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Cambodia: Over-incarceration, drug policy and its specific harms to women and children



Introduction

Cambodia's drug policies are failing to protect the most vulnerable groups in society due to the steadily rising rates of over-incarceration since the government's latest drug crackdown, announced on 1 January 2017. The dramatic increase in the numbers of people held in prisons and detention facilities (including pre-trial detention and compulsory drug rehabilitation centers) over the last three years has led to acute overcrowding, exacerbating the long-standing problem of appalling prison conditions and extensive detention of mothers, their infants, pregnant women and children¹ in the country.

This briefing paper aims to review developments relating to incarceration and drug policy in Cambodia, especially in light of the COVID-19 pandemic, and their specific impacts on women and children. It includes recommendations for reducing the high rates of incarceration and ensuring that gender-specific needs are identified and met, in accordance with international guidance and standards.

Over-incarceration driven by Cambodia's anti-drug campaigns and criminal justice policies

Since the Cambodian government declared a "war on drugs" on 1 January 2017, incarceration rates have increased at an alarming rate. In December 2016, there were 16,918 detainees in 18 out of 28 prisons monitored by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). Almost four years later, as of October 2020, there were 34,794 detainees in the same prisons, representing more than a 100% increase in the prison population. In her report to the Human Rights Council, the United Nations Special Rapporteur on the situation of human rights in Cambodia Rhona Smith noted that "*prisons in Cambodia remain overcrowded, with the average occupancy across the country beyond 300 per cent of capacity. According to the information received from the General Department of Prisons,*

as of June 2020, there were 39,376 prisoners across the 29 prisons."² According to Amnesty International "over 72% of all prisoners in Cambodia are reportedly held in pre-trial detention and thousands are held for minor, non-violent offences such as use or possession of drugs."³

Extremely high rates of pre-trial detainees show that the presumption of innocence (enshrined in Cambodia's *Constitution*), and the international standard of detention used as a measure of last resort,⁴ is not applied in practice by legal and judicial authorities. A recent report by Amnesty International reported that "[a]s of April 2020, 42% of Cambodia's 38,990 prisoners were detained awaiting the commencement of their trials."⁵ Bail is not routinely offered and many detainees are not aware of their rights to apply for it.⁶ Access to pre-trial detention are not aware of the reason for their arrest nor are they offered a lawyer at trial.⁷

Prison conditions are extremely harsh due to a culture of corruption. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) are routinely violated as detainees are only provided with two meals per day, usually consisting of watery rice and a few vegetables and must pay for essential needs including access to water, electricity, access to training classes and a space to sleep within the cell.⁸

Local and international organizations have, for many years, called on the Cambodian government to respect the presumption of innocence, slow down the rate of pre-trial detention and release detainees.⁹ International media released a photo in July 2019 of a Cambodian prison cell with more than 140 detainees.¹⁰ The picture shows detainees lying in crowded rows on a cell floor, with no space to move.

Box 1. International recommendations for women incarcerated for drug offences

The **2016 United Nations General Assembly Special Session (UNGASS)** about drugs concluded with an Outcome Document that promotes drug policies grounded in human rights, including the consideration of gender-specific issues faced by women incarcerated for drug-related offences, and calls on member states to:

1. Mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women (para 4. g)
2. Encourage the taking into account of the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (para 4. n)

In 2016, the UN Commission on Narcotic Drugs adopted **Resolution 59/5 ‘Mainstreaming a gender perspective in drug-related policies and programmes’**. The resolution called on member states to consider the specific needs of women and girls in implementing drug policies in line with the international drug control conventions, and:

to take into consideration the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice, including appropriate measures to bring to justice perpetrators

Risk of COVID-19 spreading in dangerously overcrowded prisons and detention centers

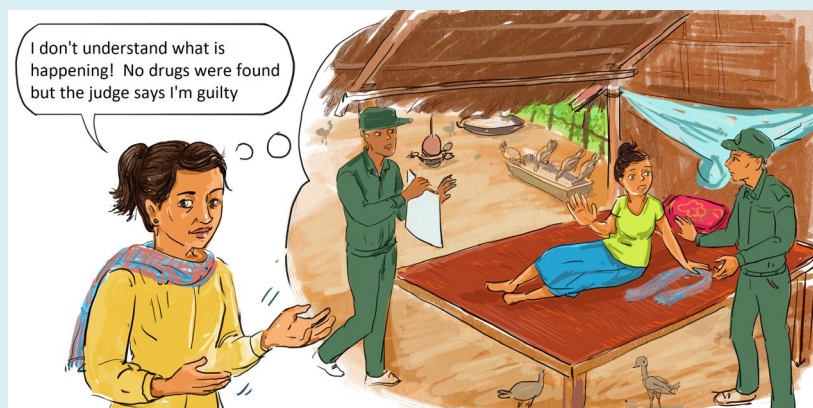
The global COVID-19 pandemic exacerbated the existing high risks to health and human rights of people held in prisons and detention facilities in Cambodia. In March 2020, the World Health Organization (WHO) published guidelines on preparedness, prevention and control of COVID-19 in prisons, and urged governments to consider releasing people who were in pre-trial detention.¹¹ Local and international organizations called on the Cambodian government to take measures to reduce the potential spread of the virus as well as to release those people deprived of liberty who are vulnerable, immuno-compromised, convicted of a minor crime or in pre-trial detention.¹² In April, 2020, Amnesty International released video footage of a Cambodian prison cell, showing the

impossibility of social distancing as detainees are crammed together with no space between them.¹³

The government announced they were taking measures to reduce the potential spread of the virus including providing quarantine cells for new arrivals for up to 14 days, increased access to soap, hand sanitiser and water, and regular temperature checks for all people in prison and detention.¹⁴ However given the extreme levels of over-crowding, as seen in reports by the UN Special Rapporteur on the situation of human rights in Cambodia, such measures are not adequate for preventing the risks of COVID-19 transmission in a widespread and systematic manner.¹⁵

Lived experiences of women in prison: Sophy's Story¹⁶

Before I went to prison, I lived with my husband. I used to work in a factory until the COVID-19 pandemic started. When I became pregnant, I decided to stay at home and raise chickens instead.



On the day I was arrested, I was sleeping in my house. Police came, saying that someone said they had bought drugs from my husband. They accused my husband and I of selling drugs. I denied this but the police still searched my house. They didn't find any drugs but still arrested my husband and I and sent us to prison.

It was six months before I had my trial. I didn't have a lawyer at any stage and I didn't know that I could apply for bail until I met with someone from an NGO. The NGO explained to me about the bail process and then, with their help, I applied for bail. The judge didn't grant me bail, even though I was pregnant.



I never knew what was happening with my case until the prison guard told me that my trial would be in a few days' time. Life in prison was very difficult. People in prison need to pay bribes. For the first month I had to pay 18,000 riel (US\$4.4) for using water and electricity.

My family had to give me that money. After I had been in prison for more than a month, I paid 5000 riel (\$1.2) every month. After I was transferred to a different prison, I had to pay more money again, 15,000 riel (\$3.7) a month. The prison didn't give me extra food for being pregnant but I received some more food from another organization.

When I was arrested and sent to prison, I was two months pregnant. I told the prison officials but they didn't care. They never sent us to hospital to get medical checks. One NGO gave me some pre-natal vitamins. After I was transferred to the second prison, the prison medical staff sent me to hospital two times for pre-natal checkups.

When I went into labor, I told the medical staff. They sent me to the hospital and the next day, I delivered my baby. The doctor told me that my case was very serious because I had high blood pressure. My baby and I were safe. I was allowed to stay in hospital for 10 days. I didn't have to pay any bribes to the hospital. When I returned to prison, I was able to breastfeed my baby. The prison didn't give me any extra food, but an organization gave me food. The prison was supposed to give powdered milk for each baby, but instead they gave each mother money every month to buy a small amount of powdered milk.



When I was in prison, I lived in a cell with 20 people, mothers and children. We tried to keep it clean in the cell. Recently, it started raining very badly and our prison flooded. We were transferred to a different prison and it was very crowded there and smelled bad. I couldn't sleep properly because I was scared that someone would step on my baby.

The hardest thing about being in prison with my baby is that our cell was really noisy and crowded. We could never get enough sunlight and my baby's skin turned yellow. I used to worry all the time and I was so stressed.

My parents-in-law visited me a few times in prison. They gave me money each time and also some food. We never got enough food in prison. The prison also never gave us nappies for our babies but one organization gave us one pack of nappies each month. It was not enough so I tried to only use four nappies each day. My baby's health was not good and sometimes had difficulty breathing. The prison medical staff would give my baby treatment and medicine. There was not enough space in our cell for the children to play. We were allowed outside the cell for 1.5 hours in the morning and 2.5 hours in the afternoon. Outside of the cell, there was space for the children to play but there were no toys.

After I was released from prison, I moved into a home with my baby. We're waiting for my husband to be released from prison. I raise chickens and grow vegetables to support us. My baby now looks healthy and is breathing is much better.

I feel that people in my community discriminate against me because I've been in prison. I fear they will discriminate against my baby for being born in prison. I rarely go to the markets or anywhere else because I don't want to answer questions that people may ask about life in prison.

I now have freedom. I feel happy and my baby likes to play with me and our family. My baby likes to smile now. I hope to live with my husband when he is released from prison and to work in a factory to make more money. I hope that my family can improve our lives.

Cambodia's Ministry of Interior also banned all prison visits in March and April 2020, including visits from family members and NGOs.¹⁷ This led to difficulties with NGOs obtaining access to prisons to monitor conditions and provide essential services for people detained.

In October 2020, Cambodia experienced extremely heavy rainfall. Several prisons flooded and more than 3,000 people detained there were forced to transfer to other already overcrowded prisons.¹⁸ As a result, extremely strained prison conditions were exacerbated by the influx of additional people.



In late November and early December 2020, prison officials including General Department of Prisons director-general Chhem Savuth, their families and associates tested positive for COVID-

19. These officials had all been visiting or working in the prisons. Human rights organizations called for the “rigorous testing of those in prisons for COVID-19, implementing effective hygiene and physical distancing measures in prisons and taking immediate steps to reduce prison overcrowding.”¹⁹ The Ministry of Health published a response but did not specify whether people deprived of liberty would be tested on a broader scale.²⁰ As of 9 December 2020, the government has acknowledged only testing 20 people deprived of liberty in Siem Reap Prison,²¹ out of a total prison population of more than 39,000 people.

dedicated juvenile detention center, children under the age of 18 are often incarcerated with adults.

Whilst in prison, pregnant women are not provided with adequate pre-natal care, nor essential food and personal hygiene supplies. After birth, women are not provided with post-natal care or breastfeeding support, nor additional food or hygiene supplies.²⁶ There have been reports of women being forced to pay bribes to stay in hospital after giving birth.²⁷ After giving birth, women return to prison cells to sleep on floors with their newborn babies.²⁸



Mothers, pregnant women and children especially vulnerable in prisons and detention²²

It is important to note that specific groups of people in detention find themselves in situations of additional vulnerability within Cambodia’s prison system. These groups include mothers incarcerated with their children, pregnant women and children detained for an offence. In December 2020, there were 98 children incarcerated with their mothers, 44 pregnant women²³ and 1,582 children detained for an offence.²⁴ Cambodia currently has one prison dedicated to women and children (Correctional Center 2 (CC2), located in Phnom Penh) though there are plans to build a juvenile detention center that would house the nation’s child prisoners (children detained for an offence).²⁵ Since the country only has one

Box 2. UN Standard Minimum Rules on People Deprived of Liberty

The UN Commission Narcotics on Drugs resolution 59/5 (outlined in Box 1.) also instructs UN member states to draw from the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)²⁹, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)³⁰ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)³¹. These UN Standard Minimum Rules include key guiding principles regarding women deprived of liberty, and require more efforts by the Kingdom of Cambodia to be adequately implemented at national level:

The Nelson Mandela Rules

- Rule 28. In women's prisons, there shall be special accommodation for all necessary pre-natal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
 - Rule 48 (2). Instruments of restraint shall never be used on women during labor, during childbirth and immediately after childbirth.
 - Rule 58(2). Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.
 - Rule 81.
- (1) In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
 - (2) No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
 - (3) Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.



Note: this illustration is of a projected scenario if the UN Standard Minimum Rules were implemented in Cambodia.

The Bangkok Rules

Rule 60. Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims 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, courts 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.



Note: this illustration is of a projected scenario if the UN Standard Minimum Rules were implemented in Cambodia.

“When a state deprives someone of their liberty, it takes on the duty of care to provide medical treatment and to protect and promote his or her physical and mental health and well-being as laid out in the Nelson Mandela Rules.”

Penal Reform International. *Coronavirus: Healthcare and human rights of people in prison*. 16 March 2020³²

The Tokyo Rules

1.5. Member States shall develop non-custodial measures 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.



Note: this illustration is of a projected scenario if the UN Standard Minimum Rules were implemented in Cambodia.

Lived experiences of women in prison: Chenda's story³³

Before I went to prison, I lived with my boyfriend. I didn't have to work because my boyfriend had a good job and paid for everything when we lived together. On the day I was arrested, a friend of mine asked if we could use ice together. I was with my boyfriend in our room and didn't want this friend to come over so I told him that I would send him some ice with someone, worth around US \$20. The delivery person came back and told me that my friend didn't have any money to pay me for the drugs so my friend had given him his phone to give to me, until he could pay me back. Sometime after that, someone called my friend's phone and I answered it. They asked me why I had my friend's phone and I said I was just keeping it for him and he would get his phone back soon. This person asked where I was, so I told him. Very soon after that, around 10 policemen came into my room to arrest my boyfriend and I. The police found ice in my bag, around US \$20 worth.

I spent six months in pre-trial detention. One organization had explained to me about bail but I didn't apply for it. When the Prime Minister's free lawyer's group came into my prison, I asked if I could be listed for a lawyer, but I never got a lawyer. One of the prison guards told me one day before my trial date that it would be happening and I didn't have a lawyer at my trial. On the day my sentence was announced, the prison officials didn't bring me to court. I only knew about my sentence because my mother in law visited me in hospital after I gave birth to my baby and told me. When I returned to prison, after having given birth, I submitted an appeal. In order to do this, I had to give the prison guard US \$20 to lodge my appeal. The appeal court only reduced my sentence by four months.



At first, the prison guard asked me to pay bribes every month. I had to pay 25,000 riel for electricity and water and 50,000 riel in order to use a small fan. But in the middle of 2020, the prison guard lowered the bribe and asked me to pay 12,000 riel for electricity and 12,000 riel to use one wall fan every month.

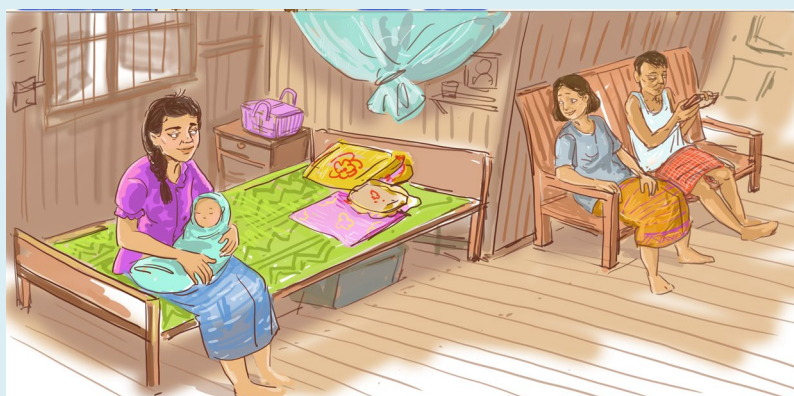


When I was sent to prison, I didn't know that I was one month pregnant. I found out after I'd been in prison for a few weeks. When I found out I was pregnant, the prison didn't give me any extra food, but I got extra food from an organization and from my family. The prison medical officers sent me to the hospital for pre-natal checkups, only three times.

On the day I went into labor, the prison officials sent me to the hospital and the doctor decided that I needed to have a caesarean surgery. I stayed in hospital for eight days and I didn't have to pay any money to the hospital to stay there. When I returned to prison, I didn't have any help with breastfeeding. My baby wanted powdered milk more than my breast milk so I stopped breastfeeding her. My parents helped me by buying powdered milk for my baby every month. The prison didn't give me any extra food, but I still received extra food from an organization and from my family. I can't eat the food that the prison gives to us.

I slept on a mat on the floor in my prison cell. My baby and I shared half a meter of sleeping space. My cell was always noisy so my baby couldn't sleep well. She would always cry when she woke up. I cried too. I really felt so sorry for my baby. I wanted to tell the other mothers in the cell to make their children be quiet, but I couldn't do that. I know that children like to play and shout.

In August or September, the International Committee of the Red Cross (ICRC), started to give nappies to children every month. So from that time until now, we would have enough nappies for babies. But before this, the prison didn't give us any nappies and the ICRC only gave one pack of nappies once every three months to children, so for those mothers who don't have money or don't have families visiting, they wouldn't have enough nappies for their children. My parents helped support me with nappies so I would share some of these with the children who needed them. If the child doesn't have a nappy, it would be dirty and smell bad in the cell that we all live in, so we need to share.



After I was released from prison, I went to live with my parents. My baby and I are waiting for my boyfriend to be released from prison. I want to ask the government to help pregnant women and mothers have a faster trial date and reduce their sentences. I also want to ask the Prime Minister's lawyer group to help defend pregnant women or mothers when they go to prison and request a lawyer.

Children are not provided with educational opportunities whilst in prison or adequate spaces to play. They essentially serve prison sentences alongside their mothers. The government only allocates an additional 1750 riel (US\$0.437) per child per day for food and other essentials. Pregnant women and mothers incarcerated with children depend on relatives and NGOs to provide them with essential needs. In January 2020, a five month-old baby died in prison. Her mother was in pre-trial detention, arrested on drugs charges for possessing US\$2.50 worth of methamphetamine.³⁴ The tragic incident highlighted the need to pursue alternatives to incarcerating mothers and their babies.

Children prisoners are also victimized by Cambodia's prison system. Whilst in prison, they have almost no access to education, with limited access to training and classes. They face the same problems as adult detainees such as barriers to obtaining legal assistance, corruption, limited food, lack

of access to clean water and hygiene supplies and extreme over-crowding.³⁵

Government response to over-crowded prisons

In May 2020, Cambodia's new Minister of Justice Koeut Rith announced reforms including a commitment to address the backlog of cases within the legal system and extreme overcrowding in the prisons, through the utilization of bail and reduced pre-trial detention.³⁶ At the same time, Interior Minister Sar Kheng indicated that up to 10,000 people could be released from prison due to over-crowding and human rights concerns.³⁷ However, there has been no discernible change in the scale of Cambodia's prison population, with the release of people keeping pace with the numbers of new arrivals in detention.³⁸

Throughout 2020, human rights organizations continued to call on the government to conduct releases of large numbers of people from prison, particularly people from especially vulnerable

groups such as pregnant women, mothers incarcerated with children, children prisoners, the elderly, those who were immuno-compromised, those in pre-trial detention and those convicted of low-level offences.³⁹

On 30 December, 2020, the Ministry of Justice issued a press release declaring the success of its campaign to address the backlog of court cases of people deprived of liberty.⁴⁰ Local media reported that the Ministry of Justice claimed that 89% of backlogged court cases had been cleared, totaling 35,100 out of 39,152 cases.⁴¹ The ministry claimed this helped ease prison overcrowding by allowing the release of 26,100 people from prison:

- 11,200 people already released from prison
- 5,600 people yet to be freed
- 3,000 people freed from detention centres, and
- 6,300 people sent to drug rehabilitation centers.

Recommendations

As the drug rehabilitation centers in Cambodia are another form of detention, in which widespread abuses have been reported,⁴² sending people to those centers instead of prisons do not represent a positive reform nor can they legitimately be described as being released from prison. People must not be incarcerated, criminalized or punished for drug use or drug dependence. Instead, there needs to be government investment in making available evidence-based, voluntary and human rights-compliant health services for people who use drugs or are dependent on drugs.

Following the government's announcement in December 2020 of significant numbers of people being released from prison, ongoing monitoring is required to confirm the actual numbers of people released and from which prisons. It remains to be seen whether Cambodia's overall prison population has significantly reduced and whether the

effects of this government campaign represent lasting reforms to the criminal justice system.

There are several serious concerns regarding Cambodia's prison and broader criminal justice system. It is clear that violations of the rights of people held in prisons and detention are occurring, including:

- lack of respect for the presumption of innocence and right to a fair and timely trial
- lack of access to legal representation
- disproportionate sentencing, such as absence of consideration of gender-sensitive and mitigating factors, i.e. a woman being pregnant, and
- failure to abide by the principle that detention should only be used as the measure of last resort, i.e. absence of consideration of alternatives to incarceration at the stages of arrest, prosecution and sentencing.

To ensure that Cambodia criminal justice system and institutions do not continue to harm people and wider society, especially those from vulnerable groups, the Kingdom urgently needs to reform its approach to drug policy, criminal justice and incarceration.

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⁴⁰ Ministry of Justice, Kingdom Of Cambodia (2020), សេចក្តីប្រកាសព័ត៌មានស្តីពីលទ្ធផលអះអាង ២២ខែ នៃការអនុវត្តយុទ្ធនាការដោះស្រាយករកស្មះសំណុំរឿងនៅតាមសាលាដំបូងរាជធានី ខេត្ត, <https://bit.ly/3q3RAbX>

⁴¹ Voun, D. (2020), 'Justice Ministry: 89 Per Cent Court Case Backlog Cleared', *Phnom Penh Post*, <https://www.phnompenhpost.com/national/justice-ministry-89-cent-court-case-backlog-cleared>

⁴² Amnesty International (2020), *Cambodia: Abusive "War On Drugs", Rife With Torture And Corruption, Must Be Overhauled*, <https://www.amnesty.org/en/latest/news/2020/05/cambodia-abusive-war-drugs-torture-corruption-must-overhauled/>

About this Briefing Paper

This briefing paper aims to review developments relating to incarceration and drug policy in Cambodia, especially in light of the COVID-19 pandemic, and their specific impacts on women and children. It includes recommendations for reducing the high rates of incarceration and ensuring that gender-specific needs are identified and met, in accordance with international guidance and standards.

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About IDPC

The International Drug Policy Consortium is a global network of non-government organizations that specialize 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 organizations, and offers expert advice to policy makers and officials around the world.

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