



# **INNOCENT PRISONERS: A LICADHO REPORT ON THE RIGHTS OF CHILDREN GROWING UP IN PRISONS**

**SPECIAL REPORT**  
June 2002



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**LICADHO**

CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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Finally, a very special thank you to the women and children who shared their stories and allowed me into their lives for a short while. The children's constant smiles and good humor never failed to astound me. This report has been written for them, in hopes that it may help them to enjoy a brighter future.

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## I. Introduction

There are those who must live in prisons despite never having committed—or even been accused of—a crime. A shocking statement perhaps, yet this is precisely the case for children living with convicted or detained parents. What happens to children raised in a prison environment? While the number of Cambodian children living with incarcerated parents is not extraordinarily high, neither is it uncommon for children to accompany their mothers to jail or for women to give birth during their time in prison. The issue has been considered serious enough to warrant both a national directive and specific mention in the Standard Prison Procedures issued by Cambodia’s Ministry of Interior.

Despite this, little attention has been paid to the issue and no research has been conducted with specific reference to this topic. Aside from regular reports from LICADHO’s Medical and Prison Project Offices, no local or international organizations have compiled data regarding children living with pre-trial detainees or inmates or pregnant pre-trial detainees or inmates, nor have any other organizations developed programs to address the unique problems they face. To the researcher’s knowledge, LICADHO is the only organization currently providing regular services that target women and children living in prisons.<sup>1</sup> LICADHO provides assistance in the form of medical care for inmates as well as supplementary food for mothers, children, and pregnant women. LICADHO’s Children’s Rights Office distributes food once a month to mothers with children and pregnant inmates, including canned fish, rice, cooking oil and sometimes canned or powdered milk. Distribution of food generally continues for three to six months following the birth of a baby, though the timeframe varies according to circumstance. At CC2 prison, for example, the researcher witnessed all mothers with children—including those well beyond infancy—receiving extra food from LICADHO. In prisons further from Phnom Penh, food distribution is conducted by local LICADHO staff who receive supplies on regular visits to LICADHO’s Phnom Penh headquarters.

LICADHO’s Medical Office also provides food for pregnant prisoners and prisoners with children. During monthly visits to monitor the health of inmates, the medical team gives them sugar, bananas and sometimes other foodstuffs. Distribution of food continues for as long as the medical team deems necessary and the amount of food provided varies based on circumstance. Medical Office staff said that they spend approximately US\$100 to US\$150 per month on extra food for all prisons.

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<sup>1</sup> Interviewees did report visits in prisons from other NGOs, including the following: ADHOC (as reported by one mother and two prison directors); CHHRA (reported by one prison director and two prison staff); LAC (reported by one prison director as a provider of legal consultation for minor prisoners only); MSF (reported by one prison director as a provider of medical care); UNCOHCHR (reported by one prison director). However, interviewees said that LICADHO is the sole provider of regular medical care and often the only source of nutritional supplements for women and children. In addition, discussions with staff at several agencies, including ADHOC, LAC, CDP, CRC-Children’s House, CNCC, Social Services of Cambodia and UNICEF confirmed this. CHHRA does provide medical assistance to inmates in four areas (Takeo, Kompong Thom, Pursat and Sihanoukville) but does not provide specific care for women and children. Moreover, the agency has not conducted any research into this area or written any report detailing findings on the status of mothers, children and pregnant women in prisons.

The medical team also provides regular health care for inmates. In 2001, LICADHO medical staff made monthly visits to twelve prisons, conducting a total of 5,083 consultations with inmates and pre-trial detainees.<sup>2</sup> Additionally, investigators from LICADHO's Monitoring and Prison Project Offices visited 19 civilian prisons and one military prison at least three times a month in 2001. During these visits, staff conducted 2,324 interviews with pre-trial detainees and inmates to monitor human rights conditions in Cambodian prisons.<sup>3</sup> Consistent interaction with prison populations brought the plight of mothers, children and pregnant women to the attention of LICADHO staff.

Fortunately, the relatively small number of children born and raised in prisons at present gives cause to hope that the situation can be addressed before it escalates further. This is among the reasons that LICADHO opted to undertake research on the issue at this time. In writing the following report, LICADHO hopes to provide a voice for the affected women and children who, up to this point, have had little if any opportunity to be heard.

The objectives of this study are as follows:

- To determine the scope of the problem and ascertain the general demographics of the affected population;
- To increase understanding of the primary needs and concerns of mothers<sup>4</sup> and their children and pregnant women living in prisons, as well as the ways in which living in prison affects children's rights, through documentation and analysis of the circumstances they face;
- To compile information on Cambodian and international laws and policies related to the issue and determine the degree to which such laws/policies are being implemented;
- To ascertain how current conditions support and/or violate children's rights with reference to the four "baskets" of rights (Survival, Protection, Development, and Participation rights) as contained in the CRC;
- To create recommendations for addressing said needs and concerns so as to prevent this matter from becoming a larger social problem.

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<sup>2</sup> For more information on and statistics from LICADHO Medical Office's work in prisons, see the LICADHO report *Human Rights and Cambodia's Prisons: 2001 Health Report*. Phnom Penh: LICADHO, 2002.

<sup>3</sup> For more information on and statistics from LICADHO Monitoring and Prison Project Offices' work, see the LICADHO report *Prison Issues and Human Rights Issues: January-December 2001*. Phnom Penh: LICADHO, 2002.

<sup>4</sup> All inmates and pre-trial detainees interviewed for this study were mothers or pregnant women; no male inmates had children living with them at the time. Therefore the term "mothers" will be used throughout this paper, though in many instances the findings could be applied to incarcerated fathers with children as well. During the course of the research the author discovered only one prior case in which children had lived with their incarcerated father. According to a prison staff member, the man had a son approximately 8 or 9 years old and an 11-year-old daughter who lived with him at the prison. When an NGO came to the prison and offered to care for his children, the father agreed. After leaving the prison, the children came to visit their father once. The staff member did not know how long the father remained in prison.

### **List of Acronyms**

ADHOC	Cambodian Human Rights and Development Association
CC2	Correctional Center II (prison facility for women and minors in Prey Sar, near Phnom Penh)
CDP	Cambodian Defenders Project
CHHRA	Cambodian Health and Human Rights Alliance
CNCC	Cambodian National Council for Children
CRC	United Nations Convention on the Rights of the Child
LAC	Legal Aid of Cambodia
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
MOH	Ministry of Health
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOSALVY	Ministry of Social Action, Labor, Vocational Training and Youth Rehabilitation
MOWA	Ministry of Women's and Veteran's Affairs
MSF	Medecins Sans Frontieres
NGO	Non-governmental organization
UN	United Nations
UNCOHCHR	United Nations Cambodia Office of the High Commissioner for Human Rights
UNICEF	United Nations Children's Fund

## **II. Executive Summary**

The word “prisoner” usually calls to mind images of hardened criminals—thieves, rapists, murderers and those who pose a threat to society. Prisons in Cambodia do house such violent offenders, but they are also home to a population that is often overlooked: innocent children. These children live in prisons not because of their own actions, but because their mothers have been charged with a crime. As their mothers serve their sentences or await their trials, so too do their children, living the life of the accused without ever having disobeyed the law.

Such children reside in prisons because Cambodian law permits it and because, for myriad reasons, no other options are available. Some accompany their mothers to correctional centers because they have no extended family to raise them or because their mothers do not trust the care available in outside facilities. Others are deemed too young to separate from their mothers, often because they are still breast feeding at the time of her arrest. Still others are born while their mothers are serving time or awaiting sentencing; at times they are even born in the prison facility itself. Regardless of the circumstances, the mothers of these children tend to have one thing in common: the feeling that keeping their children in prison with them is their best available option.

Through its medical and human rights monitoring work in 20 prisons in Cambodia, LICADHO staff became aware that numerous children are growing up in jail. Yet no

organization had collected information on the situation or compiled data to analyze its effects on children. Few organizations even provide assistance to mothers with children or pregnant women in prisons. Moreover, despite specific national legislation pertaining to the topic, awareness of the issue is minimal.

LICADHO undertook research between October 2001 and April 2002 in order to assess the conditions in which these children live and determine whether such conditions endanger children's rights. Evaluation of the situation included a review of pertinent policy and literature, as well as personal interviews with incarcerated or detained mothers and pregnant women, children living in prisons, prison staff and individuals at relevant outside agencies. Interviews were conducted at prisons in Banteay Meanchey, Battambang, Kompong Som (Sihanoukville), Phnom Penh (Prey Sar Correctional Center 2), Pursat, Siem Reap and Takhmau (Kandal province). Thirteen mothers with children living in prison and seven pregnant inmates were interviewed. Only one child, aged seven, was old enough to be interviewed. In addition, interviews were conducted with eight prison directors, six prison staff members, and five prison health workers.

In completing this research, LICADHO discovered numerous issues that severely compromise the rights of children living in prisons. Despite international and national law—including Cambodian legislation and procedures specifically aimed at protecting imprisoned pregnant women, mothers and children who accompany parents to prison—the needs of this population are continually ignored. These women and children are routinely denied access to suitable health care, adequate nutrition, education and basic human rights.

The majority of children living in prisons at present are under the age of five, which means that they are at a crucial formative stage both physically and socially. Five of the 15 children included in the study are below six months of age. Meanwhile, seven out of ten women interviewed reported an inability to produce adequate breast milk due to an insufficient diet. This is merely one indicator of the nutritional deficiencies facing children in prisons. Though children often share the allotted prison food with their mothers, extra food is not distributed to prisoners with dependents. The food provided typically lacks ample nutrients for adults, let alone for growing children. When split among two or three or even more people, the nutritional value is depleted even further. Yet few measures have been taken to supplement the food supply of pregnant and breastfeeding women, and none have been taken to supply children who are no longer breast feeding with food apart from that distributed to their mothers.

Moreover, mothers and pregnant women described an ongoing inability to obtain health care while in prison, whether for themselves or their children. At times this is because women's own lack of funds prevents them from seeking treatment outside the prison or paying for transportation to a medical facility. In other cases it is because women are not permitted to leave the prison in order to visit a health professional. In still other situations, it is because the prison health service is unresponsive to women's requests for care. Though some NGOs and government health workers provide medical care in prisons, they are unable to do so on a daily basis or to focus specifically on mothers with children and pregnant women. When prison health services provide care, it is often inadequate due to a lack of resources. Available medicines are usually intended for adults rather than children, for example, and prison

health service providers are overworked, understaffed and often not appropriately trained.

Living in prisons also presents a threat to children's safety. The potential for maltreatment at the hands of other prisoners or prison staff is ever-present, particularly in facilities where sex offenders or child abusers may be held.

The effects on children's development are social and psychological as well as physical. Without access to standard education, children are at a disadvantage in terms of intellectual development. Furthermore, they must forgo opportunities to interact with peers and the outside world in general. These children rarely, if ever, venture beyond the prison walls and thus have little chance to adapt to so-called normal society. Their world is limited in scope and largely influenced by what they observe in the prison. Positive role models may be rare in such an environment, potentially impeding children's moral development as well.

Instead, these children are often surrounded by a culture of fear and helplessness. A common theme among the inmates and detainees interviewed was that of vulnerability. The women found themselves powerless for numerous reasons. First, they all face poverty on a daily basis. Though this might appear irrelevant in the life of a prisoner, in fact it is a crucial factor in their quality of life and that of their children. Lack of funds impedes their ability to procure supplementary food or quality health care. For some women, it even leads to an extended prison sentence; in cases where sentences include monetary compensation, those unable to pay the fine remain in prison instead. This can result in an even lengthier stay in prison for a young child living with his or her mother.

The women interviewed also expressed a sense of powerlessness within the prison system. Though Cambodian procedures explicitly call for a means to address prisoners' grievances, currently there is no adequate structure for doing so. Women stated repeatedly that their complaints were ignored. Perhaps more crucially, many women did not even bother to voice their concerns because they felt certain they would not be heard. Some women were even afraid to express discontent because of possible ramifications for themselves or their children. This pervasive sense of helplessness cannot be permitted to continue, both because it undermines prisoners' rights and, more critical to the matter at hand, it thus undermines children's rights as well.

Current legislation and procedures place responsibility for ensuring adequate care of children in prison squarely on the shoulders of prison staff and the Prisons Department under the Ministry of Interior. Neither sector is fulfilling this responsibility at present. While they have been charged with the duty of maintaining a high standard of care to children, their mothers, and pregnant women in prisons, they have in fact provided little if any of the treatment called for by existing policies. Prison staff have not monitored the situation of children or pregnant women in prisons, as is required, nor have they facilitated collaboration with outside agencies able to assist in providing quality care. Moreover, they have not evaluated children's circumstances to ensure that each child's best interests are served. Policies and procedures to address many of the above issues are already in place; they are simply not upheld. In failing to meet the standards outlined in existing laws and procedures,

the Prisons Department and the Royal Government of Cambodia have allowed children's rights to be compromised. Without enforcement of the current procedures and a demand for accountability, this will continue to happen again and again.

### III. Methodology

The following report is based on several methods of study including:

- Interviews with mothers, children and pregnant women living in prisons;
- Interviews with prison staff including prison directors, guards, and administrative and medical staff;
- Direct observation of mothers, pregnant women and children living in prisons, as well as direct observation of the prisons themselves, including living conditions and medical facilities where possible;
- Interviews and discussions with representatives from relevant local and international NGOs;
- Assessment of pertinent national and international legislation, policies and procedures;
- Review of literature pertaining to the effects of prison life on children and families, as well as review of literature on programs in other countries that offer alternatives to prison for mothers and pregnant women.

Research and interviews were conducted in seven prisons between October 2001 and April 2002. The author attempted to interview all mothers whose children were living with them in Cambodian prisons, as well as their children when age-appropriate. The author interviewed 13 incarcerated or detained mothers with children living in prisons. Due to the fact that the majority of children living in prisons at the time were under the age of four, only one child (aged seven) living with her convicted mother was interviewed comprehensively.<sup>5</sup> Much of the information was therefore gleaned from the mothers, future mothers and prison staff. Seven pregnant inmates and pre-trial detainees were interviewed to determine pre- and post-natal care conditions in prisons and to gain insight into women's decisions about keeping newborns in prison with them. In addition, eight prison directors,<sup>6</sup> six prison staff members (four males and two females) and five prison health workers (one male and four females) were interviewed in an attempt to attain a more complete understanding of the living conditions and treatment of mothers, their children and pregnant women who are detained or incarcerated. Emphasis should be placed on the Case Studies described in Section III of this report, as the research findings' significance is largely qualitative rather than quantitative. Despite the relatively small sample size, those interviewed represent virtually the entire population of mothers living with children and pregnant women in prisons at the time the interviews were conducted. The author therefore feels the results are conclusive and representative of the complex situation these women and children face.

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<sup>5</sup> Three additional children were also interviewed: two children of prison staff who live on the prison grounds and one child who lives nearby and spends a large amount of time at the prison. However, it was determined that the issue of local or prison staff's children being on the prison grounds is beyond the scope of this study and thus the children's responses have not been included in the data reported here.

<sup>6</sup> The number of prison directors interviewed is greater than the number of prisons studied because CC2 prison has two directors.

The author conducted interviews at prisons in seven areas: Banteay Meanchey, Battambang, Kompong Som (Sihanoukville), Phnom Penh (Prey Sar Correctional Center II), Pursat, Siem Reap and Takhmau (Kandal province). These prisons were selected based on data attained by the Prison Project Office of LICADHO and LICADHO staff's confirmation of the presence of mothers with children and pregnant women living in these facilities.

LICADHO's pre-existing relationships with many of these prisons were beneficial in obtaining permission to conduct interviews on the premises. As a human rights organization with offices in 14 Cambodian provinces, LICADHO has established working relationships with local prison staff in order to monitor prison conditions and provide assistance to inmates when necessary and possible. Several of the author's interview trips were concurrent with prison visits by LICADHO's medical staff. This helped the author gain acceptance and trust among prison staff and ensure legitimacy of the study in the eyes of prison administrators.

Interview questions were developed by the author in collaboration with the LICADHO Children's Rights Office and were aimed at determining how living in prison impacts children's rights.<sup>1</sup> Questions also addressed the health and well-being of the mothers themselves, as well as that of pregnant pre-trial detainees and inmates, because this affects the physical and emotional health of children both directly and indirectly.

A standard set of questions was posed to each group of interviewees: mothers with children living in prison, pregnant women, prison administrators, prison staff and children of pre-trial detainees/prisoners or prison staff's children living on prison grounds. However, time constraints and other factors occasionally forced the author to limit or alter the questions posed. The presence of prison guards and officials, for example, at times prevented the author from discussing sensitive issues with pre-trial detainees/inmates. Likewise, the lack of privacy clearly deterred some women from answering particular questions. It can be logically deduced that this may have also impacted the truthfulness of some interviewees' responses, but to what degree this affected the researcher's ability to gather accurate and complete information cannot be determined.

The researcher's gender worked in her favor when interviewing pre-trial detainees and inmates as she was able to relate to the women in ways that might have otherwise been impossible, and thus to create a sense of ease and identification. Due to language limitations, however, the researcher conducted interviews with the aid of an interpreter. The researcher remains confident, however, that the quality of the information within this report remains high and that interviewees' responses are both revealing and significant.

#### **IV. Within the Walls: A Summary of Research Findings**

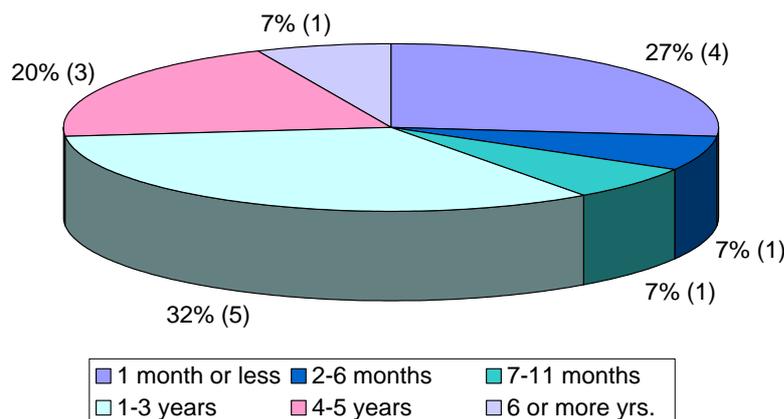
Several clear patterns emerged during the course of the author's interviews. Mothers' decisions to keep their children with them in prison often reflected the women's common dilemmas, such as a lack of childcare alternatives. Mothers and

pregnant women also shared many of the same concerns with regards to the effects of prison life on their children and/or future children. The major issues that were raised through discussions with these women, as well as with prison staff and administrators, will be highlighted and explored more thoroughly in the following paragraphs. Case Studies excerpted from the interviews exemplify the women’s experiences and support the main points in the following sections of this report.

**A. Who Are They? Demographics of Interviewees**

The majority of children living in prisons (14 out of 15, or 93%) are aged five or under. This is particularly significant in light of the fact that the first five years of a child’s life tend to be the most critical to his or her development. The average length of a mother’s sentence is six years, while the average length of time served so far is just over one and a half years. This indicates that infants currently living in prisons may spend a considerable portion of their formative years there. (See charts below.)

*Chart 1: Ages of Children Living with Mothers in Prisons*



*Chart 2: Ages of Mothers with Children and Pregnant Women in Prisons*

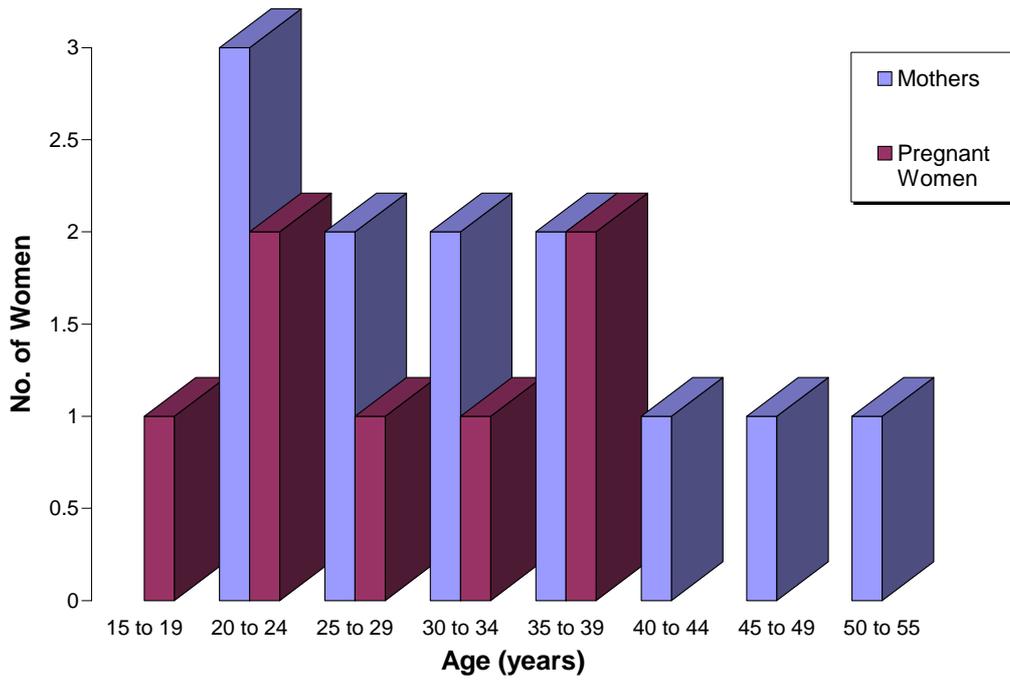


Chart 3: Length of Mothers' Sentences in Years

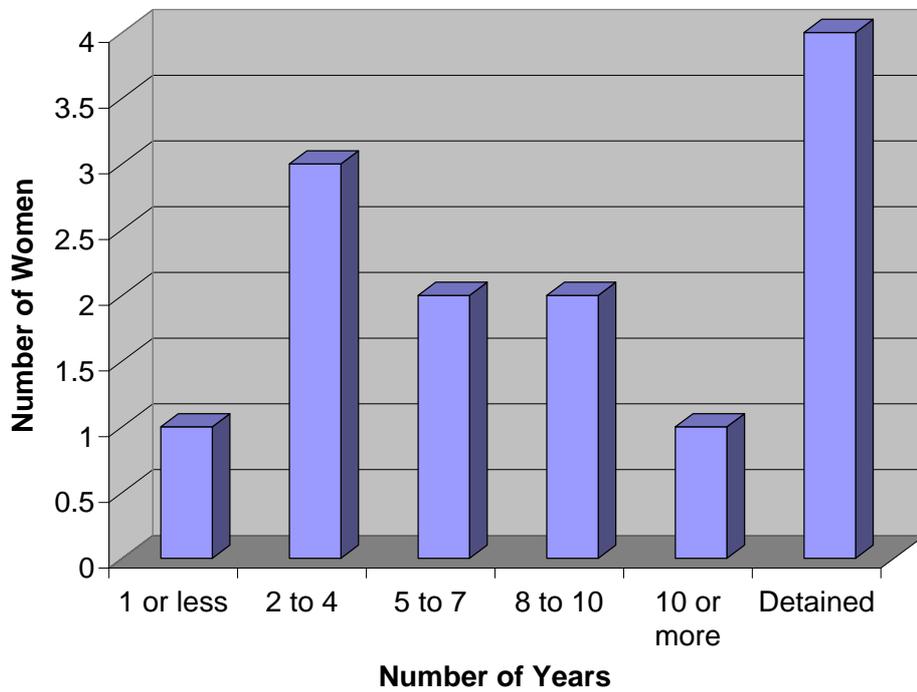
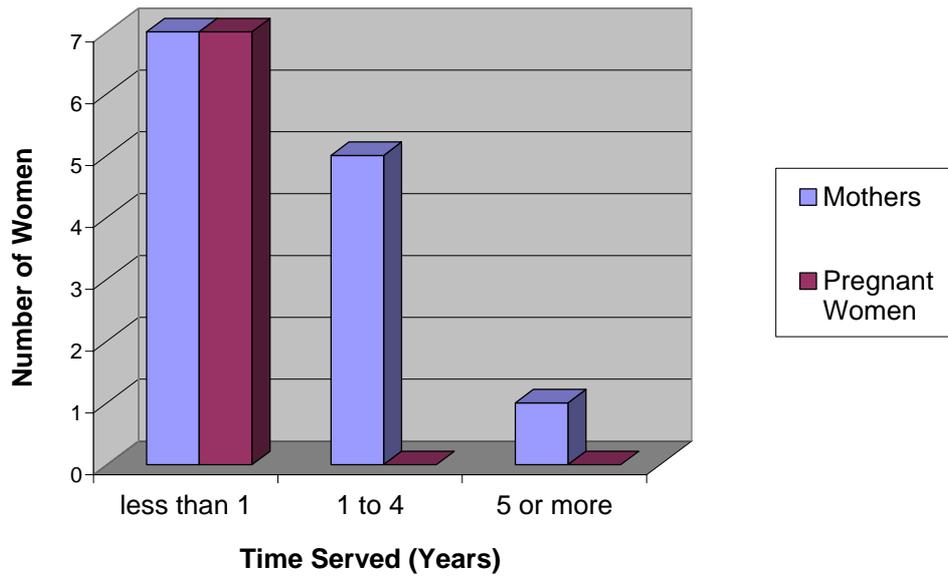
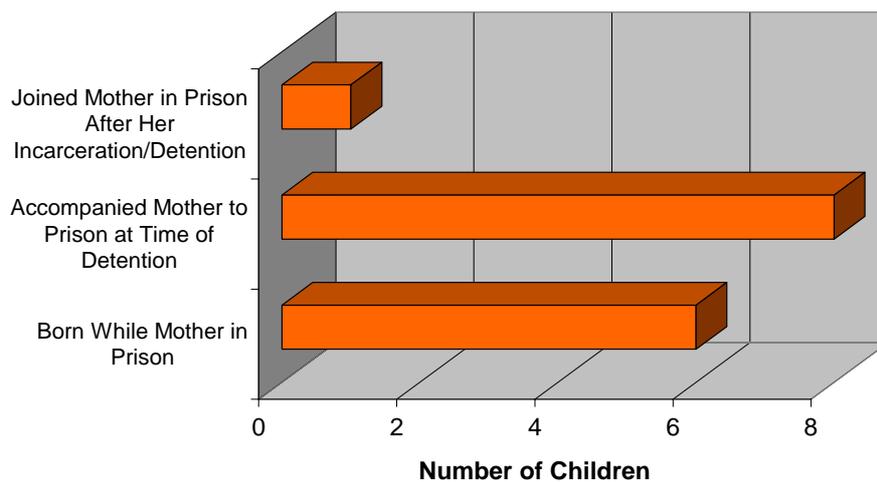


Chart 4: Time Served by Mothers and Pregnant Women



It is also interesting to note that slightly more than half of the children (eight out of 15) accompanied their mothers to prison immediately upon the mothers' incarceration. Slightly less than half of the children (six out of 15) were born in the prison. Only one child had come to live with his mother after she had been imprisoned for a period of time. This demonstrates that the entrance of inmates' children into the prison directly correlates to their mothers' imprisonment or detainment. Children do not tend to live in prisons following failed attempts at other living arrangements. This could result from a lack of availability, desirability, or feasibility of alternative childcare at the time of the mothers' arrest or detainment.

*Chart 5: Timing of Children's Entrance into Prisons*



### **B. Asking Why: Reasons Children Live in Prisons**

Interviews revealed that women faced similar circumstances and had parallel thought processes when it came to making the choice—that is, if they indeed felt they had a

choice—to keep their children in prison with them. The following comprise the primary reasons that women’s children reside in prisons:<sup>7</sup>

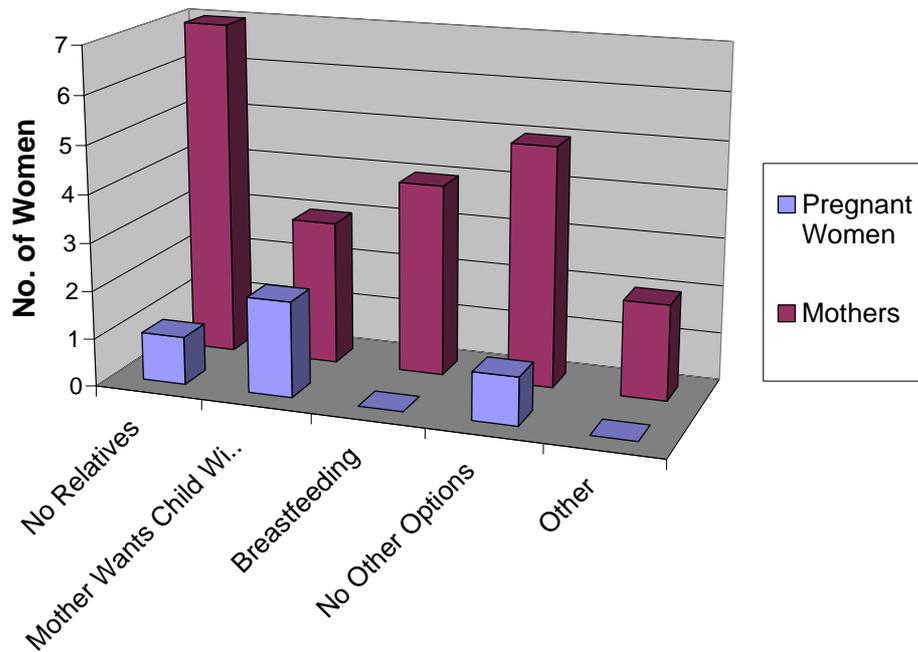
- *No other relatives to care for the child.* This could be due to a lack of living relatives, the fact that relatives live far from where the mother is imprisoned (such as is the case for one woman of Vietnamese origin whose relatives live in Vietnam) or a lack of financial or other resources on the part of the family.
- *The child is still breastfeeding.* Mothers and prison staff interviewed agreed that a child should remain with its mother during the time that it continues to breastfeed.<sup>8</sup>
- *The mother does not want to be separated from her child.* Many women commented simply that they love their child and do not want anyone else to care for him or her. Others stated that they would feel lonely and sad were the child to be removed from the prison. Some women also expressed concern over whether other available options, such as placement with an NGO or orphanage, would provide adequate childcare.
- *Lack of choices.* Numerous interviewees used identical terminology when discussing why their children live in prison with them: variations on the phrases “I have no other choice” or “there are no options.” The number of times that these terms were used during the course of the interviews was striking. Most often these words came from women who believed living in prison was not in the child’s best interests but felt they had no alternative solution.

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<sup>7</sup> This includes information garnered from interviews with pregnant women as well. Though some of the “children residing in prison” had not been born yet, the pregnant women gave similar reasons for their thoughts on keeping their future children in prison with them, and so their answers have been included in this data.

<sup>8</sup> According to Cambodia’s Demographic and Health Survey for the year 2000, the mean duration of breastfeeding among Cambodian children is 24 months. This statistic includes those who are receiving supplementary food, such as water or other liquids, in addition to being breastfed.

Chart 6: Reasons Why Mothers Keep their Children in Prison



**Case Study #1:**

Theera<sup>9</sup> said that her daughter, Srey Kia, will continue to live with her for the remaining three years of her five-year sentence. Because Srey Kia's grandmother is poor and already has many grandchildren to care for, Theera fears that Srey Kia will not have enough food if she lives with her grandmother, so she thinks Srey Kia is better off staying in the prison.

**Case Study #2:**

Sokua is concerned about her son living in the prison because she has no money to feed him, but she feels she has no choice.

**Case Study #3:**

Someone told Sothea that children are not permitted to stay in the prison with their mothers, but Sothea's daughter was still breastfeeding and so could not be separated from her. Because of what the person told her, Sothea is very worried that her daughter will not be allowed to remain in the prison with her. She said she would feel dead if her daughter were

<sup>9</sup> All names and identifying details of prisoners, pre-trial detainees, children, and prison staff have been changed for their privacy and protection.

separated from her.

#### **Case Study #4:**

The prison director told Bopha that when her son is old enough and cannot be in the prison anymore they can take him to an orphanage. Bopha said she does not think living in an orphanage is as safe for her son as living with her. When he is old enough to leave the prison Bopha does not know where he will go because she has no relatives to take him.

### **C. Speaking Out: Primary Concerns of Imprisoned Mothers and Pregnant Women**

While the women interviewed articulated various feelings about their children living in prison, many of their concerns overlapped. The majority of the thoughts they expressed fall within the following six categories:

#### **1. Food, nutrition and water**

By far the most recurring concern in talking to the incarcerated women was that of lack of food and improper nutrition. Fourteen of 20 women (70%) said that they and their children do not receive enough food or nutrients. Eight of 13 mothers (62%) reported that their children complain of hunger on a regular basis.

The majority of prisoners receive food twice a day; the meals usually include rice and one other dish, often only soup or vegetables. Both prisoners *and* prison staff made frequent mention of the fact that the food available is insufficient in terms of quality and quantity. In theory, prisons are allotted 1,000 riel per prisoner per day for food, but this money is used to cover expenses other than food as well (electricity, maintenance, etc.). This amount remains constant regardless of whether dependents live with a prisoner, despite the fact that many mothers share the prison food with their children. While the meals are meager to begin with, they become more so when split between a mother and child, or perhaps even among a mother and more than one child. For example, Sothy's three children live with her in the prison and all share the food she is given by prison staff. Sothy said that her children do not get enough to eat, especially her son who complains of hunger daily.

#### **Case Study #5:**

Kanna thinks that if she lived outside the prison her son would have better food. She said she "doesn't dare ask" for more food because the prisoners have specific food that is distributed to them. Kanna does not "hope" that the prison staff will give her more food.

### Case Study #6:

Reak Smey does not think she gets enough vitamins for a pregnant woman, but she has never told anyone at the prison this. She said she does not “dare to tell.” She is afraid to tell the prison staff and has never tried. Reak Smey knows she will not get help from the prison staff because they do not have the resources to help her. They face the same food and nutrition problems as the prisoners. She feels that the staff will not respond if she tells them about her concerns.

Prisoners’ relatives can provide extra food, but this was rare among the women interviewed. Only two of the imprisoned interviewees named their families as a consistent source of food. A LICADHO report on the human rights situation in prisons notes: “Women receive to a lesser extent than men extra food from their families. The food situation is even more troublesome for prisoners accompanied by children, as no extra food rations are provided for children.”<sup>10</sup> Many families of inmates and pre-trial detainees live too far away and/or are too poor to travel to the prison for visits. Some inmates and pre-trial detainees simply have no relatives at all.

Only two prisons appear to provide extra food for mothers and pregnant women on a regular basis. At Takhmau prison, the sole inmate whose child lives with her reported receiving more food than other female inmates; this was confirmed by both the prison health worker and prison director. Likewise, at CC2 the prison director said he had asked the cook specifically to give more food to women who had recently given birth. At the time of the interviews, the prison was providing two mothers of newborns with extra food (fish) to cook themselves. However, one woman noted that she did not have other ingredients necessary for cooking and the other said that she would only receive the supplementary food for one month following the birth of her child. A third mother who had given birth in the past ten days reported receiving milk powder from the prison doctor. He had given her 1 kg. of powder, but she did not know whether more would be provided in the future. The supplementary food at CC2 appears to be made available only to mothers who have recently given birth; only one mother of a five-year-old child reported receiving more food than other prisoners and the remaining five mothers said they shared the standard allotment of food with their children.

Staff at two other prison facilities claimed to provide extra food for children of prisoners, saying that they sometimes used personal funds to purchase “cake with vitamins” or “cake with milk” for children or coconut milk for a breastfeeding mother. However, this was not corroborated in interviews with the inmates themselves. In fact, mothers at both prisons remarked that getting supplementary food requires payment either in kind or out of pocket. One mother said she sometimes washes clothes for the police (guards) in order to receive more food. A woman at another prison said she only receives extra

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<sup>10</sup> Cambodian League for the Promotion and Defense of Human Rights (LICADHO). *Cambodian Prisons: Some Human Rights Issues*. (Phnom Penh: LICADHO, 1998), p. 6.

food when her husband comes to visit and brings her money, which she then uses to purchase goods from outside the prison via the prison staff.

The failure to provide a nutritious, well-balanced diet for children and pregnant women in prisons is cause for significant concern. A lack of adequate sustenance has been shown to have harmful effects on children, both directly and indirectly. Malnutrition is a serious condition that can lead to stunted growth and development as well as various diseases. Moreover, malnourishment during pregnancy can affect fetal development and maternal and infant mortality. The *State of the World's Mothers 2001*, a report published by Save the Children, recognizes that “newborn health...is dependent to a large degree upon the mother’s nutritional status... Eliminating malnutrition during pregnancy reduces an infant’s risk of death and disease by almost one-third.”<sup>11</sup>

Following birth, insufficient nutrition can prevent a woman from producing breast milk, as appears to be the case among many of the interviewees. Seven out of ten women with infants reported an inability to breastfeed and/or an inability to produce adequate amounts of milk for their babies. These women sometimes supplemented their infants’ diets with water or food from the prison. One woman reported feeding her infant rice porridge because she was unable to provide him with enough breast milk; the porridge had to be made from rice given to her by other prisoners as the prison did not provide it.

The importance of breastfeeding has long been stressed as a key to infant health in developing nations. Based on research conducted by the World Health Organization and others, Save the Children’s *State of the World’s Newborns* report states: “A recent review has demonstrated the substantial benefits of exclusive breastfeeding over substitute feeding or partial breastfeeding, showing, among other things, that early and exclusive breastfeeding reduces neonatal mortality from infections.”<sup>12</sup> Women bearing infants in prison, however, are often unable to provide for their children’s nutritional needs exclusively through breastfeeding.

**Case Study #7:**

Kunthea’s son breastfeeds and also drinks other milk. Sometimes Kunthea asks someone at the prison to buy milk for her from outside the prison because she cannot walk well. Her son needs extra milk because Kunthea does not produce enough breast milk due to lack of food. She has no relatives who visit her from outside the prison and therefore she receives no extra food. Sometimes other prisoners give her 500 or 1000 riel to buy food. While she was pregnant Kunthea would ask other prisoners to get water from the well for her and she would pay them to do so. Now she owes a lot of money to other prisoners.

<sup>11</sup> Dianne Sherman, ed. *State of the World’s Mothers 2001*, (Save the Children, 2001) p. 8-9.

<sup>12</sup> Anthony Costello, et al., eds., *State of the World’s Newborns*, (Save the Children, 2001) p.

**Case Study #8:**

Sometimes Roat Tana cannot produce breast milk because of her poor diet, so her son has to drink sugar water. Her son cannot share her food because he is still very young and cannot eat adult food. Roat Tana said that one of her breasts is “not good” [i.e. does not produce milk] and she was only able to breastfeed her son for 6 months. Her son complains every day that he is hungry.

Finally, women at Battambang, Pursat, and CC2 prisons were all concerned about the lack of clean drinking water. Out of the eighteen women asked, three named a nearby lake as their source of drinking water. An additional woman said the drinking water comes from a local river and a further six women said it comes from an unknown source. Of these women, only six boil the water before drinking it; two women mentioned specifically that they were unable to boil it because they did not have the necessary equipment. As exemplified in the Case Study below, two women even pay for water in order to ensure that they and their children have an adequate supply.

**Case Study #9:**

Mam said there is very little water to drink; the prison staff distributes one cup of water in the morning and one cup in the afternoon. If the prisoners have money they can pay for more water.

**2. Health and Access to Medical Care**

Lack of adequate health care is another matter that was raised frequently during the interview sessions. Eleven out of thirteen women (85%) reported that their children had experienced health problems while living in prison. Most problems are considered minor—coughs, colds, fever, upset stomachs and the like. However, many of the women expressed the fear that should their child have a serious illness, proper medical treatment would not be available.

LICADHO’s Medical Office does provide treatment to women and children during its monthly visits to 12 prisons. During 2001, women accounted for 7.7% of prisoners treated, including several pregnant women. (No statistics are available for the number of children treated.) However, not all of the prisons referred to in this study are visited by LICADHO medical staff. Moreover, LICADHO is unable to provide daily or continuous care; aside from monthly consultations with inmates, LICADHO only has the resources to provide assistance in emergency situations or under certain circumstances. Mothers, children and pregnant women are therefore forced to rely on prison medical staff and assistance the majority of the time.

**Case Study #10:**

Sopheap said a doctor did not examine her son after she gave birth because she did not have any money. Sopheap does want a doctor to examine her son, but she has not asked for one; she said she “doesn’t dare ask.” Sopheap also said she “doesn’t think the doctor understands about babies’ problems.”

The above Case Study raises two other important points with regards to the situation of children living in prisons: the lack of care available in the specific field of maternal and child health and the need for funds to pay for treatment outside of the prison. Two of the seven mothers who had given birth while living in prison had done so in the prison itself—despite the fact that Cambodia’s own Proclamation No. 217 on the Administration of Prisons, as well as the Prison Procedures and the UN Standard Minimum Rules for the Treatment of Prisoners, state that women should be brought to a hospital in order to give birth.<sup>13</sup> Two of the seven pregnant women said they will deliver their babies in the prison, while four others said they did not know where they would give birth, indicating that no definitive plans have been made for them to deliver at a medical facility.

The health care available in prisons is often limited due to lack of equipment and supplies. Three of five health staff interviewed said that they are unable to provide sufficient care to all of the prisoners, either because they do not have the time to attend to all of them or because they do not have the necessary tools at their disposal. Moreover, none of the medical staff interviewed has received an M.D; one prison health worker said she had no medical training whatsoever. Two nurses said they did receive certificates in “maternity,” while the three other health staff interviewed had no specific training in maternal and child health.

Even if they were qualified pediatricians or obstetrician-gynecologists, many of the prison health workers would face an uphill battle. The health centers viewed by the researcher were sparse, furnished with only basic equipment and facilities. None of them were properly equipped to care for children. In fact, the health workers often said they did not have adequate medicine for treating the adult inmates, let alone the children.

**Case Study #11:**

The prison nurse, Kol Layon, does not have medicine specifically for treating children. She gives children the same medications that she gives adults. Kol Layon said she does not have enough medication to treat all of the prisoners properly. She has requested more medication from the Ministry of Health; sometimes she gets more medicine and sometimes she does not.

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<sup>13</sup> For further discussion of Proclamation No. 217 see section VII.B.2 of this report.

**Case Study #12:**

The medical assistant, Chea Son, said the amount of medicine he has is “small,” and not enough. When asked whether he had talked to the Ministry of Health about getting more supplies, Chea Son said he had gone to an MOH meeting and requested supplies but the MOH only gave him pills. He said the MOH could not give him the medicine he requested because it was too expensive. For the children, Chea Son said he can only help them if their sickness is not serious. He does not think the care he can provide is enough for them because he is the only person caring for all of the prisoners. He said he needs medications for the children because most of the medicines he has are for adults. He also said he is not able to provide the care that the women need.

Prison health staff also face difficulties as a result of issues extending beyond the prison walls, as is shown in the following case described by a prison health worker. In this instance, the health staff’s ability to provide proper care for the newborns was hampered by a lack of response from the Ministry of Health.

**Case Study #13:**

The newborns did not see a doctor from the prison because the Ministry of Health did not come to see them. The prison medical assistant, Vibol, said he requested that the MOH doctor come to the prison to treat the babies but the doctor did not come. The MOH said that there are only 2 babies—a “small amount”—and therefore they want the prison director to bring the babies to the MOH to be seen. Instead, the prison staff will wait for the visit from the MOH because the MOH has a scheduled visit at the prison every 3 months.

If women do want expert medical care for themselves and their children, it often comes at a price they cannot afford. This fact reflects the mutual dilemmas of insufficient medical treatment and poverty that affect many incarcerated women. Several prison directors said that local hospitals charge prisoners minimal fees because they recognize the plight of inmates and pre-trial detainees. Still, one of the main obstacles to health care that these women face is the need to pay for medication from and transportation to medical centers outside of the prison.

**Case Study #14:**

Pophir was feeling weak and dizzy so she asked the prison staff to take her to the hospital and they did. The doctor there said that she was not feeling well because she does not have enough food. He gave her some medicine [and] after taking the medicine Pophir felt better, but there was not enough medication and once it was finished her symptoms returned. She does not plan to go back to the doctor

because she does not have enough money to pay for transportation to the hospital and medicine; it costs 10,000 riel for a moto and medication each time she goes to the hospital.

**Case Study #15:**

Solina delivered her son in the prison. She did not go to the hospital for the delivery because she did not have enough money to pay for it. When asked whether she felt it was safe for her to deliver her baby in prison, Solina said that it was difficult but that she had no choice because she did not have the money to pay for a hospital delivery.

Even within the prison, women reported that they often have difficulty getting treatment from medical staff. Several women noted that their requests for medical assistance for themselves and/or their children had been disregarded.

**Case Study #16:**

The only doctor Maly saw during her pregnancy was the one based in the prison. She did not see a doctor outside the prison until it was time for her to give birth. During her pregnancy she sometimes had a fever. The doctor at the prison would give her medicine. Maly did ask for a doctor from outside the prison to treat her but the prison doctor refused; he said “you have good health, you don’t need a doctor outside.”

**Case Study #17:**

When her daughter, Srey Neang, was sick, Kun Lina went to the doctor in the prison, but she said it is very difficult for her to get medicine from the prison doctor. If she has money it is easy to get medicine, but if she has no money then the doctor ignores her. Kun Lina said that the doctor always tells her to wait; if she goes to see him in the morning, he tells her to wait until the afternoon. Srey Neang has seen the doctor two or three times since being in the prison and he always says her sickness is not serious. Kun Lina tells the doctor that it *is* serious because Srey Neang has a fever, but the doctor does not listen.

**Case Study #18:**

Sok Khim said she has asked to see the doctor, but he did not give her medicine for her son. The doctor said he is busy and that when he was free he would come back to her, but he never had time. At the time of the interview Sok Khim herself had been sick for a few days but had not seen the doctor. The prison doctor has given her medicine twice before, but when she asked for medicine this time he said “she is not seriously ill so why is she asking for medication?”

An additional cause for concern is the failure to vaccinate all of the newborns. Cambodia's 2000 Demographic and Health Survey, released by the Ministries of Planning and Health, notes the importance of vaccinations for all infants in reducing child mortality from preventable diseases including tuberculosis, diphtheria, whooping cough, tetanus, polio, and measles.<sup>14</sup> Save the Children's report on the status of newborns also emphasizes the need for vaccinations as a means of preventing potentially fatal infections in infants.<sup>15</sup> However, vaccinations are often unavailable to children born in prisons. For example, one prison medical assistant said that she is not permitted to give vaccinations at the prison and must therefore take the children to the hospital in order to be vaccinated. Given the frequent inability for mothers and children to reach hospitals, as outlined above, infants may simply go without the necessary vaccinations. The following Case Study illustrates this problem:

**Case Study #19:**

Srey Mam has never seen a doctor other than the prison nurse. She has never received any vaccinations; her mother, Pho, does not know why. Pho said she is scared to ask about getting her daughter vaccinated. She is afraid to ask the prison director because the director has never mentioned it or offered to take her to the hospital for the vaccination. She said that she will only go to the hospital for the vaccination if the prison director mentions it. When asked why she was afraid to request the vaccine, Pho said she does not want to ask because she does not know the prison rules. She said that maybe if she asks for something from the prison director then she will be "blamed."

Sanitation presents yet another health issue confronting mothers and children. Cells are sometimes crowded—one woman reported that she shares her cell with 26 others<sup>16</sup>—and sanitation facilities are frequently sub-standard. Of the diagnoses made by LICADHO's medical team in 2001, twenty percent were conditions caused by or related to poor sanitation, such as diarrheal or parasitic diseases, typhoid fever, and skin infections.<sup>17</sup> LICADHO's 2001 report on health concerns in prisons states that "given the serious overcrowding and poor sanitation present in Cambodian prisons it is no surprise that infectious disease accounts for a large percentage of prison disease."<sup>18</sup>

One particular problem mentioned by women in several prisons is a lack of water during the dry season, which prevents prisoners and their children from

<sup>14</sup> National Institute of Statistics and Directorate General for Health, *Cambodia: Demographic and Health Survey 2000* (Phnom Penh: National Institute of Statistics, 2001) p. 150.

<sup>15</sup> Costello, *State of the World's Newborns*, p. 6, 27-8, 35.

<sup>16</sup> Although no statistics on the exact size of the cells were available, LICADHO's Prison Project Office reported overcrowding in virtually every prison visited. For more information, see the LICADHO report *Human Rights and Cambodia's Prisons: 2001 Health Report* (Phnom Penh: LICADHO, 2002).

<sup>17</sup> LICADHO, *Prison Issues and Health Issues*, p. 5.

<sup>18</sup> *Ibid*, p. 6.

maintaining good hygiene. In one case described below, a woman even purchases water in which to bathe her child because she does not trust the cleanliness of the water available at the prison.

**Case Study #20:**

Sophir buys water from outside the prison to bathe her son because she thinks the water they have is not clean enough for him. She said that the prison staff sells the water. She pays 1500 riel for 3 or 4 days' worth of water, which she only uses for bathing, not drinking.

Another critical issue the LICADHO Medical Office raises in its 2001 report is that of pregnancy resulting from sexual assault of inmates. Details in part one of the following Case Study have been taken from the Medical Office's report.

### **Case Study #21:**

In November of 2001, LICADHO investigated the case of Nia Ry, a female prisoner [who], although imprisoned since 1995, was found to be seven months pregnant. According to Nia Ry she had several sexual encounters with a prison guard over the Khmer New Year's period of that year....

At about 10:00 am on the first day of New Year Nia Ry went to the toilet. When she came out of the toilet area she encountered the prison guard who asked her to go back inside the bathroom with him.... [S]he says she was a little bit drunk (during the New Year's period alcohol was made available to [prisoners]). She eventually agreed to go inside the bathroom with him. Once inside, the guard told her that he wanted to have sex with her. At first she refused, but the guard insisted, saying he would take responsibility for anything that might happen.

In the late afternoon of the same day, the guard asked Nia Ry to return to the prison bathroom where they had sexual intercourse again. On the last day of the New Year's period, the guard asked her again to accompany him to the bathroom to have sex. As before, she tried to refuse him, but the guard insisted.

As a result, Nia Ry became pregnant. Upon learning of this news, the guard brought her various unidentified medicines and insisted she take them in order to terminate the pregnancy. She took the medicines, but with no result. During the interview, Nia Ry expressed her worry that when the time of the delivery came she would be in great difficulty because she had no money and the guard had by now disappeared. She reported she hadn't seen him in over a month.

#### **FOLLOW-UP:**

In February of 2002, when the researcher visited the prison where this took place, Nia Ry had given birth and had a one-month old son. She had delivered her baby in the prison rather than the hospital because she did not have enough money for a hospital delivery. She last saw the baby's father when she was seven months pregnant and has received no assistance from him in caring for the child.

Nia Ry said that she was no longer able to produce enough breast milk to feed her son, but she was unwilling to discuss this with the prison medical officer because she felt he would criticize her for having had a "relationship" with a prison guard. Previously, some prison staff and fellow prisoners had made negative comments about her because she had become pregnant by the guard.

At the conclusion of the interview, Nia Ry asked LICADHO staff to find the guard and request support for her and her son. She said she just wants to find him, leave the prison and live somewhere safe. According to Nia Ry, when she entered into the "relationship" with the guard he promised to help her find a way to get out of prison.

The above incident reflects not only the aforementioned concerns about nutrition and health care, but also the threat women face as potential victims of sexual abuse at the hands of others within the prison. This in turn may affect both them as mothers and any children they might bear. In the above case, the inmate's usual struggles are compounded by her role as the sole caretaker and provider for an infant she conceived through sexual abuse.

The LICADHO medical report concisely summarizes the health issues reflected in the situation of Nia Ry and other female prisoners: “[I]t is clear that [women’s] health needs differ from those of their male counterparts. They need better access to gynecological and obstetric services. Additionally, sexual abuse remains a serious health concern.”<sup>19</sup> As shown above, each of these issues can seriously impact both mother and child.

### **3. Financial Constraints**

Monetary concerns often arose in conjunction with discussions about food and medical care. A dearth of funds was considered a major factor in preventing female pre-trial detainees and inmates from procuring more or better quality food and health care, or even water. Moreover, several women mentioned giving money to prison guards and asking the guards to bring them items from outside the prison.

Some of the women suffer a double dilemma financially as a result of their sentences. In addition to the inability to purchase supplies from outside the prison or pay for transport to a medical center, these women may face extended jail time due to their incapacity to fulfill payments included in the terms of their sentences. Such sentences require monetary compensation as well as jail time. The Case Study below describes what happens if an inmate is unable to make the necessary payments.

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<sup>19</sup> Ibid, p. 11.

**Case Study #22:**

Sothua was also ordered to pay compensation for the stolen motorbike. She has to pay 350,000 riel (approximately US \$92.00) and has not yet paid the sum. If she is unable to pay the compensation, Sothua will have to remain in the prison for one extra day per 500 riel that she owes, up to an amount of 100,000 riel. Following that she will have to stay in prison one extra day per each additional 1,000 riel she owes. This would amount to approximately 15 additional months in prison (450 days). Sothua said that if she does have to remain in the prison longer her 3-month-old daughter will continue to stay there with her.

This Case Study provides a clear example of how such financial constraints can continue to impact mothers and children even after the mother's official prison term ends.

**4. Access to Education**

Even for mothers of infants and young children, the lack of educational opportunities weighs heavily on their minds. Many women said that living in the prison will prevent their children from attending school. This could be for a variety of reasons, such as a woman's inability to pay for a child's transportation to and from school, an inability to fund school uniforms and other materials, or non-existent educational facilities nearby. The women interviewed were obviously aware of how a lack of education could negatively impact their children.

**Case Study #23:**

If Chenda is convicted and her 5-year-old son continues to live at the prison, he will not be able to go to school because there is no school at the prison. Chenda said her son would have to live in Phnom Penh in order to go to school, but he has no relatives in Phnom Penh. Chenda thinks it would be better for him to live with an NGO than to stay in prison because if he were taken to an NGO he could learn to read and write and have a good future.

For some women, educational opportunities become a deciding factor in determining whether their child will remain in the prison and for how long.

**Case Study #24:**

Teang Ha, who has served two years of a 15-year sentence, said she does not want her 14-month-old son to continue living in prison with her because she does not have enough for him to eat. She is also concerned that her son will not be able to go to school because she does not have any money.

Of the three children aged five and above living in the prisons included in this study, only one receives any form of schooling. The school, however, is intended for adult inmates; the seven-year-old girl is the only child attending classes there, and she does not have the option to attend a traditional school. While she is in class for nine hours a week, a typical child her age attending a state-run school would be in class for almost 17 hours a week, which is still far below international standards.<sup>20</sup> The young girl's situation is described below.

**Case Study #25:**

Srey Pha, who is seven, attends a "school" run by a Christian charity organization directly outside the prison. The school only runs three days a week for three hours at a time. Srey Pha goes to school three mornings a week from 7 to 10 am and then returns to the prison. Srey Pha likes school because she wants to learn but she does not have any friends at school because the other students are older women [from the prison].

## 5. Maltreatment of children

Of particular concern were descriptions of children being mistreated while living in prisons. Although none of the mothers reported substantial or especially serious harm to their children, several recounted instances in which they or their children were subjected to some form of mental or physical abuse, both from prison staff and fellow prisoners. It is also important to note that questioning the women on this topic was especially difficult and sensitive. As the majority of the interviews were conducted with a prison guard present, in some cases the author was unable to pursue this line of questioning. Moreover, the ability of the women to answer truthfully may have been compromised by the prison staff's presence and the potential ramifications of their responses. None of the women reported that their children had been mistreated by prison staff, though three of eleven women responding to the question did say that they had been mistreated themselves. This could take the form of either physical or verbal abuse, as described below.

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<sup>20</sup> Bob McLaughlin, "Effective Teaching Hours: Findings and Recommendations," Ministry of Education, Youth and Sport, Cambodia (Phnom Penh, 1999) pp. 8-9.

**Case Study #26**

Khom said that if she does something bad then the staff will beat her. She said they also do this to the other prisoners.

**Case Study #27:**

Sometimes when Somchea lets her son walk around alone the prison staff ask her why she doesn't watch him and they say bad things to her.

More often the women described instances in which their children were mistreated by other prisoners. One of the common themes of these occurrences was the mothers' feeling of helplessness and their inability to defend themselves or their children.

**Case Study #28:**

Pheap said the prison staff treat her children alright, but other prisoners have "beaten" her children at night because they cry. Most often the prisoners pinch her children but sometimes they also hit her children on their backs. It is not just one but many prisoners who do this and it happens almost every night. Pheap said she cannot do anything to stop it because she is "by herself" and can't fight with the other prisoners. If her children continue crying Pheap said that the prisoners will keep beating them.

**Case Study #29:**

Sometimes another prisoner pinches Samoeun's daughter, Mem, or knocks her on the head with her fist. When another prisoner is angry with Samouen, she will beat Mem this way. The female prisoner who does this lives in the same cell with them. It has happened at least twice since they have lived in the prison. Other prisoners yell at Mem because she always goes to their cells. Samoeun said this occurs about 3 or 4 times a week. When the prisoners yell at her daughter she cries and runs back to her mother's cell.

An interview with the daughter of one imprisoned mother revealed her experience with mistreatment from other prisoners and the fear that this has instilled in her. Her tale also reflects a sense of helplessness as she describes her inability to aid her mother. She is reluctant to talk about the situation with either her mother or the prison staff for fear of reprisal. The concern she expresses about the well-being of both her mother and herself appears excessive for a seven-year-old. Her case is described below.

**Case Study #30:**

Leng is afraid that the other prisoners will beat her because a female prisoner has beaten her before. The woman pinches her leg and sometimes hits her. She said the woman beats her every day, but her mother cannot fight with other prisoners because she is alone. Leng does not know what to do about it. When asked whether she had talked to anyone about the other prisoner hurting her, Leng said she did not want to tell her mother because she is afraid her mother will fight with the other prisoner. She does not tell the staff either. Leng said she always wants to get out of the prison.

**6. General effects of the prison environment**

Many interviewees displayed anxiety about how the general environment of the prison and interaction with other prisoners might affect children living on the premises. This was clear among both pre-trial detainees/prisoners and prison staff.

**Case Study #31:**

Mai does think living in prison is “a bad influence” on her daughter, but she “does not know how to change this.”

**Case Study #32:**

The prison doctor, Sok Sai, said that if children live at the prison they cannot go to school and their behavior becomes different from children who live outside the prison. He believes children should not be in the prison with their mothers. When asked how the children’s behavior differs from other children, Sok Sai said the children in the prison are living in “darkness” and they only see prisoners. Some of the prisoners are “very bad” and as the children get older they might follow this example.

**Case Study #33:**

When asked why she thinks it is better for her daughter, Srey Neat, to return home with her father than to live in the prison, Sophanna said she is afraid that as Srey Neat grows older being in the prison will have a negative affect on her. Sophanna said she heard that older children are not allowed to live in the prison, but she does not know if this is true. Other prisoners told her that she shouldn’t let her daughter live in the prison because it will affect her as she grows. Another prisoner and someone on the staff gave Sophanna the idea that if she wants to keep her daughter in the prison she can, but it might not be good for her daughter.

In the above case, the mother's own fear was compounded by what she heard from fellow inmates and prison staff.

Several women made specific reference to the prison's physical environment and how it might be detrimental to their children. This is shown in the following examples.

**Case Study #34:**

Sovanna does not want her daughter, Srey Thea, to live in the prison because it is a bad place for her. Sovanna said it is a bad place because Srey Thea cannot see anything else outside of the prison.

**Case Study #35:**

Kanna thinks it is not good for her son [to live in prison]. He looks around and sees nothing, only buildings and iron. It makes him angry.

**7. Other Areas of Concern**

Other issues that came up during the interviews included:

- Concern that children would be teased by their peers due to parent's status as a prisoner;
- Fear that as they grow older and come to understand that their parent is a convicted criminal or pre-trial detainee the children will feel anger or resentment towards the parent;
- A lack of response to requests for government assistance that prison administrators or staff made on behalf of mothers, children and pregnant women in prisons.

## V. In Charge, but Out of Touch: Ignorance of Laws and Procedures

Interviews with prison staff, including prison directors, reflected a significant lack of knowledge regarding legislation and regulations about mothers with children or pregnant women residing in prisons. Five out of eight prison directors and seven out of 13 prison staff interviewed reported no knowledge of Cambodian laws related to the subject.

### Case Study #36:

Phol, who has been the prison director for eight years, said he does not know of any Cambodian laws related to children living in prison with their mothers. Phol then said that government policy states that the prison has to provide support for the women's children by giving them medicine or food, but this is not a law, it is "just written in a letter from the government."

Four out of eight prison directors stated that the prisons have no policies about inmates' children living at the prison and five out of eight directors said there are no policies about pregnant women living in prisons.

Similarly, the mothers and pregnant women interviewed knew little if anything about regulations pertaining specifically to incarcerated mothers with children or pregnant women. When asked if they knew of any prison regulations related to children living with their mothers in the prison, nine out of fourteen women (64%) said they had no knowledge of any such rules. Twelve out of fourteen women (86%) said they knew nothing about Cambodian laws related to children living in prisons with their mothers.

Where directors did know about pertinent regulations, they often said they were unable to implement the regulations properly because of funding constraints.

### Case Study #37:

The prison director, Chan Dara, did know about Proclamation #217 but said the prison staff is unable to follow this regulation due to a lack of funds. Chan Dara said he has to sell things to raise money to provide for the prisoners. Sometimes the prisoners make mats and sell them to earn money. Some of the money goes to the prisoners and some to the prison to provide electricity, medicine and other things.

### Case Study #38:

Sophat, the prison director, said that government policy states that when prisoners are released the prison must provide them with clothing and some money to return to their homes, but the government has never supplied the prison with funds for this. Sophat said it is very difficult for prisoners who live far from the prison. He requested aid from the

government one or two times but has not received anything so he does not want to ask again. Sometimes he gives the prisoners money himself.

## **VI. What It All Means: Analysis of Research Findings**

The research findings detailed above will be analyzed based on the following:

- How findings pertain to the four main categories of children’s rights as defined by the CRC: survival, development, protection and participation.
- How findings relate to Cambodian and international laws and regulations, and specifically how the findings demonstrate implementation or non-implementation of said laws and regulations.

### **A. The Four “Baskets” of Children’s Rights**

Workers in the field of children’s rights frequently classify all rights laid out in the CRC under four primary areas of concern, often termed the four “baskets” of children’s rights: Survival Rights, Protection Rights, Development Rights and Participation Rights. One goal of this research was to determine whether the rights of Cambodian children living in prisons are upheld in each of these four areas. Each category will thus be defined more explicitly in conjunction with an analysis of its relevance to children living in prisons.

#### **1. Survival**

As might be expected, “Survival Rights” include the basic right to life. Furthermore, and as a means of protecting the right to life, such rights guarantee access to the highest possible standard of health and medical care.

Ensuring the right to survival necessitates prevention of infant and child mortality, which inherently requires adequate health care for newborns and children. Access to sufficient medical care and facilities for their children was one of the main areas of concern among mothers interviewed. The mothers described clear examples of instances in which either they or their children were denied the care they felt was necessary, whether due to financial constraints, lack of availability of medical resources, or prison officials’ refusal to provide treatment (see Case Studies 14 through 19).

Prevention of infant and child mortality also demands adequate pre-natal care in order to ensure the health of the newborn. Again, the pregnant pre-trial detainees and inmates did not appear to receive such care. Visits to trained medical doctors were limited.

Moreover, the prevalence of nutritional deficiencies among pregnant mothers and mothers of newborns could threaten the survival and health of infants. The mothers’ inability to produce adequate breast milk is both an indication of their own poor health and a danger to the health of their children.

The birth of children in prisons rather than in medical facilities can also inhibit child survival. Should a woman face complications during birth, the lack of trained medical staff and proper equipment at the prison health centers could potentially lead to death or serious harm for both mother and child. In the 2001 *State of the World's Mothers* report, the authors write:

The presence of a skilled birth attendant during labour and delivery is also critical to preventing maternal and newborn death and disease.... Approximately 15 percent of all pregnant women will face complications that require medical care. Preventing maternal mortality in the case of many of these complications requires high-quality emergency obstetric care in a hospital.... When hospitals are far away, too expensive, or unable to provide emergency obstetric care, complications often result in death or long-term disability.<sup>21</sup>

Additionally, failure to vaccinate newborns could reduce their chances of survival well into the future.

Although there were no reports of infant deaths in the prisons, the above findings indicate that the survival rights of children living in prisons are at significant risk.

## **2. Protection**

The category of “Protection Rights” includes protection from discrimination, abuse and neglect. It also encompasses the protection of children in especially difficult circumstances, a label that could easily apply to children raised in correctional facilities.

With regards to the protection of children living in prisons, the primary concern is that of preserving their right to enjoy a life free of abuse, neglect or maltreatment. Case Studies 28 through 30, which document prisoners pinching or hitting inmates’ children, reveal that the prison environment does not adequately protect children from physical harm. Instances of prisoners or prison staff yelling at mothers and/or children repeatedly could constitute verbal abuse and lead to psychological or emotional trauma in some cases. Failure to vaccinate newborns and administer medical treatment when requested could be considered neglect on the part of prison staff or other responsible parties.

Perhaps even more worrisome than the incidents themselves is the sense of helplessness that plagues inmates and children in such circumstances. As discussed in the following section on legal instruments, Prison Procedure No. 12 highlights prisoners’ freedom to make requests and lodge complaints and details the responsibility of prison staff in addressing such concerns. Yet

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<sup>21</sup> Sherman, *State of the World's Mothers 2001*, p. 10-11.

women in the above case studies continue to feel that no safe and reliable course of action is available should they find themselves or their children in an adverse situation. Whether because inmates are unaware of the legislation or simply because the legislation is not implemented, the current system of redress does not adequately allow prisoners to report abuses or get help. In fact, many of the women, as well as the child interviewed, said that fear *prevented* them from going to prison authorities for assistance. The women also had little faith that their requests would produce positive results, thus discouraging them from reporting ill treatment and, in turn, further endangering their children's rights.

Furthermore, data collected during interviews shows that none of the prisons have rules regarding interaction between prisoners and the children of inmates and detainees. The children appear free to play and talk with whomever they wish, unless their own parent prevents them from doing so. The general lack of concern demonstrated by both prison staff and incarcerated or detained mothers about interactions between children and other inmates is itself disconcerting considering the fact that those convicted of rape, child abuse, and sex crimes reside in these prisons as well. In one case, prison staff interviewed said that their children, who live or frequently play on prison grounds, are especially fond of talking to a prisoner who is a known pedophile. Though the children referred to are those of prison staff and not of inmates, it appears that a child living with its mother would be free to associate with the same prisoner, in spite of his conviction as a child molester. Such a situation—and other similar cases that may not be as evident—present a clear danger to children's safety in prisons.

In terms of protection from discrimination, only one prison director out of seven acknowledged that a child's birth certificate can not list the prison facility as the place of birth. Lack of knowledge about or indifference to this regulation, which is described in the legal discussion below, indicates a potential failure to protect children from future discrimination due to their parents' circumstances.

Based on the above findings, it can be said that prisons do not sufficiently safeguard the Protection Rights of children living with incarcerated mothers. The potential for abuse, neglect and/or maltreatment, as well as discrimination against the child, leaves room for serious violations of these rights.

### 3. Development

Children's "Development Rights" are quite comprehensive, including the right to education and the right to a standard of living that fosters positive development physically, mentally and otherwise.

When loosely defined, the term "development" may comprise any number of factors affecting a child's mental and physical growth. The authors of *Cambodian Law and the Convention on the Rights of the Child* address the broad scope of this term and clarify some of the rights it might include:

Political freedom, guaranteed human rights, social choices, personal self-respect and improvement of human, social and economic capabilities are all considered important components as a means to and an objective of development.... [T]he survival and development right under Article 6 is very broad and also includes spiritual, moral and social development.<sup>22</sup>

When determining whether ample consideration is given to the development of children living in prisons, it is thus essential to examine development in social and emotional as well as physical terms. Children living in prisons do not have the same opportunities for such growth as do their peers. Isolation from the outside world, as well as from friends and relatives, can prevent children from learning to function in society or interact with others. Obstacles to attending school inhibit children's intellectual growth while increasing isolation and reducing peer interaction. Most children living in prisons have few playmates and those that they do have are usually other children of prisoners or of prison staff. Their world is very narrowly focused on prison life; as several of the women stated during their interviews, their children do not see anything beyond the prison walls. This serves as a metaphor for a child's mental confinement as well as his or her physical confinement.

Article 27 of the CRC calls attention to yet another factor in a child's growth: the need for positive "moral development." Prisons would rarely be considered ideal places in which to foster children's moral development. In their research summary on literature pertaining to families of adult prisoners, Edwin Hostetter and Dorothea Jinnah write:

[P]arental incarceration seriously challenges a child's formation of values. In spite of words from parent to child about proper attitudes and behaviors, criminal deeds by the parent send a powerfully contradictory message to the child. Prisoners' children are at risk of manifesting criminal or antisocial activity themselves.<sup>23</sup>

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<sup>22</sup> Sherrie Brown, et al, *Cambodian Law and the Convention on the Rights of the Child: A Comparative Study* (Phnom Penh: Legal Aid of Cambodia, 1998) p. 47.

<sup>23</sup> Edwin C. Hostetter and Dorothea T. Jinnah, "Research Summary: Families of Adult Prisoners" (Prison Fellowship Ministries 1993) p. 7.

Interviewees specifically mentioned concern about the negative influence that living among prisoners might have on a child and the fact that a child might be prone to adopting criminal behaviors. Moreover, mothers spoke of fear that their own criminal behavior could cause their child distress and harm the mother-child relationship, another essential element in a child's development.

As for physical development, poor nutrition can seriously impede children's growth. Malnourishment of pregnant women and children can also inhibit cognitive development. Since many pregnant women, nursing mothers and children living in prisons do not receive adequate food or nutrients, children's rights to physical and mental development are both at risk.

#### **4. Participation**

Finally, the *Convention* includes "Participation Rights," which cover a child's right to express his or her views and to be heard in all matters affecting him or herself, the right to receive and seek information, and the right to join associations.

Part of a children's right to participation is the opportunity to voice opinions and be heard on matters concerning themselves. A seven-year-old girl—the only child old enough to be properly interviewed—said no one had talked to her about where she would prefer to live. During the interview she repeatedly stated that she wanted to leave the prison to live with her older sister. The child was also unaware of why her mother is in prison or how long she herself will remain in the prison with her mother. The girl's right to discuss or receive information about her circumstances appears to have been disregarded, unless it was determined that this was in her best interests. Based on the interview with the girl's mother, it appears that her daughter remains in the prison due to a lack of viable alternatives rather than "for her own best interests." The child's own opinion about her living situation has never been requested and thus can not have been taken into consideration.

With regards to the "right to receive and seek information" and "join associations," children living in prisons are at a distinct disadvantage. The very fact of their limited access to the outside world prohibits them from gaining information or participating in activities in ways that their peers might. If one assumes that "joining associations" includes clubs, school groups, sports teams and other such organizations—or even informal groups, such as neighborhood children playing games—children living in prisons rarely, if ever, have the opportunity to take part in such activities. The very structure of prison life, and restricted access to life outside of the prison, severely hinders observance of these children's participation rights.

### **B. Legal Analysis of Findings**

In many instances, the case studies themselves provide clear examples of whether Cambodian and international legal instruments are being upheld with regards to mothers, children and pregnant women living in prisons. The following analysis will discuss administration of the most significant laws, policies, and procedures as found during the course of the research.

Several national and international laws were examined to inform this study. An in-depth discussion of each of the primary ones follows. These include:

- Circular No. 15 S.K.A. on Communication with Female Detainees and Prisoners Accompanied with Child (1995)
- Proclamation No. 217 on the Administration of Prisons (March 1998)
- Cambodian Prison Rules and Procedures (based on Proclamation No. 217 of March 1998) and Prison Health Service Standards (2000)
- The Constitution of the Kingdom of Cambodia (1993)
- The United Nations Convention on the Rights of the Child (1989)
- The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985)

Other legal instruments that were consulted during the course of the research include the following:

- International Covenant on Economic, Social and Cultural Rights (1966; ratified by Cambodia in 1992), Article 10.2
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990), Articles 1, 2, 11, 12, 14, 16, 19, 20, 24, and 45.
- The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990), Articles 2, 3, 12, 13, 20, 37, 38, 49, 59.
- The Cambodian Law on Marriage and the Family, Articles 115 and 119
- World Declaration on the Survival, Protection and Development of Children (World Summit for Children 1990) and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s

## 1. Circular No. 15 S.K.A. on Communication with Female Detainees and Prisoners Accompanied with Child

Circular No. 15 was issued on 22 May 1995 by the Ministry of Social Action, Labour and Veterans Affairs (MOSALVY).<sup>24</sup> The Circular was formulated on the basis of an “inter-ministerial meeting with representatives of UNICEF” that occurred on 25 July 1994 at the Ministry of Justice (MOJ). The text of the Circular indicates that this meeting and the resulting document were created in response to the increasing number of infants and children living in prisons with incarcerated and/or detained mothers. In the words of the Circular, this has “created difficulties to prisons. The children on the other hand are unable to lead a decent life.”

Circular No. 15 goes on to state:

For the purpose of protecting the child and to properly implement the Convention on the Rights of the Child... the Ministry of Social Action, Labour and Veterans Affairs shall have the responsibility to separate those children away from the mother, in order to allow them to live with their family, close relatives, or in rescue centers, upon the agreement of the mother and according to the actual circumstances.

The term “actual circumstances” is never clarified, however, and is thus open to broad interpretation by the parties involved. It is virtually impossible to enforce the Circular without a precise definition of “actual circumstances” and what is included therein.

The Circular later states that the Inspection Office of Social Action, Labour and Veterans Affairs shall execute the above by taking actions including:

- maintaining contacts between municipal/provincial prosecutors and prisons;
- *studying the circumstances of children and mothers and collaborating with prison officials to arrange an appropriate program of care “according to the actual situation”<sup>25</sup>;*
- working with *female prison officers or staff* to enable the children to stay outside of prison;
- *contacting various institutions*, such as hospitals, local authorities, and schools, to assist in addressing children’s needs.

No efforts seem to have been made to examine the circumstances of individual mothers and children and create appropriate programs in cooperation with

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<sup>24</sup> The Ministry’s name was changed to the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation on 17 June 1999. Throughout the remainder of this paper, the Ministry will be referred to by the acronym resulting from its current title, MOSALVY.

<sup>25</sup> Unless otherwise noted, italics have been added by the author for emphasis.

prison directors, as point 2 requires. Meanwhile, the lack of female prison staff creates an obstacle to implementing point 3 listed above. The prisons included in this study had an average of two female staff members each (out of staffs ranging from 40 to 90 people), including those involved in administration or health. The seven prisons included in this study had a total of 14 females on staff. Of these, only four served as supervisors for female prisoners (at Battambang, CC2 and Kompong Som prisons); an additional three have contact with female inmates as prison guards. The remaining seven include three health workers, one kitchen staff, and three administrative staff. This paucity of female prison staff makes it unreasonable to expect “collaboration of female prison officers or staff” in placing children outside of the prison.

Despite prison directors’ suggestions that mothers place their children with NGOs or orphanages, there appears to have been very little real facilitation of such placements and no examination of whether potential caretaking agencies were legitimate or competent. The case studies also show a failure to form alliances between prisons and other institutions such as schools or hospitals to ensure that children’s needs are met.

The Circular goes on to describe “Methods of Implementation” to be used in applying these orders: “Officials and staff shall, in collaboration with female prison officers, *make efforts to counsel pre-trial detainees and prisoners in pregnancy or with children...*” The Circular specifies that counseling shall incorporate an examination of the child’s family circumstances and assistance in arranging for the child to live outside of prison. As the research findings show, few women received any form of “counseling” regarding children being born or living with them while they are in prisons.

The Methods of Implementation also state that children should be separated from mothers in prison upon reaching age six, or, under “special necessary conditions,” prior to reaching age six. Rationale for separating the child from its mother at age six is not apparent; no support for this stipulation is provided or referenced in the text of the Circular. Regardless, this has not been enforced.

According to the Methods of Implementation, separation of a child from his or her incarcerated or detained mother requires “*an agreement by the mother, with authorization by the prison, as to with whom and where the child is to be transferred.*” Legal Aid of Cambodia’s 1998 book *Cambodian Law and the Convention on the Rights of the Child: A Comparative Study* details matters of concern with regards to Circular No. 15: “[The Circular] does describe minimum due process protections for the incarcerated mothers by allowing the mother the right to express her opinion in the decision-making [about where her child will live]. However, whether this is a genuine opportunity that is given consideration by the state authorities needs to be evaluated.”<sup>26</sup>

Information gleaned from interviews conducted for this report showed that prison staff did respect the need for a mother’s consent to remove her child

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<sup>26</sup> Brown, et al., *Cambodian Law and the CRC*, p. 81.

from the prison. Though interviewees reported that prison staff had suggested that their children live elsewhere, no women had been coerced into giving up a child. Likewise, prison directors and staff all said that they merely “advise” the women about where their children should reside and that they have not forced women to surrender their children to other agencies. Yet some prison directors made statements implying that a mother would have no choice but to give up her child once the child reaches a certain age (the age limit varied according to the prison director, ranging from any child who is no longer breastfeeding up to children aged 10).

The authors of LAC’s study also point out that “the Circular is deficient in providing an opportunity for judicial review of the decision to separate the children from their mothers. The Circular recognizes the importance of the decisions to separate children from their parents be made by competent authorities—social workers—however, there does not appear to be any monitoring and/or training of these individuals.”<sup>27</sup>

In addition, the Methods of Implementation require social workers to facilitate the maintenance of relationships between imprisoned or detained parents and their children, regardless of where the children reside. In the cases included in this study, social workers did not take an active role in placing children outside of prison or in arranging for children living outside of prison to visit their mothers. None of the prisons visited employ any social workers. Only one prison staff member reported having had “social workers” visit the prison; these were representatives of the NGO Legal Aid of Cambodia.

Ten mothers interviewed for this study have a child or children living outside of prison. Only one said that she receives regular visits from her child. Five of the women said they never see their children who do not reside in prison with them. This might be because of distance, transportation costs, or other obstacles. For example, LICADHO’s 2001 report on human rights in prisons states that once they arrive at the prison, family members may have to pay prison staff in order to see relatives who are held in the facility.<sup>28</sup>

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<sup>27</sup> Ibid.

<sup>28</sup> LICADHO, *Prison Issues and Human Rights Issues*, p. 8.

## 2. Proclamation No. 217 on Administration of Prisons

Proclamation No. 217, which was issued on 31 March 1998 by the Ministry of Interior, contains sections pertinent to the treatment of both mothers with infants and pregnant women in prisons. It is important to note that within the hierarchy of Cambodian law, the Proclamation takes precedence over the Circular.<sup>29</sup>

At times prison staff were not even aware of the Proclamation or its fundamentals. Four out of seven prison directors interviewed, as well as one additional prison staff member, knew of the regulation requiring that pregnant inmates and pre-trial detainees be taken to a hospital to give birth. Four out of the seven prison administrators made reference to the Proclamation, indicating their knowledge of the law's existence, although some of the directors could not detail its specifics. The research thus revealed a general lack of familiarity with Proclamation 217; such insufficient awareness of the law makes it impossible to oversee its proper implementation.

With regards to pregnant prisoners, Article 18A of the Proclamation states that prison staff must do the following:

- Provide special assistance to the female prisoner before and after giving birth.
- Allow female prisoners to give birth outside of the prison in a hospital. If a woman does give birth inside the prison, a health care worker must be in attendance or examine the mother and baby as soon as possible following delivery.
- Insure that, should a woman give birth within the prison, the infant's birth certificate shall not reflect this when listing place of birth.<sup>30</sup>

As with Circular No. 15, one of the problems with Article 18A of Proclamation No. 217 is a lack of clarification. In the second and third points listed above, there is no definition of circumstances under which a woman might be permitted to give birth within the prison (thereby apparently violating the initial statement in point two that women must be allowed to give birth in a hospital). It is thus difficult to determine when cases wherein women give birth at the prison constitute a breach of the Proclamation. Similarly, the use of undefined terminology regarding pre- and post-natal "special assistance" allows for a wide range of interpretations and, potentially, lack of proper care for pregnant women and infants.

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<sup>29</sup> According to the *Resource Guide to the Criminal Law of Cambodia*, a Proclamation is issued by the head of a ministry or multiple ministries to "organize and govern the activities of each department or section within the jurisdiction of the ministry" (p. 43). A Circular is issued by the Council of Ministers, individual ministries or administrative bodies in order to "provide clarification of legal issues, instructions or administrative requirements" (p. 44).

<sup>30</sup> This is also stipulated in Article 22 of The Kingdom of Cambodia's Sub-Decree on Civil Status (29 December 2000). As translated by UNICEF, Article 22 reads: "In case a convicted person delivered a baby, the place of birth of the baby shall be the residence of the mother or father" rather than the prison.

Point 1 of Article 18A, listed above, specifies that “special protection” or “special assistance” should be given to pregnant women, with the Proclamation according this right expressly to pregnant inmates. However, little in the way of “special assistance” seemed to be offered to prisoners either before or after giving birth. Furthermore, some mothers were not given the opportunity to deliver their children outside of the prison, regardless of Point 2 of Article 18A, which demands this.

The failure to uphold Point 3, which dictates that a child’s birth certificate shall not list the prison as the place of birth, has already been discussed in the above section on children’s right to protection.

Prison staff did appear to enforce Article 15, entitled “Work,” which states that pregnant women in prisons “shall not be directed to work 90 days before and 90 days after childbirth.” Interviewees stated that they were exempt from working at the prison (carrying water, doing laundry, etc.) during and immediately after pregnancy.

As in Circular No. 15, Article 18B of the Proclamation states that children may reside in prisons with their mothers until they reach six years of age. Adherence to this directive has already been discussed in the above section on Circular No. 15. The Proclamation makes clear that the mother assumes primary responsibility for her child’s care during the child’s stay in prison. However, the Prisons Department, under the Ministry of Interior, must provide the children with food and medicine. Though the prisons provide food in many cases, the quality and quantity of food is questionable. At times the food served is not appropriate for the children (i.e. if the child is too young to eat solid food). Little effort goes towards ensuring the availability of proper food, particularly in instances where the mother is unable to breastfeed. Medicine is provided only sometimes and is often not intended for use by children. The inability to provide sufficient and suitable food and medicine for children amounts to a failure to uphold Proclamation No. 217.

Furthermore, children living in the prison should be permitted to enter and exit the prison in accordance with the prison’s regulations. One mother interviewed, however, said she was reluctant to allow her daughter to leave the prison even for a few days because the prison director told her that if her daughter leaves the prison she will have to do so permanently and will not be allowed to return there to live.

Finally, Article 18C of the Proclamation states that if a mother is unable to care for her child properly, the prison director must “provide for the child or children’s best interests” by contacting competent ministries or relatives to ensure that the child is adequately cared for outside of the prison. The prison director must report such arrangements to the Prisons Department. In the cases reviewed for this report, no evaluation of the mothers’ ability to care for their children even took place. If a woman were deemed incapable of caring for her child, it is unclear what measures a prison director would take to secure quality alternative care.

The Proclamation also speaks to the supervision of female prisoners. Article G outlines the actions to be implemented in prisons holding female inmates or pre-trial detainees. The Article requires each prison to have a “trained female prison officer or official” available at all times to monitor women’s cells. As already stated in the above analysis of implementation of Circular No. 15, a general shortage of female prison staff makes administration of such an order unrealistic.

### **3. Cambodian Prison Rules and Procedures & Prison Health Service Standards**

Under Cambodia’s Ministry of Interior, the Prisons Department issued the Prison Rules and Procedures and Prison Health Service Procedures to provide a plan of action for carrying out Proclamation No. 217 of 31 March 1998. As the standard for measuring implementation of the Proclamation, these Procedures are crucial to an analysis of the care of mothers, children and pregnant women in prisons. The Procedures that address the circumstances of this population will be discussed in turn below.

#### *i. General Procedures*

##### *a) Procedure No. 6: Provision of Food for Prisoners*

Under Procedure No. 6.3, the director of each prison must provide sufficiently nutritious food to prisoners at least twice a day, as well as “adequate, clean drinking water” at all times. Procedure 6.4 stipulates the types of food, as well as the minimum amounts, to be provided on a daily basis.<sup>31</sup>

Arguments regarding the failure to provide adequate food for inmates and their children have already been laid out in the case studies and the above discussion of Proclamation 217. Moreover, women at three different prisons revealed concern about a lack of clean drinking water. Among the primary sources of drinking water they listed were a lake and a river; drinking from these sources can easily lead to disease, especially among newborns whose immune systems may still be weak. The inability to boil or otherwise purify the water, as in the case of at least two interviewees, prevents them from eliminating the danger of water-borne diseases.

In order to obtain satisfactory food for inmates, Procedure 6.10 allows prison administrators to request food from non-governmental organizations and to “sell or exchange items produced by the prison for additional foodstuffs.” Permission to do the latter gives cause for concern, as it could easily lead to abuse of power or forced labor within the prison. Though no such instances were reported by prisoners interviewed for this study, one prison director did mention

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<sup>31</sup> For more specific information on what food is to be provided and how much, see the text of Prison Procedure No. 6.

selling prison-made products in order to pay for prison supplies (see Case Study #37 above).

Most critically, Procedure 6.7 makes special reference to the provision of food for prisoners with children and pregnant inmates: “Prisoners who have children in prison are to be provided with food suitable to maintain the health and well-being of the child. Female prisoners who are nursing an infant may receive additional food for themselves, if recommended by the health care provider.” This Procedure is critical for two reasons. First, it gives the Prisons Department responsibility for providing adequate sustenance to children living with incarcerated or detained mothers. Second, it allows for supplementary food for nursing mothers, *but only under the recommendation of a health care worker*.

As discussed in the research findings, mothers, their children and pregnant women do not always receive medical treatment even when they request it; often they opt not to make the request out of a belief that they will be ignored or ridiculed. In Case Study #6, for example, Reak Smey is afraid to tell the prison staff that she feels she is not getting enough nutrients as a pregnant woman. Case Studies #7 and #8 provide examples of mothers who are unable to produce breast milk to nurse their infants, yet neither woman has received an order for supplementary food from prison health staff. The requirement for such an order laid out in Procedure 6.7 may actually impede rather than increase women’s ability to obtain the food necessary for them to breast feed. Prison health staff do not appear to monitor the nutrition of nursing mothers or request that they receive additional food. When food was provided, it was by order of the prison chief or from an outside source such as a relative or NGO.

*b) Procedure No. 12: Prisoner Requests and Complaints*

The purpose of Procedure No. 12 is to “provide procedures for prisoners to make requests and complaints.” As such, the Procedure outlines prisoners’ rights to lodge requests or complaints and to have these addressed in a timely and appropriate manner. The Procedure goes so far as to specify that prisoners shall have the opportunity to be heard by the Prison Chief, or another acting authority, each weekday. Moreover, it states prisoners’ right to speak freely, and without supervision, with non-prison staff who have been permitted to inspect the prison. Additionally, each prisoner is to be notified of the means by which he or she can make requests or complaints. By including all of the above, Procedure No. 12 strives to put in place an effective system whereby prisoners can communicate their concerns without negative repercussions.

Examples given in the case studies confirm the failure to create a satisfactory system of redress for mothers, children, and pregnant

women in prisons. Paragraph two of the above section on children's protection rights contains a more in-depth discussion of this issue.

c) *Procedure No. 38: Female Prisoners and Their Children*

The most significant Procedure with regards to this research, Procedure No. 38 speaks directly to the treatment of pregnant prisoners and children living with prisoners. In addition to the strictures laid out in Proclamation No. 217, Procedure No. 38 instructs prison health workers to monitor the condition of pregnant prisoners regularly. It also states the need to provide a pregnant or breast feeding woman with a balanced diet "to meet her needs." As has been stated, the nutritional requirements of pregnant inmates and pre-trial detainees are rarely met, and health workers do not consistently review their condition.

Another point previously noted is the failure to provide adequate clothing, food, and medical care for children living in prisons, which Procedure No. 38 requires of prison staff.

The Procedure mirrors the Proclamation in necessitating that the prison administrator arrange for a child's care outside the prison when such care is required. It goes one step further, however, in stating that the prison director must "facilitate meetings between the mother, relevant Ministry representatives, or family or relatives to ensure the child or children are placed with suitable caregivers on reaching the age of 6 years." Unlike the more general Proclamation, this calls for a specific action by the prison administrator in order to ensure a safe and nurturing environment for a child. Prison administrators have not met this requirement, nor have other staff or government representatives adhered to this rule.

Procedure No. 38 also expands on Proclamation No. 217 when it states that "the Prisons Department is responsible for providing opportunities for the child's intellectual, educational, and physical development" and demands that the prison administrator work with local child-oriented NGOs and relevant government offices to accomplish this. Procedure No. 38 thus strives to foster the growth and development of children living in prisons on several levels, and places the burden of doing so squarely on the shoulders of the Prisons Department and prison administrator.

Section 3 (Development Rights) of the above analysis of the four baskets of children's rights includes a thorough discussion of failure to follow this policy, but it must be stressed that prison directors are not taking active measures to encourage children's growth. No prison administrators spoke of cooperating with outside agencies in creating activities or programs to foster children's development, even though the Procedure directly calls for such action.

Procedure No. 38 states that pregnant women may forgo work in the prison for the two months before and 3 months after childbirth.<sup>32</sup> As has been said, no pregnant women interviewed had been forced to work during or following their pregnancies. In fact, many mothers with children reported that the prison staff excused them from work either so they could care for their children or because they were weak from giving birth.

## *ii. Prison Health Service Standards*

The Prison Health Service Standards, issued by the Department of Prisons under the Ministry of Interior in 2000, provide comprehensive guidelines for the provision of health care to inmates and pre-trial detainees. Key aspects of these procedures as they pertain to the care of women, children and pregnant women in prisons are addressed below.

The introductory paragraph of Standard One, entitled Organization and Administration, provides a concise overview of expectations regarding health care for those living in prisons: “The prison health services are organized and administered in such a way in order to promote, advance, and maintain the health of the prisoners they serve.” Standard One establishes that prison health services must strive above all to meet prisoners’ needs and provide care that addresses inmates’ general well-being.

Likewise, Standard Three, called Service Delivery, calls for “continuity of care, health promotion, [and] early intervention.” Based on Standard Three, prison health services must include preventative and ongoing care in addition to as-needed treatment.

At present, health staff at prisons included in this report have not successfully provided such continuing, comprehensive care. When given, treatment is geared towards immediate treatment of illness or injury. Preventative care and/or care that does not directly address physical ailments are absent from prison health service regimens.

Standard Three speaks to prisoners’ rights as well. Standards 3.10 and 3.12 ask that prisoners be informed of their right to health care services and have the opportunity to register grievances about the health care they receive. No prisons included in this study had conducted sessions to inform inmates or detainees of these rights, nor did they have systems in place for “receiving and investigating complaints” about health services, as Standard Three requires.

Standard Two, Staffing and Direction, strives to ensure that prison health staff are well-trained and capable of fulfilling their duties, but it offers no specific

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<sup>32</sup> Prison Procedure No. 11, “Prisoner Work, Education and Vocational Training,” also refers to this when it states that “female convicts shall not be directed to work 90 days before and 90 days after childbirth.”

criteria for meeting these conditions.<sup>33</sup> Standard Two requires that individuals overseeing prison health services are “suitably qualified by education, training and experience” and that an “appropriately qualified person” takes charge of units within the health service, though no specifications for “suitable” or “appropriate” qualifications are given.

Standard Two also demands that the health services employ a sufficient number of individuals “for efficient and effective operation” in meeting the goals stated above. In actuality, the health services at the prisons visited were frequently understaffed and overextended. As described in the Case Studies, some of the staff have minimal qualifications, if any. Of the four health staff interviewed at four different facilities, one was trained as a nurse with a certificate in “maternity,” one was trained as a medical assistant, one reported having studied medicine prior to the Khmer Rouge regime, and the fourth had no medical training whatsoever. None of the workers were trained as medical doctors, nor did any of the prisons report having MDs on staff.

Moreover, prison health staff rarely had “appropriate facilities and equipment” at their disposal, as deemed necessary in Standard Six, Facilities and Equipment. Standards 6.7 and 6.8 require that “sufficient equipment of an appropriate nature is available to enable staff to carry out their duties” and that staff have adequate training in the use of such equipment. Yet two of the health staff interviewed emphasized a dearth of medication and health care equipment at the prisons. Two prison health workers stated specifically that they are unable to provide adequate care to prisoners because they are the sole individuals on the prison health staff.

### *iii. Prison Health Operating Manual*

The Health Operating Manual’s introductory section, “Organization and Administration,” summarizes the objectives of the prison health service. Many of these objectives are outlined in the Prison Health Procedures described above, but the Health Operating Manual places increased emphasis on prisoners’ *right* to a high standard of health care. This emphasis is shown in Section 1.1, “Philosophy”: “We believe that every client is entitled to holistic care, which considers the physical, emotional, social, spiritual and cultural needs of the individual.” The terminology used here, as well as in other portions of Section 1.1—for example, that “clients have a right to expect” competency from health staff and that the prisoner is “the consenting participant in the health care service rather than the object of health care”—illustrates a focus on the basic rights of prisoners as well as on their health. Moreover, Section 1.1 makes clear that health care includes more than administration of medication or attention to physical afflictions; rather, the Prisons Department appears to consider a prisoner’s general well-being as a crucial aspect of his or her health, even going so far as to use the term “holistic.”<sup>34,35</sup>

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<sup>33</sup> Standard 3.7 also emphasizes this by stating that staff must provide services “in accordance with existing professionally accepted standards for prison health.” Again, however, there are no specifications as to what such “professionally accepted standards” entail.

<sup>34</sup> This is also apparent in Section 1.2: Mission Statement; see text of document.

Once again, however, such care has not been offered. In contrast, the inmates and detainees interviewed for this study had to request care repeatedly for themselves and their children, even for ailments that were readily apparent. At times, their calls for help still went unanswered, as shown in Case Studies #16, #17 and #18.

Similarly, prison health staffs have not upheld Section 3.7 of the Health Operating Manual, which requires them to arrange transport to outside medical facilities when necessary, including in the case of childbirth. Several interviewees' comments revealed quite the contrary: that women are often unable to go to hospitals because of a lack of transportation and/or their inability to fund such transportation for themselves, as demonstrated by Case Studies #14 and #15.

As its title suggests, Section 3.9, "Care of Children in Prison," is especially relevant to the treatment of children living with incarcerated or detained mothers. It restates Proclamation 217's declaration that children may live in prison until age six and also repeats Procedure No. 38's call for the encouragement of all facets of children's growth and development.

The major significance of Section 3.9, however, lies in its description of how the latter should be carried out. The procedure requires formulation of written action plans<sup>36</sup> that are "age specific and needs sensitive" in order to address each child's welfare "systematically and methodically." Moreover, staff should create such an action plan in consultation with the child's parent. These specifications provide clear benchmarks by which to measure prison staff's adherence to the health procedures.

Section 3.11, "Care of Maternity Patients in the Prison Setting," also mandates the formation of action plans, in this case detailing the health services to be provided to pregnant women. The procedure's stated aim is "to provide adequate and appropriate ante-natal and post-natal care for the pregnant prisoner to ensure optimum health for the mother and baby."

Prison health staff have not developed written action plans creating a framework for the care of either inmates' children or pregnant women in prisons. Not a single interviewee mentioned the formulation of such a plan, nor did staff, inmates, or detainees appear to have considered any long-term strategy for the care of children living with mothers or pregnant women.

This is also relevant to Section 3.11, which repeats Proclamation 217 in stating that women should give birth at hospitals except "in the most extreme urgency." Section 3.11 further states that "planning for the birth should be finalized by the end of the seventh month of pregnancy," including arrangements for the hospital stay and acquisition of necessary materials for

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<sup>35</sup> Section 3 of the Health Operating Manual, "Policies, Procedures and Protocols," also makes reference to the provision of all-encompassing health care by stressing the need for preventative as well as curative medicine (p. 23).

<sup>36</sup> Section 3.17 of the Health Operating Manual describes an action plan as "a document which is specific to one patient being treated for... [a] condition which requires a sequence of treatment events" (p. 68).

the infant's care. This implies that prison staff should prepare for the birth prior to the seventh month and also dictates a timeline for concluding preparations.

Virtually no preparations appeared to have been made for the birth of children to pregnant inmates or detainees. Numerous women did not even know where they would give birth, and staff interviewed only had vague ideas regarding the women's hospital stays, if they assumed the women would give birth in a hospital at all. For example, at six months pregnant, one pre-trial detainee said that the place of delivery is "up to the prison chief"; another detainee in her sixth month of pregnancy simply said she did not know where she would give birth; and a third detainee who is nine months pregnant said she would give birth in the prison because the prison director would not allow her to leave the prison grounds.

Section 3.11 also requires prison staff to arrange for visits to ante-natal clinics at provincial health centers and to provide regular follow-up treatment for pregnant women at prison health centers, with an emphasis on infant feeding and care. Moreover, the section states that an inmate who has recently given birth should be given "appropriate support," preferably by a female prison staff member.

Only two out of seven pregnant women interviewed had gone to see doctors at provincial health centers. A third woman had been seen by a doctor who visited the prison, but she did not know from where he came. Four of the women reported having seen a health care worker while pregnant, including medical staff in the prison. Of these women, two had seen the medical staff twice in approximately four months, one had seen the medical staff once in ten days at the prison, and one was non-responsive to the question posed. It thus appears that prison staff are not ensuring pregnant women access to outside medical care, nor providing follow-up care in all cases.

A further portion of Section 3.9 elucidates the measures to be taken to provide a diet that will foster children's health and development. Such measures include:

- Encouraging mothers to breast feed
- Supplying liquid vitamins to infants who are not breast fed and ensuring sterilization of feeding equipment (bottles, etc.)
- Educating parents about nutrition and food sanitation for children
- Finding sources of food to supplement that provided by the prison

While numerous mothers of newborns reported an inability to breast feed, none of them received vitamin supplements for their infants. Instead, they recalled using water, rice porridge, or milk purchased from outside the prison to sustain their babies. Only in rare cases did prison staff procure supplementary food.

Section 3.9 also asserts that prison health staff must examine children regularly and prescribe “*appropriate* medications.”<sup>37</sup> Prison health workers often cannot follow this directive because they simply do not have medicines intended for children at their disposal, as Case Studies #11 and #12 exemplify.

Section 3.9’s demand for regular examinations of children also goes unheeded. Mothers interviewed reported that their children are only examined when they present problematic symptoms, and even then they are not always treated.

An entire segment of Section 3.9 discusses the immunization of children living in prisons.<sup>38</sup> This mandates the vaccination of children as well as the education of their parents regarding the importance of completing the vaccination regime.<sup>39</sup> Still, several mothers and prison health workers stated that babies living in prisons had not been vaccinated, as shown in Case Study #19.

Finally, part 7 of Section 3.9 acknowledges the instrumental role of parents in maintaining children’s health: “It must be recognized that appropriate health education and promotion may be required especially for a young mother who has a first child whilst a prisoner.” The section then requests that prison staff provide health education materials in formats accessible to mothers in prisons. However, the prisons referred to in this report rarely offer such instruction; only one health worker reported speaking with pregnant prisoners about caring for their newborns.

As with several of the aforementioned portions of the Health Operating Manual, Section 3.12 elucidates prisoners’ rights. This section entitles prisoners to information about their health care and states that prison health staff “have a responsibility” to impart such information in a comprehensible manner when dispensing medication and/or treating a patient. Despite this, numerous women reported having received medicine without knowing what kind or its intended use.

#### **4. The Constitution of the Kingdom of Cambodia**

Article 48 of the Cambodian Constitution declares that “the State shall protect the rights of children as stipulated in the Convention on the Children” [the CRC] including protection “from acts that are injurious to their educational opportunities, health and welfare.”<sup>40</sup> Constitutional Article 48 thus lends even more weight to an analysis of the United Nations Convention on the Rights of the Child with regards to the circumstances of children living in prisons (for

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<sup>37</sup> Section 5.2 of the Health Operating Manual also states that “clinical stock items in prison health clinics are to be in reasonable quantities that are appropriate to need” (p. 85).

<sup>38</sup> Under the Health Operating Manual’s section on Facilities and Equipment, Section 5.5, entitled “Vaccines,” obtaining vaccines or vaccination services falls under the authority of the “doctor or medical attendant who is team leader of a prison health program clinic. Vaccination services for children under the age of six years should be negotiated with maternal and child health services locally in all instances” (p. 92).

<sup>39</sup> According to part 6 of Section 3.11, the newborn must actually begin his or her vaccination sequence before returning to prison following birth (p. 55).

<sup>40</sup> Sherrie Brown et al., *The Legal Rights of Cambodian Children: International and Cambodian Laws, Regulations and Guidelines Relating to Children* (Phnom Penh: Legal Aid of Cambodia, 1998) p. 290.

further discussion of this topic, see below). As has been described above in the section on Protection Rights, and as is shown through the case studies, children living in prisons do not seem to have been protected in the ways guaranteed by Cambodia's Constitution.

## 5. United Nations Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC), which was adopted by the UN in 1989 and ratified by the Kingdom of Cambodia on 15 October 1992, contains numerous articles pertinent to a discussion of the rights and care of children living in prisons. Article 3.1 provides a concise summary of the intent of the CRC in stating that “in all actions concerning children... the *best interests of the child* shall be a primary consideration.”<sup>41</sup> Furthermore, Article 6.2 says, “States Parties shall ensure to the maximum extent possible the survival and development of the child.”<sup>42</sup>

Article 9 of the CRC speaks most directly to the dilemma of children being raised in correctional facilities. Article 9.1 guarantees that children will only be separated from their parents if, under examination by “competent authorities subject to judicial review,” it is deemed necessary. In such cases, all those affected by the ruling have the right to participate in and voice their opinions regarding the decision (Article 9.2). Moreover, according to Article 9.3, a child separated from one or both parents retains the right to maintain a relationship with the parent(s) unless such interaction is detrimental to the child. Finally, Article 9.4 specifically refers to cases in which separation of parent and child results from detention or imprisonment; in these instances, the child or another family member has the right to information about the whereabouts of the imprisoned or detained parent(s), again excluding circumstances in which such information could be harmful to the child.

The authors of LAC's *Cambodian Law and the Convention on the Rights of the Child* comment on the significance of Article 9 with regard to the separation of children from parents:

Under article 9(1) the *Convention* requires State Parties to establish rules and procedures that clarify when children can be separated from their parents and that only competent—or legally recognized—authorities make the decision. In addition, all interested parties must have the opportunity to participate in the decision-making process and have their opinions known.... ‘Interested parties’... includes anyone who has information relevant to the decision.... In other words, Article 9 provides specific due process procedures that States Parties must follow before the State may infringe

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<sup>41</sup> Ibid, p. 74.

<sup>42</sup> Ibid, p. 75.

on the right of the child to be cared for by his or her parents.... At a minimum, the procedures must be fair.<sup>43</sup>

The text of CRC Article 9 requires that “competent” or “legal” authorities take responsibility for deciding whether a parent and child shall be separated. Based on Circular No. 15, as discussed above, it would appear that the Kingdom of Cambodia recognizes the Inspection Office of Social Action, Labour and Veterans Affairs as such an authority. However, the means by which members of this office are deemed “competent” is unknown, as is their actual level of competency and experience in dealing with matters regarding parental separation from children. The interviews did not show any evidence of assessment or evaluation by authorities regarding whether a child should remain with its mother in prison. Most often the mother said she simply brought her child with her to the prison at the time of her detention. In the case of newborns there appeared to be an assumption that the infant would remain in the prison with the mother, with no analysis of whether this was truly in the child’s best interests.<sup>44</sup>

Additionally, as highlighted in the above discussion of Circular No. 15 and Proclamation No. 217, the Cambodian State does not seem to have created “rules and procedures that clarify when children can be separated from their parents,” as required by the CRC.

Similarly, Article 3.3 of the CRC works to protect children separated from their parents, but again leaves room for the State to determine the competency of agencies and individuals involved in the child’s care: “*States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities particularly in the areas of safety [and] health, in the number and suitability of their staff, as well as competent supervision.*”<sup>45</sup> With relation to Cambodia, a reading of Article 3.3 leads to the following question: Have standards been established by which adequate competency of caretakers can be ensured? Once again, current legislation and practice do not provide satisfactory assurance of such competency. Significantly, the prisons’ ability to provide sufficient childcare has not been examined in and of itself.

While parents are mainly accountable for their children’s well-being according to Article 18.1,<sup>46</sup> further CRC articles reinforce the State’s duty to ensure adequate care and protection of children in unusual circumstances. This includes providing “appropriate assistance” to parents and others raising children, as well as developing childcare facilities and services (Article 18.2). It also includes taking all measures necessary to protect children from abuse and neglect, even going so far as to suggest the establishment of social services to assist children and their caregivers (Articles 19.1 and 19.2). If unable to remain within their “family environment,” the State must not only

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<sup>43</sup> Brown et al, *Cambodian Law and the CRC*, p. 79.

<sup>44</sup> Although it is generally agreed that children who are still breastfeeding should not be separated from their mothers, this might not be the case if the mother is not fit to care for her child or if, as in some of the cases described in this paper, the mother is unable to feed her baby properly.

<sup>45</sup> Brown et al, *Cambodian Law and the CRC*, p. 44.

<sup>46</sup> Brown et al, *The Legal Rights of Cambodian Children*, p. 78.

protect and aid a child, it must also “ensure alternative care” as described in national laws (Articles 20.1 and 20.2); such alternative means of childcare have not been guaranteed to mothers and pregnant inmates or pre-trial detainees.

Of equal importance is Article 27.1, which reads:

*States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.*

According to Article 27.2, the parent(s) or guardian(s) are primarily responsible for guaranteeing such a standard of living. However, Article 27.3 requires States Parties to “*take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*”<sup>47</sup>

The above articles make clear that the State may be held responsible not only for collaborating with agencies and individuals to care for and protect children, but also for ensuring that all children benefit from proper, comprehensive care. The case studies show that mothers and pregnant women in prison have not been offered such support, despite the fact that they often demonstrate need.

Also pertinent is CRC Article 2.2, which prohibits discrimination against or punishment of children due to the behavior of their parents, relatives or guardians. In the case of children with incarcerated parents, Article 2.2 attempts to ensure that a child shall not be discriminated against due to a parent’s status as a pre-trial detainee or prisoner.<sup>48</sup> The above discussion of children’s right to protection addresses the implementation of this article with regards to children living in prisons.

The CRC speaks specifically to children’s health care as well. Article 24.1 is especially noteworthy:

*States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*”<sup>49</sup>

As has been shown, children living in prison have not been granted this privilege, nor have they been provided “adequate nutritious foods and clean drinking water,” as the CRC requires.

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<sup>47</sup> Ibid, p. 78-82.

<sup>48</sup> This correlates to Circular No. 15’s Proclamation that a child born in prison may not have a birth certificate reflecting his/her place of birth as such.

<sup>49</sup> Brown et al, *The Legal Rights of Cambodian Children*, p. 80.

Finally, the CRC recognizes the duty of States Parties to guarantee all children access to education. Article 28.1 stipulates that “States Parties recognize the right of the child to education” and that in order to ensure children’s access to education States Parties shall take measures that include “[making] primary education compulsory and available free to all.”<sup>50</sup> Yet children residing in prison have minimal access to schooling and may well receive no primary education.

## **6. UN Standard Minimum Rules for the Treatment of Prisoners**

The UN Standard Minimum Rules for the Treatment of Prisoners were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955. Though the Standard Minimum Rules describe procedures for care of prisoners in numerous relevant areas, for the purposes of this report only those rules pertaining to mothers and children or pregnant women in prisons will be discussed.

Article 23 in Part I of the Standard Minimum Rules, “Rules of General Application,” spells out expectations for the care of pregnant prisoners. Article 23.1 calls for “special accommodation” for pre- and post-natal care and treatment, though it does not specify what would constitute such accommodation. As with Cambodia’s Proclamation 217 discussed above, Article 23.1 mandates that pregnant inmates and pre-trial detainees give birth in hospitals rather than in prison “wherever practicable” and that if a child is born in prison his or her birth certificate should not list the prison as the place of birth. Once again, however, the Article’s language does not provide concrete instruction as to when it would not be considered “practicable” for a woman to give birth outside the prison. Does this refer only to instances wherein the mother’s labor proceeds at such a rapid pace that it is not feasible for her to go to a hospital, or does it also apply to a situation wherein the woman or the prison facility is unable to fund transportation to a hospital? Such linguistic ambiguity allows for much leniency in interpreting the standards.

Regardless, Article 23 has not been upheld according to the findings of this research. None of the interviewees who are currently pregnant or had given birth while in prison had been granted “special accommodation.” Moreover, as has already been discussed, inmates and pre-trial detainees were not always permitted to give birth in hospitals, even where it appeared to be “practicable.”

Special note should be made of Article 23.2 of the Standard Minimum Rules, as it is the only procedural instrument that explicitly refers to a means of caring for infants in prisons. The Article requires that prisons with nursing infants provide a “nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.” As seen in the above discussion of Cambodian prison laws and procedures, to date no national policy enforcing this standard has been issued. None of the prisons included in this study had anything resembling “a nursery staffed by qualified

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<sup>50</sup> Ibid, p. 82.

persons” to provide care for babies. Given the above case studies and evidence of minimal resources in prison health centers, it is difficult to imagine implementation of this requirement. Instead, infants remain under the watch of their mothers, siblings, or other prisoners.

## 7. UN Standard Minimum Rules for the Administration of Juvenile Justice

The UN Standard Minimum Rules for the Administration of Juvenile Justice, also called the Beijing Rules, were adopted by the United Nations General Assembly on 29 November 1985. Although the Beijing Rules deal primarily with the treatment of juvenile offenders, there are some portions of the document that pertain to the topic of this study. In Part I of the Rules, Principle 1.2 declares that “member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.”<sup>51</sup>

While it is difficult to assess whether such a rule has been applied, the enforcement of this rule for children living in prisons is questionable at best. The above section detailing children’s Development Rights speaks to issues of personal development and education. Principle 1.2 raises the question of whether it is possible for a prison to foster such an environment for children, particularly for children who themselves have not committed crimes. The Commentary portion of Part II of the Beijing Rules clearly speaks to this point, albeit within the context of juvenile detainees: “The danger to juveniles of ‘criminal contamination’ while in detention pending trial must not be underestimated.”<sup>52</sup> It seems logical to extend the concept of “criminal contamination” to any child living among detained and convicted criminals, which causes concern about the possibility of “criminal contamination” for the children of inmates and pre-trial detainees as well.

## VII. Searching for Solutions: Examples of Alternative Methods of Care

The question of whether infants and children should live in prisons is a complex one, and to address it adequately would require a more in-depth discussion than this report allows. Research has shown both pros and cons to children remaining in prisons with incarcerated parents. The Council of Europe addressed this in a 2000 report by the Social, Health and Family Affairs Committee: “Prisons do not provide an appropriate environment for babies and young children, often causing long term developmental retardation. Yet, if babies and children are forcibly separated from their mothers they suffer permanent emotional and social damage.”<sup>53, 54</sup> This statement reflects the

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<sup>51</sup> Ibid, p. 105.

<sup>52</sup> Ibid, p. 114.

<sup>53</sup> Council of Europe Parliamentary Committee. “Mothers and Babies in Prison.” Report from Social, Health and Family Affairs Committee. Retrieved from <<http://stars.coe.fr/doc/doc00/EDOC8762.htm>> 9 June 2000.

<sup>54</sup> Of additional note is the statement in the UK newspaper the *Guardian* that “the prison service argues that around the age of 14 months, babies start to become aware of their institutionalized surroundings” which

ambivalence that often accompanies discussions on this topic. The Council's draft recommendations and explanatory memorandum also reveal a hesitance to keep children in jail while still attempting to consider the infants' best interests:

Experts agree that early maternal separation causes long term difficulties, including impairment of attachment to others, emotional maladjustment and personality disorders. It is also recognized that the development of young babies is retarded by restricted access to varied stimuli in closed prisons.... It is in the best interest of a newborn or a young baby to be with his/her mother. Forced separation at birth or in the early months is detrimental to the healthy development of a child, and damages the mother/child relationship. Breastfeeding a newborn baby is known to provide a better nutritional and emotional start to life.<sup>55</sup>

The report later states this dilemma quite clearly: "The main conclusion of this report is that prison deleteriously affects young children but separation is cruel and inhumane, therefore a new way forward must be developed to manage mothers who commit offences."<sup>56</sup> The report then goes on to give specific examples of alternatives to sentencing for mothers with young children.

The Council's report corresponds with the recommendations of Article 9 of the CRC, as explained below in this excerpt from *Cambodian Law and the Convention on the Rights of the Child*:

[C]hild development research supports the right of the child to be cared for by a parent, particularly in the first few years of life. Although [Circular No. 15] is intended to protect the interests of children, the separation of children and parents must be taken as a last resort under the Convention [CRC] which guarantees the right of a child to be cared for by his/her parents unless this would not be in his/her best interests. Therefore, consideration should be given to alternatives to prison for mothers with children so that the parental relationship is allowed to continue as long as it does not harm the child.<sup>57</sup>

The paragraph's final emphasis on sentencing options that allow for a continued parent-child relationship reflects strong views that failure to maintain contact between parent and child can be deleterious to the child's development. Strong family ties are particularly important for children in especially difficult circumstances, a category that includes children of incarcerated parents. A 1993 report by the United States National Council on Crime and Delinquency found that "children whose parents are

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indicates that children of a certain age become particularly vulnerable to the consequences of living in prison. Diane Taylor, "Little Prisoners," *The Guardian*, retrieved from <<http://www.guardian.co.uk/prisons/story/0,7369,527011,00.html>>, 25 July 2001

<sup>55</sup> Council of Europe Parliamentary Committee, "Mothers and Babies in Prison," I.4 and II.10.

<sup>56</sup> *Ibid.*, II.3.

<sup>57</sup> Brown et al., *Cambodian Law and the CRC*, p. 79-80.

incarcerated experience trauma, anxiety, guilt and fear. They are at significant risk for poor academic achievement, dropping out of school, gang involvement, early pregnancy, drug abuse and delinquency. And children of inmates are five times more likely than their peers to end up in prison themselves someday.”<sup>58</sup> This gives reason for concern about the emotional and psychological growth of children with imprisoned parents, let alone children who live alongside their imprisoned mothers.

In efforts to address such issues faced by mothers, their dependents and pregnant women in prisons—and to reduce overcrowding and improve prison conditions in general—numerous alternative forms of sentencing have emerged. The majority of these options are exclusively available to non-violent criminals who are not considered threats to society. Many of these programs have been used to address drug-related offenses in particular. Although none of the women included in the researcher’s study are imprisoned for this type of crime, the programs highlighted below still provide examples of ways in which the situation of mothers, children and pregnant women currently living in prisons could be greatly improved.

Each of these alternatives and support programs require significant resources, whether financially or in terms of man power. Successful implementation of such schemes demands the cooperation and assistance of government and/or non-governmental agencies, as well as social services. Additionally, many of the programs rely on community and public support. Adequate monitoring and evaluation are also key aspects of these programs. For these reasons, the feasibility of various alternatives to prison and forms of support for incarcerated mothers must be critically assessed within the Cambodian context. While this falls beyond the scope of this research, it must be pointed out that the following initiatives may or may not be appropriate in Cambodia and that further study would be required in order to determine the applicability of such schemes or the development of new ones. Yet the alternatives presented here provide a starting point for discussion of possible solutions to the issues at hand. Hopefully these models will help stimulate the creation of new approaches that are applicable within the Cambodian context.

## **A. Alternatives to Incarceration**

- *Community Service Orders.* In certain cases, courts substitute community service for prison sentences. Under a community service order, the offender must perform valuable service as compensation for his or her crime. He or she might do basic work for a public institution, such as a hospital or parks department, for an assigned number of hours determined by the court. Community service can replace monetary fines, which convicts are often too poor to pay (thus leading to more prison time, as described in Case Study #22 above). Zimbabwe has enjoyed great success with the use of community service orders<sup>59</sup>; as a result, similar programs are being created in other developing African countries such as Uganda, Kenya, Malawi and Zambia.<sup>60</sup>

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<sup>58</sup> Julee Newberger, “Mothers in Jail,” *Connect for Kids*, Retrieved from IGC Internet WomensNet, 2002 (The Benton Foundation) para. 9.

<sup>59</sup> Penal Reform International, “Community Service as an Alternative to Custody,” pamphlet (London: Penal Reform International, 1999); Vivien Stern, “Alternatives to Prison in Developing Countries: Some Lessons from Africa” (London: SAGE Publications).

<sup>60</sup> *Ibid.*

- *Reconciliation.* Reconciliation brings together the perpetrator and victim of a crime to determine an appropriate and mutually acceptable punishment. The goal of reconciliation is to foster acceptance and understanding as well as to encourage criminals to take responsibility for their actions. In addition, it can compensate victims faster than the traditional justice system. This process has been implemented as an alternative to imprisonment in Russia, the Czech Republic and in the juvenile justice system in Poland.<sup>61</sup>
- *Intensive Supervision.* A restricted version of probation, “intensive supervision” requires convicted criminals to remain at their homes during certain hours. Probation officers or other authorities make “surprise visits” to their homes during these times to ensure that the parameters of the probation are being respected. However, offenders are able to live with their families, hold down jobs, and remain integrated in their communities. In some cases, those under intensive supervision wear electronic ankle bracelets that allow authorities to monitor the offender’s whereabouts at all times. These devices inform authorities if offenders disobey probationary rules and alert them if offenders engage in potentially criminal behavior. This form of probation has been used extensively in the United States.<sup>62</sup>
- *Residential facilities.* In some areas, special facilities allow mothers to serve sentences while living with their young children. The goal of these programs is “to keep the family intact while the woman satisfies her obligation to the criminal justice system.”<sup>63</sup> Such facilities are often specially outfitted to create a child-friendly environment. Women who live in these centers are frequently required to attend parenting classes, educational programs, or drug and alcohol treatment programs where necessary. They may also be required to secure and maintain employment outside the facility. One example of such a program is Summit House, Inc., in North Carolina, USA. In addition, the state of California has established two programs that transfer eligible incarcerated mothers from prisons to community-based sites.<sup>64</sup> The Mothers with Infants Together (MINT) program provides such an option for pregnant women during the two months before and three months after delivery, thus providing them access to pre- and post-natal treatment and classes to enhance their parenting skills.<sup>65</sup>
- *In-prison facilities for mothers and children.* Four prisons in England and Wales include “mother and baby units.” The units are unlike the residential centers in that they are within the prisons themselves. They provide secure facilities for women who have committed serious crimes or been disruptive in

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<sup>61</sup> Penal Reform International, “Reconciliation in Criminal Justice in Russia: What Is It and Why Do We Need It?” Information Sheet (London: Penal Reform International); “Probation Service in the Czech Republic, The,” PRI Information Sheet (Prague: Penal Reform International, 1997); Working Group for Establishing a System of Reconciliation Between Victim and Offender, “Reconciliation in the Juvenile Justice System in Poland: Introduction to Experimental Programme,” PRI Information Sheet (London: Penal Reform International).

<sup>62</sup> Anne-Marie Cusac, “What’s the Alternative?” *MotherJones.com: Debt to Society* (10 July 2001).

<sup>63</sup> Newberger, para. 25.

<sup>64</sup> *Ibid*, para. 25-26..

<sup>65</sup> “When the Bough Breaks,” retrieved from <<http://www.itvs.org/whentheboughbreaks/mothers.html>>, (2002) para. 8.

prison but who authorities have determined are not a threat to themselves or their children. The facilities are intended to provide enhanced support for mothers and children while requiring the women to remain in a more highly-monitored setting than would be found at a residential facility.<sup>66</sup>

## **B. Other Ways to Protect Children and Support Parent-Child Relationships**

Some programs, while not providing actual alternatives to prison, have created innovative means of offering support to incarcerated mothers and children with parents in prison.

- *Legal aid.* Several of the women interviewed demonstrated concern over the handling of their cases by their lawyers or by the courts. They complained about absentee lawyers, poor follow-through, and apparently false promises that legal action would be taken on their behalf. A mother who is unaware of her legal status is not only unable to have input into the handling of her case, she is also at a disadvantage in planning for her child's future. Her exploration of childcare alternatives and decision about what type of care is in the best interests of her child may depend largely on the length of her detainment or sentence. A LICADHO report on human rights issues in Cambodian prisons states that "access to legal counsel still falls short" of national and international standards. The report states: "Not everyone has, as stipulated in the International Covenant on Civil and Political Rights, the right to communicate with counsel of his own choosing in the determination of any charges against him."<sup>67</sup> Without good counsel, a woman may be unable to defend herself in the case of faulty arrest or illegal detainment. Thus she—and possibly her child—could languish in prison unnecessarily. In Nepal, The Centre for Victims of Torture combats these issues through a comprehensive project for female prisoners and their dependent children. A large component of this project is providing legal aid to the women by ensuring that they have good representation and examining cases in which women have been detained without due cause.<sup>68</sup>
- *Maintaining parent-child contact.* Many mothers in prison are unable to maintain contact with their children, or can only do so via phone calls and mail. Programs such as Girl Scouts Behind Bars in the United States bring daughters together with their incarcerated mothers and foster the mother-daughter relationship through activities that require parent and child to work together towards a common goal.<sup>69</sup> In St. Louis, Missouri, USA, the Mothers and Children Together program provides families of inmates with free

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<sup>66</sup> "Baby Units in UK Prisons," British Broadcasting Corporation, <[http://www.news.bbc.co.uk/hi/english/uk/newsid\\_387000/387161.stm](http://www.news.bbc.co.uk/hi/english/uk/newsid_387000/387161.stm)>; for more on European countries' regulations regarding infants and children living in prisons, see Council of Europe Parliamentary Committee Report, "Mothers and Babies in Prison," points 16-24.

<sup>67</sup> LICADHO, *Cambodian Prisons: Some Human Rights Issues* (1998) p. 12.

<sup>68</sup> "Legal Representation for the Women Prisoners in the Eastern Region of Nepal," <[http://www.penalreform.org/english/frset\\_theme\\_en.htm](http://www.penalreform.org/english/frset_theme_en.htm)>, Penal Reform International.

<sup>69</sup> Newberger, para. 31.

transportation to the prison four times a year.<sup>70</sup> Other similar programs have been implemented in numerous states in the U.S.<sup>71</sup>

- *Informing women of their rights.* The Incarcerated Mothers Law Project in New York, USA, promotes fair treatment of convicted mothers by educating them about inmates' rights regarding their children. Moreover, the program works to increase mothers' awareness of their responsibilities to their children during their incarceration.<sup>72</sup>
- *Improving parenting techniques.* Several programs aim to enhance inmates' success as parents by providing training in parenting techniques. This is often one component of a more comprehensive program, such as described in the residential treatment facilities above. Similarly, The Bedford Hills Correctional Facility in New York, USA, which pioneered the concept of a nursery within a prison approximately 100 years ago, runs a program that combines parent-child interaction with parenting and life skills education. The facility includes a play room for children visiting parents, and the program staff encourage frequent visits from inmates' children. They use these visits, as well as standard courses, as a means of educating inmates about their roles and responsibilities as parents. This program has been noted for its success in significantly reducing recidivism rates among participants.<sup>73</sup>

## **X. Facing Forward: Conclusion and Recommendations**

Though this report pertains specifically to children living in prisons with their mothers, the issues raised herein are symptomatic of more far-reaching concerns in Cambodia today: poverty, lack of accountability, poor social infrastructure, and an inadequate judicial system. These problems permeate Cambodian society, fostering a sense of injustice and, at times, acquiescence. Blameless children, including those who live in correctional centers with incarcerated or detained parents, continue to suffer the consequences of Cambodia's troubles. Authorities can no longer permit these children to bear the burden of a system that fails to protect them and their rights. Fortunately, numerous individuals and organizations refuse to accept the status quo and continue to fight for development of a stronger and more just state. These people and agencies are those who must take the lead in implementing measures to uphold the rights of children who accompany their mothers to prison. Although such measures affect only a small segment of society at present, this population could easily expand if neglected, creating yet another social ill and allowing for continued abuse of children's rights.

The following are recommendations generated on the basis of the above research and findings. While most of the recommendations require long-term efforts, it is imperative that prison staff, the Prisons Department, and/or other agencies address the nutrition and health needs of pregnant women, mothers and their children

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<sup>70</sup> "When the Bough Breaks," para. 8.

<sup>71</sup> For more information see Hostetter and Jinnah, section entitled "Programs and Services." See also Eric Zorn, "Prison Visits With Moms Help Kids Most of All," *Chicago Tribune* (Chicago: August 28, 2001).

<sup>72</sup> Newberger, para. 31.

<sup>73</sup> "When the Bough Breaks," para. 8.

immediately. In addition to the general recommendations listed below, short-term recommendations include distribution of food and dietary supplements and appropriate medical supplies for these women and children.

1. Formation of a sub-committee or task force under the existing CNCC, with members representing relevant government ministries and local and international organizations, whose mandate is to address the issues raised herein. Methods of doing so might entail:
  - a) Development of a central facility for all inmates and pre-trial detainees who are pregnant or have children living with them. Requirements for the facility would include provision of nutrition, health and educational services geared towards pregnant women, mothers and children, as well as the creation of an environment that would support children's growth and development. Establishing such a facility would also reduce the potential for abuse of children at the hands of prisoners by separating mothers with children from the rest of the prison population, notably those accused of crimes involving mistreatment of children.
  - b) Creation of alternatives to prison for non-violent female offenders with children. Modeled on successful programs in other countries, such alternatives could include community service, the creation of mother- and child-centered programs within prisons, or the establishment of secure facilities where mothers and children can live together in a child-friendly environment.
  - c) Review of strategies to meet children's needs, with specific reference to nutritional and medical needs, including those of pregnant women and nursing mothers. This might require a revision of the current budget for prisoners' food and/or creation of a partnership with an organization that can assist in providing additional food or health care. Among actions to be taken are issuing of new procedures and/or legislation by the Ministry of Interior that require the Prisons Department to increase food rations for pregnant women and mothers with children in prisons, with the following explicit mandates:
    - i. Breastfeeding women should be issued supplementary food in an amount suitable for them to produce adequate breast milk.
    - ii. Mothers unable to breast feed should receive milk and liquid vitamin supplements regularly for their infants.
    - iii. Children who are no longer breast feeding should be allocated food independently of their mothers.
  - d) Review of current regulations and procedures with focus on analysis of whether existing legislation and policies are appropriate and adequate for meeting the needs of mothers, children and pregnant women in prisons.

2. Strengthening of national legislation and policies pertaining to women and children and pregnant women living in prisons. Means of doing so could include the following:
  - a) Development of more specific regulations regarding the treatment of mothers, children and pregnant women in prisons, including clarification of terms used in legislation;
  - b) Establishment of standards by which:
    - i. authorities and institutions are deemed “competent” to determine what is in the best interests of the child;
    - ii. agencies offering alternative placements for children are deemed “competent” to provide adequate childcare.
  - c) Standardization of care for mothers, children and pregnant women throughout all prisons through the enforcement and monitoring of regulations.
  - d) Overhaul of system of redress:
    - i. to ensure mothers, children, and pregnant women have a means of lodging complaints and voicing grievances without fear of reprisal;
    - ii. to hold prison authorities and the Prisons Department accountable for addressing these concerns in a timely and appropriate fashion.
3. Formation of standard procedures and materials for educating mothers, children (where appropriate) and pregnant women about their rights as pre-trial detainees/inmates, as well as the rights of their children, according to national and international laws.
4. Creation of standards pertaining to agencies and/or people offering alternative placements for children of incarcerated mothers. Such standards would enable government and other authorities to:
  - a) Determine legitimacy and competency of said agencies and individuals and specify requirements for providing adequate childcare;
  - b) Regulate and monitor agencies or individuals who provide alternative childcare to ensure protection of children’s rights;
  - c) Adopt a procedure or regulation that clarifies and guarantees the mother’s right to regain custody of her child following her prison sentence, unless competent authorities judge the mother to be unfit upon completion of her sentence;

- d) Require those offering alternative placements to facilitate ongoing contact between mother and child in the form of weekly (or if not feasible due to distance, monthly) personal visits.

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