

EXECUTIVE SUMMARY

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

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

Through its medical and human rights monitoring work in --- prisons in Cambodia, LICADHO staff became aware that numerous children are growing up in jail. Yet no organization had investigated the situation or examined its effects on children. Few organizations even provide assistance to mothers with children or pregnant women in prisons. Moreover, despite specific national legislation pertaining to the topic, awareness of the issue is minimal.

LICADHO undertook research between October 2001 and April 2002 in order to assess the conditions in which these children live and determine whether such conditions pose a threat to children's rights. Evaluation of the situation included a review of pertinent policy and literature, as well as personal interviews with incarcerated or detained mothers and pregnant women, children living in prisons, prison staff and individuals at relevant outside agencies.

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

The majority of children living in prisons at present are under the age of 5, which means that they are at a crucial formative stage. Five of the 15 children included in the study are below six months of age. Yet seven out of ten women interviewed reported an inability to produce adequate breast milk due to insufficient food. This is merely one indicator of the nutritional deficiencies facing children in prisons. Though children often share the allotted prison food with their mothers, extra food is not distributed to prisoners with dependents. The food provided typically lacks sufficient nutrients for adults, let alone for growing children. When split among two or three or even more people, the nutritional value is depleted that much more.

Moreover, mothers and pregnant women described an ongoing inability to obtain health care while in prison, whether for themselves or their children. At times this is because the woman's own lack of funds prevents her from seeking treatment outside the prison or paying for

transportation to a medical facility. In other cases it is because the woman is not permitted to leave the prison in order to visit a health professional. In still other situations, it is because the prison health service is unresponsive to women's requests for care. When care is provided in the prisons, it is often inadequate due to a lack of resources. Medicines are usually intended for adults rather than children, for example, and prison health service providers are overworked, understaffed and often not adequately trained.

Living in prisons presents threats to children in other areas as well. The potential for maltreatment at the hands of other prisoners or prison staff is ever-present, particularly in facilities where sex offenders or child abusers may be held.

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

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

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

Current legislation and procedures place responsibility for ensuring adequate care for children in prison squarely on the shoulders of the Prison Department and prison staff. Neither sector is fulfilling this responsibility at present. While they have been charged with the duty of maintaining a high standard of care to children, their mothers, and pregnant women in prison, they have in fact provided little if any of the treatment called for by present policies. Prison staff have not monitored the situation of children or pregnant women in prisons, as is required, nor have they facilitated meetings with outside agencies to aid in providing quality care. Moreover, they have not evaluated children's circumstances to ensure that each child's best interests are served. In failing to fulfill these tasks, the Prison Department and the Cambodian Government have allowed children's rights to be compromised. Unless changes are made in the current system, this will continue to happen again and again.

PREFACE

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LIST OF ACRONYMS

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

INTRODUCTION

There are those who must live in prisons despite never having committed—or even been accused of—a crime. A shocking statement perhaps, yet this is precisely the case for children living with convicted or detained parents. What happens to these children being raised in a prison environment? While the number of Cambodian children living with incarcerated parents is not extraordinarily high, neither is it uncommon for children to accompany their mothers to jail or for women to give birth during their time in prison. The issue has been considered serious enough to warrant both a national directive and a mention in the most recent report of the United Nations Secretary General's Special Representative on Human Rights to Cambodia, Peter Leuprecht (get reference).

Despite this, little attention has been paid to the issue and no research has been conducted with specific reference to this topic. Aside from regular reports from LICADHO's Medical and Prison Project Offices, no local or international organizations have compiled data regarding pregnant pre-trial detainees or inmates or children living with pre-trial detainees or inmates, nor have any other organizations developed programs to address the unique problems they face. To the researcher's knowledge, LICADHO is the only organization currently providing regular services

that specifically target women and children living in prisons.¹ LICADHO provides assistance in the form of medical care for inmates as well as supplementary food for mothers, children, and pregnant women. LICADHO's Children's Rights Office distributes food once a month to mothers with children and pregnant inmates, including canned fish, rice, cooking oil and sometimes canned or powdered milk. Distribution of food generally continues for 3 to 6 months following the birth of a baby, though the timeframe varies according to circumstance. At CCII prison, for example, the researcher witnessed all mothers with children—including those well beyond infancy—receiving extra food from LICADHO. In prisons further from Phnom Penh, food distribution is conducted by local LICADHO staff who receive supplies on regular visits to the LICADHO's Phnom Penh headquarters.

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

The medical team also provides regular health care for inmates. In 2001, LICADHO medical staff made monthly visits to twelve prisons, conducting a total of 4,924 consultations with inmates and pre-trial detainees.² Additionally, investigators from LICADHO's Monitoring and Prison Project Offices visited 19 civilian prisons and one military prison a minimum of three times a month during 2001. During these visits, staff conducted 2,324 interviews with pre-trial detainees and inmates to monitor human rights conditions in Cambodian prisons.³ Consistent interaction with prison populations brought the plight of mothers, children and pregnant women to the attention of LICADHO staff.

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

The objectives of this study are as follows:

¹ Interviewees did report visits in prisons from other NGOs, including the following: ADHOC (as reported by 1 mother and 2 prison directors); CHHRA (reported by 1 prison director and 2 prison staff); LAC (reported by one prison director to provide legal consultations for minor prisoners only); MSF (reported by 1 prison director to provide medical care); UNCHR (reported by 1 prison director). However, interviewees said that LICADHO is the sole provider of regular medical care and often the only source of nutritional supplements for women and children. In addition, discussions with staff at several agencies, including ADHOC, LAC, CDP, CRC-Children's House, CNCC, Social Services of Cambodia and UNICEF confirmed this. CHHRA does provide medical assistance to inmates in four areas (Takeo, Kompong Thom, Pursat and Sihanoukville) but does not focus specifically on women and children. Moreover, the agency has not conducted any research into this area or written any report detailing findings on the status of mothers, children and pregnant women in prisons.

² For more information on and statistics from LICADHO Medical Office's prison work, please see the LICADHO report "Prison Issues and Health Issues: January-December 2001."

³ For more information on and statistics from LICADHO Monitoring and Prison Project Offices' work, please see the LICADHO report "Prison Issues and Human Rights Issues: January-December 2001."

- To determine the scope of the problem and ascertain the general demographics of the affected population;
- To increase understanding of the primary needs and concerns of mothers⁴ and their children and pregnant women living in prisons, as well as the ways in which living in prison affects children's rights, through documentation and analysis of the circumstances they face;
- To compile information on Cambodian and international laws and policies related to the issue and determine the degree to which such laws/policies are being adhered;
- To ascertain how current conditions support and/or violate children's rights with reference to the four "baskets" of rights (Survival, Protection, Development, and Participation rights) as contained in the CRC;
- To create recommendations for addressing said needs and concerns so as to prevent this matter from becoming a larger social problem.

METHODOLOGY

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

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

Research and interviews were conducted in seven prisons between October 2001 and April 2002. In undertaking this study, the author attempted to interview all mothers whose children are currently living with them in Cambodian prisons, as well as their children when age-appropriate. The author interviewed 13 incarcerated or detained mothers with children living in prisons. Due to the fact that the majority of children living in prisons at the time were under the age of four, only one child (aged seven) living with her convicted mother was interviewed comprehensively.⁵

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

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

Much of the information was therefore gleaned from the mothers, future mothers and prison staff. Seven pregnant inmates and pre-trial detainees were interviewed to determine pre- and post-natal care conditions in prisons and to gain insight into women's decisions about keeping newborns in prison with them. In addition, 8 prison directors, 6 prison staff members (4 males and 2 females) and 5 prison health workers (1 male and 4 females) were interviewed in an attempt to attain a more complete understanding of the living conditions and treatment of mothers, their children and pregnant women who are detained or incarcerated. Despite the relatively small sample size of interviewees, those interviewed represent virtually the entire population of mothers living with children and pregnant women in prisons at the time the interviews were conducted. The author therefore feels the results to be conclusive and representative of the complex situation these women and children face.

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

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

Interview questions were developed by the author in collaboration with the LICADHO Children's Rights Office and were aimed at determining how living in prison impacts children's rights.⁶ Questions also addressed the health and well-being of the mothers themselves, as well as that of pregnant pre-trial detainees and inmates, because this affects the physical and emotional health of children both directly and indirectly.

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

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

⁶ For full text of interview questions, please see annex #--.

PERTINENT CAMBODIAN AND INTERNATIONAL LAWS AND REGULATIONS

Several national and international laws were reviewed and examined in order to inform this research, of which the primary ones were:

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

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

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

*I. Circular No. 15 S.K.A. on Communication with Female Detainees and Prisoners Accompanied with Child*⁷

Circular No. 15 was issued on 22 May 1995 by the Ministry of Social Action, Labour and Veterans Affairs (MOSALVY).⁸ The Circular was formulated on the basis of an “inter-ministerial meeting with representatives of UNICEF” that occurred on 25 July 1994 at the Ministry of Justice (MOJ). The text of the Circular indicates that this meeting and the resulting document were created in response to the increasing number of infants and children living in prisons with incarcerated and/or detained mothers. In the words of the Circular, this has “created difficulties to prisons. The children on the other hand are unable to lead a decent life.”

Circular No. 15 goes on to state:

⁷ For the full text of the circular please see the Annex **section** of this paper.

⁸ The Ministry’s name was changed to the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation on 17 June 1999. Throughout the remainder of this paper, the Ministry will be referred to by the acronym resulting from its current title, MOSALVY.

For the purpose of protecting the child and to properly implement the Convention on the Rights of the Child, which the Royal Government of Cambodia ratified in 1992, the Ministry of Social Action, Labour and Veterans Affairs shall have the responsibility to separate those children away from the mother, in order to allow them to live with their family, close relatives, or in rescue centers, upon the agreement of the mother and according to the actual circumstances.

Key aspects of the above paragraph include (1) the intention to separate the child from its mother; (2) the necessity of “agreement of the mother” to the removal of her child from prison; and (3) the removal of the child “according to the actual circumstances.” The term “actual circumstances” is never clarified, however, and is thus left open to broad interpretation. It is therefore difficult to ensure that involved parties have a clear understanding of what constitutes such circumstances. Moreover, it is virtually impossible to enforce the Circular without a precise definition of “actual circumstances” and what is included therein.

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

- *Maintain contacts with municipal/provincial prosecutors to discuss the modalities to cooperate with prisons;*⁹
- *Study the situation of the children and the mothers and discuss with the officials in charge of the prison in order to set up a program according to the actual situation;*
- *Ask for the collaboration of female prison officers or staff to enable the children to stay outside of prison.*
- *Contact various institutions in order to take care of the needs of the children, for instance hospitals, local authorities, schools, etc.*

The Circular then describes “Methods of Implementation” to be used in applying the above orders: “Officials and staff shall, in collaboration with female prison officers, make efforts to counsel pre-trial detainees and prisoners in pregnancy or with children....” The Circular specifies that such counseling shall incorporate several points; the most significant ones are listed below:

- *Find out the situation of the family and close relatives and help the mother arrange for the child to live outside [the prison].*
- *The infant shall be brought away from the mother after reaching 6 [years]¹⁰ of age. In special necessary conditions it*

⁹ Italics have been added by the author to emphasize the points that were used as a basis for interview questions and research analysis; unless otherwise specified, this is the case throughout the remainder of the paper

¹⁰ The English translation of the circular states that children may remain in prisons with their mothers until 6 *months* of age. However, this appears to be a translation error, as all other Cambodian laws and procedures state that children may live in prisons with their mothers until they are 6 *years* old. This is also more fitting with general agreement that children who are still breastfeeding should not be removed from their mothers. Moreover, Proclamation No. 217, which clearly states the maximum age of children living with mothers in prisons as 6 years old, takes precedence over Circular 15. Throughout this paper, the researcher therefore uses 6 years as the age at which the law requires children to be separated from incarcerated or detained mothers.

may be brought away before reaching 6 [years] of age. *There shall be an agreement by the mother, with authorization by the prison, as to with whom and where the child is to be transferred.*

- *Social workers* shall facilitate or bring the child to pay regular visits to the mother, following arrangements at [an] appropriate place in the prison, without exposing the child to hardship.

Legal Aid of Cambodia's (LAC's) 1998 book *Cambodian Law and the Convention on the Rights of the Child: A Comparative Study* details matters of concern with regards to Circular No. 15: "[The Circular] does describe minimum due process protections for the incarcerated mothers by allowing the mother the right to express her opinion in the decision-making [about where her child will live]. However, whether this is a genuine opportunity that is given consideration by the state authorities, needs to be evaluated."¹¹ This speaks to another issue that LICADHO aimed to address, which is that of whether mothers were indeed consulted about or permitted to choose where their children would live.

Point three elucidated in the Circular's "Methods of Implementation" specifies the need for social workers to facilitate the maintenance of a relationship between imprisoned or detained parents and their children, regardless of where the children reside. The authors of LAC's study write:

[W]ith the exception of [this Circular]..., there is currently no domestic law or regulation that specifically provides for the rights of parents or children in prison to maintain their parent-child relationship—i.e. allowing visits by children. However, under the UNTAC Criminal Law, Cambodia has agreed to follow the United Nations *Standard Minimum Rules for the Treatment of Prisoners* and *Basic Principles for the Treatment of Prisoners* which provide this right.¹²

The Circular, along with Cambodia's ratification of the CRC and its recognition of other international standards as mentioned above, in effect commits the government to providing assistance in upholding parent-child relationships where necessary (i.e. where parents and children are separated). LICADHO's research directive thus included analysis of whether social workers are in fact providing such assistance, or whether the government is providing such assistance in any capacity.

LAC's study goes on to point out that "the Circular is deficient in providing an opportunity for judicial review of the decision to separate the children from their mothers. The Circular recognizes the importance of the decisions to separate children from their parents be made by competent authorities—social workers—however, there does not appear to be any monitoring and/or training of these individuals."¹³ Once again, the Circular fails to provide guidelines regarding its terminology: how and by whom is "competency" of authorities determined? Through direct interviews, the author specifically attempted to ascertain whether there has been any involvement of social workers or other "competent" authorities in the decision-making process about the separation of children from their mothers.

¹¹ *Cambodian Law and the CRC* by LAC, p. 81.

¹² *Cambodian Law and the CRC*, p. 81

¹³ *Cambodian Law and the CRC* by LAC, p. 81

*II. Proclamation No. 217 on Administration of Prisons*¹⁴

Proclamation No. 217, which was issued on 31 March 1998 by the Ministry of Interior, contains sections pertinent to the treatment of both mothers with infants and pregnant women in prisons. It is important to note that within the hierarchy of Cambodian law, the Proclamation takes precedence over the Circular.¹⁵

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

1. Provide special assistance to the female prisoner before and after giving birth.
2. Allow female prisoners to give birth outside of the prison in a hospital. If a woman does give birth inside the prison, a health care worker must be in attendance or examine the mother and baby as soon as possible following delivery.
3. Insure that, should a woman give birth within the prison, the infant's birth certificate shall not reflect this when listing place of birth.¹⁶

Moreover, Article 15, entitled "Work," states that pregnant women in prisons "shall not be directed to work 90 days before and 90 days after childbirth."

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

Article 18B of the Proclamation states that children may reside in prisons with their mothers until they reach six years of age. The Proclamation makes clear that the mother assumes primary responsibility for her child's care during the child's stay in prison. However, the Prison Department, under the Ministry of Interior, must provide the children with food and medicine. Furthermore, children living in the prison should be permitted to enter and exit the prison in accordance with the prison's regulations.

Finally, Article 18C of the Proclamation states that if a child is unable to live in prison with its mother due to circumstances that prevent the mother from properly caring for the child, the prison director must "provide for the child or children's best interests" by contacting competent

¹⁴ For the full text of the relevant sections of Proclamation No. 217 please see the Appendix section of this paper.

¹⁵ According to the *Resource Guide to the Criminal Law of Cambodia*, a Proclamation is issued by the head of a ministry or multiple ministries to "organize and govern the activities of each department or section within the jurisdiction of the ministry" (p. 43). A Circular is issued by the Council of Ministers, individual ministries or administrative bodies in order to "provide clarification of legal issues, instructions or administrative requirements." (p. 44). For more detailed information, see the text of the *Resource Guide to the Criminal Law of Cambodia*, pp. 38-44.

¹⁶ This is also stipulated in Article 22 of The Kingdom of Cambodia's Sub-Decree on Civil Status (29 December 2000). As translated by UNICEF, Article 22 reads: "In case a convicted person delivered a baby, the place of birth of the baby shall be the residence of the mother or father."

ministries or relatives to ensure that the child is adequately cared for outside of the prison. The prison director must report such arrangements to the Prison Department.

The Proclamation also speaks to the supervision of female prisoners. Article G outlines the actions to be implemented in prisons holding female inmates or pre-trial detainees. The Article requires each prison to have a “trained female prison officer or official” available at all times to monitor women’s cells.

III. Cambodian Prison Rules and Procedures and Prison Health Service Procedures

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

General Procedures

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

Under Procedure No. 6.3, the director of each prison must provide sufficiently nutritious food to prisoners at least twice a day, as well as “adequate, clean drinking water” at all times. Procedure 6.4 stipulates the types of food, as well as the minimum amounts, to be provided on a daily basis.¹⁷

In order to obtain satisfactory food for inmates, Procedure 6.10 allows prison administrators to request food from non-governmental organizations and to “sell or exchange items produced by the prison for additional foodstuffs.” Permission to do the latter gives cause for concern, as it could easily lead to abuse of power or forced labor within the prison. Though no such instances were reported by prisoners interviewed for this study, one prison director did mention selling prison-made products in order to pay for prison supplies. (See Case Study #37 below)

Most critically, Procedure 6.7 makes special reference to the provision of food for prisoners with children and pregnant inmates: “Prisoners who have children in prison are to be provided with food suitable to maintain the health and well-being of the child. Female prisoners who are nursing an infant may receive additional food for themselves, if recommended by the health care provider.” This Procedure is critical for two reasons. First, it gives the Prison Department responsibility for providing adequate sustenance to children living with incarcerated or detained mothers. Second, it allows for supplementary food for nursing mothers, *but only under the recommendation of a health care worker*. This becomes quite significant when, despite being unable to breastfeed adequately, nursing mothers do not attain such orders from health staff, as is documented in the Case Studies in **Section ---** of this report.

b) Procedure No. 12: Prisoner Requests and Complaints

The purpose of Procedure No. 12 is to “provide procedures for prisoners to make requests and complaints.” As such, the Procedure outlines prisoners’ rights to lodge

¹⁷ For more specific information on what food is to be provided and how much, please see the annex portion of this paper.

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

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

The most critical and significant Procedure with regards to this research, Procedure No. 38 speaks directly to the treatment of pregnant prisoners and children living with prisoners. In addition to the strictures laid out in Proclamation No. 217, Procedure No. 38 instructs prison health workers to monitor the condition of pregnant prisoners regularly. It also states the need to provide a pregnant or breast feeding woman with a balanced diet "to meet her needs" and specifies that pregnant inmates may be exempt from prison work duties during the 2 months prior to and 3 months following childbirth.¹⁸

Regarding the care of children living with their mothers in prisons, Procedure No. 38 reiterates the Prison Department's responsibility for providing sufficient food, clothing, and medical care to children until they reach 6 years of age. The Procedure also mirrors the Proclamation in necessitating that the prison administrator arrange for a child's care outside the prison when such care is required. It goes one step further, however, in stating that the prison director must "facilitate meetings between the mother, relevant Ministry representatives, or family or relatives to ensure the child or children are placed with suitable caregivers on reaching the age of 6 years." Unlike the more general Proclamation, this calls for a very specific action to be taken by the prison administrator in order to ensure a safe and nurturing environment for a child.

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

Prison Health Service Standards

The Prison Health Service Standards, issued by the Department of Prisons under the Ministry of Interior in 2000, provide comprehensive guidelines for the provision of health

¹⁸ Procedure No. 11, "Prisoner Work, Education and Vocational Training," is even more lenient when it states that "female convicts shall not be directed to work 90 days before and 90 days after childbirth."

care to inmates and pre-trial detainees. Key aspects of these procedures as they pertain to the care of women, children and pregnant women in prisons are addressed below.¹⁹

a) *Standard One: Organization and Administration*

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

b) *Standard Two: Staffing and Direction*

Standard Two identifies qualifications to be met by employees of the prison health service, though it does so in a broad manner. Standard Two requires that individuals overseeing prison health services are "suitably qualified by education, training and experience" and that an "appropriately qualified person" takes charge of units within the health service. Moreover, prison health staff must meet requirements for licensing or professional certification. Clearly, Standard Two strives to ensure that prison health staff are well-trained and capable of fulfilling their duties, but it offers no specific criteria for meeting these conditions.²⁰

Standard Two not only calls for prison health teams to employ qualified staff, it also demands that the health services employ a sufficient number of individuals "for efficient and effective operation" in meeting the goals stated above.

c) *Standard Three: Service Delivery*

Standard Three works to ensure that health services remain centered on the needs of inmates and pre-trial detainees. This includes access to health services, but it also calls for "continuity of care, health promotion, [and] early intervention." Based on Standard Three, prison health services must include preventative and ongoing care in addition to as-needed treatment.

Standard Three also speaks to prisoners' right to information regarding health services. This is specifically noted in Standard 3.10, which obligates the prison staff to provide "a mechanism for informing prisoners of their health rights and responsibilities." Furthermore, Standard 3.12 provides prisoners the right to address the effectiveness of prison health services by mandating "a mechanism for receiving and investigating complaints relating to the provision of health care in the prisons."

d) *Standard Six: Facilities and Equipment*

Standard Six asserts the need for "appropriate facilities and equipment... for the efficient and effective operation of the prison health service." In particular, Standards 6.7 and 6.8 require that "sufficient equipment of an appropriate nature

¹⁹ For further text from the Prison Health Service Standards please see Annex – of this report.

²⁰ Standard 3.7 also emphasizes this by stating that staff must provide services "in accordance with existing professionally accepted standards for prison health." Again, however, there are no specifications as to what such "professionally accepted standards" entail.

is available to enable staff to carry out their duties” and that staff have adequate training in the use of such equipment.

e) *Prison Health Operating Manual*

i. *Section 1: Organization and Administration*

The Health Operating Manual’s introductory section, “Organization and Administration,” summarizes the objectives of the prison health service. Many of these objectives have already been outlined in the Prison Health Procedures described above, but the Health Operating Manual places increased emphasis on prisoners’ *right* to a high standard of health care. This emphasis is shown in Section 1.1, “Philosophy”: “We believe that every client is entitled to holistic care, which considers the physical, emotional, social, spiritual and cultural needs of the individual.” The terminology used here, as well as in other portions of Section 1.1—for example, that “clients have a right to expect” competency from health staff and that the prisoner is “the consenting participant in the health care service rather than the object of health care”—illustrates a focus on the basic rights of prisoners as well as on their health. Moreover, Section 1.1 makes clear that health care includes more than administration of medication or attention to physical afflictions; rather, the Prison Department appears to consider a prisoner’s general well-being as a crucial aspect of his or her health, even going so far as to use the term “holistic.”^{21,22}

The focus on prisoners’ rights extends to the goals outlined in Section 1.8 entitled “Strategic and Business Plans—Prison Health.” According to these goals, the Prison Department aims to provide health services that are adapted to meet prisoners’ needs in a manner that demonstrates accountability. The reference to *accountability* is critical, for it demands that prison staff take responsibility for the health and welfare of inmates.

ii. *Section 3: Policies, Procedures, and Protocols*

Section 3 contains several points crucial to the administration of care for mothers, their children and pregnant women in prisons. For example, Section 3.7, “Transfer to Hospital/Outside Agency,” includes pregnancy and childbirth in a list of conditions that may require medical care outside the prison. Section 3.7 also designates the prison administration as the party responsible for arranging transport to outside medical facilities.

As it title suggests, Section 3.9, “Care of Children in Prison,” is especially relevant to the treatment of children living with incarcerated or detained mothers. It restates Proclamation 217’s declaration that children may live in prison until age 6 and also repeats Procedure No. 38’s call for the preservation of all facets of children’s growth and

²¹ This is also apparent in Section 1.2: Mission Statement. For further text of the Health Operating Manual please see Annex – of this report.

²² Section 3: of the Health Operating Manual, “Policies, Procedures and Protocols,” also makes reference to the need for all-encompassing health care by stressing the need for preventative as well as curative medicine. [p. —]

development. The major significance of Section 3.9, however, lies in its description of how the latter should be carried out. The procedure requires formulation of written action plans²³ that are “age specific and needs sensitive” in order to address each child’s welfare “systematically and methodically.” Moreover, staff should create such an action plan in consultation with the child’s parent. These specifications provide clear benchmarks by which to measure prison staff’s adherence to the health procedures.

Section 3.9 also devotes an entire segment to the immunization of children living in prisons.²⁴ This mandates the vaccination of children as well as the education of their parents regarding the importance of completing the vaccination regime.²⁵

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

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

Section 3.9 also specifies the need to protect children’s health through proper hygiene, bedding, clothing and footwear. If the mother and child do not already possess the necessary items, the prison staff is again instructed to immediately seek outside assistance in acquiring materials.

With regards to the health of children in prison, Section 3.9 asserts that prison health staff examine children regularly and prescribe “appropriate medications.”²⁶

Finally, part 7 of Section 3.9 acknowledges the instrumental role of parents in maintaining children’s health: “It must be recognized that appropriate health education and promotion may be required especially for a young mother who has a first child whilst a prisoner.” The section then goes on to request that prison staff provide health education materials in formats accessible to mothers in prisons.

²³ Section 3.17 of the Health Operating Manual describes an action plan as “a document which is specific to one patient being treated for... [a] condition which requires a sequence of treatment events.”

²⁴ Under the Health Operating Manual’s section on Facilities and Equipment, Section 5.5, entitled “Vaccines,” states that obtaining vaccines or vaccination services falls under the authority of the “doctor or medical attendant who is team leader of a prison health program clinic. Vaccination services for children under the age of six years should be negotiated with maternal and child health services locally in all instances.”

²⁵ According to part 6 of Section 3.11, the newborn must actually begin his or her vaccination sequence before returning to prison following birth.

²⁶ Section 5.2 of the Health Operating Manual also states that “clinical stock items in prison health clinics are to be in reasonable quantities that are appropriate to need.”

The manual's Section 3.11, "Care of Maternity Patients in the Prison Setting," also has significant bearing on this report. The procedure's stated aim is "to provide adequate and appropriate ante-natal and post-natal care for the pregnant prisoner to ensure optimum health for the mother and baby." As with the care of children, the procedure mandates formation of an action plan detailing the health services to be provided to the pregnant woman. It also requires prison staff to arrange for visits to ante-natal clinics at provincial health centers and to provide regular follow-up treatment for pregnant women at prison health centers, with an emphasis on infant feeding and care. Moreover, the section states that an inmate who has recently given birth should be given "appropriate support," preferably by a female prison staff member.

Section 3.11 repeats Proclamation 217 in stating that a child's birth certificate shall not name the prison as his or her place of birth and that women should give birth at hospitals except "in the most extreme urgency." However, Section 3.11 makes a further statement that "planning for the birth should be finalized by the end of the seventh month of pregnancy," including arrangements for the hospital stay and acquisition of necessary materials for the infant's care. This implies that prison staff should prepare for the birth prior to the seventh month and also dictates a timeline for concluding preparations.

As with several of the aforementioned portions of the Health Operating Manual, Section 3.12 elucidates prisoners' rights. This section entitles prisoners to information about their health care and in fact states that prison health staff "have a responsibility" to impart such information in a comprehensible manner when prescribing medication and/or treating a patient.

IV. The Constitution of the Kingdom of Cambodia

Article 48 of the Cambodian Constitution declares that "the State shall protect the rights of children as stipulated in the Convention on the Children" [the CRC] including protection "from acts that are injurious to their educational opportunities, health and welfare."²⁷

Constitutional Article 48 thus lends even more weight to an analysis of the United Nations Convention on the Rights of the Child with regards to the circumstances of children living in prisons (for further discussion of this topic, see below). Moreover, Article 48 leads to questions of how prison life might impair the "educational opportunities, health and welfare" of children. The researcher attempted to answer such questions during the course of this study.

V. United Nations Convention on the Rights of the Child (1989) Ratified by the Kingdom of Cambodia on 15 October 1992

Numerous articles of the UN Convention on the Rights of the Child (CRC) are pertinent to a discussion of the rights and care of children living in prisons.²⁸ Article 3.1 provides a concise

²⁷ The Legal Rights of Cambodian Children by LAC, P. 290

²⁸ For full text of the CRC please see Annex --- of this report.

summary of the intent of the CRC in stating that “in all actions concerning children... the *best interests of the child* shall be a primary consideration.”²⁹ Furthermore, Article 6.2 says, “States Parties shall ensure to the maximum extent possible the survival and development of the child.”³⁰

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

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

Under article 9(1) the *Convention* requires State Parties to establish rules and procedures that clarify when children can be separated from their parents and that only competent—or legally recognized—authorities make the decision. In addition, all interested parties must have the opportunity to participate in the decision-making process and have their opinions known.... ‘Interested parties’... includes anyone who has information relevant to the decision.... In other words, Article 9 provides specific due process procedures that States Parties must follow before the State may infringe on the right of the child to be cared for by his or her parents.... At a minimum, the procedures must be fair.³¹

The text of CRC Article 9 requires that “competent” or “legal” authorities take responsibility for deciding whether a parent and child shall be separated. Based on Circular No. 15, as discussed above, it would appear that the Kingdom of Cambodia recognizes the Inspection Office of Social Action, Labour and Veterans Affairs as such an authority. However, the means by which members of this office are deemed “competent” is unknown, as is their actual level of competency and experience in dealing with matters regarding parental separation from children. Additionally, as highlighted in the above discussion of Circular No. 15 and Proclamation No. 217, the Cambodian State does not seem to have created “rules and procedures that clarify when children can be separated from their parents,” as required by the CRC.

Similarly, Article 3.3 of the CRC works to protect children separated from their parents, but again leaves room for the State to determine the competency of agencies and individuals involved in the child’s care: “*States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities particularly in the areas of safety [and] health, in the number and suitability of their*

²⁹ The Legal Rights of Cambodian Children by LAC, p. 74

³⁰ The Legal Rights of Cambodian Children by LAC, p. 75

³¹ *Cambodian Law and the CRC*, p. 79

staff, as well as competent supervision.”³² With relation to Cambodia, a reading of Article 3.3 leads to the following question: Have standards been established by which adequate competency of caretakers can be ensured? The legal experts and authors of *Cambodian Law and the Convention on the Rights of the Child* clearly do not believe that current legislation or practice provide satisfactory assurance of such competency.

However, Circular No. 15 does reflect Article 9.3 of the CRC by asserting that social workers must ensure contact between incarcerated parents and their children should the children reside outside of the prison.

While parents are mainly accountable for their children’s well-being according to Article 18.1 of the CRC,³³ further CRC articles reinforce the State’s duty to ensure adequate care and protection of children in unusual circumstances:

ARTICLE 18.2: “...*States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*”

ARTICLES 19.1 and 19.2: *States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.... Such protective measures should... include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have care of the child....*

ARTICLE 20.1: *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

ARTICLE 20.2: *States Parties shall in accordance with their national laws ensure alternative care for such a child.*

ARTICLE 27.1: *States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.*

ARTICLE 27.2: *The parent(s) or others responsible for the child have the primary responsibility to secure within their abilities and financial capabilities, the conditions of living necessary for the child’s development.*

³² *Cambodian Law and the CRC*, p. 44

³³ *The Legal Rights of Cambodian Children by LAC*, p. 78

ARTICLE 27.3: States Parties... *shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*³⁴

The above articles make clear that the State can be held responsible not only for supporting agencies and individuals in caring for and protecting children, but also for ensuring that proper, comprehensive care is available to all children. LICADHO thus undertook to determine whether the needs of children living in prisons were being met according to this mandate.

CRC Article 2.2 is also pertinent to the rights of children living in prisons: “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians, or family members.”³⁵ In the case of children with incarcerated parents, article 2.2 attempts to ensure that a child shall not be discriminated against due to a parent’s status as a detainee or prisoner.³⁶

The CRC also speaks specifically to children’s health care. In particular, Article 24 should be excerpted here due to its significance in analysis of the research findings.

ARTICLE 24.1: “States Parties recognize the right of the child to the enjoyment of *the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.* States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”³⁷

ARTICLE 24.2: “State Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures;

- a) To diminish infant and child mortality;
- b) *To ensure the provision of necessary medical assistance and health care to all children with emphasis on primary health care;*
- c) To combat disease and malnutrition, including... *the provision of adequate nutritious foods and clean drinking water...*;
- d) *To ensure appropriate pre-natal and post-natal health care for mothers*
- e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition....

³⁴ The Legal Rights of Cambodian Children by LAC, p. 78-82

³⁵ The Legal Rights of Cambodian Children by LAC, p. 74

³⁶ This correlates to Circular No. 15’s Proclamation that a child born in prison may not have a birth certificate reflecting his/her place of birth as such.

³⁷ The Legal Rights of Cambodian Children by LAC, p. 80

f) To develop preventive health care....³⁸ (author's emphasis)

Again, the above article, in combination with Cambodian Circular No. 15, elucidates the responsibility of the State in ensuring adequate health care for both mothers and children. Of particular note are the inclusion of the availability of pre- and post-natal care and sufficient food in addition to general access to the best medical care possible.

Finally, the CRC recognizes the duty of States Parties to guarantee all children access to education. Article 28.1 stipulates that "States Parties recognize the right of the child to education" and that in order to ensure children's access to education States Parties shall take measures that include "[making] primary education compulsory and available free to all."³⁹

*VI. UN Standard Minimum Rules for the Treatment of Prisoners
Adopted by the First UN Congress on the Prevention of Crime and the Treatment of
Offenders, 1955)*

Though the UN Standard Minimum Rules for the Treatment of Prisoners outline desired procedures for care of prisoners in numerous relevant areas, for the purposes of this report only those rules that specifically pertain to mothers and children or pregnant women in prisons will be discussed here.

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

Special note should be made of Article 23.2 of the Standard Minimum Rules, as it is the only procedural instrument that explicitly refers to a means of caring for infants in prisons. The Article requires that prisons with nursing infants provide a "nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers." As seen in the above discussion of Cambodian prison laws and procedures, to date no national policy enforcing this standard has been issued.

*VII. UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
Adopted by the United Nations General Assembly on 29 November 1985*

³⁸ The Legal Rights of Cambodian Children by LAC, p. 80-81

³⁹ The Legal Rights of Cambodian Children by LAC, p. 82

Although the Beijing Rules deal primarily with the treatment of juvenile offenders, there are some portions of the document that pertain to the topic of this study. In Part I of the Rules, Principle 1.2 states that “member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible.”⁴⁰

This Principle raises the question of whether it is possible for a prison to foster such an environment for children, particularly for children who themselves have not committed crimes. The Commentary portion of Part II of the Beijing Rules clearly speaks to this point, albeit within the context of juvenile detainees: “The danger to juveniles of ‘criminal contamination’ while in detention pending trial must not be underestimated.”⁴¹ It seems logical to extend the concept of “criminal contamination” to any child living among detained and convicted criminals, and to therefore be concerned about the possibility of “criminal contamination” for these children as well. As will be shown below in the section of this paper detailing the research findings, this is indeed one of the concerns of both mothers and prison staff with regards to the effects of prison life on children.

⁴⁰ The Legal Rights of Cambodian Children by LAC, p. 105

⁴¹ The Legal Rights of Cambodian Children by LAC, p. 114

WITHIN THE WALLS:
A Summary of Research Findings

Several clear patterns emerged during the course of the author's interviews. Mothers' decision to keep their children with them in prison often reflected the women's common dilemmas, such as a lack of childcare alternatives. Mothers and pregnant women also shared many of the same concerns with regards to the effects of prison life on their children and/or future children. The major issues that were raised through discussions with these women, as well as with prison staff and administrators, will be highlighted and explored more thoroughly in the following paragraphs, supported by Case Studies excerpted from the interviews to exemplify the women's experiences.

I. Who Are They?

Demographics of Interviewees

INSERT TABLE: DEMOGRAPHICS OF INTERVIEWEES:

ALL STATS ARE BASED ON INFO AT TIME OF INTERVIEW

BREAK UP INTO CONVICTED VS. DETAINED????

- Ave. age of mothers: 33
- Ave. age of pregnant women: 28
- Ave. length of sentence of mothers: 6 yrs.
- Ave. time served by mothers: 18.2 months⁴²
- Ave. length of sentence of pregnant women: unknown (all women are pre-trial detainees)
- Ave. time served by pregnant women: 3.8 months
- Convicted/detained for:
 - Murder of husband: 3
 - Murder (other): 2
 - Attempted murder: 1
 - Theft: 5
 - Fraud/Debt: 1
 - Human trafficking: 4
 - Prostitution: 1
 - Other: 3
- Nationality: 15 Cambodian, 5 Vietnamese women
- Total no. of children living with mothers in prisons visited: 15
- Sex of children: 8 male, 7 female
- Ave. age of children: approx. 2.2 years old
 - Children 1 month old or less: 4
 - Children 1-6 months: 1
 - Children 6-11 months old: 1
 - Children 1-3 years old: 5
 - Children 4 to 5 years old: 3
 - Children 6 or more years old: 1
- Ave. length of time children have been in prison: 9.6 months
 - No. of children who have lived in prison since birth: 6

⁴² This statistic is approximated due to the fact that some interviewees gave non-specific answers regarding the length of time they had been in the prison (i.e. "7-8 months," or "over 1 year").

- *No. of children who have lived in prison for the entire length of mother's incarceration/detainment: 8*

As the demographics table shows, the vast majority of the children currently living in prisons (14 out of 15, or 93%) are aged 5 or under. This is particularly significant in light of the fact that the first five years of a child's life tend to be the most crucial to his or her development.⁴³ (ENTER STAT!) The fact that the average length of a mother's sentence is 6 years in combination with the fact that the average length of time served so far is just over one and a half years indicates that infants may spend a considerable portion of their formative years inside the prison.

It is also interesting to note that slightly more than half of the children (8 out of 15, or 53%) accompanied their mothers to prison immediately upon the mothers' incarceration. Slightly less than half of the children (6 out of 15, or 40%) were born in the prison. Only one child had come to live with its mother after she had already been imprisoned for a period of time. This indicates that the entrance of inmates' children into the prison directly correlates to their mothers' imprisonment or detainment. Children do not tend to live in prisons following failed attempts at other living arrangements. This could result from a lack of availability, desirability, or feasibility of alternative childcare at the time of the mothers' arrest or detainment.

II. Asking Why:

Reasons Women Keep Their Children in Prison with Them

Throughout the research period, the author found that the women interviewed faced similar circumstances and had parallel thought processes when it came to making the choice—that is, if they indeed felt they had a choice to make—to keep their children with them in prison. The following comprise the primary reasons that women's children reside in prison with them:⁴⁴

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

⁴³ REFERENCE????

⁴⁴ Because this includes information garnered from interviews with pregnant women as well, some of the “children residing in prison” have actually not been born yet. However, the pregnant women gave similar reasons for their thoughts on keeping their future children in prison with them, and so their answers have been included in this data.

INSERT TABLE W/ STATS

CASE STUDY #1:

Theera⁴⁵ said that her daughter, Srey Kia, will continue to live with her for the remaining three years of her five-year sentence. Because Srey Kia's grandmother is poor and already has many grandchildren to care for, Theera fears that Srey Kia will not have enough food if she lives with her grandmother, so she thinks Srey Kia is better off staying in the prison.

CASE STUDY #2:

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

CASE STUDY #3:

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

CASE STUDY #4:

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

III. Speaking Out:

Primary Concerns of Convicted or Detained Mothers and Pregnant Women

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

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

The majority of prisoners receive food twice a day; the meals usually include rice and one other dish, often only soup or vegetables. Both prisoners *and* prison staff made frequent mention of the fact that the food available is insufficient in terms of quality and

⁴⁵ All names and identifying details of prisoners, pre-trial detainees, children, and prison staff have been changed for their protection.

quantity. In theory, prisons are allotted 1,000 riel per prisoner per day for food, but this money is used to cover expenses other than food as well (electricity, maintenance, etc.). This amount remains the same regardless of whether dependents live with a prisoner, despite the fact that many women's children share the food distributed to them by the prison. While the meals are meager to begin with, they become more so when split between a mother and child, or perhaps even among a mother and more than one child. For example, Sothy's three children live with her in the prison and all share the food she is given by prison staff. Sothy said that her children do not get enough to eat, especially her son who complains of hunger daily.

CASE STUDY #5:

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

CASE STUDY #6:

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

Prisoners' relatives can provide extra food, but this was rare among the women interviewed. Only two of the imprisoned interviewees (10%) named their families as a consistent source of food. A LICADHO report on the human rights situation in prisons notes: "Women receive to a lesser extent than men extra food from their families. The food situation is even more troublesome for prisoners accompanied by children, as no extra food rations are provided for children."⁴⁶ Many of the inmates' and pre-trial detainees' families live too far away and/or are too poor to travel to the prison for visits. Some inmates and pre-trial detainees simply have no relatives at all.

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

⁴⁶ LICADHO, *Cambodian Prisons: Some Human Rights Issues*, January 1998, p. 6.

recently given birth; only one mother of a five-year-old child reported receiving more food than other prisoners and the remaining 5 mothers said they shared the standard allotment of food with their children.

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

The failure to provide a nutritious, well-balanced diet for children and pregnant women in prisons is a cause for significant concern. A lack of adequate sustenance has been shown to have harmful effects on children, both directly and indirectly. Malnutrition is a serious and pertinent condition that can lead to stunted growth and development as well as various diseases. Moreover, malnourishment during pregnancy can affect fetal development and maternal and infant mortality. The *State of the World's Mothers* 2001, a report published by Save the Children, recognizes that “newborn health... is dependent to a large degree upon the mother’s nutritional status.... Eliminating malnutrition during pregnancy reduces an infant’s risk of death and disease by almost one-third.”⁴⁷

Following birth, insufficient nutrition can prevent a woman from producing breast milk, as appears to be the case among many of the interviewees. Seven out of ten women (70%) with infants reported an inability to breastfeed and/or an inability to produce adequate amounts of milk for their babies. These women sometimes supplemented their infants’ diets with water or food from the prison. One woman reported feeding her infant rice porridge because she was unable to provide him with enough breast milk; the porridge had to be made from rice given to her by other prisoners as the prison did not provide it.

The importance of breastfeeding has long been stressed as a key to infant health in developing nations. Based on research conducted by the World Health Organization and others, Save the Children’s *State of the World’s Newborns* report states: “A recent review has demonstrated the substantial benefits of exclusive breastfeeding over substitute feeding or partial breastfeeding, showing, among other things, that early and exclusive breastfeeding reduces neonatal mortality from infections.”⁴⁸ Women bearing infants in prison, however, are often unable to provide for their children’s nutritional needs exclusively through breastfeeding.

CASE STUDY #7:

Kunthea’s son breastfeeds and also drinks other milk. Sometimes Kunthea asks someone at the prison to buy milk for her from outside the prison because she cannot walk well. Her son needs extra milk because, due to lack of food, Kunthea does not produce enough breast milk. She has no relatives who visit her from outside the prison

⁴⁷ *State of the World’s Mothers 2001* by Save the Children, p.8-9.

⁴⁸ *State of the World’s Newborns* by Save the Children, p. 34.

and therefore she receives no extra food. Sometimes other prisoners give her 500 or 1000 riel to buy food.... While she was pregnant Kunthea would ask other prisoners to get water from the well for her and she would pay them to do so. Now she owes a lot of money to other prisoners.

CASE STUDY #8:

Sometimes Roat Tana has no breast milk—due to the fact that she does not get enough food to produce milk—so her son has to drink sugar water. Her son cannot share her food because he is still very young and cannot eat adult food. Roat Tana said that one of her breasts is “not good” [i.e. does not produce milk] and she only breastfed her son for 6 months. Her son complains every day that he is hungry. He asks to eat meat but she has no money to buy meat.

Finally, women at Battambang, Pursat, and CCII prisons were all concerned about the lack of clean drinking water. Out of the eighteen women asked, three (17%) named a nearby lake as their source of drinking water. An additional woman (1%) said the drinking water comes from a nearby river and a further six women (33%) said it comes from an unknown source. Of these women, only six (33%) boil the water before drinking it; two women mentioned specifically that they were unable to boil it because they did not have the necessary equipment. As exemplified in the case study below, two women even pay for water in order to ensure that they and their children have an adequate supply.

CASE STUDY #9:

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

- *Health and access to medical care.*

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

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

CASE STUDY #10:

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

The above case study brings up two other important points with regard to the situation of children living in prisons: the lack of care available in the specific field of maternal and child health and the need for funds to pay for treatment outside of the prison. Two of the seven (29%) mothers who had given birth while living in prison had done so in the prison itself—despite the fact that Cambodia’s own Proclamation No. 217 on the Administration of Prisons, as well as the Prison Procedures, state that women should be brought to a hospital in order to give birth.⁴⁹ Two of seven (29%) pregnant women said she would deliver her baby in the prison, while four others (57%) said they did not know where they would give birth, thus indicating that there is no guarantee that they will deliver in a medical facility outside the prison.

The health care available in prisons is often limited due to lack of equipment and supplies. Three of five health staff interviewed (60%) said that they are unable to provide sufficient care to all of the prisoners, either because they do not have the time to attend to all of them or because they do not have the necessary tools at their disposal. Moreover, none of the medical staff interviewed has received an M.D; one prison health worker said she had no medical training whatsoever. Two nurses said they did receive certificates in “maternity,” while the three other health staff interviewed had no specific training in maternal and child health.

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

CASE STUDY #11:

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

CASE STUDY #12:

The medical assistant, Chea Son, said the amount of medicine he has is “small,” and not enough. When asked whether he had talked to the Ministry of Health about getting

⁴⁹ For further discussion of Proclamation No. 217 please see above....

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

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

CASE STUDY #13:

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

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

CASE STUDY #14:

Pophir was feeling weak and dizzy so she asked the prison staff to take her to the hospital and they did. The doctor there said that she was not feeling well because she does not have enough food. He gave her some medicine [and] after taking the medicine Pophir felt better, but there was not enough medication and once it was finished her symptoms returned. She does not plan to go back to the doctor because she does not have enough money to pay for transportation to the hospital and medicine; it costs 10,000 riel for a moto and medication each time she goes to the hospital.

CASE STUDY #15:

Solina delivered her son in the prison. She did not go to the hospital for the delivery because she did not have enough money to pay for it.... When asked whether she felt it was safe for her to deliver her baby in prison, Solina said that it was difficult but that

she had no choice because she did not have the money to pay for a hospital delivery.

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

CASE STUDY #16:

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

CASE STUDY #17:

When her daughter, Srey Neang, has been sick, Kun Lina has gone to the doctor in the prison, but she said it is very difficult for her to get medicine from the prison doctor. Kun Lina said that if she has money it is easy to get medicine, but if she has no money then the doctor ignores her. She has gotten medicine from the doctor three times. She said that the doctor always tells her to wait—for example, if she goes in the morning, the doctor tells her to wait until the afternoon. Srey Neang has seen the doctor two or three times since being in the prison. The doctor has always said her sickness is not serious. Kun Lina complains to the doctor that it is serious because Srey Neang has a fever, but the doctor still says it is not serious.

CASE STUDY #18:

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

An additional cause for concern is the failure to vaccinate all of the newborns. Cambodia’s 2000 Demographic and Health Survey, released by the Ministries of Planning and Health, notes the importance of vaccinations for all infants in reducing child mortality from preventable diseases including tuberculosis, diphtheria, whooping cough, tetanus, polio, and measles.⁵⁰ Save the Children’s report on the status of newborns also emphasizes the need for vaccinations as a means of preventing potentially fatal infections in infants.⁵¹ However, vaccinations are often unavailable to children born in prisons. For example, one prison medical assistant said that she is not permitted to give vaccinations at the prison and must therefore take the children to the hospital in order to be vaccinated.

⁵⁰ Cambodia Demographic and Health Survey 2000, p. 150

⁵¹ Save the Children, *State of the World’s Newborns*

Given the frequent inability for mothers and children to reach hospitals, as outlined above, infants may simply go without the necessary vaccinations. The following case study illustrates this problem:

CASE STUDY #19:

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

Sanitation presents yet another health issue confronting mothers and children. Cells are sometimes crowded—one woman reported that she shares her cell with 26 others⁵²—and sanitation facilities are frequently sub-standard. Of the diagnoses made by LICADHO's medical team in 2001, twenty percent were conditions caused by or related to poor sanitation, such as diarrheal or parasitic diseases, typhoid fever, and skin infections.⁵³ LICADHO's 2001 report on health concerns in prisons states that "given the serious overcrowding and poor sanitation present in Cambodian prisons it is no surprise that infectious disease accounts for a large percentage of prison disease."⁵⁴

One particular problem mentioned by women in several prisons is a lack of water during the dry season, which prevents prisoners and their children from maintaining good hygiene. In one case described below, a woman even purchases water in which to bathe her child because she does not trust the cleanliness of the water available at the prison.

CASE STUDY #20:

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

The LICADHO Medical Office raises another critical issue related to the health and safety of women and children in prisons. In its 2001 annual report, the medical staff details the case of one woman who became pregnant after being sexually harassed and assaulted. Details in part one of the following case study have been taken from the Medical Office's report.

CASE STUDY #21:

⁵² Although no statistics on the exact size of the cells were available, LICADHO's Prison Project Office reported overcrowding in virtually every prison visited.

⁵³ LICADHO, "Prison Issues and Health Issues", p. 5, 2001

⁵⁴ LICADHO, "Prison Issues and Health Issues", p. 6, 2001

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

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

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

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

FOLLOW-UP:

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

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

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

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

situation concisely: “[I]t is clear that [women’s] health needs differ from those of their male counterparts. They need better access to gynecological and obstetric services. Additionally, sexual abuse remains a serious health concern.”⁵⁵ As shown above, each of these issues can seriously impact both mother and child and therefore must not be ignored.

- *Financial insecurity.* Monetary issues often arose in conjunction with discussions about food and medical care. A dearth of funds was considered a major factor in preventing female pre-trial detainees and inmates from procuring more or better quality food and health care, or even water. Moreover, several women mentioned giving money to prison guards and asking the guards to bring them things from outside the prison. One inmate said that sometimes she washes clothes for the prison guards in order to earn money so that she can support herself and her child.

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

CASE STUDY #22:

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

This case study provides a clear example of how such financial constraints can continue to impact mothers and children even after the mother’s official sentence has ended.

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

CASE STUDY #23:

If Chenda is convicted and her 5-year-old son continues to live at the prison, he will not be able to go to school because there is no school at the prison. Chenda said her son

would have to live in Phnom Penh in order to go to school, but he has no relatives in Phnom Penh. Chenda thinks it would be better for him to live with an NGO than to stay in prison because if he were taken to an NGO he could learn to read and write and have a good future.

For some women, educational opportunities become one of the deciding factors in determining whether their child will remain in the prison, or until what age.

CASE STUDY #24:

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

Of the three children aged 5 and above living in the prisons included in this study, only one receives any form of schooling. The school, however, is intended for adult inmates; the seven-year-old girl is the only child attending classes there, and she does not have the option to attend a traditional school. While she is in class for nine hours a week, a typical child her age attending school would be in class for – HOURS/WEEK--ADD STATISTIC—The young girl's situation is described below.

CASE STUDY #25:

Srey Pha, who is seven, attends a "school" run by a Christian charity organization directly outside the prison. The school only runs 3 days a week for 3 hours at a time. Srey Pha goes to school 3 mornings a week from 7 to 10 am and then returns to the prison. Srey Pha likes school because she wants to learn but she does not have any friends at school because the other students are older women [from the prison].

- *Maltreatment.* Of particular concern were descriptions of children being mistreated while living in prisons. Though none of the mothers reported substantial or especially serious harm to their children, several recounted instances in which they or their children were subjected to some form of mental or physical abuse, both from prison staff and fellow prisoners. It is also important to note that questioning the women on this topic was especially difficult and sensitive. As the majority of the interviews were conducted with a prison guard present, in some cases the author was unable to pursue this line of questioning. Moreover, the ability of the women to answer truthfully may have been compromised by the prison staff's presence and the potential ramifications of their responses. None of the women reported that their children had been mistreated by prison staff, though three of eleven women (27%) responding to the question did say that they had been mistreated themselves. This could take the form of either physical or verbal abuse, as described below.

CASE STUDY #26:

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

CASE STUDY #27:

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

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

CASE STUDY #28:

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

CASE STUDY #29:

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

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

CASE STUDY #30:

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

mother because she is afraid her mother would fight with the other prisoner. She said she does not tell the staff. Leng also said she always wants to get out of the prison.

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

CASE STUDY #31:

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

CASE STUDY #32:

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

CASE STUDY #33:

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

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

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

CASE STUDY #34:

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

CASE STUDY #35:

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

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

IV. In Charge But Out of Touch:

Lack of Knowledge Regarding Relevant Cambodian and International Laws and Regulations

Interviews with prison staff, including prison directors, reflected a significant lack of knowledge regarding legislation and regulations about mothers with children or pregnant women residing in prisons. Five out of nine prison directors (56%) and seven out of 13 prison staff (54%) interviewed reported no knowledge of Cambodian laws related to the subject.

CASE STUDY #36:

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

Four out of eight prison directors (50%) stated that their prisons have no policy about inmates' children living at the prison and five out of eight directors (63%) said there were no policies about pregnant women living in the prison.

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

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

CASE STUDY #37:

The prison director, Chan Dara, did know about Proclamation #217 but said the prison staff is

unable to follow this regulation due to a lack of funds. Chan Dara said he has to sell things to raise money to provide for the prisoners. Sometimes the prisoners make mats and sell them to earn money. Some of the money goes to the prisoners and some to the prison to provide electricity, medicine and other things.

CASE STUDY #38:

Sophat, the prison director, said that government policy states that when prisoners are released the prison must provide them with clothing and some money to return to their homes, but the government has never supplied the prison with funds for this. Sophat said it is very difficult for prisoners who live far from the prison. He requested aid from the government one or two times but has not received anything so he does not want to ask again. Sometimes he gives the prisoners money himself.

Analysis of Findings

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

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

The Four "Baskets" of Children's Rights

Workers in the field of children's rights frequently classify all rights laid out in the CRC under four primary areas of concern, often termed the four "baskets" of children's rights: Survival Rights, Protection Rights, Development Rights and Participation Rights. One goal of the author's research was to determine whether the rights of Cambodian children living in prisons are being upheld in terms of the four baskets of rights. In this first section of the analysis, each of these categories will thus be defined more explicitly in conjunction with an analysis of their application to children living in prisons.

(1) Survival

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

Ensuring the right to survival clearly implies a need to prevent infant and child mortality, which inherently requires adequate health care for children. Access to sufficient medical care and facilities for their children was one of the main areas of concern among interviewed mothers. The mothers described clear examples of instances in which either they or their children were denied the care they felt was necessary, whether due to financial constraints, lack of availability of medical resources, or prison officials' refusal to provide treatment.

Prevention of infant and child mortality also demands adequate pre-natal care in order to ensure the health of the newborn. Again, the pregnant pre-trial detainees and inmates did not appear to receive such care. Visits to trained medical doctors were limited. Moreover, the prevalence of nutritional deficiencies among pregnant mothers and mothers of newborns has an obvious impact on the survival and health of infants.

The mothers' inability to produce adequate breast milk is both an indication of their own poor health and a danger to the health of their children. The birth of children in prisons rather than in medical facilities can also inhibit child survival. Should a woman face complications during birth, the lack of trained medical staff and proper equipment at the prison health centers could potentially lead to the death or serious impairment of both mother and child. In the 2001 *State of the World's Mothers* report, the authors write:

The presence of a skilled birth attendant during labour and delivery is also critical to preventing maternal and newborn death and disease.... Approximately 15 percent of all pregnant women will face complications that require medical care. Preventing maternal mortality in the case of many of these complications requires high-quality emergency obstetric care in a hospital.... When hospitals are far away, too expensive, or unable to provide emergency obstetric care, complications often result in death or long-term disability.⁵⁶

Finally, failure to vaccinate newborns could have negative affects on their survival well into the future. It would thus appear that, although there were no reports of infant deaths in the prisons, the right to survival of children living in prisons is at significant risk.

(2) Protection

The category of "Protection Rights" includes protection from discrimination, abuse and neglect. It also encompasses the protection of children in especially difficult circumstances, a category under which children raised in correctional facilities could easily fall. With regards to the protection of children living in prisons, the primary concern is that of preserving their right to enjoy a life free of abuse, neglect or maltreatment. The above cases in which mothers reported other prisoners pinching or hitting their children reveal that the prison environment does not provide adequate protection from physical harm. Additionally, instances of prisoners or prison staff yelling at children repeatedly could constitute verbal abuse in some cases. The prisons therefore may not sufficiently prevent children from experiencing psychological or emotional trauma. Failure to administer medical treatment when requested, as well as vaccinations for newborns, could be considered neglect on the part of prison staff or other responsible parties.

Perhaps of even more concern than the incidents themselves is the sense of helplessness that plagues inmates in such circumstances. Prison Procedure No. 12, intended to promote

⁵⁶ *State of the World's Mothers 2001* by Save the Children, p. 10-11.

enforcement of Declaration No. 217, highlights prisoners' freedom to make requests and lodge complaints and details the responsibility of prison staff in addressing such concerns. Yet the above case studies show that the women continue to feel that no safe and reliable course of action is available should they find themselves or their children in an adverse situation. Whether because inmates are unaware of the legislation or simply because the legislation is not implemented, the current system of redress does not adequately allow prisoners to report abuses or get help. In fact, many of the women, as well as the child interviewed, said that fear *prevented* them from going to prison authorities for assistance. The women also had little faith that their requests would produce any positive results, thus discouraging them from reporting ill treatment and, in turn, further endangering their children's rights.

According to data collected during interviews, none of the prisons have rules regarding the interaction of inmates' children with other prisoners. The children appear free to play and talk with whomever they wish, unless their own parent prevents them from doing so. The general lack of concern demonstrated by both prison staff and incarcerated or detained mothers about interactions between children and other inmates is itself disconcerting. This is especially disturbing in the case of one prison where a known foreign pedophile resides. Prison staff interviewed said that their children, who live or frequently play on prison grounds, are especially fond of talking to the *barang*—the foreigner. Though the children referred to are those of prison staff and not of inmates, it appears that the same standards apply to children of prisoners. It seems reasonable to assume that a child living with its mother would be able to associate with the "*barang*" freely as well, despite the *barang*'s conviction as a child molester. Such a situation—and other similar cases that may not be as evident—present a clear danger to children's safety in prisons.

In terms of protection from discrimination, only one prison director out of seven (14%) acknowledged that a child's birth certificate can not list the prison facility as the place of birth. Lack of knowledge about or indifference to this regulation on the part of prison staff indicates a potential failure to protect children from future discrimination due to their parents' circumstances.

Based on the above findings, it can be said that children's Protection Rights are not sufficiently safeguarded within the prison environment. The potential for abuse, neglect and/or maltreatment, as well as discrimination against the child, leaves room for serious violations of these rights in the case of children living with incarcerated mothers.

(3) Development

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

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

Political freedom, guaranteed human rights, social choices,
personal self-respect and improvement of human, social and

economic capabilities are all considered important components as a means to and an objective of development.... [T]he survival and development right under Article 6 is very broad and also includes spiritual, moral and social development.⁵⁷

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

In addition to increasing isolation and reducing peer interaction, the many obstacles to children attending school inhibit their intellectual growth, which should certainly be considered when discussing a child's development.

Article 27 of the CRC calls attention to yet another factor in a child's growth: the need for positive "moral development." It can reasonably be assumed that prisons are not thought of as ideal places in which to foster children's moral development. In their research summary on literature pertaining to families of adult prisoners, Edwin Hostetter and Dorothea Jannah write:

[P]arental incarceration seriously challenges a child's formation of values. In spite of words from parent to child about proper attitudes and behaviors, criminal deeds by the parent send a powerfully contradictory message to the child. Prisoners' children are at risk of manifesting criminal or antisocial activity themselves.⁵⁸

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

Physically, poor nutrition can create serious impediments to children's growth. Malnourishment of pregnant women and children can also lead to a lack of cognitive development. As many pregnant women, nursing mothers and children living in prisons do not appear to receive adequate supplies of food or nutrients, the children's rights to physical and mental development are both at risk.

(4) Participation

⁵⁷ *Cambodian Law and the CRC* by LAC, p. 47

⁵⁸ from "Research Summary: Families of Adult Prisoners" by Edwin C. Hostetter and Dorothea T. Jannah, copyright by Prison Fellowship Ministries 1993.

Finally, the *Convention* includes “Participation Rights” covering the right of a child to express his or her views and to be heard in all matters affecting that child, the right to receive and seek information and the right to join associations.

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

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

Consideration of Findings With Regards to Cambodian and International Laws

In many instances, the case studies themselves provide obvious examples of whether Cambodian and international legal instruments are being applied to mothers, children and pregnant women living in prisons. The following analysis will discuss each of the laws in turn with regards to their administration as found during the course of the research.

(1) Circular No. 15

There are several aspects of Circular No. 15 that appear not to have been administered. First and foremost, the stated intention to separate a child from its imprisoned mother once the child reaches a certain age has not been enforced. Moreover, there does not appear to have been any effort to examine the circumstances of mothers and children and create appropriate programs in collaboration with prison directors.

The lack of female prison staff also creates an obstacle to implementing the Circular. The prisons included in this study had an average of two female staff members each (out of staffs ranging from 40 to 90 people), including those involved in administration or health. The seven prisons included in this study had a total of 14 females on staff. Of these, only four (29%) served as supervisors for female

prisoners (at three prisons—Battambang, CC2 and Kompong Som); an additional three (21%) have contact with female inmates as prison guards. The remaining 7 include three health workers, one kitchen staff, and three administrative staff. This paucity of female prison staff makes it unreasonable to expect “collaboration of female prison officers or staff” in placing children outside of the prison.

Although some prison directors did suggest that mothers place their children with NGOs or orphanages, there appears to have been very little real facilitation of such placements and no examination of whether potential caretaking agencies were legitimate or competent. Social workers did not take an active role in placing children outside of prison, or in arranging for children living outside of prison to visit their mothers, despite the fact that Circular No. 15 specifically calls for them to do so. None of the prisons visited had any social workers on staff. Only one prison staff member reported having had “social workers” visit the prison; these were representatives of the NGO Legal Aid of Cambodia. In the same vein, the case studies show a failure to ensure that the children’s needs were met through cooperation between prisons and other institutions such as schools or hospitals.

However, the prison staff did appear to respect the requirement that a mother agree to have her child removed from the prison. Though interviewees reported that prison staff had suggested that their children be placed elsewhere to live, no women reported having been coerced into giving up a child. Likewise, prison directors and staff all said that they merely “advise” the women about where their children should be raised and that they have not forced women to surrender their children to other agencies. Yet some prison directors did make statements that would imply a mother would have no choice but to give up her child once he or she reaches a certain age (the age varied according to the prison director, ranging from toddler age—SPECIFY AGE to age 6 or 7).

(2) Proclamation 217

Like Circular No. 15, portions of Proclamation No. 217 do not appear to have been enforced. In fact, at times prison staff were not even aware of the Proclamation or its fundamentals. Four out of seven (57%) prison directors interviewed, as well as one additional prison staff member, knew of the regulation requiring that pregnant inmates and pre-trial detainees be taken to a hospital to give birth. Four out of the seven (57%) prison administrators made reference to the Proclamation, indicating their knowledge of the law’s existence, although some of the directors could not detail its specifics. The research thus revealed a general lack of familiarity with Proclamation 217; such insufficient awareness of the law makes it impossible to oversee its proper implementation.

The Proclamation specifies that “special protection” or “special assistance” should be given to pregnant women, with the Proclamation according this right expressly to pregnant inmates. However, little in the way of “special assistance” seemed to be offered to prisoners either before or after giving birth. Some mothers were not given the opportunity to deliver their children outside of the prison, regardless of the Proclamation’s statement that this should be the case. One form of “special protection” that was afforded pregnant women was an exemption from working at the prison (carrying water, doing laundry, etc.) during and immediately after pregnancy. Prison staff did also demonstrate awareness of the fact that a child’s birth certificate could not list the prison as the place of birth, although the author did not see any of

the children's birth certificates and so cannot verify whether this directive was followed.

Proclamation No. 217 also states that while the mother is primarily responsible for her child while living in the prison, the prison must provide food and medicine. In many instances the prison does provide food, though the quality and quantity of food is questionable. At times the food provided was not appropriate for the children (i.e. if the child was too young to eat solid food) and no effort seemed to ensure that proper food was made available, particularly in instances where the mother was unable to breastfeed. Medicine is provided only sometimes and is often not medication intended for use by children. Even though food and medicine are available at the prisons, the inability to provide it sufficiently and suitably for children amounts to a failure to uphold Proclamation No. 217.

Finally, prison staff have not implemented the Proclamation's order to have a trained female staff member monitoring female inmates at all times. As already stated in the above analysis of implementation of Circular No. 15, a general shortage of female prison staff makes administration of such an order unrealistic.

(3) *Cambodian Prison Rules and Procedures and Prison Health Service Standards*

a) General Procedures

i. *Procedure No. 6: Provision of Food for Prisoners*

Arguments regarding the failure to provide adequate food for inmates and their children have already been laid out in the above discussion of Proclamation 217. However, Procedure No. 6 makes specific reference to the need for prison directors to provide "adequate, clean drinking water." As shown by the research findings with regards to food, nutrition and water, women at three different prisons revealed concern about a lack of clean drinking water. Among the primary sources of drinking water they listed were a lake and a river; drinking from these sources can easily lead to disease, especially among newborns whose immune systems may still be weak. The inability to boil or otherwise purify the water, as in the case of at least two interviewees, prevents them from eliminating the danger of water-borne diseases.

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

ii. *Procedure No. 12: Prisoner Requests and Complaints*

For analysis of Procedure No. 12, please see the second paragraph in the above discussion of children's Protection rights (Section 2: Protection). This examines how Procedure 12 has failed to create a satisfactory system of redress for mothers, children, and pregnant women in prisons.

iii. *Procedure No. 38: Female Prisoners and Their Children*

Discussion of the enforcement of Procedure No. 38 is covered in much of the preceding analysis. Procedure No. 38 requires prison health workers to continually assess the condition of pregnant inmates and ensure that the food they receive fulfills their dietary needs. As has already been stated, the nutritional requirements of pregnant inmates and pre-trial detainees—as well as those who are already mothers—are rarely met, nor do health workers consistently review their condition. Another point previously noted is the failure to provide adequate clothing, food, and medical care in general, which Procedure No. 38 also requires. One element that is particular to this Procedure, and that is crucial to taking children's best interests into account, is the demand that prison directors facilitate arrangements between inmates or pre-trial detainees and relevant agencies to guarantee proper care of inmates'/detainees' children once they can no longer reside in prison. Certainly prison administrators do not appear to be meeting this requirement, nor do any other staff or government representatives seem to abide by this rule.

Procedure No. 38 also highlights the need for children living in prisons to have opportunities for growth and development. A more complete discussion of this issue is contained in Section 3 (Development Rights) of the above analysis of the four baskets of children's rights. However, it must be noted that, although Procedure No. 38 directly gives prison directors the role of facilitator when it comes to stimulating children's growth, they do not appear to be fulfilling this role. No prison administrators spoke of cooperating with outside agencies in creating activities or programs to foster children's development, even though the Procedure directly calls for such action.

One area in which prison staff do appear to adhere to the Procedure is that of work by female prisoners. Procedure No. 38 states that pregnant women may forgo work in the prison for the two months before and 3 months after childbirth. In accordance with this, no pregnant women interviewed stated that they had been forced to work during or following their pregnancies. In fact, many mothers with children reported that the prison staff excused them from work either so that they could care for their children or because they were weak from giving birth.

b) *Health Service Procedures*

i. *Health Standards One, Two, Three and Six*

At present, health staff at prisons included in this report have not successfully provided the ongoing, comprehensive care stated as a general goal of prison health services in Standards One and Three. When given, treatment is geared towards immediate solutions for illness or injury. Preventative care and/or care that does not directly focus on physical ailments are absent from the regimens of prison health services. This may be in part because of a failure

to meet Standard Two's demand for the employment of qualified health staff in sufficient numbers to address prisoners' wide-ranging health needs. In truth, the health services at the prisons visited were frequently understaffed and overextended. Some of the staff interviewed had only minimal qualifications, if any. One prison nurse stated that she is unable to provide adequate care to prisoners because she is the sole health care worker at the prison.

Although the Prison Health Service Standards do not specify what constitutes suitable qualifications for health staff, several staff interviewed had questionable credentials in light of the fact that their positions entail providing comprehensive care to all prisoners. Of the four health staff interviewed at four different facilities, one was trained as a nurse with a certificate in "maternity," one was trained as a medical assistant, one reported having studied medicine prior to the Khmer Rouge regime, and the fourth had no medical training whatsoever. None of the staff were trained as medical doctors, nor did any of the prisons report having MDs on staff. Moreover, prison health staff rarely had "appropriate facilities and equipment" at their disposal, as deemed necessary in Standard Six. Two of the health staff interviewed emphasized a dearth of medication and health care equipment at the prisons.

With regards to prisoners' rights, Standard Three asks that prisoners be informed of their health rights and also have the opportunity to register grievances about the health care they receive. No prisons included in this study had conducted sessions specifically informing inmates or detainees of their rights with regards to health care, nor did they have a system in place for "receiving and investigating complaints" about health services.

ii. Prison Health Operating Manual

As in Standards One and Three discussed above, Section 1 of the Prison Health Operating Manual refers to the prisoners' right to "holistic" care encompassing all facets of health, not just physical ones. Once again, however, such care has not been offered. In contrast, the inmates and detainees interviewed for this study often had to request care repeatedly, even for physical ailments that were readily apparent. At times, their calls for help still went unanswered, such as in Case Studies #16, #17 and #18.

This also speaks to the failure of prison health services to take accountability for providing health care that meets prisoners' needs, as is required by Section 1.8 of the Health Operating Manual. At the administrative level, there appears to be very little, if any, sense of accountability for the health and well-being of prisoners and their children. By failing to ensure the availability of adequate supplies to suitably trained personnel, the Prison Department has not succeeded in taking responsibility for prisoners' health.

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

inability to fund such transportation for themselves, as demonstrated by Case Studies #14 and #15.

Health education is another element of Section 3 of the Health Operating Manual, and one which prison health staff have not made a priority. In discussing immunization of infants, Section 3.9 requires prison staff to inform parents about the necessity of completing the vaccination sequence. Other parts of Section 3.9 refer to the need for mothers with children and pregnant women in prisons to receive guidance about caring for their children. This is especially emphasized for new mothers. Section 3.9 states that such education should be understandable for the target population and include information about nutrition, food sanitation, and breast feeding. However, such instruction is rarely offered at the prisons referred to in this paper; only one health worker reported speaking with pregnant prisoners about caring for their newborns.

Additionally, prison health services have not complied with the measures in Section 3.9 that are meant to ensure a safe and adequate diet for children living with mothers in prisons. One of the measures calls for staff to provide liquid vitamins for infants who are not breast feeding. While numerous mothers of newborns reported an inability to breast feed, none of them received vitamin supplements for their infants. Instead, they recalled using water, rice porridge, or milk purchased from outside the prison to sustain their babies. Only in rare cases did prison staff procure supplementary food, as is called for in Section 3.9.

Section 3.9's demand for regular examinations of children also goes unheeded. Mothers interviewed reported that their children are only examined when they present problematic symptoms, and even then they are not always treated. Moreover, prison health staff are often unable to follow Section 3.9 in distributing "appropriate medications" to children, as they simply do not have medicines intended for children at their disposal, as shown in Case Studies #11 and #12.

Nor have prison health staff followed the instructions laid out in Sections 3.9 and 3.11 that call for written action plans that create a framework for ongoing care of children living with mothers and pregnant women in prisons. Not a single interviewee mentioned the formulation of such a plan, nor did staff, inmates, or detainees appear to have considered any long-term strategy for the care of children living with mothers or pregnant women.

This lack of planning also speaks to the segment of Section 3.11 that calls for finalization of arrangements for childbirth by the end of the seventh month of pregnancy. Again, virtually no preparations appeared to have been made for pregnant inmates or detainees to give birth. Numerous women did not even know where they would give birth, and staff interviewed only had vague ideas regarding the women's hospital stay—if they assumed the women would give birth in a hospital at all. For example, at six months pregnant, one pre-trial detainee said that the place of delivery is "up to the prison chief"; another detainee in her sixth month of pregnancy simply said she did not know where she would give birth; and a detainee who is nine months

pregnant said she would give birth in the prison because the prison director would not allow her to leave the prison grounds.

In its description of services to be provided to pregnant inmates and detainees, Section 3.11 states that prison staff must facilitate visits to pre-natal clinics at provincial health centers and give follow-up care on a regular basis at the prison health center. Only two out of seven pregnant women (29%) interviewed had gone to see doctors at provincial health centers. A third woman had been seen by a doctor from outside the prison (he came to the prison), but she did not know from where. Four of the women (57%) reported having seen a health care worker while pregnant, including medical staff in the prison. Of these women, two had seen the medical staff twice in approximately 4 months, one had seen the medical staff once in ten days at the prison, and one was non-responsive to the question posed. It would thus appear that prison staff are not ensuring pregnant women access to outside medical care, nor providing continuous follow-up care in all cases.

Finally, Section 3.12 grants prisoners the right to clear and understandable information about their health care. In fact, prison staff are meant to give such information when treating a patient or dispensing medication. However, numerous women reported having received medicine without knowing what kind or its intended implications.

(4) Constitution of Cambodia

Article 48 of Cambodia's constitution requires adherence to the principals of the CRC, which will be discussed in the following section. The article also stipulates that the State must protect children from acts that could negatively affect their education, health and general welfare. As has been described above in the section on Protection Rights, and as is shown through the case studies, children living in prisons do not seem to have been protected in the ways guaranteed by Cambodia's Constitution.

(5) UN Convention on the Rights of the Child

The majority of relevant points in the CRC are covered in the above discussion of the four baskets of rights. However, some items deserve special attention. The first is that of the necessity for "competent authorities" to determine whether separation of the parent and child is in the child's best interests. The interviews did not provide any evidence of an assessment or evaluation by authorities regarding whether a child should remain with its mother in prison. Most often the mother said she simply brought her child with her to the prison when she was arrested. In the case of newborns there appeared to be an assumption that the infant would remain in the prison with the mother, with no analysis of whether this was in fact in the child's best interests.⁵⁹

Secondly, Article 3.3 of the CRC demands that institutions involved in caring for children must provide adequate childcare according to standards laid out by the state. However, the present standards as laid out in the Prison Procedures, are not being

⁵⁹ Although it is generally agreed that children who are still breastfeeding should not be separated from their mothers, this might not be the case if the mother is not fit to care for her child or if, as in some of the cases described in this paper, the mother is unable to feed her baby properly.

followed. Once again, there seem to be no attempts to ensure agencies' capacity to provide the highest quality of care. Moreover, the prisons' ability to provide sufficient childcare does not seem to have been examined in and of itself.

Alternative means of childcare have not been guaranteed to mothers and pregnant inmates or pre-trial detainees, as Article 20.2 demands. Article 27.3 requires States Parties to provide necessary assistance to parents or other caretakers with particular reference to financial assistance and nutrition. The case studies make clear that mothers and pregnant women in prison have not been offered such support, despite the fact that they often demonstrate need.

Finally, Article 24 of the CRC instructs States Parties to provide all children with health care of the highest possible standard. As has been shown, children living in prison have not been granted this privilege. Moreover, they have not been provided "adequate nutritious foods and clean drinking water," as the CRC calls for specifically.

- (6) **UN Standard Minimum Rules for the Administration of Juvenile Justice**
The Standard Minimum Rules for the Administration of Juvenile Justice requires that States "foster a process of personal development and education that is as free from crime and delinquency as possible." While it is difficult to assess whether such a rule has been applied, the enforcement of this rule for children living in prisons is questionable at best. The above section detailing children's Development Rights speaks to issues of personal development and education. From a subjective standpoint, it would seem clear that living in a prison, though perhaps the best available option, would not place a child in a crime-free environment and could potentially lead to learned criminal or delinquent behavior on the part of the youth.

Examples of Alternative Methods of Care for Incarcerated Mothers, their Children and Incarcerated Pregnant Women

The question of whether infants and children should live in prisons is a complex one, and to address it adequately would require a more in-depth discussion than this paper allows. Research has shown both pros and cons to children remaining in prisons with incarcerated parents. The Council of Europe addressed this in a 2000 report by the Social, Health and Family Affairs Committee: "Prisons do not provide an appropriate environment for babies and young children, often causing long term developmental retardation. Yet, if babies and children are forcibly separated from their mothers they suffer permanent emotional and social damage."⁶⁰ This statement reflects the ambivalence that often accompanies discussions on this topic. The Council's draft recommendations and explanatory memorandum also reveal a hesitance to keep children in jail while still attempting to consider the infants' best interests:

Experts agree that early maternal separation causes long term difficulties, including impairment of attachment to

⁶⁰ Council of Europe Document 8762, "Mothers and Babies in Prison", report, Social, Health and Family Affairs Committee, 9 June 2000, Rapporteur Mr. Rudolf Vis. Of additional note is the statement that "the prison service argues that around the age of 14 months, babies start to become aware of their institutionalized surroundings", which indicates that children of a certain age become particularly vulnerable to the consequences of living in prison.

others, emotional maladjustment and personality disorders. It is also recognized that the development of young babies is retarded by restricted access to varied stimuli in closed prisons.... It is in the best interest of a newborn or a young baby to be with his/her mother. Forced separation at birth or in the early months is detrimental to the healthy development of a child, and damages the mother/child relationship. Breastfeeding a newborn baby is known to provide a better nutritional and emotional start to life.⁶¹

The paper later states this dilemma quite clearly: "The main conclusion of this report is that prison deleteriously affects young children but separation is cruel and inhumane, therefore a new way forward must be developed to manage mothers who commit offences."⁶² The report then goes on to give specific examples of alternatives to sentencing for mothers with young children.

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

[C]hild development research supports the right of the child to be cared for by a parent, particularly in the first few years of life. Although [Circular No. 15] is intended to protect the interests of children, the separation of children and parents must be taken as a last resort under the Convention [CRC] which guarantees the right of a child to be cared for by his/her parents unless this would not be in his/her best interests. Therefore, consideration should be given to alternatives to prison for mothers with children so that the parental relationship is allowed to continue as long as it does not harm the child.⁶³

The paragraph's final emphasis on sentencing options that allow for development of the parent-child relationship reflects strong views that failure to maintain contact between parent and child can be deleterious to the child's development. This is also referred to in Hostetter and Jannah's article: "The literature... acknowledges the value of maintaining family ties—not only for the sake of the prisoner's rehabilitation but for the preservation and welfare of the family."⁶⁴ The maintenance of strong family ties is particularly important for children in especially difficult circumstances, a category under which children of incarcerated parents clearly fall. A 1993 report by the United States National Council on Crime and Delinquency found that "children whose parents are incarcerated experience trauma, anxiety, guilt and fear. They are at significant risk for poor academic achievement, dropping out of school, gang involvement, early pregnancy, drug abuse and delinquency. And children of inmates are five times more likely than their peers to end up in prison themselves someday."⁶⁵ There appears to be clear reason for concern

⁶¹ Council of Europe Document 8762, "Mothers and Babies in Prison", report, Social, Health and Family Affairs Committee, 9 June 2000, Rapporteur Mr. Rudolf Vis.

⁶² Council of Europe Document 8762, "Mothers and Babies in Prison", report, Social, Health and Family Affairs Committee, 9 June 2000, Rapporteur Mr. Rudolf Vis.

⁶³ Cambodian Law and the CRC by LAC, p. 79-80.

⁶⁴ from "Research Summary: Families of Adult Prisoners" by Edwin C. Hostetter and Dorothea T. Jinnah, copyright by Prison Fellowship Ministries 1993.

⁶⁵ From Mothers in Jail by Julee Newberger

regarding the emotional and psychological growth of children with imprisoned parents, let alone children who live alongside their imprisoned mothers.

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

Alternatives to Incarceration:

- *Community Service Orders.* Some courts are permitted to substitute community service for prison sentences in certain cases. Under a community service order, the offender is required to perform some type of valuable service as compensation for his or her crime. They might do basic work for a public institution, such as a hospital or parks department, for an assigned number of hours determined by the court. Community service is an option that can be used in place of monetary fines, which convicts are often too poor to pay (thus leading to more prison time, as described in the case studies above). Community service orders have been used successfully in Zimbabwe⁶⁶ and are under development in other African countries such as Uganda, Kenya, Malawi and Zambia.⁶⁷ They have also been incorporated into sentencing structures in the United Kingdom, France, Germany, Portugal, and the Netherlands,⁶⁸ as well as in Finland⁶⁹ and New South Wales, Australia.⁷⁰
- *Reconciliation.* Reconciliation works with both the perpetrator and the victim of a crime to establish guidelines for an appropriate and mutually acceptable punishment. The goal of reconciliation is to foster acceptance and understanding as well as to encourage criminals to take responsibility for their actions. In addition, it can provide compensation for victims faster than the traditional justice system. This process has been implemented as an alternative to imprisonment in Russia, the Czech Republic and in the juvenile justice system in Poland.⁷¹
- *Intensive Supervision.* A restricted version of probation, “intensive supervision” requires convicted criminals to remain at their homes during certain hours. Probation officers or other authorities make “surprise visits” to their homes during these hours to ensure that the parameters of the probation are being respected. However, offenders are able to remain with their families, hold down jobs, and remain integrated in their communities. In some cases, those under intensive supervision wear electronic ankle bracelets that allow authorities to monitor the offender’s whereabouts at all times, which informs authorities if offenders are not obeying the probationary rules and also alerts authorities if offenders are engaged in potential criminal behavior (for example, if they are spending

⁶⁶ PRI Pamphlet, 1999 and also “Alternatives to Prison in Developing Countries: Some Lessons from Africa” by Vivian Stern, SAGE Publications, London.

⁶⁷ PRI Pamphlet, 1999.

⁶⁸ PRI “Why Do We Need Alternatives?”

⁶⁹ “Alternatives to Prison in Developing Countries: Some Lessons from Africa” by Vivian Stern, SAGE Publications, London.

⁷⁰ from “Mothers in Prison” by Children of Prisoners Support Group, reprinted from their newsletter.

⁷¹ PRI Information Sheets: “Reconciliation in Criminal Justice in Russia”; “The Probation Service in the Czech Republic”; “Reconciliation in the Juvenile Justice System in Poland”

nights in areas where drug activity has been documented rather than in their homes). This form of probation has been used extensively in the United States.⁷²

- *Residential facilities.* In some areas, special facilities allow mothers to serve their sentences while living with their young children. The goal of these programs is “to keep the family intact while the woman satisfies her obligation to the criminal justice system.”⁷³ Such facilities are often specially outfitted to create a child-friendly environment. Women who live in these facilities are frequently required to attend parenting classes, educational programs, or drug and alcohol treatment programs where necessary. They may also be required to secure and maintain employment outside the facility. One example of such a program is Summit House, Inc., in North Carolina, USA. In addition, the state of California has established two programs that transfer eligible incarcerated mothers from prisons to community-based sites.⁷⁴ The Mothers with Infants Together (MINT) program provides such an option for pregnant women during the two months before and three months after delivery, thus providing them access to pre- and post-natal treatment and classes to enhance their parenting skills.⁷⁵
- *In-prison facilities for mothers and children.* Four prisons in England and Wales include “mother and baby units” The units are unlike the residential centers in that they are within the prisons themselves. They provide secure facilities for women who have committed serious crimes or been disruptive in prison but who authorities have determined are not a threat to themselves or their children. The facilities are intended to provide enhanced support for mothers and children while requiring the women to remain in a more highly-monitored setting than would be found at a residential facility.⁷⁶

Other Kinds of Programs to Protect Children and to Foster Parent-Child Relationships:

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

- *Maintaining parent-child contact.* Many mothers in prison have been unable to maintain contact with their children, or can only do so via phone calls and mail. Out of ten interviewed mothers with a child or children living outside of prison, only one said that she receives regular visits from her child. Five of the women (50%) said they never see their children who do not reside in prison with them. This might be because of distance, transportation costs, or other obstacles. Programs such as Girl Scouts Behind Bars in the United States bring daughters together with their incarcerated mothers and foster the mother-daughter relationship through activities that require parent and child to work together towards a common goal.⁷⁷ In St. Louis, Missouri, USA, the Mothers and Children Together program provides free transportation to the prison four times a year for

⁷² Mother Jones.com Special Report: Debt to Society: “What’s the Alternative?” by Anne-Marie Cusac, July 10, 2001.

⁷³ “Mothers in Jail” by Julee Newberger, reprinted from Connect for Kids, an online publication from the Benton Foundation.

⁷⁴ “Mothers in Jail” by Julee Newberger, reprinted from Connect for Kids, an online publication from the Benton Foundation.

⁷⁵ From “Mothers in Prison” [When the Bough Breaks?]

⁷⁶ From “Baby Units in UK Prisons”,

http://news.bbc.co.uk/1/hi/english/uk/newsid_387000/387161.stm . For more on European countries’ regulations regarding infants and children living in prisons, see Council of Europe Document 8762, “Mothers and Babies in Prison”, report, Social, Health and Family Affairs Committee, 9 June 2000, Rapporteur Mr. Rudolf Vis, points 16-24.

⁷⁷ “Mothers in Jail” by Julee Newberger, reprinted from Connect for Kids, an online publication from the Benton Foundation.

families of inmates.⁷⁸ Other similar programs have been implemented in numerous states in the U.S.⁷⁹

- *Informing women of their rights.* The Incarcerated Mothers Law Project in New York, USA, promotes fair treatment of convicted mothers by educating such women about their rights regarding their children during their time in prison. Moreover, the program works to make them aware of their responsibilities to their children during their incarceration.⁸⁰
- *Improving parenting techniques.* Several programs aim to enhance inmates' success as parents by providing training in parenting techniques. This is often one component of a more comprehensive program, such as described in the residential treatment facilities above. Similarly, The Bedford Hills Correctional Facility in New York, USA, which pioneered the concept of a nursery within a prison approximately 100 years ago, runs a program that combines parent-child interaction with parenting and life skills education. The facility includes a play room for children visiting parents, and the program staff encourage frequent visits from inmates' children. They use these visits, as well as standard courses, as a means of educating inmates about their roles and responsibilities as parents. This program has been noted for its success in significantly reducing recidivism rates among participants.⁸¹
- *Legal aid.* Several of the women interviewed demonstrated concern over the handling of their cases by their lawyers or by the courts. They complained about absentee lawyers and instances in which they were promised legal action would be taken, yet they had never been informed as to the state of their cases. A mother who is not apprised of her legal status is not only unable to have fair input into the handling of her case, she is also at a disadvantage when it comes to planning for her children's future. Her exploration of childcare alternatives and decision about what type of care is in the best interests of her children may be largely dependent on the length of her detainment or sentence. Moreover, a woman without good counsel may be unable to defend herself in the case of a faulty arrest or illegal detainment. Thus she—and possibly her children—might languish in prison unnecessarily. In Nepal, The Centre for Victims of Torture runs a comprehensive project for female prisoners and their dependent children. A large component of this project is providing adequate legal assistance to the women by ensuring that they have legal representation and examining cases in which women have been detained without due cause.⁸²

Each of these alternatives and support programs require significant resources, whether financially or in terms of man power. Successful implementation of such schemes demands the cooperation and assistance of government and/or non-governmental agencies, as well as social services. Additionally, many of the programs rely on community and public support. Adequate monitoring and evaluation are also key aspects of these programs. For these reasons, the feasibility of various alternatives to prison and forms of support for incarcerated mothers must be critically assessed within the Cambodian context. While this falls beyond the scope of this paper, it must be pointed out that the above initiatives may or may not be appropriate in Cambodia and that

⁷⁸ From "Mothers in Prison" [When the Bough Breaks?]

⁷⁹ For more information see from "Research Summary: Families of Adult Prisoners" by Edwin C. Hostetter and Dorothea T. Jinnah, copyright by Prison Fellowship Ministries 1993, section entitled "Programs and Services." See also "Prison Visits With Moms Help Kids Most of All" by Eric Zorn, the Chicago Tribune, August 28, 2001.

⁸⁰ "Mothers in Jail" by Julee Newberger, reprinted from Connect for Kids, an online publication from the Benton Foundation.

⁸¹ From "Mothers in Prison" [When the Bough Breaks?]

⁸² From "Legal representation for the Women Prisoners in the Eastern Region of Nepal", by PRI.

further study would be required in order to determine the applicability of such approaches or the development of new ones.

Recommendations

The following are recommendations generated on the basis of the above findings.

1. Formation of a sub-committee or task force comprised of representatives from relevant government ministries and local and international organizations with the mandate to address the issues raised herein. Methods of doing so might entail:
 - a) Creation of alternatives to prison for non-violent female offenders with children. Modeled on successful programs in other countries, such alternatives could include community service, the creation of mother- and child-centered programs within prisons, or the establishment of secure facilities where mothers and children can live together in a child-friendly environment.
 - b) Review of strategies to meet children's needs, with specific reference to nutritional and medical needs, including those of pregnant women and nursing mothers. This might require a revision of the current budget for prisoners' food and/or creation of a partnership with an organization that can assist in providing additional food or health care.
 - c) Review of current regulations and procedures with focus on analysis of whether existing legislation is appropriate and adequate for meeting the needs of mothers, children and pregnant women in prisons.
2. Strengthening of national legislation and policies pertaining to women and children and pregnant women living in prisons. Means of doing so could include the following:
 - a) Development of more specific regulations regarding the treatment of mothers, children and pregnant women in prisons, including clarification of terms used in legislation;
 - b) Establishment of standards by which:
 - (1) authorities and institutions are deemed "competent" to determine what is in the best interests of the child;
 - (2) agencies offering alternative placements for children are deemed "competent" to provide adequate childcare;
 - c) Standardization of care for mothers, children and pregnant women throughout all prisons through the enforcement and monitoring of regulations.
3. Formation of standard procedures and materials for educating mothers, children (where appropriate) and pregnant women about their rights as pre-trial detainees/inmates, as well as the rights of their children, according to national and international laws.
4. Creation of standards pertaining to agencies and/or people offering alternative placements for children of incarcerated mothers. Such standards would enable government and other agencies to:
 - a) Determine legitimacy and competency of said agencies and individuals and specify requirements for providing adequate childcare.
 - b) Regulate and monitor agencies or individuals who provide alternative childcare to ensure protection of children's rights.

Conclusion