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លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF  
HUMAN RIGHTS



# TORTURE & ILL-TREATMENT:

TESTIMONY FROM INSIDE CAMBODIA'S  
POLICE STATIONS AND PRISONS

A report issued in  
June 2014



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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENSE OF HUMAN RIGHTS

# CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

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



## MONITORING & PROTECTION

### **Monitoring of State Violations and Women's and Children's Rights:**

Monitors investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.

### **Medical Assistance & Social Work:**

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

### **Prison Monitoring:**

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

### **Paralegal and Legal Representation:**

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

## PROMOTION & ADVOCACY

### **Supporting unions and grassroots groups and networks:**

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

### **Training and Information:**

Advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.

### **Public Advocacy and Outreach:**

Human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual) or used for other advocacy.

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Male inmates in a Cambodian prison, 2013



Tower and walls of a Cambodian prison, 2010

# Introduction



Cambodia ratified the Optional Protocol to the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in March 2007. Among other things, this protocol requires State Parties to establish an independent National Preventative Mechanism (NPM) within one year of ratification. The primary purpose of NPMs is to monitor and prevent torture and ill-treatment in places of detention.

More than seven years after the ratification, Cambodian authorities have failed to establish such a body. Instead, an inter-ministerial committee made up of various government officials was created. This body is neither independent nor capable of performing the functions of an effective NPM. Moreover, since its establishment in 2009, it has done very little of actual substance.

Regrettably, there is no indication that this body will be replaced by a truly independent and functional NPM in the foreseeable future. Indeed, during a December 2013 conference organized to mark a visit to Cambodia by the UN Subcommittee on the Prevention of Torture (SPT)<sup>1</sup>, an international monitoring body established under OPCAT, Cambodian authorities expressed their continued opposition and, in some cases, their outright hostility to

the creation of an NPM.

In the face of such resistance to international obligations, it is hardly surprising that levels of torture and ill-treatment in Cambodia remain high, that avenues for complaint are limited and that those responsible for abuse are rarely punished.

Since January 2008, LICADHO has received more than 500 detailed allegations of torture or ill-treatment by officials in Cambodian police stations and prisons, including the abuse of female and juvenile detainees and those experiencing mental health problems. LICADHO fears that the actual rate of abuse is much higher.

Additionally, LICADHO regularly documents abuse by police and other security forces at the point of arrest and during transit to police stations. Once in prison, inmates are not only subject to abuse by guards but also by other inmates, often under the direct order or with the acquiescence of prison authorities.

Additionally, LICADHO believes that conditions of detention in some places of detention, including the denial of appropriate medical treatment, may amount to cruel, inhuman or degrading treatment.

<sup>1</sup> High-level consultative workshop on the National Preventative Mechanism in Cambodia (16-17 December 2013), held at the Intercontinental Hotel, Phnom Penh.



LICADHO has been working in Cambodian prisons for more than 20 years to promote and protect the rights of prisoners. Since 1993, LICADHO has been monitoring prison conditions, collecting and analyzing data and advocating on behalf of prisoners. LICADHO also provides legal representation and services, medical treatment and other basic help to inmates and, in some cases, to their families.

LICADHO's primary monitoring mechanism is weekly interviews with pre-trial detainees and convicts, family members of prisoners and released prisoners. Through these interviews, LICADHO is able to monitor prison conditions, identify prisoners with legal and medical needs, and uncover the occurrence of torture.

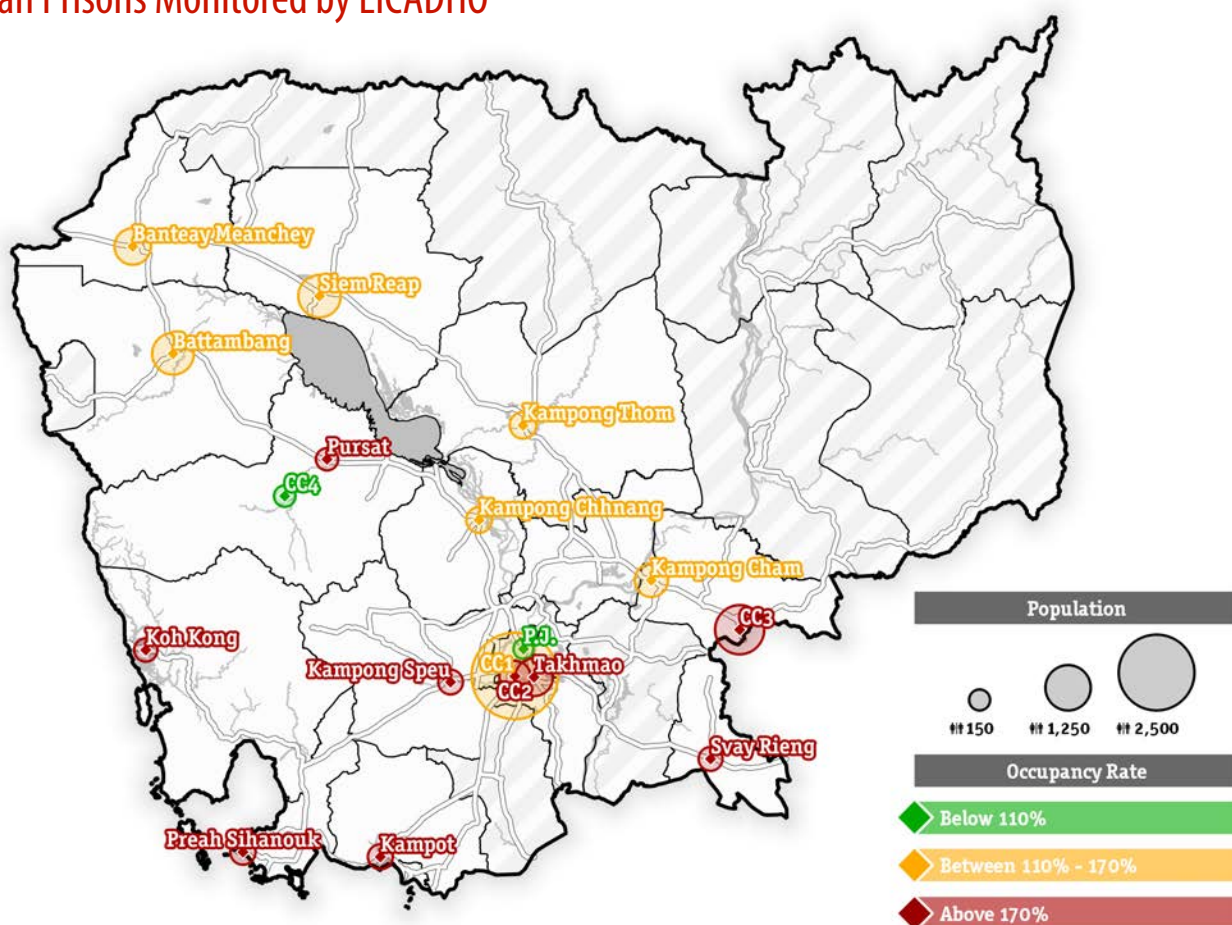
LICADHO regularly monitors 18 of Cambodia's

28 prisons.<sup>2</sup> Authorities do not allow non-governmental organizations (NGOs) to regularly monitor places of police detention so LICADHO relies on interviews with current and former prisoners to learn of the conditions of detention and treatment of detainees in police stations.

Since January 2008, LICADHO's prison researchers have interviewed more than 11,000 detained individuals or those recently released. Of these, more than 500 reported that they were subjected to torture or ill-treatment by officials in prison or police custody. LICADHO's statistics show that there has been very little change in the proportion of those reporting abuse over recent years.

LICADHO does not regularly monitor other places where people are deprived of their liberty such as social affairs and drug rehabilitation centres.<sup>3</sup>

## Cambodian Prisons Monitored by LICADHO



<sup>2</sup>Police Judiciare (PJ), Correctional Centre 1 (CC1), Correctional Centre 2 (CC2), Correctional Centre 3 (CC3), Correctional Centre 4 (CC4), Takhmao, Kampong Som, Kampong Speu, Kampot, Kampong Chhnang, Kampong Cham, Kampong Thom, Pursat, Battambang, Banteay Meanchey, Siem Reap, Svay Rieng and Koh Kong.

<sup>3</sup> For more information on reports of human rights abuses in drug detention centres, see the Human Rights Watch report: "They Treat Us Like Animals: Mistreatment of Drug Users and "Undesirables" in Cambodia's Drug Detention Centers," <http://www.hrw.org/node/120957>.

# The absolute prohibition on torture



Torture is absolutely prohibited under international law and cannot be justified under any circumstances. States must ensure a prompt investigation into allegations of torture, punish perpetrators and enforce the right of victims to compensation. States are also obliged to take effective legislative, administrative, judicial and other measures to prevent acts of torture or ill-treatment in any territory under their jurisdiction.

According to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Cambodia ratified in 1992, torture can be defined as the intentional infliction of severe mental or physical pain or suffering; by or with the consent or acquiescence of the state authorities; for a specific purpose, such as gaining information, punishment or intimidation.

Cruel, inhuman or degrading treatment or punishment<sup>4</sup> is also prohibited under international law.

Whilst there is no definition of cruel, inhuman or degrading treatment under international law, treatment or punishment may be deemed to be cruel, inhuman or degrading if it is disproportionate, unnecessary, arbitrary or unreasonable and if it produces undue pain and/or suffering but does not include all the elements of the definition of torture.

Cambodian law prohibits torture, but does not include a definition of the term itself. This lack of clear terminology is a major hurdle in increasing the understanding of what

constitutes torture and the prevention thereof in the judiciary and among law enforcement officials.

Many of the accounts given to LICADHO of abuse and punishment in police custody and prison clearly amount to torture. Some of the accounts are of abuse by state officials, others are of abuse by other inmates either under the direct order or with the awareness of officials who do not act to prevent the abuse. Authorities regularly fail to investigate reports of abuse, punish offenders or ensure victims receive compensation.

“They beat me all over my body including my head, face and chest... they used electric shocks on me. My head was beaten with fists and batons...my face was trampled against the ground. They kicked me in my ribs with their boots. I was in so much pain. I felt that I almost died.”

Male who reported abuse at a provincial police station, 2013

## Physical abuse and threats



LICADHO's records show that most of those who reported brutality by police or prison officials since 2008 described being beaten, kicked, slapped or punched, often until they were bleeding and unconscious. Many were beaten all over the body including on the head and neck. Some had their heads smashed against walls.

Objects used during beatings included guns, sticks, iron rods, stun batons, walkie-talkies, handcuffs, chains, ropes, electric cables, bricks and belts. Some detainees had their faces covered with plastic bags or other items during the beatings. Many of those interviewed said that they were beaten in order to force them to confess or pay money to their abusers. Those who cannot read Khmer were forced to thumbprint confessions they did not understand.

LICADHO also received reports of inmates being dragged on the ground by their hair; being forced to stand on one leg for prolonged periods; of guards standing and stamping on bodies and faces; objects being forced into mouths; cigarette burns; forced prolonged kneeling, including in direct sunlight; choking; and the use of electro-shock weaponry for torture.

Many reported being threatened, or having their family threatened, by police or prison officials, again usually to extract money or a confession. Some were threatened with death or sexual abuse, others had guns pointed at their heads or were threatened with electric shocks. Threats of nail extraction were also reported. Many said they were denied food and water in police custody.

<sup>4</sup>For the purpose of this document, cruel, inhuman or degrading treatment or punishment is sometimes referred to as ill-treatment or abuse.

LICADHO has analysed the details of testimony received between January 2008 and June 2014, and found that there has also been no palpable change in the type, frequency and severity of abuse reported over that time period.

In the first four months of 2014 alone, LICADHO received 49 allegations of torture or ill-treatment during arrest or in police custody. In 2014, detainees were slapped, kicked in the ribs and chest, and beaten on the head and torso with sticks and electro-shock batons. Police officers stamped on detainees' hands and, in one case, covered a man's head with a plastic bag whilst he was lying on the floor, stamped on his body and kicked him repeatedly in the ribs.

One of the primary purposes of abuse continued to be the forced extraction of confessions or money.

In the first few months of 2014, as in previous years, some of the complaints of abuse came from female detainees. One was kicked in the ribs until unconscious, another was repeatedly slapped, kicked and beaten with a rubber baton until she lost consciousness, and a third who was two months pregnant at the time was threatened with death.

## Beaten unconscious

Roth (not his real name) was arrested in January 2013. He was taken to a local police station where he was beaten by six police officers until he lost consciousness. Handcuffed behind his back, they kicked and punched him in the stomach and broke his teeth. Later they stamped on his chest and back as he lay on the floor. When he tried to sleep they slapped him on the face. He eventually confessed to the alleged crime.



Entrance to a police station in Phnom Penh, 2014

"The female police officer checked my body and asked where I had bought the drugs. She said that if I did not answer she would beat me to death...I was so frightened. The male police officer stamped on the handcuffs behind my back, causing me to fall backwards...I was afraid I would have a miscarriage."

Female who reported abuse in a Phnom Penh police station, 2014



# Forced confessions



Since 2008, 90 percent of all abuse reported to LICADHO was alleged to have taken place in police custody, often in the form of extracting confessions.

The treatment of detainees in Cambodia's police stations is of particular concern because the law does not permit a suspect to speak to a lawyer or family member during the first 24 hours of custody and detainees are rarely informed of their rights upon arrest. According to Article 98 of Cambodia's Code of Criminal Procedure, only "after a period of 24 hours from the beginning of the police custody has expired, the detainee may request to speak with a lawyer or any other person..." Furthermore, the provision regarding police custody of a minor does not specify a timeframe for notifying a parent or guardian after arrest.

Under this provision suspects can be held incommunicado<sup>5</sup> for at least 24 hours and are usually questioned in the absence of a legal representative without being informed of their right to counsel or their right to not answer police questions. It is during this initial period that confessions are usually extracted, often under duress.

Most police units lack the necessary training, resources and professional incentive to conduct impartial fact-based investigations and their focus is therefore primarily on extracting a speedy confession, often by unlawful means. Such confessions are rarely called into question during court proceedings and are often used as the sole basis for convictions.

Widespread corruption within the police service perpetuates the cycle of abuse. The UN Committee against Torture in its concluding observations to Cambodia's second periodic report in 2010 noted that the functioning of the police was unduly influenced by political interference and corruption.

"...the Committee expresses its concern at reports that police officers are promoted for convictions and that police stations are given special incentives for convictions, amounting to a rewards system, as well as reports of police officers benefitting financially from informal arrangements or extrajudicial settlements."<sup>6</sup>

LICADHO does not believe there have been any improvements in this regard since 2010. Affected most adversely from such arrangements are of course those arrested. Police are well aware that the most vulnerable detainees, particularly the young or those with mental health problems, are often also those most likely to confess under pressure to a crime or crimes they did not commit. With financial inducements available for convictions and a suspect who is already confessing under duress, police officers may be tempted to force them to confess other unsolved crimes.

Because the courts readily accept confessions as the primary and sometimes the only basis for conviction, once a confession has been obtained police officers have little incentive to look for supporting evidence. If evidence does exist which contradicts the confession, it is often ignored.

The occurrence of torture and ill-treatment in police custody is exacerbated by other factors. Conditions of detention in police holding cells are poor and detainees are regularly denied food and adequate water. Access to medical treatment is rare and there are generally no attempts to separate adult and juvenile detainees.

One of the reasons this abusive environment endures is because the government does not allow NGOs to monitor places of police detention and there are no other independent bodies which are permitted or adequately equipped to regularly inspect and monitor treatment and conditions.

## Testimony of forced confessions

"When the policeman questioned me he used electric shocks until I fell unconscious. He also beat me on the neck with a wrench in order to force me to accept that I had stolen a motorcycle. After I was beaten many times I confessed, even though I did not do it." Male who reported abuse in a provincial police station, 2012.

"At the police station the police officers punched and kicked me violently. They also beat me with a wooden stick and a walkie talkie. They shocked me with a stun baton to force me to confess to many different robberies. When I continued to refuse they continued to beat and torture me for many hours. They only stopped when I eventually told them, 'You do not need to force me. You can write whatever you want in the confession letter. I will give you my thumbprint.' I gave my thumbprint to the confession which had already been written." Male who reported abuse in a provincial police station, 2013.

"...they violently punched, slapped and kicked me... and beat me with a plastic stick...my body was so weak and I lost consciousness many times. They tortured me for 4 or 5 days...during the day and night. Those who tortured me came from different jurisdictions where robberies had happened. I could not stand the torture. I confessed so that they would stop torturing me." Male who reported abuse in a Phnom Penh police station, 2013.

<sup>5</sup> According to Amnesty International, incommunicado detention facilitates torture and in itself amounts to cruel, inhuman or degrading treatment or punishment or even torture. See *Torture in 2014: 30 Years of Broken Promises*, p.12 <http://www.amnesty.org/en/library/asset/ACT40/004/2014/en/96fde57f-61d9-487b-90dc-7da21c6c505d/act400042014en.pdf>.

<sup>6</sup> See <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.KHM.CO.2.pdf>.



Military police arrest a protester during a garment workers' strike in Phnom Penh, November 12, 2014

## Tortured to confess

Samoeun (not his real name) was arrested in February 2013. In police custody he was slapped in the face repeatedly and then beaten by five police officers in order to extract a confession. He was forced to urinate in front of police, kicked and slapped all over his body until he fell to the floor where the beating continued. Later police officers burnt one hand with a cigarette as they grabbed the other, forcing him to thumbprint a confession. Samoeun does not read Khmer.

In total, Samoeun spent three days in police custody. During this time he was given no food or water by authorities and relied solely on friends to bring him basic supplies. The money he had on him at the time of arrest was stolen by police officers.

"...the policeman read out the confession, but they were not my words. I refused to thumbprint the paper. The policeman suddenly beat me with a cane on my shoulders and back... even though I told him I was pregnant..."

Female who reported abuse in a Phnom Penh police station, 2013



# Beaten during arrest and transit



Perhaps the most common, visible, yet least reported form of violence towards detainees is that which takes place at the point of arrest. This might be in a suspect's home, their place of work or on the streets. Witnesses are often present at the scene of abuse but officials are rarely called to account.

Based on testimony received by LICADHO, such abuse is often arbitrary, unnecessary and disproportionate to the alleged crime or any potential threat posed to officials, but may be falsely justified in the name of preserving law and order. Little or no attention is paid to the need to minimize injuries and those affected often have lengthy waits before receiving any form of medical assistance.

In one of the most high profile cases of 2014, 23 union leaders and workers were violently arrested during deadly clashes in early January 2014.<sup>7</sup> Many of them were severely beaten during arrest and quickly charged then held incommunicado for several days and denied access to any independent medical care. Some of them required medical treatment as a result of injuries sustained during arrest and because of authorities' continued negligence towards their health needs whilst in detention.

During their trials which ran over five non-consecutive days, almost all attempts by the defendants' lawyers to introduce evidence of violence against the 23 at the time of arrest were quickly suppressed by the judges and prosecutors. To date, no action has been taken to punish those responsible for the violence of January 2 and 3 which

left at least four people dead.<sup>8</sup> All 23, plus two others who had been arrested during the violent suppression of a demonstration in November 2013 were eventually convicted but given suspended sentences.<sup>9</sup>

"...at 6:30 am I went outside to go to the toilet. When I came back there were 30-40 police surrounding my house. Eight of them arrested me, beat me and subjected me to electric shocks until I fell unconscious. When I woke up in the police car they shocked me again until I was once more unconscious."

Male who reported abuse by provincial police officers, 2010

Abuse during transit to police custody is also common, with officials sometimes beginning the interrogation process at this stage to take advantage of the suspect's state of initial shock and vulnerability.



Soldiers beat a protester with iron rods during an arrest, near Yak Jin Factory, Phnom Penh, January 2, 2014

<sup>7</sup> For more information see the joint statement "Cambodia: Harassment, Arrest, and Detention of Human Rights Defenders Continue", January 22, 2014: <http://www.licadho-cambodia.org/pressrelease.php?perm=339>.

<sup>8</sup> In addition to the four confirmed deaths, 15-year-old Khem Sophath has been missing since January 3. He was last seen lying on the ground on Veng Sreng road with an apparent bullet wound to his chest. A sixth individual who was beaten by military police on January 3 died more than four months later. Some reports suggest that his death was related to injuries sustained during the violence: <http://www.cambodiadaily.com/news/worker-beaten-on-veng-sreng-in-january-dies-of-head-injuries-58976/>.

<sup>9</sup> For more information see LICADHO's press release "Phnom Penh Court orders Conviction with Suspended Sentences for 25 Workers and Activists", May 30, 2014: <http://www.licadho-cambodia.org/pressrelease.php?perm=344>.



# Unreported abuse



The accounts of police brutality recorded by LICADHO are illustrative of a broader pattern of unreported abuse. LICADHO cannot interview detainees in police custody and most interviews are conducted in the coercive prison environment in which many detainees are too fearful to complain about ill-treatment at the hands of authorities. Furthermore, LICADHO's researchers are only able to meet with a fraction of inmates in 18 of Cambodia's 28 prisons.

From LICADHO's interviews, it is also clear that police brutality goes unreported because it is considered normal behavior. Many of those who have received or been witness

NGOs about life in prison.

There is certainly greater and more detailed external scrutiny of prisons than there is of police stations, including by LICADHO, the International Committee of the Red Cross (ICRC) and the UN Office of the High Commissioner on Human Rights (UNOHCHR) Cambodia. This scrutiny, combined with improved training of prison guards, has undoubtedly led to reduced levels of violence by prison officials. However, LICADHO's research also shows that the culture of abuse in prisons is far more complex than that in police custody.



Detention of a minor by police forces following a garment workers' strike, Phnom Penh, November 12, 2013

to such treatment have reported that they or others were 'only' beaten or 'just' kicked and punched a few times. Some emphasized that, despite enduring such beatings, they did not consider that they had been badly treated.

Whilst reports of torture and ill-treatment by prison authorities are less common it should be noted that, in general, inmates are less likely to complain of abuse when it occurred in the place in which they are still held and when they are still under the control of their abusers. LICADHO often receives reports of abuse only after prisoners have been released.

In this context, LICADHO also notes that its prison visits are becoming increasingly restricted. LICADHO's researchers cannot visit prisons without prior notice and are sometimes unable to conduct in-prison interviews in full confidentiality. In such circumstances, LICADHO does not ask questions which could endanger inmates or compromise their conditions of detention.

Some released inmates told LICADHO that they were threatened before prison visits by LICADHO and other organizations, others report having been questioned by authorities or cell leaders after such visits. LICADHO has also received reports of prisoners being offered money upon release with the proviso that they would not talk to

"I was handcuffed and chained in the car...a group of five police officers questioned me...they tried to threaten and persuade me to confess to many different crimes. When I refused they stopped the car and kicked me out causing severe pain in my neck."

Male who reported abuse by provincial police officers, 2009

In contrast to the stark, short-lived and sometimes random brutality meted out in police custody, abuse in prison is more likely to be sustained, targeted and premeditated.

Similarly, whilst police abuse is usually driven by financial motivation or the pressure to obtain convictions, in prison, individuals are more likely to be mistreated due to their individual circumstances, or their actions and status within the prison.

Finally, whilst the perpetrators of abuse in police stations are usually acting of their own volition, in prison, beatings and other punishments are often carried out by other inmates, often under the order of prison officials. This task usually falls to designated cell leaders, individuals who are chosen by prison authorities to maintain order and discipline within each cell.

## Prisoner on prisoner abuse



LICADHO has spoken to many inmates, including juveniles, who reported that they were abused by fellow inmates, sometimes at the instigation, or with the acquiescence or consent of, prison authorities. Such beatings, whilst not unheard of, are less frequently reported amongst female prisoners.

Some cell leaders responsible for carrying out or ordering the beatings, have themselves, following their release from prison, admitted their role as abusers to LICADHO.

Inmates and former inmates have reported many reasons for prisoner-on-prisoner abuse. Initiation beatings for newly arrived inmates are common and often target young, poor or weak prisoners.

Violence is also a common form of punishment for those who break cell rules such as returning to the cell late after recreation time. Inmates may also be punished for transgressions of unwritten rules. For example, one former prisoner described how his cell-mate was assaulted by a cell leader for refusing to give up his sleeping space to make way for a prisoner with more money. Another was beaten because the cell leader determined he was talking too loudly at night time.

Some inmates who were beaten by fellow inmates told LICADHO that they did not consider this serious or unusual

treatment. The perceived normality of initiation beatings and other prisoner-on-prisoner violence appears to mirror perceptions of police brutality as something to be expected and tolerated, certainly not something to complain about or report.

“They hit, they slapped and kicked, like with the adult prisoners... normally the guards didn’t hit the prisoners themselves, they got the other prisoners to hit.”

Juvenile male who reported abuse in a provincial prison between 2012 and 2013

A culture of fear and suspicion also pervades life in Cambodian prison cells, with cell leaders and other, sometimes unidentified, inmates reportedly acting as the eyes and ears of the guards. As with many other aspects of prison culture, those with money are less likely to be subject to abuse than others.

“Rich prisoners would never be hit...but for some poor prisoners, when they committed mistakes they would be hit... even if we were not wrong, they still hit us. When we were in the cell, they ordered us to do things for them - ‘go get the water’, ‘do this’ and ‘do that’...if we didn’t do it, they would hit us...I was kicked on my face because I was poor”.

Juvenile male who reported abuse in a provincial prison between 2012 and 2013

# Punished for complaining



Inmates who attempt to lodge complaints about their treatment, their conditions of detention or the behaviour of other prisoners are also at risk. For instance, in 2011 LICADHO interviewed a prisoner who had been beaten on five separate occasions by prison officials after he had complained about the quality of the drinking water in prison. Former prisoners regularly tell LICADHO that, whilst in prison, they did not dare complain. In this climate it is hardly surprising that ill-treatment in prisons often goes unreported.

Those who complain about abuse are at best ignored and, at worst, subjected to further ill-treatment. Those cell leaders who refuse to carry out orders may themselves be beaten or otherwise punished.

On another occasion the same inmate complained about the unfair allocation of prison food and found himself beaten by prisoners who, according to him, enjoyed a close relationship with prison guards. When he reported these beatings, no action was taken.



Guard and inmates in a Cambodian prison, 2009

## Cell leaders

LICADHO spoke to one young prisoner, Lida (not his real name) who, after six months in prison, was appointed juvenile cell leader by prison guards. Lida was cell leader for two years before being promoted to the cell management committee, a prisoner-led body which had the authority to manage and discipline cell leaders. His positions came with significant benefits, including more out-of-cell time and additional food, but there was also a darker side.

With the responsibility to report cell disturbances, supervise prison labor and monitor sick prisoners, came the task of beating new inmates or those who returned late to their cells. Cell leaders who erred and those who failed to comply with orders would themselves be beaten by the cell management committee or by the guards themselves.

“When I reported gambling to prison staff, I was beaten by other prisoners. When I complained about this to prison staff, they didn’t care or take action because the gamblers were rich prisoners. Those who did the beatings were never punished. The prison guards threatened to send me to CC1 prison if I made any more complaints. No-one else dared to report problems. I know of five others who were sent to CC3 prison after they filed complaints.”

Male who reported abuse in a provincial prison between 2010 and 2013



# Prison officials abusive and complicit



Whilst the majority of prisoner abuse reported to LICADHO originates at the hands of prisoners, either acting on their own accord or under the direction of authorities, LICADHO also receives testimony of direct physical and verbal abuse by prison officials. Since 2008, LICADHO has recorded physical abuse by prison officials in 13 of the 18 prisons monitored.

For example in April 2013, a prison guard beat a prisoner following an altercation over some mangoes the prisoner had taken from a farm near a rubber plantation where he and other prisoners had been working. According to reports, the prison guard punched the inmate causing him to fall on to a rock. He reportedly suffered cuts to his face as a result and required 15 stitches.

In a rare example of an official receiving any form of punishment for violence towards detainees, the guard concerned reportedly received an administrative fine and was removed from duties which involved direct contact with inmates. However, even though he was questioned by the deputy prosecutor, no other disciplinary measures were known to have been taken against him.

LICADHO is not aware of prison officials being disciplined in other recent cases of reported abuse, either because inmates are unwilling or unable to make official complaints or because complaints filed are not taken seriously or properly investigated.

Those who have attempted to escape from prison, or who have escaped and been recaptured, are regularly subjected to lengthy periods of cell-confinement, severe beatings and other harsh punishments. LICADHO recorded four such cases in 2012 alone. These individuals are unlikely to have the opportunity to make timely complaints about their abuse as they are generally isolated from the outside world for weeks or months. LICADHO's researchers are often denied the opportunity to meet with them.

Female inmates have also been subject to abuse by prison officials. In 2011, a four month pregnant prisoner reported to LICADHO that a prison guard had beaten her on her lower back with a wooden stick and told her he was

beating her "for fun". Her complaint was eventually taken to the prison director who agreed only to change the duties of the man responsible so he would no longer be in direct contact with prisoners. To LICADHO's knowledge, there was no proper investigation into the incident nor was the guard subject to any further disciplinary procedures.

When a state deprives anyone of their liberty, it also assumes a duty of care for that person and must therefore maintain their safety and safeguard their welfare. Institutions have a duty to protect all prisoners equally.

Regardless of whether the perpetrator of abuse is a police or prison official, fellow prisoner or other individual, when abuse occurs in the custody of the state, it is the ultimate responsibility of the state to protect, investigate and punish those responsible.

...a four month pregnant prisoner reported to LICADHO that a prison guard had beaten her on her lower back with a wooden stick and told her he was beating her "for fun".

Testimony received by LICADHO suggests that even when state officials are not the primary perpetrators of abuse in Cambodian prisons, they have often ordered or been acquiescent in the abuse. If they did not issue direct orders, they are generally aware that the abuse is taking place and fail to take action to prevent it. They are therefore complicit.

If state officials do not even know that abuse is taking place in their custody then they are clearly failing in one of their most basic duties of care to protect those within their custody.

# Violence against children ignored



Perhaps the most shocking example of official inaction towards abuse in prison relates to the abuse of young children who live in prison with their mothers. At the end of April 2014, there were 39 such children living with their mothers in eight of the prisons monitored by LICADHO. Most of them were under the age of three.<sup>10</sup>

LICADHO has long argued that the Cambodian prison system is simply incapable of providing for most of a child's basic needs, including education, family life, proper nutrition and medical care. Yet beyond this lies an even darker reality – the Cambodian prison system appears equally incapable of protecting children from harmful verbal and physical abuse.

Recently LICADHO has become aware of cases of young children who have been beaten in prison. Authorities did not intervene and have since taken no action to protect those children against further abuse.

Decisions to allow children under the age of three to stay with their mothers in prison should be based on full individual assessments and must have, as their absolute guiding principle, the best interests of the child.<sup>11</sup> However, these types of assessments never take place in Cambodia. Children can be sent to prison simply because they are present at the time of arrest and suitable alternatives are rarely considered. Often the mother decides if her child will live with her and authorities rarely participate in or question this decision.

The prison procedures on pregnant women and children in Cambodian prisons state that, when a child is accommodated with the mother in prison, "the mother is responsible for the care and safety of such children."<sup>12</sup> These procedures also state that when a prisoner is "unable to adequately care for her children in prison for any given reason, the Prison Chief...must arrange with the appropriate Ministry or family member, for the children's care outside prison."<sup>13</sup>

Whilst the mother should indeed take full responsibility for her child in prison, authorities cannot abrogate all responsibility. As in all cases of child abuse in or outside prison, competent authorities must intervene and immediate measures must be put in place to prevent further abuse. Prison staff should also be trained, not only in child development and health care needs, but also in how to recognize signs of abuse and intervene appropriately.

LICADHO believes that, in the absence of a full and ongoing assessment of what is best for the child and, in particular, an assessment of whether the mother can properly care for and protect her child in the Cambodian prison system, authorities must also bear some responsibility for the overall protection of these children, not only in cases of suspected abuse.

In this, prison authorities need the full commitment and support of the Ministry of Social Affairs, Veterans & Youth Rehabilitation (MoSAVY), the agency which should be responsible for leading the assessment of appropriate custodianship and the safe removal and relocation of a child from prison. Unfortunately, to date, this commitment and support has been woefully lacking.



Child living with his mother in a prison in Cambodia, 2011

<sup>10</sup> Six of them were over the age of three, in contravention of the 2011 Prison Law which reduced the age limit of children allowed to stay in prison from the age of six to the age of three. The law also stipulates that children over the age of three should be the burden of MoSAVY if there is no custodian to take care of them outside of prison.

<sup>11</sup> The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rules 49 and 52 and the UN Convention on the Rights of the Child, Article 3 (1).

<sup>12</sup> Prison Procedure No. 34, para. 4.6.

<sup>13</sup> As above, para. 4.10.

# Torture and mental health



Of particular concern are reports that people experiencing mental health problems are at risk of being targeted for abuse in prison or police custody.

Between January 2011 and December 2013, LICADHO conducted a joint project with its partner organization, the Transcultural Psychosocial Organization (TPO) Cambodia, the leading Cambodian NGO in the field of mental health and psychosocial interventions.

The objective of the project was to improve the conditions of inmates in 19 of Cambodia's prisons, particularly survivors of torture, and ensure their rights are respected. The project focused on prison conditions, legal and health services, strengthening of consultation and information-sharing between civil society and government, and prison-related advocacy campaigns.

During the project, TPO provided training for LICADHO prison researchers and medical staff on how to identify prisoners with mental health needs. The training covered psychological conditions, symptoms, and manifestations related to torture. LICADHO staff regularly refer cases to TPO for comprehensive mental health assessments and treatment, including in cases of alleged torture.

TPO currently provides mental health services in four target prisons and provides crisis interventions in other locations. It is notable that during the joint project TPO documented a number of cases of abuse from their relatively small target group in these four prisons.

These reports are consistent with the types of allegations received by LICADHO and include detainees being slapped, kicked and shoved, beaten with objects including rifles, burned with boiling water and cigarettes, being suffocated with plastic bags or blindfolded, having objects inserted into their anus, being threatened with death, rape, strangulation and other physical violence and being forced to sit, stand or kneel in the same position for several hours. Some TPO clients also complained of sleep deprivation, denial of medication and their overall conditions of detention.

As with LICADHO's findings, the majority of abuse detected by TPO took place in police custody. In prisons, abuse took place at the hands of other inmates as well as prison guards.

TPO Cambodia continues to support both male and female inmates in the four target prisons. As a provider of mental health and psychosocial support and treatment, the organization is uniquely placed to identify those experiencing mental health problems who have been subjected to torture or ill-treatment in detention. TPO's counselors are then able to assess and provide treatment to those psychologically affected by such abuse.

"One prisoner who was mentally ill was moved from one cell to another where he was set upon by fellow prisoners. He was beaten until bleeding and unconscious..."

Male who reported abuse between 2010 and 2012

## The psychological impact of torture

In addition to the impact on physical health, TPO has also identified the long term effects of abuse on the mental well-being of their clients.

TPO's clients in prison who have suffered or continue to suffer torture or ill-treatment have reported symptoms which include headaches, anxiety, depression, disturbed sleeping patterns, hearing voices, constant fear, being quick-tempered and angry, and having startled reactions.

Some TPO clients who experienced abuse have attempted suicide. Others have expressed suicidal thoughts.

The psychological impact of torture and ill-treatment is not only of concern in cases of those who previously experienced mental health problems. Abuse may signal the beginning of such problems for some. The poor conditions of detention in Cambodia, combined with lack of contact with the outside world, may exacerbate pre-existing conditions in others.

The International Rehabilitation Council for Torture Victims (IRCT) notes that 'The consequences of torture reach far beyond immediate pain... Torture victims often feel guilt and shame, triggered by the humiliation they have endured. Many feel that they have betrayed themselves or their friends and family. All such symptoms are normal human responses to abnormal and inhuman treatment.'<sup>14</sup>

In Cambodia it is rare for survivors of torture to be provided with the long-term material, medical, psychological and social support they may need to rebuild their lives. There are few specialized services for torture survivors and, with the exception of TPO's services, mental health care in prisons is virtually non-existent. Even for those who can access such services outside of prison, the quality of public mental health care remains poor, particularly in rural areas.



<sup>14</sup> <http://www.irct.org/what-is-torture/effects-of-torture.aspx>.



Inmates who are experiencing mental health problems may find it particularly difficult to speak out about abuse for a number of reasons, including psychological barriers and fear of reprisals. However, the psychological assessments carried out by TPO and the personal testimonies of some detainees leave no doubt that these individuals are at particular risk of abuse.

“I was tortured for no reason. When I was accused, I was violently beaten until I was unconscious. When I was given oxygen I became conscious for a while. When I tried to explain to them that I did not do anything wrong, I was interrogated and beaten unconscious once again.”

Male who reported abuse  
between 2010 and 2012



Door to cell for male inmates, Cambodia, 2010

# Unregulated discipline



Whilst there is clearly a need for a disciplinary system in all places of detention, international standards stipulate that all disciplinary measures should be properly regulated to ensure that accusations of wrongdoing are fairly dealt with and that punishments are proportionate to the alleged incident and are humanely administered.

In line with these standards, Cambodian prison procedures define what constitutes a disciplinary offence<sup>15</sup> and set out the procedures to be followed when a disciplinary report has been filed and how the subsequent investigation should proceed, including the possibility for a prisoner to appeal against the disciplinary decision.<sup>16</sup>

However, in practice these procedures are seldom followed and inmates are often given no chance to defend themselves against their accusers. LICADHO has also documented the use of punitive measures which go far beyond those considered acceptable under international standards and Cambodian law itself.

Perhaps most importantly in the Cambodia context, the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) state that only prison staff should exercise disciplinary powers over prisoners.<sup>17</sup> This rule is designed to specifically discourage the type of disciplined cell leadership structure that exists in most Cambodian prisons.

As has been noted, prisoner cell leaders and members of the cell management committees, often at the behest of prison authorities, routinely discipline those inmates who infringe formal or unwritten rules. Beatings and other punishments are often unjustified, instantaneous and brutal and those who carry out the punishments do so with impunity.

The use of prisoners to mete out punishments, or tolerance thereof, enables unfettered abuse. Yet many other forms of punishment reported to LICADHO, carried out by guards as well as cell leaders, are equally troubling and lacking in oversight.

Despite the prohibition of such forms of punishment in Cambodian regulations, former prisoners have reported having their food and water rations restricted as punishment, an “unjustifiable punitive measure that

adversely affects the health of prisoners”<sup>18</sup> and have been punished more than once for the same alleged disciplinary breach. LICADHO has also received reports of prisoners being collectively punished for the alleged transgression of one cell member.

Beatings and other punishments are often unjustified, instantaneous and brutal and those who carry out the punishments do so with impunity.

Following their imprisonment in May 2012, LICADHO conducted detailed post-release interviews with 13 female Boeung Kak community representatives. Many of them noted that guards would often collectively punish all occupants of a single cell if not enough women from that cell had shown up to work in the sewing programme on a given day. Such punishment would usually consist of reducing recreation time for the entire cell.

Whilst the prison procedures allow for a detainee to have his or her privileges withdrawn for a period not exceeding two weeks for each minor offence and not exceeding a total of 30 days,<sup>19</sup> LICADHO has received testimony of inmates being denied contact with their families and other visitors for months at a time.

Similarly, prison procedures allow for prisoners to be confined to their cells for up to three days as punishment, but only if they still have access to open air for one hour a day.<sup>20</sup> However, LICADHO has received reports of prisoners being confined to their cells as punishment for weeks or months with no out-of-cell time whatsoever. Some prisons are reported to have specific punishment cells where inmates are isolated from other prisoners for prolonged periods.

Whilst male inmates are routinely beaten by guards and subject to prisoner-on-prisoner violence, physical abuse towards female inmates is less commonly reported. However, both male and female inmates have

<sup>15</sup> Prison Procedure 9, para. 3.1.

<sup>16</sup> As above, para. 4.10.

<sup>17</sup> SMR, Rule 28 (1) stipulates that “No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.” Cambodian prison procedure number 9, which regulates prisoner discipline also stipulates that prisoners should not be used to discipline other prisoners para. 3.2 (f).

<sup>18</sup> Penal Reform International “Making Standards Work: An International Handbook on Good Prison Practice”, 2001.

<sup>19</sup> Prison Procedure 9, para. 47 (c).

<sup>20</sup> As above, para. 4.7 (d).



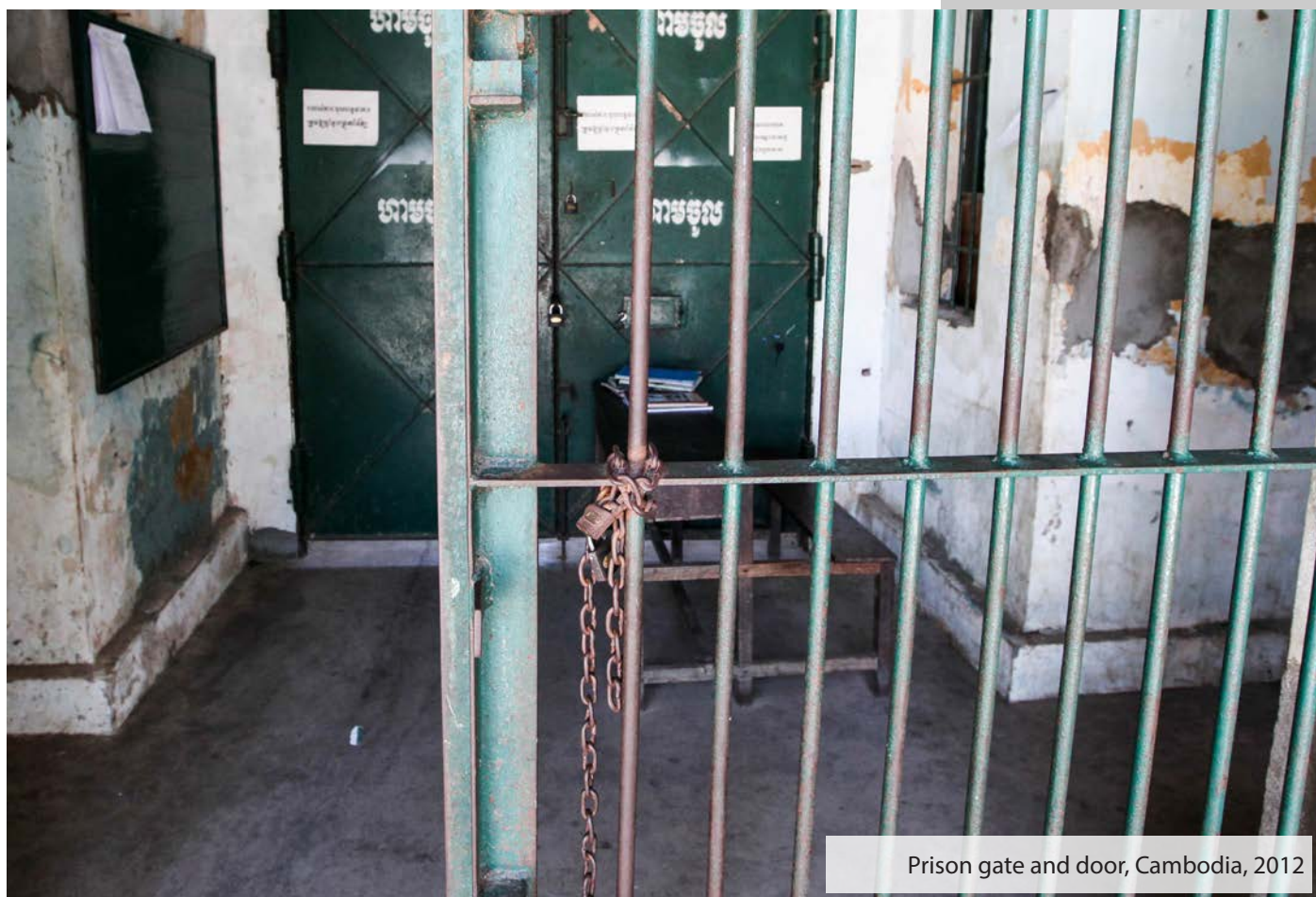
reported the regular use of less overt forms of punishment that violate prisoner's rights, including reducing rations of food and water, the denial of family visits, limiting out-of-cell time and the use collective cell punishments for individual infringements.

One former female cell leader told LICADHO that an inmate who was found in possession of a mobile phone or who was aggressive towards another inmate would typically be punished by one to three months' confinement in her cell. Others would be punished by having their family visits stopped. Whatever the alleged transgression, the former cell leader noted those with money would usually be able to buy their way out of any punishment.

In the majority of cases, punishments can be exchanged for cash payments. Inmates may pay to regain temporarily suspended privileges or to avoid physical abuse. There is no doubt that such a system actively encourages prison guards and cell leaders to abuse the unregulated disciplinary system for their own financial benefit.

## The intentional infliction of pain

Some methods of punishment reported to LICADHO which were directly ordered by prison authorities clearly constitute torture. One former prisoner described how he witnessed guards ordering inmates to drag themselves, face down along the floor, along the prison courtyard three times back and forth. Others witnessed inmates being forced to stand under the sun in intense heat for hours at a time or being made to hold large water cooler containers on their shoulders for long periods whilst kneeling on the floor. They would be required to do this over and over again until the guards allowed them to stop. If they dropped the container they would be beaten.



Prison gate and door, Cambodia, 2012



# Conditions of detention



Conditions of detention in most Cambodian prisons may amount to cruel, inhuman and degrading treatment, largely due to severe overcrowding, inadequate sanitation and food, poor sleeping arrangements and lack of appropriate medical services. Many prisoners are denied regular and adequate recreation time. Contact with the outside world, including family visits, is often limited and, like access to most other basic rights, contingent on bribes.

Many former inmates reported having less than 30 minutes daily out-of-cell time and some reported being allowed out of their cell only once every two weeks. During a visit to Oddur Meanchey's temporary prison facility in August 2013, LICADHO noted that the majority of inmates were locked in their cells for 24 hours a day with less than 0.5m<sup>2</sup> space per person.

According to LICADHO's calculations, overall the 18 prisons monitored by the organization are currently operating at approximately 152% capacity, with some prisons operating at well over 200% capacity. Levels of overcrowding are not uniform across prisons or

within prisons, with some cells or buildings much more overcrowded than others. Cell living arrangements are often determined by the social and financial status of individual inmates.

Levels of prison overcrowding are exacerbated by the continued overreliance on pre-trial detention and lengthy prison sentences for minor offences. Whilst the actual numbers of pre-trial detainees has, in the past year, begun to decrease in line with the overall decrease in prisoner numbers, the pre-trial percentage of the total prison population remains high and has showed no sign of dropping.

According to GDP statistics, in December 2012, the total adult prisoner pre-trial population, including those who were awaiting appeal or final judgment,<sup>21</sup> stood at 61% of the overall prison population. By March 2014, there had been no change in the percentage of pre-trial detainees. Notably the pre-trial incarceration rate for women is higher than for men, with 68% of the current female prisoner population still awaiting trial, appeal or final verdict.

## Population & Occupancy Rate of Prisons Monitored by LICADHO (March, 2014)

Prison	Population	Occupancy
Police Judiciare (PJ)	147	73%
Correctional Center 1	2,951	144%
Correctional Center 2	619	206%
Correctional Center 3	1,380	170%
Correctional Center 4	214	102%
Takhmao	901	287%
Preah Sihanouk	375	250%
Kampong Speu	352	196%
Kampong Cham	363	227%
Kampong Chhnang	394	127%
Kampong Cham	715	119%
Kampong Thom	439	146%
Koh Kong	292	195%
Pursat	249	207%
Battambang	1,066	164%
Banteay Meanchey	846	121%
Siem Reap	1,100	110%
Svay Rieng	316	197%
<b>Total</b>	<b>12,719</b>	<b>152%</b>



Female inmates in a prison cell, Cambodia, 2010

<sup>21</sup> According to the Open Society Justice Initiative, "Pretrial detention" is defined as the period during which an individual is deprived of liberty through to the conclusion of the criminal trial (including appeal). Similarly, the International Centre for Prison Studies (ICPS) include in their definition of pre-trial detainees, those awaiting appeal or final verdict.

# Denial of physical and mental health care



Cambodian law provides no guarantee of access to medical care for suspects in police custody. Instead, the decision to request medical attention is usually at the discretion of the prosecutor or police officers. As a result medical care during interrogations is virtually non-existent.

Before admission to prison, every detainee should receive a medical examination, carried out by an accredited and registered medical doctor or medical officer. The results of the check-up, including any physical evidence of injury, mental illness or physical impairment should be recorded.<sup>22</sup> Any injuries should be photographed and reported to the prison director.<sup>23</sup>

Most detainees are transferred to prison less than 48 hours after arrest, suggesting that signs of physical abuse in police custody, such as bruises, open wounds and burns would still be evident at the time of examination. Even some prison directors have told LICADHO they are aware of detainees who arrived at prison in need of medical attention due to police abuse. However, it would appear that prison medical staff generally lack the expertise, the independence and the authority to accurately identify, record and report signs of abuse by state officials.

Even those with medical accreditation and appropriate training are unlikely to have the specialized skills required to detect certain signs of torture. They are equally unlikely to have any experience in recognizing the mental health impact of abuse.

It is likely then that, when an individual is still in detention, the physical and psychological signs of torture and other ill-treatment will go undetected, unreported or dismissed. Those who have been released are just as unlikely to have their symptoms properly recorded even if they do visit a health professional due to the overall lack of expertise on the physical and psychological impact of torture among health professionals in Cambodia.

It is not just those who have suffered abuse in police custody who are affected by the failing prison medical system. Many of those in need of routine or urgent medical help, including those who have been abused in prison, do not receive appropriate

## Unnecessary and untimely inmate deaths

LICADHO receives only basic information about the causes of inmate deaths and sometimes no information at all. However, the organization believes that the deliberate or negligent denial of appropriate and timely health care has, in some cases, led to unnecessary inmate deaths.

Those with serious health problems are often transferred to hospital too late because their conditions were not recognized or were misdiagnosed and wrongly treated. LICADHO is particularly concerned at the high rate of deaths among young inmates who were said to have no health problems before prison.

Between January 2012 and February 2014 LICADHO was able to get basic details of the circumstances surrounding the deaths of 50 inmates. Of these, 19 were under the age of 35 when they died and many were reportedly in good health before they entered prison.

## Case Study

According to LICADHO's information, 19-year-old Phorn (not his real name) was transferred from prison to hospital eight days after he first complained of numbness in his arms and legs. He was initially given medicine by the prison health staff but this did not help his condition. After this he remained in his cell for eight days receiving no additional medical assistance. It was not until he complained of heart pains eight days later that he was transferred to hospital where he died the following day.



Health post in a Cambodian prison, 2010

<sup>22</sup> Law on Prisons, Articles 19 and 24.

<sup>23</sup> Procedure on Prisoner Admission, Point 3.3.

and timely treatment due to inadequate services, lack of medication and the system-wide corruption which permeates prison medical services.

Whilst prisons should have at least one prison medical officer on a permanent basis, prison medical staff are often poorly trained or lacking in relevant medical qualifications. In addition, prison health posts usually lack sufficient medication and the equipment to deal with even minor health complaints.

Because prison medical staff have extremely limited or no experience in mental health care, those inmates with mental health problems are only offered the support or treatment they need if they are able to access the services of NGOs which specialize in mental health issues such as TPO.

Furthermore, inmates regularly report to LICADHO that medical care and medication is only provided to those inmates who can afford to pay or those who enjoy good relationships with prison authorities.

According to the SMR, any prisoner undergoing certain types of punishment, including close confinement, must be examined daily by a medical officer who should advise the prison director if the punishment should be stopped for physical or mental health reasons.<sup>24</sup>

In Cambodian prisons this rarely happens, partly due

to the lack of will and the limited medical staff at each prison but also because of the unregulated nature of many prison punishments, notably those administered by inmates themselves.

Similarly, all prisoners should undergo a medical assessment to determine their physical and mental fitness before being required to undertake any form of prison work.<sup>25</sup> Such assessments do not take place in Cambodian prisons. On the contrary, prisoners are often forced to work even if they are clearly too sick to do so, and are sometimes punished if they refuse.

“One day I was sick...I told them I could not work because it hurt too much, but they said I had to...they hit me because I could not work.”

Juvenile male who reported abuse in a provincial prison between 2012 and 2013

## Lack of punishment and redress



LICADHO is not aware of any successful prosecutions of law enforcement officials for torture related crimes in recent years<sup>26</sup> and the numbers of administrative complaints and investigations within prisons is low.

There are many reasons for this. Crucially, there is no independent body tasked with receiving and dealing with complaints against the police and other law enforcement personnel.

Whilst the Cambodian prison law establishes the right of all prisoners to complain about abuse,<sup>27</sup> those who attempt to make complaints inside prison fear that they will be subjected to further abuse. This fear is well-founded, as attested by the number of individuals who reported threats or actual abuse from prison guards or other inmates after they made a complaint.

Furthermore, there are no protective measures in place for those who wish to file a complaint. Anonymity is unlikely to be guaranteed and authorities are not equipped to ensure the ongoing safety of the complainant.

LICADHO has, for example, interviewed former prisoners who remained detained in the same cell as their abuser after making a complaint.

Few current detainees would therefore take the risk of reporting torture to prison officials or the police. The potential risks far outweigh the possible benefits.

Fear of reprisals is not the only barrier to making a formal complaint for those who are still detained. Even for those who do manage to file administrative complaints, mechanisms are not in place to ensure an impartial and appropriate review and the system is plagued with corruption.

If they are aware of their right to do so, it may be that some detainees feel safer and more willing to file a complaint to the courts once released from prison or police custody. But even so, the state does not provide victims and witnesses with any form of protection.

Moreover, those wishing to report abuse may not have sufficient legal representation. There is a severe shortage

<sup>24</sup> SMR Rule 32 (3).

<sup>25</sup> As above, Rule 72 (2).

<sup>26</sup> Under the Cambodian Penal Code, torture and acts of cruelty are punishable by up to 20 years' imprisonment.

<sup>27</sup> Law on Prisons, Article 28.



of legal aid attorneys in Cambodia<sup>28</sup> and private attorneys are often too expensive or unreliable. Any investigation is unlikely to be prompt or impartial. Cambodia's judiciary is notoriously corrupt and susceptible to political interference.

Those able and willing to move forward with complaints are likely to be met with indifference or hostility from the investigating authorities and, even if the report is taken seriously and properly investigated, there is very little potential upside for the complainant.

There exists no comprehensive system of compensation

and rehabilitation for victims of torture in Cambodia so the few complaints made are usually resolved by informal arrangements with the perpetrator in order to have the case dropped. LICADHO is not aware of any recent cases where compensation for torture or ill-treatment by state agents was awarded by the courts.

In light of the above, it comes as no surprise that few victims are willing to report torture and other ill-treatment and those who do have little expectation that anything will come of their complaint. In the meantime those responsible for torture and other acts of ill-treatment go unpunished and are free to repeat their actions.

## Inter-ministerial committee – Neither independent nor effective



In accordance with Article 17 of OPCAT, Cambodia should have established an NPM or NPMs by April 2008, one year after ratification.

Instead, in 2009 the Cambodian government issued a sub-decree establishing a new inter-ministerial committee consisting of representatives of government ministries.

Whilst NPMs can take a variety of forms, they must follow certain OPCAT minimum requirements. Most importantly, NPMs must be free from government influence. Amongst other requirements, they must be capable of acting independently without interference from state authorities and their members should be appropriately qualified, independent experts. They must also be financially autonomous, able to draft budgets and allocate resources free from government control.

The composition of Cambodia's temporary NPM fails to meet these and other fundamental requirements. The body consists of individuals from different governmental agencies, including the Ministry of Interior, the Ministry of National Defense, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Justice, the Ministry of Health, the Ministry of Social Affairs, Veteran and Youth Rehabilitation and the Cambodian government's Human Rights Committee. The body is headed by the Minister of Interior, Sar Kheng.

Not only does this committee fail to meet basic requirements of independence, it has also proved itself to be wholly inefficient and ineffective. It appears to have done very little in terms of actual monitoring, reporting or investigating complaints. Furthermore at the December 2013 conference on the establishment of an NPM, its members were unable to elaborate on the committee's achievements to date, instead reflecting solely on the apparent lack of resources available to them.

The UN Sub-Committee on the Prevention of Torture

has visited Cambodia twice since Cambodia ratified the OPCAT. Following the first visit in December 2009, it issued a confidential report and recommendations to the government. After receiving no response to that report, the SPT made a return visit in December 2013 to discuss the implementation of the 2009 recommendations and the establishment of a truly independent NPM.

UNOHCHR Cambodia first organized a conference on the establishment of an independent NPM in November 2011 during which authorities expressed their willingness to draft a new NPM law. Following this, UNOHCHR commissioned the Association for the Prevention of Torture (APT) to produce an analysis of good practices and lessons learned from other states. This study was presented at the second conference on the establishment of an NPM held in Phnom Penh during December 2013.

As noted by the APT, whilst all participants at the conference agreed on the need for Cambodia to fulfil its obligations under OPCAT, comments made at the conclusion of the conference by the Minister of Interior were ambivalent, "We have to look at what has been achieved so far and what remains to be done in preventing torture ... We will continue to make efforts but what we have achieved so far is already positive."<sup>29</sup>

By contrast, Malcolm Evans, chairperson the SPT noted the lack of progress to date, "Cambodia has now had several years to gain experience of what is needed, and the time has come for the country to fulfil its international commitments by establishing an independent National Preventive Mechanism... This is a vital first step on the road towards preventing torture and ill-treatment in detention."

Since the December 2013 conference no further progress is known to have been made towards the establishment of an NPM.

<sup>28</sup> Recent UNOHCHR research shows that there were only 119 legal aid lawyers in Cambodia in 2010, and that the number has since fallen to 76. In several provinces, there are no legal aid lawyers at all.

<sup>29</sup> [http://www.apt.ch/en/news\\_on\\_prevention/cambodia-towards-an-independent-npm/#.U4bpr55Sys9](http://www.apt.ch/en/news_on_prevention/cambodia-towards-an-independent-npm/#.U4bpr55Sys9).



Inmates in their prison cell, Cambodia, 2009



# Conclusion



For reasons already noted, it is impossible to know the true extent of torture and ill-treatment of detainees in Cambodia. It is clear however that many detainees continue to be subjected to physical and psychological mistreatment in state custody, that they have little recourse to effective complaints mechanisms and redress, and that those responsible are rarely brought to justice.

Whilst there has clearly been significant progress towards reducing levels of torture in Cambodia in the decades since Khmer Rouge rule, such progress appears to have stalled completely in recent years with no obvious, meaningful improvements since the OPCAT was ratified in 2007.

Sadly then, nearly 22 years after Cambodia's ratification of the UN Convention against Torture and more than seven years since its ratification of OPCAT, the country's legal and judicial system remains unable or unwilling to effectively prevent and punish acts of torture.

Even as Cambodian authorities openly and routinely condemn torture, its continued occurrence is denied, ignored or disputed. In the meantime, perpetrators go unpunished and those affected receive neither protection nor redress.

For as long as the Cambodian courts continue to accept confessions obtained under duress and whilst those who order, facilitate or commit torture do so with impunity, Cambodia's true commitment to the absolute prohibition of torture and ill-treatment will remain in serious doubt.

Whilst men, women and children continue to be beaten, threatened and maimed in the custody of the State, Cambodian authorities must accept that they bear direct responsibility and must take immediate steps to introduce stronger safeguards and accountability mechanisms.



Prison cell for male inmates, Cambodia, 2013



## RECOMMENDATIONS

LICADHO makes the following set of twelve priority recommendations to the Cambodian government:

▶▶▶ Prepare and enact specific anti-torture legislation which incorporates into domestic law the definition of torture as set out in Article 1 of the UN Convention against Torture and characterizes acts of torture as a specific crime, punishable by appropriate sanctions.

▶▶▶ Establish a truly independent National Preventative Mechanism, made up of appropriately qualified independent experts, which is free from government influence, capable of acting independently and financially autonomous.

▶▶▶ Ensure that all law enforcement personnel and prison staff understand what constitutes torture and ill-treatment and the absolute prohibition thereof.

▶▶▶ Amend the Criminal Procedure Code to guarantee detainees the right to communicate with a lawyer, relative or other person at any time while in police custody, to have a lawyer present during questioning and to be allowed access to an independent medical examination if requested.

▶▶▶ Take immediate measures to ensure that all detainees are informed of their rights upon arrest, including the right to not answer police questions, the right not to be tortured and their right to file complaints.

▶▶▶ Prohibit the use of confessions as admissible evidence in court unless the confessions were made in the presence of and after consultation with a defense lawyer.

▶▶▶ Take further measures to improve conditions of detention in prisons and reduce overcrowding. As a first step, increase the use of non-custodial pre-trial measures and make greater use of non-custodial sentencing.

▶▶▶ Ensure that only prison staff are authorized to exercise disciplinary powers over prisoners. Any cases of abuse and ill-treatment carried out by other inmates must be investigated and punished and any prison officials found to have ignored or condoned such acts must be held accountable.

▶▶▶ Establish an independent civilian oversight body competent to directly receive and deal with complaints against police and other law enforcement personnel in a satisfactory manner.

▶▶▶ Ensure that law enforcement personnel and other officials of the state accused of torture and other ill-treatment are promptly, impartially and fully investigated and, where appropriate, prosecuted according to the law.

▶▶▶ Set up an effective state program of victim and witness protection which ensures confidentiality and protects those who come forward to report or complain about acts of torture; and ensure that victims are provided with redress, including fair and adequate compensation and as full rehabilitation as possible.

▶▶▶ Allow increased monitoring of all places of detention by independent monitors and end unwarranted restrictions on LICADHO's prison access. LICADHO and other monitors must be able to conduct confidential interviews with all detainees when requested.

