



ARBITRARY DETENTION RELATED TO DRUG POLICIES IN CAMBODIA

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1. INTRODUCTION

This response to the questionnaire of the UN Working Group on Arbitrary Detention is based on field research conducted by Amnesty International in Cambodia during November and December 2019 in preparation for a [research report](#) published on 13 May 2020. The findings are based on interviews with 50 people, including 34 people who use or previously used drugs, comprising 19 men, nine women, and six people who were minors at the time of their arrest and detention. Interviewees were

primarily individuals who had been arrested and detained since January 2017 as part of Cambodia’s anti-drug campaign, in addition to families of victims, local civil society activists, lawyers, and public health and drug rehabilitation experts.

The organisation also reviewed a variety of laws, policy documents, and reports related to the anti-drug campaign, including some from the National Authority for Combating Drugs (NACD), the Ministry of Interior, and the Ministry of Health. On 4 February 2020, Amnesty International sent letters to the NACD, the Ministry of Social Affairs, Veterans and Youth Rehabilitation, and the Ministry of Health requesting information regarding the country’s anti-drug efforts. Amnesty International did not receive a response from the authorities to any of the letters.

The Cambodian authorities offered mixed responses to the report published by Amnesty International. While one official from the Ministry of Justice stated the government “did not deny” the report and highlighted the new reforms promised by the Ministry of Justice (see details below under questionnaire paragraph 17, below),¹ an official from the Ministry of Interior stated that “human rights must be set aside” and “there is never a respect for human rights” in anti-drug operations.²

This response was prepared in partnership with the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), a leading Cambodian human rights non-governmental organisation (NGO) and the primary NGO in Cambodia monitoring prison conditions. LICADHO has been working in Cambodian prisons since 1992 and currently monitors 18 out of 28 prisons for human rights abuses. Through this unparalleled access to Cambodia’s prisons, LICADHO is able to give legal advice and support, provide in-prison medical care and material support as well as closely monitor the prison conditions of 34,421 inmates (as of April 2020).

Within LICADHO’s Prison Project, there are discrete special interest projects. The Early Years Behind Bars project monitors and supports the rights of pregnant women and children incarcerated with their mothers in prisons. There are currently 48 pregnant women and 99 children in Cambodian prisons.³ LICADHO’s monitoring serves as the foundation of a range of evidence-based advocacy directed towards both national actors and the international community. For example, the release of a statement detailing the death of a five-month-old baby in Phnom Penh’s Correctional Center 2 (CC2)⁴ led to widespread media interest, which in turn prompted Cambodian authorities to launch an official investigation into the baby’s death. Authorities then assisted the mother, who had been charged with a drugs offence, with legal support. She was later released on a suspended sentence.⁵

2. PRE-TRIAL DETENTION AND IMPRISONMENT PURSUANT TO A CONVICTION FOR DRUG-

¹See: <https://www.khmertimeskh.com/722895/government-rejects-ngo-report-on-war-on-drugs/>

²See: <https://www.reuters.com/article/us-cambodia-rights/cambodian-official-says-human-rights-need-to-be-put-aside-in-drug-war-idUSKBN22P1L8>

³ As at April 2020, in the 18 out of 28 prisons monitored by LICADHO.

⁴ <https://www.licadho-cambodia.org/pressrelease.php?perm=447>

⁵ <https://www.rfa.org/english/news/cambodia/mother-02282020151638.html>

RELATED OFFENCES (QUESTIONNAIRE PARA.1)

In January 2017, the Cambodian government initiated a six-month campaign against drugs. This campaign – which has seen at least 55,770 people arrested on suspicion of using or selling drugs between January 2017 and March 2020 – has been repeatedly and indefinitely extended since that time.⁶

According to government data, as of April 2020, 56.9% of all inmates in Cambodian prisons are held on drug-related charges.⁷ A large proportion of those behind bars are being held for using or possessing small quantities of drugs, and at least 39 % of the 21,740 persons prosecuted during the anti-drug campaign between 2017 and 2019 were jailed for minor, non-trafficking offences, including use, possession, administration and facilitation of the use of drugs.⁸

Cambodia's prison population has skyrocketed by 78% since the campaign started, from 21,900 at the end of 2016 to over 38,990 in March 2020. Notably, Cambodia's prisons have an estimated capacity of just 26,593. In early 2020, the population of Cambodia's largest prison, Phnom Penh's CC1, exceeded 9,500 prisoners – 463% over its maximum capacity of 2,050.⁹ This overcrowding crisis is causing serious and systematic violations of prisoners' right to the enjoyment of the highest attainable standard of physical and mental health and, in some instances, amounts to torture or other ill-treatment.

Despite the harrowing levels of overcrowding in its detention centres and the threat of Covid-19 transmission, the Cambodian government has resisted calls to release people in detention as a preventative action, with arrests under the anti-drug campaign actually increasing in early 2020.¹⁰

3. DISPROPORTIONATE IMPACT ON WOMEN (QUESTIONNAIRE PARA. 1)

Cambodia's anti-drug campaign has a disproportionate impact on women's human rights. While 57% of all prisoners in Cambodia are held on drug-related charges, 73% of all women prisoners are imprisoned on drug-related charges.¹¹

Amnesty International interviewed five women who were prosecuted under anti-drug legislation. Among them, four were convicted for trafficking, while one was convicted for 'using' drugs. Among those convicted, four stated that they were not in possession of any drugs when they were arrested; two of these women were convicted based on forced urine testing, and two

⁶ National Authority for Drugs and Crime website: <https://www.nacd.gov.kh/>;

⁷ Khuon Narim, "New Justice Minister vows reforms and speedier trial procedures," Khmer Times, 02 April 2020, <https://bit.ly/2wEgKY6>; "The interior minister shows the number of prisoners in prison" [Khmer], Sabay News, 02 April 2020, <https://bit.ly/39Zw1QM>.

⁸ National Authority for Combatting Drugs, Full Year Annual Report 2017, 26 February 2018; National Authority for Combatting Drugs, Full Year Annual Report 2018, 3 April 2019; National Authority for Combatting Drugs, First Six Months Report 2019, November 2019.

⁹ Niem Chheng, "Prey Sar prison no longer accepting pre-trial detainees to ease burden," *Phnom Penh Post*, 20 January 2020, <https://bit.ly/2OQVYKx>.

¹⁰ Khouth Sophak Chakrya, "Over 5,500 arrested for drugs," *Phnom Penh Post*, 6 April 2020, <https://bit.ly/3ejbw1B>.

¹¹ Khuon Narim, "New Justice Minister vows reforms and speedier trial procedures," Khmer Times, 02 April 2020, <https://bit.ly/2wEgKY6>; "The interior minister shows the number of prisoners in prison" [Khmer], Sabay News, 02 April 2020, <https://bit.ly/39Zw1QM>.

told Amnesty International that they were arrested as bystanders in drugs raids despite never having possessed or used drugs. All five trials described to Amnesty International violated their right to a fair trial by failing to meet evidentiary standards and contravening the presumption of innocence.

All five women, three of whom were imprisoned alongside their infant children, described harrowing prison conditions that severely impacted their physical and mental well-being, and that of their children.

Cambodian law allows for the imprisonment of children along with their mothers until they reach three years of age. The anti-drug campaign has led to significant increases in the numbers of women held in detention with their children. In the 18 prisons monitored by LICADHO, the number of infants living in prisons increased from 30 at the end of 2015 to 138 in mid-2018,¹² with a total number of 203 children and 55 pregnant women in 2018.¹³ In February 2019, 170 women with their children and 51 pregnant women were reported to reside in Cambodia's prisons.¹⁴

In 2019, Prime Minister Hun Sen publicly recognised the unique difficulties faced by mothers with young children in Cambodia's prisons, and called for their early release.¹⁵ In response to the prime minister's comments, a spokesman for the department of prisons told local media that while overcrowding was a problem in men's prisons, this was not the case in women's prisons.¹⁶

Amnesty International interviewed two women who gave birth to their children while serving prison sentences and another who was imprisoned with her infant child. In contrast to the claims by the department of prisons, their accounts suggest that overcrowding and poor conditions also pervade women's prisons and have a particularly serious impact on women and their children. In none of the accounts told to Amnesty International did the trial judge explicitly consider non-custodial sentences.

Women told Amnesty International that they suffered from a complete lack of pre-natal and post-natal care inside the prison system, despite the fact that Article 40 of the Prison Law requires that such care be provided.¹⁷ Women detained in CC2 prison reported that their children received no food from the prison, and that they received no additional food when breastfeeding. Food was reported to be of poor nutritional value and portions were inadequate. No portions were provided for infants in detention, so mothers had to share their own meagre helpings or find ways to purchase additional food. Several women complained that their infant children often fell ill in prisons, due to a combination of unsanitary conditions, overcrowding, stale air, and insufficient food of poor quality.

LICADHO has worked in Cambodia's prisons with pregnant women and incarcerated children and mothers since 2002.¹⁸ During the 18 years LICADHO has worked with this vulnerable population, they have observed little to no pre- and post-natal care, no additional food or material support for children and incarceration in damaging and squalid conditions for mothers and their children. Clients have reported giving birth in hospital and then being forced to return to prison one day later if they are unable to pay bribes to prison officials. New-born babies are forced to sleep on cell floors with their mothers due to extreme overcrowding and a total lack of adequate bedding. Prison officials refuse to assist mothers in registering the births of their children and child vaccinations are not always conducted in a timely manner. Basic hygiene materials such as soap, laundry detergent, toothpaste, sanitary and maternity napkins, diapers and access to clean water is not always provided – or is provided at a cost to prisoners.

The accounts received by Amnesty International suggest that authorities have failed to uphold the minimum standards of treatment of women in detention, as provided for in the Bangkok Rules, which appear to be systematically violated in Cambodian jails. This treatment is also contrary to Cambodia's own Prison Law, which states that infants held with their mothers in prison must be provided with food, clothing and healthcare.¹⁹

Some women told Amnesty International that the overcrowding in their cells was so severe that their babies had to sleep on top of their bodies. Sleeping space in CC2 women's prison in Phnom Penh was described as 0.3 – 0.4 metres width. Inmates who lack financial means were forced to sleep in the toilet, amid a pungent smell and people frequently passing by to use the facilities. Women also described medical neglect in CC2 prison both when they were pregnant and after they gave birth. Prison medical staff were reported to often ignore the women's requests.

In February 2020, as overcrowding in Cambodian prisons reached its most severe level to date, local media reported that a five-month old baby imprisoned with her mother in Phnom Penh's CC2 jail had died. According to LICADHO:

The mother of the child who died was sent to pre-trial detention in mid-2019 after authorities alleged she possessed a sachet of methamphetamine worth just 10,000 riel, or \$2.50. The woman was not provided a lawyer and was unaware of her right to apply for bail. She was eight months pregnant when she was sent to prison.²⁰

¹² LICADHO, "Time for Bail: Ending Needless Mass Detention" October 2018, <https://bit.ly/2SKsGhQ> p. 3.

¹³ LICADHO internal statistics, 2018.

¹⁴ Khorn Savi, "PM calls for mercy in sentencing women with children," *Phnom Penh Post*, 19 February 2019, <https://bit.ly/2OP18a4>.

¹⁵ Khorn Savi, "PM calls for mercy in sentencing women with children," *Phnom Penh Post*, 19 February 2019, <https://bit.ly/2OP18a4>.

¹⁶ Khorn Savi, "PM calls for mercy in sentencing women with children," *Phnom Penh Post*, 19 February 2019, <https://bit.ly/2OP18a4>; LICADHO, "Incarcerated Mothers and Pregnant Women: LICADHO Calls for Urgent Action", 8 April 2019, <https://bit.ly/39v7Qd3>.

¹⁷ Law on Prisons 2011, Article 40.

¹⁸ <http://www.licadho-cambodia.org/reports.php?perm=34>

¹⁹ Law on Prisons 2011, Article 41.

²⁰ LICADHO, "A Child Living in Prison has Died: LICADHO Calls for Urgent Action" February 2020, <https://bit.ly/37XbMSK>.

4. DISPROPORTIONATE IMPACT ON OTHER AT-RISK GROUPS (QUESTIONNAIRE PARA. 1)

Cambodia's anti-drug campaign has had an especially severe impact on a number of marginalised groups, including people living with HIV, sex workers and ethnic minorities. A representative of a civil society organisation that provides harm reduction, counselling, and rehabilitation services for people who use drugs explained the impact of drug raids on the group's most marginalised clients:

If our clients are caught up in raids, our service to them is broken and their recovery is derailed. If they are receiving medical treatment, this becomes a huge and life-threatening problem. Especially for clients with HIV and tuberculosis, trying to find them after they are arrested becomes a huge problem.²¹

Organisations supporting people living with HIV have complained of significant difficulty in providing effective treatment to those with whom they work as a result of the anti-drug campaign.²² Moreover, community and outreach workers with public health organisations, including those promoting harm reduction services, are regularly arrested in drugs raids while conducting outreach activities and sometimes detained in compulsory drug detention centres.²³

Outreach and community workers told Amnesty International that they can often secure the release of harm reduction service providers from compulsory drug detention centres if they can prove that they are working for NGOs. Nonetheless, such arrests have a significant deterrent effect on people who may need to access the services that outreach workers are promoting due to fear of the police. Amnesty International heard of the chilling effect that these raids have had, preventing people who use drugs from seeking healthcare, information or tools that may help them to avoid infection and minimise the risk of vein damage and other more serious health consequences.

Civil society leaders told Amnesty International that a closing civic space in Cambodia has created a climate of fear among civil society organizations and hampered activists' ability to speak out about the negative impacts of the anti-drug campaign, particularly on people living with HIV.

Cambodia's Vietnamese population – both established ethnic Vietnamese communities and more recent arrivals – face widespread discrimination in Cambodian society. Many are denied legal recognition in the form of identification cards and family books, putting them at a heightened risk of homelessness and poverty.²⁴

Ethnic Vietnamese people interviewed by Amnesty International described particularly harsh treatment at the hands of police and within compulsory drug detention centres. A 41-year-old rubbish collector who was prosecuted for a drug-related offence in July 2019, told Amnesty International that "Vietnamese detainees are always treated worse than Cambodian detainees. They are really neglected and discriminated against."

²¹ Amnesty International interview with drugs expert, Phnom Penh, 31 October 2019.

²² See, for example, Martin de Bourmont and Khouth Sophak Chakrya, "Is Cambodia's war on drugs working?" *Phnom Penh Post*, 14 June 2017, <https://bit.ly/37nY7UH>.

²³ Amnesty International interview with a man detained during anti-drug campaign, Phnom Penh, 18 November 2019.

²⁴ See: Report of the Special Rapporteur On the Situation of Human Rights in Cambodia, September 2019, UN Doc. A/HRC/42/60/Add.1, paras. 47-51; Minority Rights Group, "Cambodia: Ethnic Vietnamese," November 2017, <https://bit.ly/2vwUQFm>; Tim Frewer, "Cambodia's Anti-Vietnam Obsession," *The Diplomat*, 6 September 2016, <https://bit.ly/2uHhJWg>.

5. CLASSIFICATION OF THE OFFENCE OF ACQUISITION, USE OR POSSESSION OF DRUGS FOR PERSONAL USE (QUESTIONNAIRE PARA. 2)

Some Cambodian officials have recently claimed that people who use drugs are to be treated as victims rather than criminals. In 2019, both the Minister of Justice and the Secretary General of the National Authority for Combatting Drugs (NACD) told the UN Special Rapporteur on Cambodia that everyone held in Cambodian prisons on drug charges was being held for serious trafficking offenses, with no one imprisoned for using or possessing drugs.²⁵

In September 2019, the Secretary General of the NACD reportedly stated, "no drug users have been jailed because the government has treated drug addicts as victims who need to be treated and rehabilitated free of charge".²⁶ The latest quarterly report on the anti-drug campaign by the NACD, covering January – March 2020, stated that all 2,413 "drug users" arrested during this period were sent to drug rehabilitation, rather than prosecuted.²⁷

However, Amnesty International's research suggests that thousands of people are still imprisoned on charges of use and possession of drugs for personal use, and that many people who use drugs continue to be baselessly convicted on trafficking charges. Moreover, those who are sent to compulsory drug detention centres (rather than being prosecuted in the criminal justice system) also face prison-like detention and equally harsh conditions (further details below).

²⁵ Report of the Special Rapporteur On the Situation of Human Rights in Cambodia, September 2019, UN Doc. A/HRC/42/60 para 45.

²⁶ Voun Dara, "Government issues report on drug crimes, treatment," *Phnom Penh Post*, 23 September 2019 <https://bit.ly/2Skuuz7>.

²⁷ Khouth Sophak Chakrya, "Over 5,500 arrested for drugs," *Phnom Penh Post*, 6 April 2020, <https://bit.ly/3ejbwIB>.

6. CRIMINALIZATION OF THE ACQUISITION, USE OR POSSESSION OF DRUGS FOR PERSONAL USE (QUESTIONNAIRE PARA. 2)

Cambodia's Law on Drug Control, enacted in 2012, continues to provide the primary legal basis for drug prosecutions under the anti-drug campaign.²⁸ The law provides for a wide range of criminal offences, including the crime of "keeping" drugs (defined as possession), which carries a sentence of two to five years' imprisonment, and up to ten years' imprisonment in cases of repeat offending (Articles 40 and 48).

Separately, the law criminalises the "unlawful consumption of narcotic substances" for individuals who have "already accepted compulsory treatment," providing for penalties of between one- and six-months imprisonment, or up to one year in cases of repeat offending (Articles 45 and 53). Trafficking is criminalised under Article 40, carrying prison sentences of two to 20 years.

Cambodian authorities have spoken plainly about their desire to arrest and imprison people who use drugs as a way to address drug-related problems in the country. In his initial campaign announcement during late 2016, National Police Chief Neth Savoeun stated that police would specifically target people who use drugs as a means of identifying and tracking down major "drug dealers".²⁹ In July 2019, another senior drug enforcement official reportedly told a gathering of anti-drug police, "Please don't forgive – even if it's a minor drug crime – because it could lead to the arrest of the big fish."³⁰ Similar sentiments were expressed by Interior Minister Sar Kheng in March 2020 when he called for legal action against all "drug addicts and dealers in small-scale drug use and distribution cases".³¹

²⁸ Law on Drug Control, promulgated January 2012, Royal Kram NS/RKM/0112/001.

²⁹ Lay Samean and Erin Handley, "Top officials vow harder line with drugs initiative," *Phnom Penh Post*, 23 December 2016, <https://bit.ly/2SFwYah>.

³⁰ Ben Sokhean, "Don't collude with dealers: Mok Chito," *Khmer Times*, 16 July 2019, <https://bit.ly/2uJLWEh>.

³¹ Taing Vida, "Sar Kheng cautions against freeing suspects in minor drug crimes," *Khmer Times*, 5 March 2020, <https://bit.ly/3dpmwNR>.

7. UNLAWFUL & ARBITRARY ARREST OF PEOPLE SUSPECTED OF USING DRUGS (QUESTIONNAIRE PARAS. 4 & 5)

Since the beginning of Cambodia's anti-drug campaign in January 2017, the police have significantly stepped up their efforts to identify, locate, and arrest people who use drugs. Drug raids in residential areas and sweeps of urban streets are common features of the campaign. Many of those who are arrested and who were interviewed by Amnesty International and LICADHO are poor, homeless, and struggling with drug dependence. Most had a very limited understanding of their rights, rendering them at heightened risk of human rights violations.

Drug raids occur mostly in poor neighbourhoods, and regularly involve indiscriminate and arbitrary arrests. People arrested during these raids are often detained despite not being in possession of any drugs and in the absence of arrest warrants. Simply being in the wrong place at the wrong time – typically a poor neighbourhood or near a drug treatment facility – can be sufficient reason for the police to round up these people. The nearby presence of drug paraphernalia, including syringes or pipes, or mere association with an individual in possession of drugs, is commonly seen as sufficient cause for arrest.

According to the testimonies gathered by Amnesty International, police have targeted the neighbourhoods surrounding facilities that provide harm reduction, drug treatment and other health services. Many of the people interviewed by Amnesty International were arrested in the immediate vicinity of the methadone clinic at the Khmer-Soviet Friendship Hospital, one of the few healthcare facilities in Cambodia that provides methadone, a prescribed drug that can be used to substitute heroin in the treatment of opioid dependence.³²

Targeting drug treatment and other health services in police raids deters people from seeking the medical care they may require and constitutes an additional barrier to the right to health of people who use drugs.³³ Such raids regularly involve the arbitrary arrest and detention of people who use drugs, interrupt essential health services, and act as a deterrent to individuals who are seeking to access drug treatment and rehabilitation. This practice further underlines the skewed implementation of the anti-drug campaign in favour of criminalisation and incarceration at the expense of public health and human rights.

The arrest of individuals in drugs raids and their transfer to drug-related detention centres operates in a legal vacuum, rendering victims subject to an almost complete lack of procedural safeguards. None of the individuals interviewed by Amnesty International who had been sent to compulsory drug detention or social affairs centres were given the opportunity to consult a lawyer. None were told of the legal basis for their arrest; none were told of their rights, and the vast majority were not told how long they would be detained.

Once in social affairs transition centres, where arrestees are often kept temporarily before onward transport to detention centres, people are regularly subjected to compulsory drugs urine testing and asked to sign or thumbprint documents which they often cannot read or do not understand.

Mandatory drug testing is an arbitrary interference with an individual's privacy.³⁴ The UN Special Rapporteur on the right to health has confirmed that compulsory testing must not be used as a means to police private behaviour and any limitations must be carefully justified by public health necessity and implemented with participation, transparency and accountability, a

³² A mass arrest of people suspected of using drugs and their children, including at least three infants, was filmed outside the Khmer-Soviet Friendship Hospital and shared online on 12 June 2017. Amnesty International has verified the video, which can be found here: <https://bit.ly/2xo82wQ> (video credit: K01 TV News).

³³ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, United Nations General Assembly, 2010, A/65/255

³⁴ UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, August 2009, UN Doc. A/64/272 para 32.

threshold that is not met in drug testing.³⁵ Drug testing must be conducted only after informed consent has been given, and carried out in a non-discriminatory, transparent and inclusive way. Drug testing should be intended to encourage counselling and treatment, if appropriate, and not used for judicial proceedings or compulsory treatment.

In some cases, people arrested after drugs raids are physically forced to thumbprint these documents by agents of the Ministry of Social Affairs, Veterans and Youth Rehabilitation. Some people told Amnesty International that they were physically forced to thumbprint documents they did not understand after being arrested during street sweeps under threat of further physical violence. Although Amnesty International was unable to examine any of the documents which detainees were sometimes coerced into thumb printing in transition centres, the organization believes they refer to the written consent forms referred to in Article 104 of the Law on Drug Control on Voluntary Treatment and Rehabilitation, which states:

Before admitting a drug addict for treatment and rehabilitation, the facility shall make sure that the person does provide her/his consent on a voluntary basis for treatment and rehabilitation upon receiving key information on treatment and rehabilitation. The consent to accept treatment and rehabilitation made by a drug addict shall be made in writing.

The practice of enforced “confessions” under threat of violence was particularly highlighted by sex workers that were interviewed by Amnesty International, who said that sex workers are often forced to undergo urine tests when they are arrested in street sweeps. Even if they test negative, they are then forced to thumbprint “confessions” before being sent to Orkas Khnom [drug detention centre]. If they don’t thumbprint the documents, they are beaten.³⁶

Many people interviewed by Amnesty International who were prosecuted for drug-related offences described being arrested in almost identical circumstances to those who were placed in drug-related administrative detention. Amnesty International’s research suggests there is no coherent pattern in the handling of individual cases; rather, individual police officers, who may be influenced by bribes, seem to have unlimited discretion to determine the fate of arrestees.

In addition to drugs raids conducted by police, many people who use drugs – often those with a drug dependence – are brought to drug detention centres by family members with varying degrees of consent, in an attempt to make them stop using drugs. Once they are inside, however, the individuals cannot leave. In such cases, the families involved typically have higher incomes in comparison to those who are rounded up during police raids.

Many of the individuals interviewed by Amnesty International were prosecuted after testing positive for drugs when police subjected them to a compulsory urine testing. In some cases, forced urine testing even led to convictions for trafficking.³⁷

Although the Cambodian authorities frequently claim that they only target drug traffickers in their anti-drug operations, Amnesty International interviewed many people who were not selling drugs but were arrested and detained purely in the basis of their alleged drug use. In other cases, individuals reported being convicted despite not being found in possession of any drugs, and even in the absence of any drugs testing. With the odds stacked against any poor person who enters the criminal justice system, simply being in the wrong place at the wrong time, or being wrongfully accused by another person, can lead to years in prison. People detained under Cambodia’s anti-drug legislation consistently described summary trials conducted in the absence of defence lawyers – greatly increasing the risk of unfair trials.

8. LEGAL AID (QUESTIONNAIRE PARA. 5)

Many of the violations to the right to a fair trial in drug-related prosecutions, particularly those against people living in poverty, are compounded by the inadequate provision of free legal aid and the poor quality of legal representation available. Of the 18 criminal cases documented by Amnesty International, only two people were provided with free legal aid, including one child and one adult. As a lawyer told Amnesty International:

A poor person charged with a drugs offence has a slim chance of a fair trial in Cambodia. They are poor, so they won’t have a private lawyer. They generally don’t know the law, and they could have been tortured, forced to confess, or abused by law enforcement officers.

³⁵ UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, August 2009, UN Doc. A/64/272 para 32.

³⁶ Amnesty International interview with sex worker representative, Phnom Penh, 29 November 2019.

³⁷ Amnesty International interview with a woman detained during anti-drug campaign, Phnom Penh, 16 November 2019.

They are at a very high risk of being victimized by the justice system. When I represent my clients at trials, I see many issues related to the presumption of innocence. Questions tend to be framed in a way that those people are already deemed guilty and they should confess if they want lighter sentences.³⁸

Under current law, free legal aid is only available to adults in felony cases (in which the defendant faces more than five years' imprisonment) whereas free legal aid is available to children in both felony and misdemeanour cases.³⁹ This means that the vast majority of people living in poverty who cannot afford a lawyer of their choosing are deprived of free legal assistance. LICADHO has observed that even child prisoners do not always have access to a lawyer. When they are provided with legal assistance, these marginalized clients are often entirely unaware that they even have a lawyer until their trial. In misdemeanour cases, there is no legal requirement for courts to ensure that the defendant has a lawyer. This is a significant obstacle to justice as most people accused of drugs offences in Cambodia are charged with misdemeanours.⁴⁰

Poor and marginalised people interviewed by Amnesty International showed little or no understanding of their legal rights, and several stated that they had no understanding of the nature of the legal proceedings they were facing until after they were convicted. LICADHO has interviewed thousands of people who did not understand their legal rights, were not informed of the reason for their arrest and were never offered a lawyer.

Even in cases where defendants do manage to obtain legal assistance, the conduct of lawyers is often problematic, and the quality of legal assistance is often poor. The payment of bribes to trial judges by defendants in drug prosecutions is regularly facilitated by lawyers. A lawyer who spoke to Amnesty International explained:

Lawyers and judges have long-term relationships with each other, and they build trust together. It's pretty common for judges to seek out trusted lawyers to seek corrupt payments from defendants to lessen their sentence or charge. That is why we need to strengthen the integrity and independence of lawyers.⁴¹

Prime Minister Hun Sen has personally criticised widespread corruption in the criminal justice system and urged the Bar Council of the Kingdom of Cambodia (BAKC) to take disciplinary measures against corrupt lawyers.⁴²

9. TORTURE AND OTHER ILL-TREATMENT IN COMPULSORY DRUG DETENTION CENTRES (QUESTIONNAIRE PARA. 6)

People who were formerly detained in drug detention facilities described frequent instances of physical abuse, often amounting to torture and other ill-treatment. People interviewed by Amnesty International described regimes of violence and fear in which "room leaders" - detainees given authority over fellow detainees by centre management - and centre staff exercise apparently unlimited power over detainees.

This lack of adequate oversight and monitoring of drug detention centres facilitates the use of force by state officials guarding the centre and "room leaders" they appoint, creating a climate where extreme violence is normalised, and which sometimes results in deaths in custody. Amnesty International received worrying accounts of people being beaten to death by centre-appointed "room leaders", followed by alleged cover-ups by centre authorities in both the Orkhas Khnom and Prey Speu

³⁸ Amnesty International interview with a lawyer, Phnom Penh, 5 December 2019.

³⁹ See Article 46, Criminal Code of the Kingdom of Cambodia; Article 301, Code of Criminal Procedure of the Kingdom of Cambodia.

⁴⁰ Amnesty International interview with a lawyer, Phnom Penh, 5 December 2019.

⁴¹ Amnesty International interview with a lawyer, Phnom Penh, 5 December 2019.

⁴² Niem Chheng, "Bar association takes on corruption among lawyers," *Phnom Penh Post*, 1 September 2019, <https://bit.ly/2tSnyji>**Error!**
Hyperlink reference not valid.; Ben Sokhean, "Hun Sen keen to eradicate judicial corruption," *Khmer Times*, 29 August 2019, <https://bit.ly/2SotjyQ>.

centres in Phnom Penh. Other former detainees recounted witnessing frequent suicide attempts because of the unbearable combination of suffering through unsupported drug withdrawals and severe physical abuse.

In addition to systematic “welcome” beatings upon arrival in the centres, detainees are subjected to severe physical punishments for infractions of arbitrary rules by room leaders and centre staff. Assaults are most often carried out by room leaders, long-term detainees who have been selected by the centre staff to maintain discipline and order over other detainees in exchange for privileges and benefits. According to Rule 40 of the Mandela Rules, no detainee may be employed by an institution in a disciplinary capacity or otherwise given responsibility for exercising disciplinary measures on another detainee.⁴³

Amnesty International interviewed three former “room leaders” from the Prey Speu and Orkas Khnom centres, each of whom described similar regimes of control and corporal punishment that they were expected to maintain with the complicity and authorisation of centre staff. Every individual interviewed by Amnesty International who had been detained in drug detention centres described physical abuse often amounting to torture on the part of “room leaders” who operated with the authorisation of the staff and administration.

Each of the former detainees interviewed by Amnesty International reported that beatings on arrival were a standard part of induction into life at the centres. Although individuals who are brought to drug centres by their family members may be spared, individuals brought by the police appear to be systematically subjected to such “welcome” beatings. The nature and severity of abuse inflicted upon detainees varies according to the individual discretion of room leaders.

At Prey Speu, the harsh conditions, abusive practices, and the design of the facility lead to frequent escape attempts by detainees. Room leaders and centre staff ban talking amongst detainees in the hope of preventing further escape attempts, and those who attempt to escape and are caught face severe punishment. Severe physical punishments are meted out for minor infractions of unwritten and arbitrary rules, making violence - and the constant threat of violence - a central facet of life in these detention centres.

Several detainees reported witnessing the deaths of their fellow inmates, often due to a combination of physical abuse, drug withdrawals without any medical support, and inhumane conditions of detention. In two cases documented by Amnesty International, former detainees described attempted cover-ups by the centre authorities after detainees were beaten to death. These deaths were rarely, if ever, investigated by the authorities.

The testimonies gathered by Amnesty International suggest widespread violations of the right to be free from torture and cruel, inhuman and degrading treatment or punishment, in addition to violations of the right to life, in compulsory drug detention facilities. These violations appear to occur with total impunity. Despite many well-publicised reports of torture and other ill-treatment, as well as deaths in social affairs and drug detention centres in Cambodia over the past ten years, Amnesty International found no evidence of credible or independent investigations into these reports. The organization wrote to the Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation on 4 February 2020 in order to request information in relation to investigations into allegations of torture and other ill-treatment in drug detention centres, but has received no responses to date.⁴⁴

Cambodia's human rights obligations in respect of the prohibition of torture extend beyond the direct actions of agents of the state, such as detention centre staff. The Cambodian authorities are also responsible for the prevention, investigation, prosecution, and punishment of all instances of torture or other ill-treatment committed by non-state actors where state authorities or others acting in official capacity know or have reasonable grounds to believe that torture or other ill-treatment has occurred.⁴⁵ As detainees, room leaders are not themselves agents of the state; however, the prevalence of torture and other ill-treatment described in the testimonies gathered by Amnesty International and the consistency of the roles and responsibilities of room leaders, as described by both room leaders themselves and other detainees, make it inconceivable that room leaders operate without the consent and acquiescence of centre authorities. As such, in respect of the actions of room leaders, the Cambodian state can be held liable for these acts and state officials could be considered as authors, complicit or otherwise responsible under the Convention Against Torture for consenting to or acquiescing to acts of torture and other ill-treatment.⁴⁶

The failure to investigate and prosecute allegations of torture and other ill-treatment in social affairs and drug detention centres violates Cambodia's obligations under the Convention Against Torture, which require states to conduct prompt, thorough, impartial and independent investigations wherever there is reasonable grounds to believe that an act of torture has been committed.⁴⁷ This obligation extends to circumstances where no formal complaint has been made but there are indications that torture or other ill-treatment may have occurred.⁴⁸ In light of the widespread testimonies of people formerly held in drug-related detention, Amnesty International has called for a prompt, thorough and independent investigation into all such allegations in places of detention in Cambodia.

⁴³ Nelson Mandela rules for the treatment of prisoners, Rule 40.

⁴⁴ Letter to the Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation, 4 February 2020, on file with Amnesty International.

⁴⁵ CAT General Comment 2, §18. See also Report of the Special Rapporteur on torture, UN Doc. A/HRC/31/57 (2016) §§10-11.

⁴⁶ CAT General Comment 2, §18. See also Report of the Special Rapporteur on torture, UN Doc. A/HRC/31/57 (2016) §§10-11.

⁴⁷ UN Convention Against Torture, Articles 12, 16.

⁴⁸ Principle 2, UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Recommended by General Assembly resolution 55/89 of 4 December 2000.

Amnesty International also received several reports of torture committed by the police in police stations to extract “confessions” in criminal prosecutions.

10. COMPULSORY DRUG TREATMENT AND REHABILITATION CENTRES AND ADMINISTRATIVE DETENTION OF DRUG USERS (QUESTIONNAIRE PARAS. 7 & 12)

There are currently at least seven state-run drug detention centres in which people who use drugs are compulsorily held, spread across various provinces of Cambodia.⁴⁹ These centres are variously overseen by the national police, military police (gendarmierie), and the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY), in tandem with municipal and provincial authorities. The MoSAVY also runs “youth rehabilitation” and “vocational training” centres, including Prey Speu, a social affairs centre on the outskirts of Phnom Penh where people who use drugs are also regularly detained.

These centres mostly hold individuals arrested by the police in anti-drug operations and city beautification efforts. In addition to people who use drugs, other marginalised groups are often locked away in these centres, including homeless people, sex workers, and people with mental disabilities.⁵⁰ Many individuals are also brought to drug detention centres by family members, hoping that their relatives might find the treatment and rehabilitation services they may require. In the latter case, families typically pay the centre an initial entry fee in addition to a monthly “donation” for each month their relative remains there.⁵¹ Individuals are typically held in drug detention centres for six-months; however, longer periods of detention—up to two years—are permitted under the Law on Drug Control.⁵²

Cambodia’s compulsory detention centres for people suspected of using drugs operate in a legal vacuum, with no domestic legislation adequately governing their management or operations. As such, these centres not only violate international human rights law, they also operate in the absence of oversight and regulation, rendering people detained therein at heightened risk of human rights violations.

⁴⁹ 1) Orkas Knhorn Center, Phnom Penh; 2) Chivit Thmey Youth Rehabilitation Center, Banteay Meanchey; 3) Educational and Rehabilitation Center of Military Police, Banteay Meanchey; 4) Hope Center of Civilian Police, Battambang; 5) Educational and Rehabilitation Center of Military Police, Battambang; 6) Rehabilitation Center for Drug Dependence, Siem Reap; and 7) Education and Rehabilitation Center of Military Police, Sihanoukville.

⁵⁰ Human Rights Watch, “Skin on the Cable: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia,” 25 January 2010, <https://bit.ly/2uJh8U1>; Human Rights Watch, “They Treat Us Like Animals: Mistreatment of Drug Users and “Undesirables” in Cambodia’s Drug Detention Centers, 2013, <https://bit.ly/37krUgH>.

⁵¹ Amnesty International interview with drug rehabilitation expert, Phnom Penh, 24 October 2019.

⁵² Law on Drug Control, Article 102 (5).

The 2012 Law on Drug Control, in addition to Circular No. 03 of 2006 on the Implementation of Measures on Drug Education, Treatment And Rehabilitation for Drug Users (the Circular), are the only sources of law which refer to state-run “rehabilitation” centres, yet they are wholly inadequate as a legal basis for the system of mass detention which currently exists, due to their lack of clarity regarding the circumstances under which individuals can be involuntarily detained.⁵³

The Law on Drug Control makes reference to “compulsory drug rehabilitation” but does not provide specific determination procedures for the involuntary committal of detainees. Article 101 states that:

In principle, treatment and rehabilitation can be undertaken only after receiving consent from drug addicts. However, in special circumstances and for the interests of drug addicts and the public, treatment and rehabilitation can be conducted compulsorily in accordance with the conditions and procedures as stipulated in this Law.

These “special circumstances” mentioned in Article 101 are not clearly defined anywhere, with the exception of instances of involuntary detention that are ordered by prosecutors (Article 108). Article 107 on Compulsory Drug Treatment and Rehabilitation states:

No one can be forced into treatment and rehabilitation of drug dependence, except when the concerned person is under the state of severe drug dependence with apparent threat of immediate and severe risk exposures to her/him or to others.... Compulsory treatment and rehabilitation can also be undertaken if the drug addict is under the state of inability to express her/his willingness to accept voluntary treatment and rehabilitation.

Cambodia’s Law on Drug Control does not specify which authorities have the ability to order compulsory detention in the name of drug treatment, and the process by which the necessity of drug treatment is determined is so vague that it is ripe for arbitrary and abusive interpretation.

Article 108 outlines the process for “Compulsory Treatment and Rehabilitation Imposed by the Prosecutor,” stating that “[t]he prosecutor may receive a request directly from a parent, guardian, or relative of a drug addict or through other competent authorities.” However, these “competent authorities” are not defined, and the law is unclear as to whether compulsory treatment can *only* be imposed by a prosecutor, or also in other circumstances.

In cases of involuntary treatment not involving a prosecutor – which the vast majority of cases documented by Amnesty International did not – there is no provision for judicial supervision of compulsory treatment orders, in violation of international human rights standards governing administrative detention,⁵⁴ including by this Working Group.⁵⁵

Article 4 of the Law on Drug Control is of particular concern because it defines “drug addict” as any “person who consumes drugs and is under the influence of drugs”. This provision conflates all drug use with dependency, thereby mandating treatment and rehabilitation regardless if a person has developed a dependency on drugs or not. While drug dependence is a chronic and relapsing health condition that may require medical treatment, not all drug use implies dependence and therefore not all drug use requires medical treatment. According to the UNODC, only 10% of all people who use drugs develop a drug dependence.⁵⁶ This definition in Cambodian law follows a misguided presumption that all drug use is inherently dangerous and leads to dependence, which deepens general misconceptions about people who use drugs, perpetuates stigma and discrimination against them and facilitates other human rights violations.

Data on the number of people compulsorily detained for drug-related reasons in Cambodia is difficult to access and verify. Testimonies received by Amnesty International suggest that levels of overcrowding inside these centres is similar to the prison system. Limited government data reflects this: while 3,400 people were reportedly sent to these centres in 2016, 8,700 people were sent in 2017 – an increase of 256%.⁵⁷

Cambodia’s Law on Drug Control only allows for compulsory drug detention in two narrow circumstances, namely where the individual concerned is deemed to be in a “state of severe drug dependence with apparent threat of immediate and severe risk exposures to her/him or to others” or “under the state of inability to express her/his willingness to accept voluntary treatment and rehabilitation”.⁵⁸

Both of these exceptions are unacceptable under international human rights law. Compulsory detention for the purposes of drug “rehabilitation”—including detention based on the perceived danger of persons to themselves or to others or on arguments of “medical necessity”—is inherently arbitrary according to what this Working Group has previously established.⁵⁹ The UN Human Rights Committee has also determined that regimes of administrative detention present several risks of arbitrary deprivation of liberty due to the scarce safeguards provided to detainees.⁶⁰ In respect of the latter exception – where

⁵³ Circular No. 03 of 2006 on the Implementation of Measures on Drug Education, Treatment and Rehabilitation for Drug Users, 23 October 2006.

⁵⁴ United Nations Committee on Civil and Political Rights, General Comment No. 35, UN Doc. CCPR/C/GC/35.

⁵⁵ UN Human Rights Council, Report of the Working Group on Arbitrary Detention, July 2015, UN Doc. A/HRC/30/36 para. 59.

⁵⁶ United Nations Office on Drugs and Crime, World Drug Report 2018, New York, 2018, p. 7.

⁵⁷ Kong Meta, “Ongoing drug crackdown straining facilities,” *Phnom Penh Post*, 3 January 2016, <https://bit.ly/37m4mYU>.

⁵⁸ Law on Drug Control 2012, Article 107.

⁵⁹ Report of the Working Group on Arbitrary Detention, 10 July 2015, UN Doc. A/HRC/30/36, para. 59.

⁶⁰ General Comment 35: Article 9 (Liberty and security of person), 16 December 2014, UN Doc. CCPR/C/GC/35, para. 15.

there is deemed to be an inability to provide consent – such an inability could only ever be temporary and would require the authorities to facilitate the person concerned to provide or withdraw their consent on an ongoing basis.⁶¹

According to the World Health Organization guidelines, drug treatment should not be compulsory and should only be undertaken with informed consent.⁶² Informed consent to medical treatment is an essential component of the right to health. The concept is grounded in the ethical principle of patient autonomy and human rights. Informed consent is the ability to make a voluntary and sufficiently informed decision, which protects the right of the patient to be involved in medical decision-making, and it assigns duties and obligations to health-care providers.⁶³

Regardless of the lack of human rights compliance of the narrow exceptions provided for in the Law on Drug Control which allow for compulsory drug detention, Cambodian authorities continue to flout the general rule against compulsory drug detention by detaining people in violation of the rights to health and liberty. Only one of the former detainees interviewed by Amnesty International (of a total of 20) reported being brought before a judge prior to being detained in a compulsory drug facility.

People who were held at these centres told Amnesty International that one of the most difficult aspects of their detention was its indefinite nature: many detainees were never told how long they were to remain in detention. While most individuals whom Amnesty International interviewed were detained for six months, individuals without family support and who could not afford to pay bribes were often held longer.

The involuntary detention described to Amnesty International by former detainees clearly violates Article 104 of the Law on Drug Control, which emphasizes the voluntary nature of the treatment regime. The law establishes that people undergoing treatment “are entitled to participate in making any decision to accept the methods of treatment and rehabilitation, including the duration of treatment and rehabilitation and the cease of treatment and rehabilitation”. The law further states that people under treatment can, at any time, voluntarily cease treatment and rehabilitation.

The actions of the Cambodian police and the agents of the Ministry of Social Affairs, Veterans and Youth Rehabilitation in respect of people suspected of using drugs not only violate Cambodia’s human rights obligations, they are in direct conflict with the community-based drug treatment model being advanced by Cambodia’s Ministry of Health. Individuals who are detained are held in detention facilities in which they are denied access to evidence-based drug treatment services and placed at severe risk of a range of human rights abuses. Lacking any evidence base, these policies have, moreover, failed to reduce drug use among the Cambodian public according to the government’s own data.⁶⁴

11. OVERCROWDING AND INHUMANE CONDITIONS IN DRUG DETENTION CENTRES

⁶¹ Guidelines on the Committee on the Rights of People with Disability on Art. 14, (para. 6)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A/72/55&Lang=en

⁶² UNODC and WHO, International Standards for the Treatment of Drug Use Disorders, March 2017, <https://bit.ly/2xIRJAG>.

⁶³ UN General Assembly, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, August 2009, UN Doc. A/64/272 para. 9.

⁶⁴ The periodic reports on the anti-drug campaign released by the government’s National Authority for Combatting Drugs (NACD) have not shown any reduction in the numbers of recorded “drug users”. The NACD states that there were 20,621 “drug users” at the end of 2016, 18,104 at the end of 2017, approximately 20,00 at the end of 2018, and 19,272 in November 2019. Source: National Authority for Combatting Drugs, Full Year Annual Report 2017, 26 February 2018; National Authority for Combatting Drugs, Full Year Annual Report 2018, 3 April 2019; National Authority for Combatting Drugs, First Six Months Report 2019, November 2019.

(QUESTIONNAIRE PARAS. 7 & 12)

Every former detainee interviewed by Amnesty International described extreme overcrowding during their time in drug-related detention, with the situation deteriorating markedly between 2017 and 2019 as a result of the anti-drug campaign. This severe overcrowding, in combination with a lack of access to clean water and nutritious food, has a major impact on detainees' physical and mental health.

People formerly detained in drug detention centres consistently described conditions which were so cramped that it was impossible to sleep on one's back on the floor of the cell. Instead, detainees crowd together on their sides, or have to sleep in shifts. Conditions are exacerbated by a lack of ventilation, with many former detainees describing hot, windowless cells infested with mosquitoes.

People interviewed by Amnesty International described being confined to their extremely cramped cells for 22 to 24 hours per day. While most people said they were allowed outside for one to two hours daily at mealtimes, others described being forced to eat in their rooms, and only being allowed outside their cells if they paid money to their "room leaders".

Accounts of exercise periods were similarly uneven. While some detainees had three one-hour periods of exercise outside their cell per week, others – particularly when overcrowding deteriorated as the anti-drug campaign progressed – described minimal exercise, and always within the confines of their cells.

Those interviewed by the organization also described a governance regime in which corruption was central to the allocation of relative 'privileges' within compulsory drug detention centres. Bribes and gifts to centre staff and "room leaders" can get them more sleeping space, better nutrition, protection from violence, and even early release.

The overall impact of this overcrowding, combined with other inhumane conditions of detention reaches the threshold of cruel, inhuman or degrading treatment under international human rights law. The conditions are so brutal that many detainees are physically and mentally traumatised by their experiences of mistreatment and abuse, which may in turn exacerbate drug dependence. One man who spent six months in Orkas Khnom in 2017-2018, summed up the impact of these conditions: "I felt like living there just made people worse. It's so hard for people to eat, it makes people so mentally stressed. People who are pretty fine [going in] get mentally ill from being held in that place."⁶⁵

In addition to overcrowding, detainees suffer from a lack of sanitation and adequate healthcare in compulsory drug detention centres. Many former detainees recounted to Amnesty International that they became ill while in detention as a result of overcrowding, unsanitary conditions, and poor nutrition, with skin conditions and stomach illnesses most prevalent. All of the former detainees who spoke to Amnesty International described the prevalence of these health problems, and the absence of appropriate medical care inside the centres. If detainees become ill, they can visit an on-site medical centre; however, the only medicine they are likely to receive is paracetamol.

Some detainees blamed their skin problems on a lack of clean water and access to sanitation. As one former detainee said: "Most people in there had skin diseases because we couldn't clean ourselves properly. When people are ill, [the authorities] don't take them to the hospital unless they are extremely ill, or unless it's too late."⁶⁶

People who spoke to Amnesty International also complained of inadequate food of poor quality that frequently made them ill. Women with young children described not being given any food rations for their children.

The food provided in compulsory drug detention centres had fatal consequences in late 2019. In December, two children detained in Banteay Meanchey's Phnom Bak centre were reported to have died and at least 150 more became ill after being poisoned by unwashed, pesticide-laden vegetables provided by the centre.⁶⁷

The inhumane conditions of detention in compulsory drug detention centres, combined with forced drug withdrawals and prevalent torture and other ill-treatment at the hands of room leaders and centre staff, leads many detainees to attempt suicide. One former room leader in Orkas Khnom detention centre told Amnesty International that he frequently witnessed self-

⁶⁵ Amnesty International interview with a man detained during anti-drug campaign, Phnom Penh, 4 December 2019.

⁶⁶ Amnesty International interview with a man detained during anti-drug campaign, Phnom Penh, 4 December 2019.

⁶⁷ Soth Komsoeun, "'Pesticide-laden cucumbers' kill two, poison 150 in Banteay Meanchey," *Phnom Penh Post*, 6 December 2019, <https://bit.ly/2whj1G>.

harm and approximately one attempted suicide per week by people detained in the centre. He recalled that some people ran into a wall with their head to try to die by suicide, while others tried to hang themselves.

12. PRIVATE DRUG TREATMENT CENTRES AND SPECIALISED COURTS (QUESTIONNAIRE PARAS. 8, 10, 11)

There are three private drug rehabilitation centres in Cambodia, all of which are run by non-governmental organisations. Although these centres fell outside the scope of Amnesty International's most recent research, Amnesty International understands that one of these centres – The Drug Addict Relief Association of Cambodia (DARAC) – detains people involuntarily after they are brought in by their families. The other two private rehabilitation centres, run by NGOs Friends International and Mith Samlanh, are voluntary in nature and operate in line with international best practices for drug rehabilitation.

Amnesty International has not conducted legal research on the status of private rehabilitation centres in Cambodia.

Cambodia does not have specific drug courts or any other specialised courts for people accused of drug-related offences. Amnesty International has received no reports of military courts being used to try people accused of drug-related offences. Neither is Amnesty International aware of cases in which pregnant women have been detained on the basis of an alleged danger to the foetus as a result of drug use.

13. DRUG TREATMENT FOR PEOPLE IN DETENTION (QUESTIONNAIRE PARA. 14)

People held in Cambodian prisons do not receive any treatment for drug dependency or harm reduction services.

Moreover, the testimonies of individuals formerly detained in Cambodia's drug detention centres strongly suggest that this system is not intended to meaningfully assist those with drug dependence. Rather, this system appears to be intended to remove individuals deemed "undesirable" from public spaces and to punish people for their perceived moral failings. Individuals formerly detained in the name of "rehabilitation" spoke to Amnesty International of the complete absence of appropriate medical care and facilities within detention centres. They described an absence of concrete rehabilitation and treatment plans, with an apparent reliance on abstinence as the sole solution to drug dependence.

The combination of abstinence and exercise, which are most commonly used as supposed rehabilitation strategies, have been discredited by public health and human rights experts.⁶⁸ In addition to being denied evidence-based treatment while detained, individuals who have a drug dependence are forced into abstinence and undergo withdrawals without any medical assistance or supervision. Amnesty International has heard stories of denial of opioid substitution therapy and other harm reduction services in places of detention, which violated the right to health and strongly suggested circumstances that may amount to torture.⁶⁹

The lack of evidence-based drug treatment available in state-run compulsory drug detention centres also violates Article 102 of Cambodia's Law on Drug Control, which states:

The treatment and rehabilitation of drug dependence shall accompany appropriate scientific medical services, namely:

1. Treatment and rehabilitation shall be managed by healthcare experts;
2. Methods of treatment and rehabilitation shall clearly respond to the need of each individual's symptom and shall be decided by a health care expert in consultation with and with the consent from the person in question;
3. The treatment and rehabilitation shall comply with national and international norms and rules of best practices applicable to the treatment and rehabilitation of drug dependence in an effective and humanitarian manner.

Former detainees who had been using methadone as an opioid substitution therapy told Amnesty International of the severe pain experienced when they were forced to go through withdrawal without any medical support during their detention at Prey Speu, and how they were punished and beaten if they showed symptoms from their withdrawals such as vomiting.

The absence of scientifically-supported treatment within compulsory drug treatment centres can have lethal consequences for individuals even after their release. This is particularly true of people with an opioid dependence and those who are receiving methadone treatment. A rubbish collector that was held in Prey Speu recounted that three of her cellmates have died since they left the drug detention centre, at least two of them from an overdose.

14. ARREST, DETENTION AND IMPRISONMENT OF JUVENILES FOR DRUG-RELATED CRIMES (QUESTIONNAIRE PARA. 15)

The impact of Cambodia's failed "was on drugs" on children has been largely unreported. Amnesty International encountered several children who were either subject to compulsory detention in drug centres or prosecuted via the criminal justice system. The organisation interviewed four children who were prosecuted for drugs-related charges under the anti-drug campaign, including three children who were convicted for using drugs and one who was convicted for trafficking.

⁶⁸ UNODC and WHO, International Standards for the Treatment of Drug Use Disorders, March 2017, <https://bit.ly/2xlRJAG>; World Health Organization and United Nations Office on Drugs and Crime, *International Standards for the treatment of drug use disorders (draft for field testing)*, March, 2016, UN Doc. E/CN.7/2016/CRP.4.

⁶⁹ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, January 2009, UN Doc. A/HRC/10/44, para. 57; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, January 2009, UN Doc. A/HRC/10/44 para. 73, UN Doc. A/HRC/22/53, para. 73; Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, April 2015, UN Doc. CCPR/C/RUS/CO/7, para. 16.

Among the three children who were prosecuted for using drugs, two were convicted on the basis of positive results to compulsory drug tests which they were forced to undertake after being arrested in drugs raids, and one was convicted after his uncle, with whom he was travelling, was caught in possession of a small personal quantity of methamphetamine.

LICADHO has interviewed many children who have been detained for drug offences. The majority of them have not had a lawyer or been informed of the charges against them at time of arrest. They were completely unaware of their legal rights. Several children reported not being allowed to contact their parents or guardians before being transferred to prisons. One child prisoner told LICADHO that he had never used drugs or sold drugs in his life, that his urine test showed no traces of drugs, and that police beat him during his interrogation. At the time of his arrest he was in grade nine in high school.

Amnesty International believes that no child should be imprisoned or otherwise deprived of liberty solely for using or possessing drugs. The deprivation of a child's liberty for drug-related offences should be a last resort and for the shortest appropriate period of time, and must be in a facility especially suited to their needs. The Committee on the Rights of the Child has consistently called on States to avoid the treatment of children as criminals for their use of drugs,⁷⁰ and has recommended States not to subject children who use drugs to criminal proceedings.⁷¹ Moreover, Amnesty International believes that states should consider alternatives to criminalization when dealing with children accused of having committed minor, non-violent drug-related offences.

One 14-year-old child who was convicted for trafficking told Amnesty International that he had been tortured by police during his detention at a police station following his arrest in 2018.

The arrest or detention of children must be a measure of last resort, and must be for the shortest appropriate period of time.⁷² However, the Cambodian Center for Human Rights, a local human rights organisation which monitors proceedings at Cambodia's Court of Appeal reported in 2019 that "pre-trial detention of juvenile [sic] appears to be the norm rather than a measure of last resort".⁷³ All of the children interviewed by Amnesty International had also been placed in pre-trial detention.

Some children interviewed by Amnesty International displayed a lack of understanding of the criminal process which they had faced, suggesting the failure of the criminal justice system to ensure that accused persons, especially under-18s, are fully aware of their rights.

Under the Convention on the Rights of the Child (CRC), states have an obligation to ensure that the best interests of the child are observed in all actions concerning children, including in the context of criminal justice.⁷⁴ The Human Rights Committee has recognized that, under the ICCPR, states are required to adopt special measures to protect the personal liberty and security of every child.⁷⁵ The Special Rapporteur on the Independence of Judges and Lawyers has stated that children in conflict with the law require broader safeguards to be applied to them, particularly at the sentencing stage in criminal proceedings.⁷⁶

According to Cambodian law, children must always be provided with legal aid when they are accused of criminal offences, whatever the nature of the accusations they face.⁷⁷ However, three of the four prosecuted under-18s interviewed by Amnesty International said that they were prosecuted without being provided with legal representation.

In prison, children are faced with the same unbearable levels of overcrowding which plague adult detention centres, but with heightened risk factors. Amnesty International's research raises significant concerns regarding child protection and the incarceration of children under Cambodia's anti-drug campaign.

All four children interviewed by Amnesty International were held in cells with both adults and children in Phnom Penh's CC2 women's and children's facility, in contravention of Cambodian and international human rights law. LICADHO has observed that children held in provincial prisons may also be held in cells with both children and adult inmates. LICADHO has also interviewed children who have been held in CC1, Phnom Penh's adult male correctional facility, and has intervened to transfer them to an appropriate facility. Mixed detention of adults and children poses a clear risk to the safety and well-being of children, and these dangers are amplified in the extremely overcrowded conditions which currently prevail in Cambodian prisons. A detainee who was 16 years old at the time of his imprisonment for 'using' drugs, told Amnesty International: "There were 182 prisoners in our room, a mixture of young boys and men."⁷⁸

⁷⁰ Committee on the Rights of the Child (21 April 2011), Concluding Observations: Ukraine, UN Doc. CRC/C/UKR/CO/4, para 61(b); Committee on the Rights of the Child (26 February 2004), Concluding Observations: Armenia, UN Doc. CRC/C/15/ADD.225, para 63; Committee on the Rights of the Child (26 February 2004), Concluding Observations: Indonesia, UN Doc. CRC/C/15/ADD.223, para 74(b); Committee on the Rights of the Child (21 September 2005), Concluding Observations: Norway, UN Doc. CRC/C/15/Add.263, para 44(b).

⁷¹ Committee on the Rights of the Child (7 April 2011), Concluding Observations: Mexico, UN Doc. CRC/C/OPAC/MEX/CO/1, para. 29; Committee on the Rights of the Child (21 April 2011), Concluding Observations: Ukraine, UN Doc. CRC/C/UKR/CO/3-4, paras. 59-60.

⁷² Convention on the Rights of the Child, Art. 37.

⁷³ CCHR, "Fair Trial Rights in Cambodia Monitoring at the Court of Appeal Annual Report (1 November 2017-31 October 2018), October 2019, <https://bit.ly/2OQc8nz>.

⁷⁴ Convention on the Rights of the Child, Arts. 3(1), and 40(2)(b)(iii).

⁷⁵ HRC General Comment 35: Article 9 (Liberty and security of person), 16 December 2014, UN Doc. CCPR/C/GC/35, para. 62.

⁷⁶ Report of the Special Rapporteur on the independence of judges and lawyers, 1 April 2015, UN Doc. A/HRC/29/26, para. 67.

⁷⁷ Article 301, Code of Criminal Procedure of the Kingdom of Cambodia.

⁷⁸ Amnesty International interview with a boy detained during anti-drug campaign, Phnom Penh, 16 November 2019.

Children interviewed by Amnesty International described the extreme hardship of their lives in prison. Teenage boys spoke of the inadequate provision of food and round the clock confinement in packed cells.

Widespread corruption in Cambodian prisons prevents many children who live in poverty from receiving regular visits from their families. Child prisoners have told LICADHO that the high cost of prison bribes means that their families are unable to visit them on a regular basis. As family members usually bring additional food and materials, this means that those children who do not have family visit them also suffer from lack of food. Family members of detained children told Amnesty International that the high levels of corruption embedded in prison visitation regimes prevented them from regularly visiting the detained children. The prohibitive cost of visits due to corruption has a disproportionate impact on poorer inmates. One 16-year-old boy recalled to Amnesty International: "I didn't have any visitors for my two years inside because my parents had no money to visit. I missed them so much. What I missed the most is my mum. I was so unhappy that nobody could come to visit me."⁷⁹

The criminalisation of children under Cambodia's anti-drug laws not only leads to multiple violations of children's rights in the course of their prosecution and imprisonment, it can also have a severe, long-term impact on the well-being and prospects of these children. Many face stigma in their communities after they are branded as criminals. A 17-year-old teen who was held in a drug detention centre spoke of his enduring shame after being released from prison: "I felt so ashamed when I went back home, with my history of being a prisoner... I don't know what my future is or what I can do."⁸⁰

15. GOOD PRACTICES IN RELATION TO DRUG-RELATED DETENTION AND DRUG POLICIES (QUESTIONNAIRE PARA. 17)

The Cambodian authorities have recently undertaken a number of tentative steps in the direction of an evidence-based and human rights-compliant approach to people who use drugs. In 2019, the Cambodian government accepted a recommendation made by Portugal during its Universal Periodic Review at the UN Human Rights Council, which committed to "[adopting] a public health and human rights approach to the world drug problem, including the decriminalisation of drug consumption and the provision of harm reduction services".⁸¹

The Ministry of Justice recently announced a campaign to address prison overcrowding and reduce levels of incarceration for minor crimes including drugs-related offences. It was announced on 6 May 2020 that "*minor drug-related trials will be handled urgently based on legal procedures and humanitarian principles. This... includes allowing suspects to get bail, suspended sentences or sentences based on mitigating circumstances following legal procedures.*"⁸² The campaign announcement is a welcome step, but the effectiveness of its implementation remains to be seen.

Some Cambodian officials have spoken in favour of a decriminalised approach to drug use, stating that people who use drugs are to be treated as victims rather than criminals. In 2019, both the Minister of Justice and the Secretary General of the National Authority for Combatting Drugs (NACD) told the UN Special Rapporteur on Cambodia that everyone held in

⁷⁹ Amnesty International interview with a man detained during anti-drug campaign, Phnom Penh, 16 November 2019.

⁸⁰ Amnesty International interview with a boy detained during anti-drug campaign, Phnom Penh, 16 November 2019.

⁸¹ See UPR-Info, Cambodia: Responses to Recommendations 110.156, 5 April 2019, recommendation 110.156.

⁸² Voun Dara, 'Clearing of backlogged cases to start', Phnom Penh Post, 6 May 2020, <https://www.phnompenhpost.com/national/clearing-backlogged-cases-start> (last accessed 26 May 2020).

Cambodian prisons on drug charges was being held for serious trafficking offenses, with no one imprisoned for using or possessing drugs.⁸³ In September 2019, the Secretary General of the NACD reportedly stated, "*no drug users have been jailed because the government has treated drug addicts as victims who need to be treated and rehabilitated free of charge*".⁸⁴ The latest quarterly report on the anti-drug campaign by the NACD, covering January through March 2020, stated that all 2,413 "drug users" arrested during this period were sent to drug rehabilitation, rather than prosecuted.⁸⁵

However, government officials' claims that people who use drugs are not being prosecuted through the criminal justice system purely for their drug use are inconsistent with existing Cambodian criminal law, highlighting the urgent need for legal reforms. Cambodia's Law on Drug Control, enacted in 2012, continues to criminalise the use of drugs.⁸⁶ Moreover, Amnesty International's research indicates that people have been prosecuted and sent to prison solely for their use or possession of drugs for personal use, or even for the suspicion of using drugs.

Also encouraging among the government's recent efforts towards drug policy reform is the Ministry of Health's rollout of community-based drug treatment (CBDT) centres. As of September 2019, CBDT was being implemented in two national hospitals, 24 provincial referral hospitals, 73 district referral hospitals and 332 commune health centres, with 431 facilities in total spread across all 25 provinces.⁸⁷ It should be noted that the vast majority of these facilities were pre-existing general health centres, which have now been given added CBDT responsibilities. The government has also authorised two non-governmental organisations to run needle and syringe exchange programmes.⁸⁸

The Cambodian authorities have further cooperated with the United Nations Office on Drugs and Crime (UNODC) to provide training to officials, who have in turn trained healthcare professionals staffing the 431 CBDT facilities. These initiatives represent the best hope for Cambodia's approach to people who use drugs; however, significant improvements to existing services are required in order for the right to health of people who use drugs to be fully respected.

When Amnesty International spoke to the staff of two CBDT facilities in Phnom Penh, some expressed concerns over the lack of training and understanding of the complexities of drug dependence. One commune health centre staff member told Amnesty International that staff did not have enough expertise on drug dependence, so when the police referred people for drug treatment they could only be referred onwards to a national hospital.

CBDT facilities are generally under-resourced, under-promoted, and lacking in appropriate medical facilities. Staff require further training to ensure that they can meet the needs of people with drug dependence, and the services require promotion among the general public and law enforcement agents. People accessing CBDT may require specialised medication to help cope with withdrawals, and counselling by qualified and trained staff who can support their recovery and community integration. Cambodia's development partners should support the strengthening of CBDT and harm reduction services as an alternative to compulsory drug treatment.

There are examples of well-functioning evidence-based treatment services within Cambodia; however, they are currently provided by NGOs with a limited reach. Nonetheless, the successes of their treatment model should provide inspiration for what is possible should the Cambodian authorities meaningfully commit to transitioning away from the existing, punitive approach to people who use drugs. The experiences of people who have benefitted from voluntary, evidence-based treatment attest to this.

⁸³ Report of the Special Rapporteur On the Situation of Human Rights in Cambodia, September 2019, UN Doc. A/HRC/42/60 para 45.

⁸⁴ Voun Dara, "Government issues report on drug crimes, treatment," *Phnom Penh Post*, 23 September 2019, <https://www.phnompenhpost.com/national/government-issues-report-drug-crimes-treatment> (last accessed 20 April 2020).

⁸⁵ Khouth Sophak Chakrya, "Over 5,500 arrested for drugs," *Phnom Penh Post*, 6 April 2020, <https://www.phnompenhpost.com/national/over-5500-arrested-drugs> (last accessed 20 April 2020).

⁸⁶ Law on Drug Control, promulgated January 2012, Royal Kram NS/RKM/0112/001.

⁸⁷ National Authority of Drugs and Crime, Campaign Report 2018-2019, on file with Amnesty International.

⁸⁸ National Authority of Drugs and Crime, Campaign Report 2018-2019, on file with Amnesty International.