongst other things the family would have time to organise suitable, alternative care arrangements and new schooling if a child has to move home. The child would be better prepared for the period of separation, both practically and psychologically, and the family would be less affected financially.

LICADHO believes that a significant proportion of the female inmate population could also be spared prison time at sentencing. In a 2014 survey of 479 adult female prisoners, LICADHO found that more than one third were accused or convicted of drug related offences whilst a further 31% were in prison for minor offences such as theft, receiving stolen goods, breach of trust, damaging property and illegal fishing. In LICADHO's view, due to the non-violent nature of their crimes, most, if not all, should have been considered for alternative measures so as not to separate them from their families and communities.

“A considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration...By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration.”

Bangkok Rules, Commentary to Rules 57-58

Maintaining the Mother-Child Bond



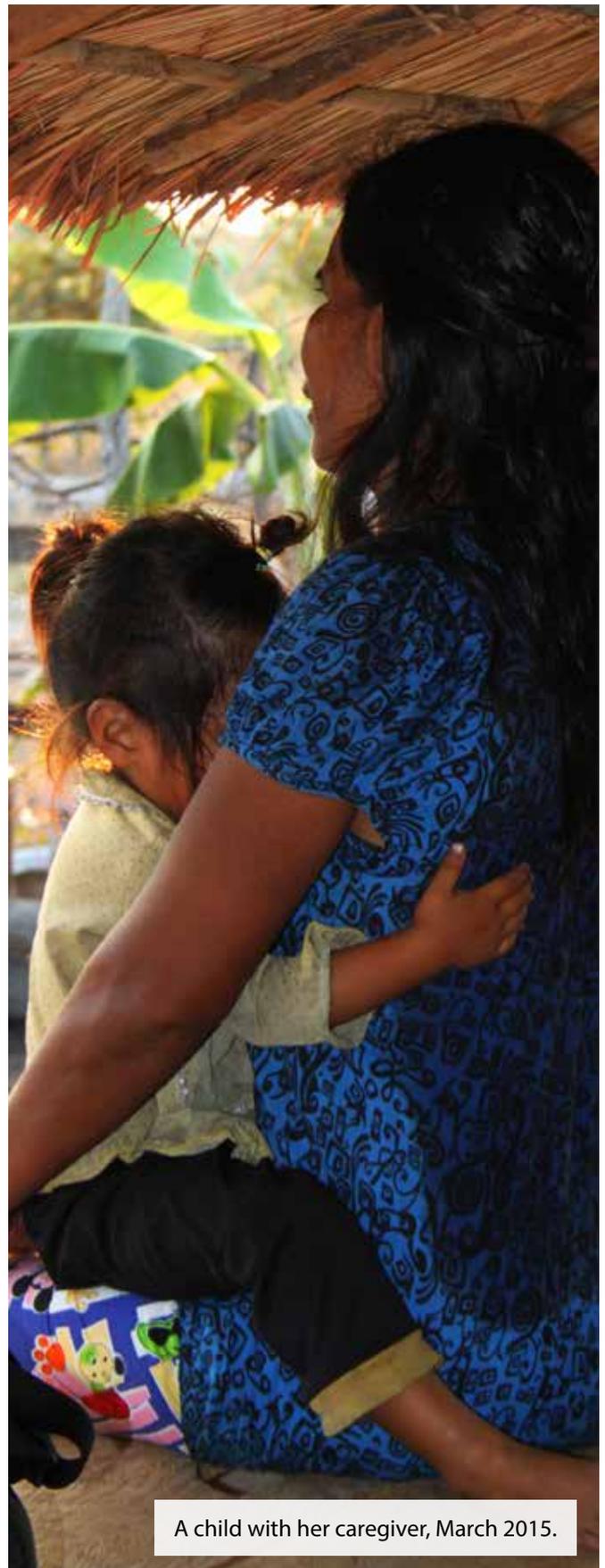
Whilst LICADHO believes that many mothers could be spared prison time, there are clearly cases where a period of incarceration may be the best option. In these cases, LICADHO urges prison authorities to introduce immediate, basic changes to the system of prison visits so that children can more easily visit their mothers and so that meeting conditions are improved, allowing for the continuation and positive development of the mother-child bond.

“My three year old cries all night long because she has never slept beside anyone except me. She doesn't want to eat or drink anything and always asks to be with me”

As a first step, authorities should immediately lift any charges for prison visits. In principle, this should apply to all visitors but could be applied as an immediate priority to visits by the children of inmates. Next, the duration and frequency of family visits, and mother-child meetings in particular, should not be restricted. Instead, prison authorities should consider allowing half or full-day visits between mother and child, preferably at weekends or on other non-school days, to minimise any disruption to the child's home routine. Such arrangements would benefit in particular those families who have to travel long distances to visit and those who can only visit irregularly.

Just as importantly, visits between mothers and children should always allow physical contact and should be conducted with as much privacy and in as natural an environment as possible. Mothers should not be separated from their children by bars or a screen and the meeting environment should never be dependent on financial circumstances. Mothers should also be allowed to speak to their children on the telephone on a regular basis, for a reasonable period of time and should not be prohibited from doing so for financial reasons. This is particularly important for those whose families live far or cannot visit regularly.

In the longer-term, prison authorities should consider introducing a system to allow mothers to visit their children at home for short periods of time, if it is safe and



A child with her caregiver, March 2015.

appropriate to do so. As a trial, this system could be introduced for those mothers who are nearing the end of their sentences. Such arrangements would allow for the mother and child to begin to re-establish their relationship in their own environment, enable the mother to begin the process of adapting, both physically and psychologically, to life after prison and assist in her eventual reintegration in her family and community.

During visits, prison staff can also do more to ensure that a child's experience of visiting their mother in prison is a positive one. For example, if they so choose and where available, mothers should be allowed to wear their own clothes when they meet their children and pre-trial detainees should never have to wear the blue uniform of those convicted. Aside from any essential security arrangements, visiting children should not have to encounter more prison officials than necessary and their mothers should be able to enter and leave the visiting area without being accompanied by a guard. If children or their accompanying adult must be searched before the visit, this should be done sensitively and in an appropriate manner.

Rather than limiting meetings to the often cramped communal meeting places, in prisons where space allows, staff could organise for children to meet their mothers in larger areas where the children can feel more at ease and physically play with their mother. This type of special arrangement is particularly important when considering the bonds between siblings if one is living in prison with its mother.

Families Torn Apart

Chenda

Chenda, her husband and their five youngest children have never had a permanent home of their own. Instead they move from place to place finding work where they can. They told LICADHO that they were recently offered their own plot of land but were soon evicted and accused of illegal land clearance.

When police came to destroy their home, Chenda's husband and eldest son hid in a nearby forest and the other children aged 13, ten, seven and four went to a neighbour's house. Chenda herself was arrested and sent to prison. The police did not ask her if she had any children or not.

When LICADHO met with Chenda she did not know where her children were living. Her husband's telephone was confiscated during the eviction and it was not until one month later that he was able to afford to buy a new phone so she could call him. She was only able to speak with him occasionally whenever she could afford it.

Her husband had been able to visit her with their two youngest children just once, after Chenda had been hospitalized with severe abdominal pain.

Chenda told LICADHO, "If he does get any money I asked him to spend it on food for our children. He should spend it on them, not on coming to visit me in prison."

LICADHO met with Chenda's family soon after visiting her in prison and was able to update her on their location and well-being. With nowhere to sleep and fearing arrest himself her husband had fled with the children to a neighbouring province where the family have taken temporary shelter in the house of an acquaintance. Since her arrest Chenda's youngest son has been in poor health and was himself hospitalised for a short period. Chenda was released on bail just before Khmer New Year in April 2015.

Neary

Neary has three children, two boys aged seven and four and a seven-month-old girl. She was arrested in November 2014 and charged with drug trafficking.

Before her arrest Neary's family lived together with one of her relatives. They made a living collecting and selling empty cans and bottles from the streets. When she was in prison the family was separated. Her husband, who was unable to stay with relatives, lived on the streets with their four-year-old boy and the baby girl lives in prison with her mother. The oldest son who had also been living on the streets was offered temporary shelter with another relative. He no longer goes to school.

When LICADHO met Neary's husband he was staying with his youngest son under a bridge and had recently recovered from a bout of food poisoning. A local motodop provided him with food and overnight accommodation whilst he was sick. Despite having few resources, Neary's husband managed to visit her in prison a few times every week and because of their family situation the prison guards allowed them to meet without paying the usual prison visit fees.

When Neary was arrested police asked nothing about her family circumstances and when she was sent to prison there was no mention of what would happen to her children. She did not have a lawyer and the family have received no support. LICADHO subsequently organised an NGO lawyer for her and provided some material support for her and her baby in prison. On March 30, 2015 she went to trial and was convicted to two years in prison. However, she immediately received a royal pardon and was released on April 13, 2015.



Three-year-old daughter of a prisoner, March 2015.

Conclusion



In publishing “Dara’s Story” LICADHO hoped that the General Department of Prisons and the Ministry of Social Affairs, Veterans & Youth rehabilitation (MoSAVY) would be persuaded to take steps to better understand and tackle the situation of children living in prison with their mothers, ensuring that the rights of both mother and child are fully respected. At the time LICADHO could never have guessed that just two months after the report was published there would have been a 90 percent reduction in the numbers of pregnant women and children in the prisons monitored by the organization.

When Prime Minister Hun Sen intervened on the issue, he called specifically for an end to “the culture of having children live with their mothers inside prison,” adding that “we won’t allow any women who have children or are pregnant inside prison anymore.” Now that the initial round of releases is complete, it is not clear how Cambodian authorities plan to address this issue in the longer term.

LICADHO recognizes that there will always be cases where pre-trial detention and custodial sentencing are the most appropriate options, and this will inevitably include mothers and pregnant women. LICADHO also acknowledges that in a few cases there may be no viable, safe alternative for the children of these women and that it may therefore be in their best interests to stay with the mother in prison.

As such LICADHO has never advocated for a full cessation of the practice of allowing children to stay with their mother in prison provided it is safe and appropriate for them to do so. Instead, LICADHO has always argued that there need to be full, holistic and ongoing assessments of each case so that informed decisions can be made based on the best interests of the child. In those cases where there

are no other options, prison authorities can make changes to lessen any harmful repercussions.

Instead of the current ad-hoc arrangements there need to be comprehensive, longer-term approaches which deal with the issue at root, that is before a pregnant woman or child ends up in prison. Each case should be considered on its merits and should take into account the personality of the mother, family circumstances and the best interests of the child. These same principles should be applied to all women with dependent children accused of minor offences and not just those whose children are already in prison with them.

The recent moves to reduce the numbers of children in prison were, on the face of it, designed to protect the children from further suffering. Yet LICADHO believes that many could have been spared that suffering in the first place. Considering the details of the women included in the recent pardons, LICADHO concludes that many should have been suitable candidates for supervised pre-trial release or non-custodial sentences and should never have been in prison.

Looking to the future, and to alleviate the suffering of greater numbers of children, LICADHO urges authorities to consider the impact of a mother’s imprisonment on her children outside prison and pay serious attention to alternatives to prison for this priority group. In doing so they can enable children to remain with their mothers, preserve family units and protect children’s chances of a good education. In the absence of alternative measures, thousands of children across Cambodia will continue to bear the brunt of harsh, unnecessary detention policies.

RECOMMENDATIONS

Arrest and detention

Whenever arresting authorities apprehend and detain women they should:

- ▶▶▶ Always check whether they have any dependent children and allow them to make arrangements for the safe care of their children before taking them into custody.
- ▶▶▶ Consider whether it is absolutely necessary to use sirens, or to handcuff mothers in front of their children and ensure that any house or body searches are carried out respectfully and with consideration of the presence of the child.
- ▶▶▶ Consider the impact on children before performing the arrest, taking into account whether the child or another adult is likely to be present, the time of day and method of arrest, including whether the arrest would likely take place after dark.
- ▶▶▶ If children are present at arrest, allow their mother to explain what is happening and where she is being taken. If this is not possible, the police should themselves provide a clear explanation. If children are not present, ensure they receive such explanation at a later time.
- ▶▶▶ Provide mothers with the opportunity to contact their children and the child's designated caregiver without delay.
- ▶▶▶ Ensure that the arrest record includes available details of the suspect's children, their ages, location, name and contact information for their caregiver, provided the mother agrees to provide such information.

Pre-trial decisions, trial and sentencing

When judicial authorities are making decisions on sending a woman to pre-trial detention or at sentencing, they should:

- ▶▶▶ Make sure they have all available and relevant information about the accused, including whether she is pregnant or has dependent children.
- ▶▶▶ Consider whether detention is absolutely necessary, take into account the nature of the crime, the personality of the mother, her family circumstances and caring responsibilities.
- ▶▶▶ Take into account the effect imprisonment may have on her children, including their welfare and the likelihood of future criminality.
- ▶▶▶ Ensure that pre-trial detention is used only when absolutely necessary and that the 2014 pre-trial detention forms are used correctly, clearly explaining which of the six reasons for pre-trial detention apply to the case and containing a strong argument for the pre-trial detention decision.
- ▶▶▶ Identify pregnant women or women with dependent children, inside or outside prison, who are candidates for appropriate non-custodial sentences.
- ▶▶▶ If necessary allow the mother time to make alternative childcare arrangements between sentencing and beginning her imprisonment.
- ▶▶▶ Provide families with information about court hearings in order that children may have the opportunity to better understand what is happening to their mother;

Mothers in prison.

When pre-trial detention or a custodial sentence is justified, properly taking into consideration all factors, prison authorities and MoSAVY should:

- ▶▶▶ Maintain accurate records of the mother's dependent children, their ages, locations, names and contact details of the primary caregivers, according to available information and with the mother's permission.
- ▶▶▶ Immediately lift all fees for children visiting their mothers in prison, extend the time allowed for them to meet, and allow them to have physical contact, meet in as much privacy as possible and wear their own clothes if they so choose.

- ▶▶▶ Ensure that mothers can telephone their children and other family members on a regular basis.
- ▶▶▶ Make proper efforts to keep families informed of important information such as key legal dates, changes to place of detention and any medical concerns.
- ▶▶▶ Allow mothers to review any childcare arrangements put in place at the time of arrest and to provide input for any decisions made related to the child's care, such as changes to location or primary caregiver. Children themselves should also have a say in these decisions.
- ▶▶▶ Support and assist the child's primary caregiver to enable the children to continue their education and to visit their mother in prison on a regular basis, including possible help with transportation.
- ▶▶▶ Allow mothers to visit their children at home for short periods of time, if it is safe and appropriate to do so, particularly for those mothers who are nearing the end of their sentences.
- ▶▶▶ Put special measures in place to allow foreign nationals to contact their families and diplomatic representatives.

Children in prison

In cases where a mother is imprisoned and the child remains with her, prison authorities should:

- ▶▶▶ Provide ongoing, individual assessments of the situation of the child taking into account any changes in prison environment and the developing needs of a child, including his or her maturity, health, relationship with the mother and the existence of appropriate alternatives.
- ▶▶▶ Act immediately if they become aware of any situations where the child in prison is at risk and provide training to staff on child development and the health care needs of pregnant mothers and children.
- ▶▶▶ Issue guidelines on how to proceed with and enhance outside referrals and placements of children who live in prison once they are over the age of three.
- ▶▶▶ Improve the living situation of pregnant women and children living in prison with their mothers so that the environment is child-appropriate and safe.
- ▶▶▶ Enable contact with other family members, especially a child's siblings, including regular telephone calls and improved visit conditions.

