

Cambodia: barriers to accessing alternatives to incarceration for women and young people who use drugs

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Introduction

In 2020, Amnesty International released a report detailing some of the serious abuses against people held in drug rehabilitation centres and prisons in Cambodia, and highlighted the seriously overcrowded conditions resulting from the anti-drug campaign that began in 2017. As of March 2020, Cambodia's prisons had the estimated capacity to hold 26,593 people in its prisons, however, the number of people held in prisons stood at over 38,990.³ Four years later, Cambodia's Ministry of Interior reported that, as of March 2024, 45,122 people were held in the country's prisons. Amongst them, 21,644 or 48% were held for drug offences⁴ and 2,214 were minors⁵. It is concerning that the General Department of Prisons' response to prison overcrowding was to request the construction of new drug rehabilitation centres and prisons.⁶

International standards, including the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules), *United Nations Standard Minimum Rules for Non-custodial Measures* (the Tokyo Rules) and *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Mandela Rules), call for detention to be used only as a measure of last resort, and to develop non-custodial measures to reduce the use of imprisonment, with consideration for tailoring measures to meet the specific needs of women and children.⁷

Organisations working in Cambodia, such as IDPC partner, This Life (TLC), referenced throughout this brief, focus on addressing these challenges through programmes aimed at improving outcomes for at-risk youth and families. Their initiatives often align with international standards and best practices, promoting alternatives to incarceration and support services.



Box 1. The Tokyo Rules

1.5 Member States shall develop non-custodial measure within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice

policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

Box 2. The Bangkok Rules

Rule 60. Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measure with interventions to address the most common problems leading to women's contact with the criminal system. These may include therapeutic courses and counselling for victim of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programs to improve employment prospects. Such programs shall take account of the need to provide care for children and women-only services.

Rule 61. When sentencing women offenders, court shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

Rule 62. The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programs in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

While Cambodia's Drug Control Law (2012) provides that the prosecutor and court have the discretion to divert a person accused of using drugs from imprisonment or to postponement of sentencing if they agree to complete a "voluntary" treatment programme, it has not been effectively

applied in practice to reduce the detention (i.e. in pre-trial detention or drug rehabilitation facilities) or imprisonment of people who use drugs.⁸

TLC implements programmes that provide vocational training and family support services to ju-



veniles in conflict with the law, aiming to reduce recidivism and promote successful reintegration. The organisation often engages in dialogue with government ministries, law enforcement, and community leaders to develop holistic solutions that strengthen Cambodia's justice system and support vulnerable populations.

However, there are alternative measures stipulated for children. The *Juvenile Justice Law of Cambodia* was promulgated on 14 July 2016 and aims to protect the rights of children who are in conflict with the law, to support their rehabilitation and reintegration into society and to ensure social and community benefits (Article 1). The law also provides for alternatives to detention, such as diversion, probation, community service and mediation (Articles 24-29). The law is considered a milestone for the promotion and protection of children's rights in Cambodia, as it seeks to align with the Convention on the Rights of the Child and other international standards.

Non-governmental organisations like This Life are committed to evidence-based interventions that promote human rights, reduce inequality, and create opportunities for marginalised communities in Cambodia. Their work often complements the objectives of the *Juvenile Justice Law*, focusing on the rehabilitation and reintegration of youth in conflict with the law.

Research objectives and areas of research

The research for this paper was carried out to understand the current landscape of alternative measures to incarceration in Cambodia. TLC runs a diversion programme aimed at providing alternatives to imprisoning children and adults for minor offences, especially those related to drug use, provided valuable context and insights. The programme advocates for the increased use of diversionary measures and alternatives to detention, such as community-based rehabilitation, education and vocational training. The programme also works with women and children who are already in prison or drug detention centres, providing them with legal aid, case management and reintegration support.

The objective of the research was to understand:

- i. Existing non-custodial measures available to children detained for drug offences.
- ii. Whether these are genuine 'alternatives' to punishment or compulsory detention and human rights violations are associated with them; and
- iii. The barriers that people who use drugs face in accessing non-custodial measures.

Methodology

This study employed a mixed-methods approach that combined a desk review of the relevant literature and primary data collection. The desk review examined Cambodia's legal and policy framework on drug control, the *Code of Criminal Procedure*, and the *Juvenile Justice Law*. The primary data collection involved semi-structured interviews and focus group discussions with the following participants:

- Formerly incarcerated women who served time in prison, some of whom were accompanied by small children or during pregnancy.
- Former detainees, both male and female, who had spent time in a government-run drug rehabilitation centre.
- Police officers from the drug squad in charge of implementing the drug law.
- A judge who has presided over drug-related cases, and
- TLC programme officers involved with enforcing and supporting the prison related programmes.

Diversion and drug use in Cambodia

Diversion programmes are alternative measures that aim to divert people charged or convicted with a criminal offence from the formal criminal justice system and provide them with rehabilitation and reintegration services. Implementing diversion programmes in Cambodian prisons is crucial for addressing the challenges of overcrowding, pre-trial detention, and disproportionate sentencing that affect many inmates, especially those who are accused or convicted of minor drug offences. Due to corrupt practices, many people, including young people, face unfair pun-

ishments for drug use, such as long jail terms or compulsory drug treatment in abusive centres. Diversion programmes can offer them a more humane and effective way of addressing drug use, reducing recidivism, and protecting the right to health.⁷

Cambodia has two legal frameworks that provide for alternative measures to incarceration for drug-related offences, including the criminal justice framework and the administrative law framework. The criminal justice framework is based on the *Law on Drug Control* and the *Juvenile Justice Law*, which allow for diversion programmes for people who use drugs and people charged with minor offences. The administrative law framework is based on the *Village Safety and Commune Policy* (2010), which authorises local authorities to send people who use drugs to community-based treatment centres⁹. However, both frameworks suffer from vague and discretionary provisions that enable police abuse and corruption in the implementation of diversion programmes. The *Law on Drug Control* defines drug-related offences as the cultivation, production and consumption of controlled substances as specified in the law. The penalties for these offences range from six months to 20 years of imprisonment and a fine from \$250 to \$1,000.¹⁰

Laws on arresting a minor

Diversion policies in Cambodia are aimed at protecting the rights and well-being of children who are in contact with the law. According to UNICEF, children who experience criminal acts are extremely vulnerable, and a justice system that does not cater to their needs can lead to additional harm. Therefore, the purpose of laws such as the *Juvenile Justice Law* aim to ensure that children are treated fairly and humanely by law enforcement and that judicial authorities use prison as the last resort. Cambodia is one of the countries that has ratified the Convention on the Rights of the Child, which requires states to protect the best interests of children in conflict with the law.¹¹ However, Cambodia does not have a specialised juvenile court to handle cases involving minors who are under 18 years old. Article 15 of the *Juvenile Justice Law* states that judicial police officers must report to the prosecutor immediately after arresting a minor aged 14 to 17. They must also

respect the dignity of the minor and take them to the nearest police section or unit for minors. However, the Law does not specify how to inform the parents.¹² Moreover, police often neglect to inform the minors of their procedural rights as guaranteed by Article 6 of the *Juvenile Justice Law*.

Primary challenges in accessing 'alternatives' to incarceration in Cambodia

A. Corruption

One of the greatest challenges for implementing diversionary practices fairly and equitably in Cambodia, is the normalcy surrounding corruption.

Since the end of the Khmer Rouge period, corruption and corrupt practices have almost become a way of life for most Cambodians. While the poor hope for an effective justice system, the rich use their wealth and power to manipulate the system to their advantage. With most Cambodians receiving limited education, many cannot see beyond the way of life that they have become accustomed to. Transparency International Cambodia (2021) for example, ranked Cambodia 157th out of 180 countries in its corruption perceptions index¹³. A survey by the same organization (2020) found that 38% of 1,000 respondents had paid a bribe to the police in the past year. As a result of the pervasive corruption in Cambodia, diversion as an alternative for drug offenders is not applied fairly or effectively. Corruption is therefore one of the most significant obstacles to implementing diversion policies in Cambodia.¹⁴



The juvenile justice law (Article 62) gives prosecutors and judges the power to divert juvenile offenders from prosecution. The law states that the drug control police can only arrest suspects and must then refer them to the prosecutor, who

decides whether to prosecute or not. It also states that only people who use drugs can be sent to rehabilitation centres as opposed to drug traffickers¹⁵. A national guideline on diversion for juvenile offenders was issued by three Cambodian ministries in 2021 which allows judicial police to warn or mediate petty offences committed by minors aged 14 to 18 who admit their guilt. However, the reality is that Cambodian police often exploit people involved in the use or trafficking of drugs for their own gain by demanding bribes. A study by Tuot et al. (2017)¹⁶ for example, found that law enforcement officials often demand bribes from people who use drugs or their families in exchange for avoiding arrest or prosecution. Moreover, some officials use the threat of arrest or detention as a means of extorting money or property from people who use drugs. This creates a climate of fear and distrust among people who use drugs and discourages them from seeking harm reduction services or legal assistance.



This can be demonstrated through the interviews with people formerly charged with drug offences. All of the interviewees said that they had been asked for money by the police when they were arrested. During the interrogation, the police would tell them to contact a family member to come to the station to 'solve the problem', which meant that the police offered them a chance to pay a bribe to be released:

When I was arrested, I was asked to contact my family to bring money to the police. During the call nobody picked up and the police only allowed two hours. Nobody answered so they sent me straight to the court. Two months later my brother came to speak to the police and the prison officer asked for \$2000 - \$2500 for my release. He didn't pay, so I stayed in prison for two years. I wasn't

offered any other option.

I was asked if I could pay \$2000 - \$3000 to not go to jail. It depends on the crime, if the crime is too serious or too obvious then they won't ask for a bribe. If it is not a serious crime, then I can pay \$2000 and go home, or if it's more serious then I can pay and go to the drug rehab.

For low level offenders such as people who use drugs, they were offered the opportunity to pay a bribe and be released or not and be placed in the prison. For higher level offenders who were accused of drug trafficking, they were given the opportunity to pay a bribe and be sent to the drug rehabilitation centre or the prison. For those who were sent to prison, they could be charged and sentenced to a term of imprisonment ranging from between 6 months to 15 years, which is a harsher sentence than stipulated in the Drug Control law.¹⁷

According to some of the participants, the drug rehabilitation centre was seen as a preferred option to prison where they feared overcrowded cells, lack of sanitary care and harsher treatment. However, upon a visit to the drug rehabilitation centre by the research team, the conditions in the rehabilitation centre were similar to that of a prison. The offenders are kept within large cells, where there appeared to be between 30 - 40 individuals, including minors and according to the drug squad police, were only allowed out for one hour a day to exercise. The rehabilitation centre reportedly provided no counselling services and the only services offered to the people interned in the center were those by TLC:

The drug rehab didn't provide anything to the people, only food two times a day and a shower. They charged \$60 a month for food. Only NGO staff go there to provide life skills (Female, former drug rehab).

Despite the inadequate conditions, the drug rehabilitation centre was still preferred to the prison, in accordance with the statements made by the participants in this study. However, the option for people to be diverted to the drug rehabilitation centre is not applied equally or fairly and is rather dependent on who is able to pay a bribe to the po-

lice. Thus, until alternative 'systems of justice' are viewed to be the norm in Cambodia, alternatives to prison such as diversion will most likely continue to be used as a tool of bribery and a means for members of law enforcement to gain advantage.

B. The importance of family support and diversion



Family support is crucial for diverting or providing alternatives to incarceration for children in conflict with the law in Cambodia. Often, only with the help of the family can an accused child pay the bribe to the police to be released from detention. While Cambodian law says that all offenders should be treated equally, corruption favors the rich or those with family support. However, if the family is poor and cannot pay the bribe, the child will face harsher punishment, not because of their crime but because of their economic situation. With Cambodia having high levels of poverty many Cambodians are not in a position to be able to manage additional expenses. The Asian Development Bank (2019) for example, reported that 17.8% of the population lived below the poverty line.¹⁸

C. Lack of capacity of police to appropriately manage children in conflict with the law

Another barrier to diversion in Cambodia is the lack of adequate training and capacity of the police officers, who are often the first responders to cases involving children in conflict with the law. According to UNICEF, police officers are often not familiar with the *Juvenile Justice Law* and its provisions on diversion and may not have the skills and knowledge to handle children's cases in a child-friendly and rights-based manner. Moreover, police officers may face challenges such as limited resources, time constraints and pressure from superiors or communities to deal with cases quickly. In order for it to be effective, law enforce-

ment must be sufficiently trained on the current laws on diversion and have it made clear when diversion should be used. However, in discussion with the diversion programme coordinator from TLC, it was indicated that, in a training with all the police in Siem Reap province, none of the police were aware of the current laws on diversion in Cambodia or how these laws should be implemented. Therefore, there is a need to provide regular and comprehensive training and support to police officers on diversion and other alternatives to detention, as well as on child protection and child rights.

D. Lack of knowledge amongst institutions in the criminal legal system

One of the main barriers to diversion in Cambodia is the lack of knowledge and awareness about what diversion involves or its benefits, both among the general public and law enforcement agencies. According to UNICEF, a lack of awareness about the *Juvenile Justice Law* and how to apply it has resulted in growing numbers of children being interrogated and detained like adults.¹⁹ Moreover, many people in Cambodia have a punitive attitude towards crime and justice and may perceive diversion as a lenient or ineffective measure that does not deter or punish offenders adequately. This was expressed during an interview with a judge from the provincial court, he indicated that diversion was still a new concept in Cambodia and suggested that it is challenging to implement diversion policies and practices as "*our community is not ready to accept the diverted person back to community yet*". Significant efforts are still needed in Cambodia to inform and teach law enforcement about the country's current laws on diversion and how they should effectively be implemented. Therefore, there is a need to educate and inform the public and the law enforcement agencies about the advantages of diversion, such as reducing overcrowding in prisons, saving costs for the government, preventing re-offending, and promoting rehabilitation and reintegration of children in conflict with the law.

E. Heightened risks in prisons during the COVID-19 pandemic

During the pandemic, there was reportedly an outbreak of COVID-19 in Cambodia's prisons, which are notoriously overcrowded and lack ad-

equate hygiene and health care. Human rights groups urged the government to take urgent action to protect the rights and health of prisoners and prison staff, including by releasing those who were eligible for bail or early release. However, only one court in Preah Sihanouk province ordered the early release of over 100 people from a local prison to reduce overcrowding. The United

Nations also provided technical and humanitarian assistance to Cambodian prisons, such as establishing surveillance sites, advising on risk mitigation measures and supplying hygiene kits and personal protective equipment. It is not clear how effective these measures have been in containing the spread of the virus and ensuring adequate care for those infected.



Conclusion and Recommendations

Diversion is not only beneficial for children in conflict with the law, but also for their families, communities and society as a whole. By promoting diversion, Cambodia can uphold its commitment to protect the rights and best interests of children and ensure their rehabilitation and reintegration. Diversion is also able to offer a viable and valuable alternative to prison, especially for young people and women with small children and have a long-lasting negative effect on children's physical, mental and emotional health. Diversion can reduce overcrowding in prisons and offer a more positive outcome for children in conflict with the law as well as reduce the negative effects of incarceration, such as stigma, trauma and recidivism. It can also save costs and resources for the juvenile justice system.

This paper has discussed the barriers to diversion in Cambodia, a process that aims to direct children in conflict with the law away from formal court procedures and towards more constructive and positive solutions. It has examined the challenges and gaps in implementing the law, such as low awareness, lack of resources, coordination and training, social stigma and discrimination, and limited alternatives to detention. It has explored some of the contextual factors that affect diversion, such as – chief of all - corruption, as well as lack of family support, lack of police training, and the impact of COVID-19. To overcome these barriers, we propose the following recommendations:

1. Explore legal reforms and improvement of practices, including inter-ministerial collaboration and co-ordination, to ensure that access to diversion is the default response to people arrested for drug use and possession for personal use, thus reducing the risks of corruption by law enforcement officers and other officers in the criminal justice system.
2. Strengthen the capacity and role of local government workers, such as social agents, to ensure access to diversion measures for people, especially women and children, arrested for drug use and possession for personal use.
3. Invest greater efforts into public education and awareness about the availability of diversion measures amongst local communities and government authorities.
4. Expand the availability of community-based services and support, particularly for people who use drugs, and amongst them, women and children; and
5. Monitor and evaluate the impact of diversionary measures, not only on recidivism but also on reducing levels of incarceration, and improved outcomes for public health and development.

Organisations like This Life continue to work towards implementing these recommendations and improving the justice system in Cambodia through their programmes and advocacy efforts.

Endnotes

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About this Briefing Paper

This paper looks at the crisis of overcrowded prisons and places of detention in Cambodia, and one of the major driving factors: the country's drug policy. It presents an analysis of the available alternatives to incarceration to show some of the barriers and challenges to accessing non-custodial measures. It concludes with recommendations for improving the diversionary and non-custodial measures in Cambodia.

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About IDPC

The International Drug Policy Consortium is a global network of non-government organisations that specialise in issues related to illegal drug production and use. The Consortium aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level, and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

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