



## Cambodian League for the Promotion and Defense of Human Rights

April 2003

### *Briefing Paper*

## **TORTURE IN POLICE CUSTODY IN CAMBODIA**

This briefing paper examines the nature, extent and possible causes of torture in police custody in Cambodia during 2001 and 2002. It is hoped that the information in this paper will be used to raise awareness among government officials and the general public to the situation of torture in police custody; to illustrate the need for the alternative methods of criminal investigation by police officers; and to encourage regular independent monitoring of police stations to reduce the practice of torture.

This briefing paper is based on interviews with people detained in Cambodian prisons and other research conducted by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). As it is not an exhaustive documentation of the problem, the statistics in this paper provide only an indication of the number of persons tortured in police custody. The real number is probably higher, for reasons outlined below. LICADHO's findings indicate the systematic use of torture as a method of investigation by the police, including the military police, throughout Cambodia. Torture is primarily used to elicit confessions from criminal suspects, to extort money from them, and to punish them for their alleged crimes.

The risk of torture of arrested persons is increased by the fact that they are often detained incommunicado in police stations, without access to family members, lawyers, or human rights or medical workers. This is compounded by little or no independent scrutiny of conditions of detention. LICADHO therefore advocates action by the Royal Cambodian Government, donor agencies and Cambodian and international human rights groups to take measures to protect suspects in detention, and specifically to support the urgent need for independent monitoring of police stations as a means to prevent torture. The positive impact of outside monitoring is illustrated by Cambodian prisons, which are generally open to visits by human rights, medical or other organizations. Regular outside scrutiny of prison conditions has coincided with a steady decrease in reports of torture committed by prison staff against incarcerated people in recent years.

Established in 1992, LICADHO is based in Cambodia's capital, Phnom Penh, and has offices in 12 provinces. Its mandate includes investigating alleged human rights abuses, assisting victims to make complaints to the authorities, conducting research and advocacy, and providing human rights education to target groups. LICADHO researchers regularly visit Cambodian prisons to monitor conditions and interview detainees.

## Methodology & Limitations

This report is based on interviews with pre-trial detainees and convicts in 20 prisons throughout Cambodia in 2001 and 2002 by LICADHO prison monitors.<sup>1</sup> A small number of cases are also cited from complaints filed directly to one of LICADHO's offices. Field investigation was also undertaken in one province, Kompong Som, to gauge the attitudes of police officers towards torture, and their knowledge of lawful detention requirements.

The amount of police violence cited in the LICADHO interviews with prisoners is likely to be under-reported, as confidential interviews are not usually allowed. Only 23 per cent of interviews conducted were confidential; the majority took place with the presence of prison guards, other officials or fellow prisoners. Some inmates may have been reluctant to talk, due to fear of repercussions from prison staff. Also, in some prisons there were difficulties for LICADHO monitors to gain access to all pre-trial detainees – the group of prisoners most likely to report police torture – to conduct interviews.

Another important limitation is that LICADHO's statistics on police violence are based only on those arrested persons who ended up in prison and who were interviewed and responded to questions. This excludes people mistreated in police custody but then released for whatever reason, without being sent to prison. The main reason for the reliance on information from prison inmates is the lack of access to police stations by independent monitors.

As a result of these factors, the real amount of torture by the police is almost certainly higher than the statistics in this paper.

The majority of respondents' claims of police torture have not been investigated and their veracity established. Physical evidence of torture has often healed by the time prisoners are interviewed, although LICADHO monitors do see some who have injuries consistent with torture. Further investigation of information about alleged torture is not generally conducted by LICADHO unless the interviewees specifically agree to file complaints against their torturers. In most cases, they do not wish to do so, for fear of reprisals.

For the above reasons, the statistics in this paper are indicative rather than conclusive. The limited information available, however, indicates that torture of suspects in police stations is prevalent throughout Cambodia.

## Definition of Torture in Police Custody

As in many countries, torture is not defined or legislated as a crime in Cambodian domestic law. Perpetrators should, however, be charged under the applicable criminal provisions for each element of the torture – for example, battery and injury, illegal confinement, manslaughter. According to the Khmer dictionary of Academic Buddhism, 'torture' is defined as "brutal, bad and inhumane acts".<sup>2</sup>

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<sup>1</sup> Due to resource limitations and lack of permanent offices, prisons in the following provinces are excluded from LICADHO's prison monitoring program: Ratanakiri, Mondulakiri, Kratie, Stung Treng and Preah Vihear.

<sup>2</sup> Royal Government of the Kingdom of Cambodia report on UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 2003, p. 4

The applicable international legal definition of torture comes from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Cambodia ratified in 1992:

*“The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of committing, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*

The main points of this definition are that torture causes severe physical or mental suffering and that suffering is inflicted *deliberately*. In the case of torture by the police, the torturers intend to inflict suffering, usually in order to extract information or confessions from the victims. What then constitutes severe physical or mental suffering? There is no international benchmark to determine when an act of violence or intimidation becomes ‘severe’; it is open to different interpretations. Nevertheless, lesser acts of mistreatment, which may not be serious enough to constitute torture, are also banned by the convention.<sup>3</sup> For the purposes of this paper, the terms ‘torture’ and ‘mistreatment’ are used interchangeably, as both are prohibited. Mostly, however, the abuse reported in prisoner interviews with LICADHO is serious physical violence, rather than minor abuse.

This paper covers torture and mistreatment in police custody committed by arresting authorities.<sup>4</sup> This encompasses the stages of investigation, search and seizure, arrest and detention at police stations, regardless of whether the police have lawful powers to do so. Torture committed in prisons after arrested persons were sent there from police stations is not covered in this paper. The term ‘police’ includes both civil police forces and the military police (or gendarmerie). There are many units of civil police, including anti-drug, anti-terrorist, border police, criminal police, etc. In principle, only particular police units who are designated as judicial police (sometimes called judiciary police) have lawful powers of arrest, detention, search and seizure.<sup>5</sup> In practice, however, all police use such powers. Until recently, the military police had wide-ranging jurisdiction over suspected crimes committed by military personnel *and civilians*.<sup>6</sup> The military police are no longer lawfully permitted to arrest civilians, but this still occurs on a regular basis.

## **Extent of Police Torture in Custody**

Arrested persons detained in Cambodian police stations face a grave risk of being threatened, beaten or otherwise tortured, primarily to extract confessions that are then used against them in court. Torture is an intrinsic part of the arrest and investigation process throughout Cambodia, according to LICADHO’s research.

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<sup>3</sup> In addition to torture, the convention prohibits “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture” (Art. 16). Such acts are not defined, except that they must be committed by, or with the acquiescence of, a public official.

<sup>4</sup> Arresting authorities were usually the police but, in a few cases, were military or other officials, and the place of detention was not a police station but a military base or other institution.

<sup>5</sup> See Article 36 of Law on Criminal Procedure for a list of those regarded as judicial police officers.

<sup>6</sup> Sub-decree No. 77, 1994, on the Duties and the General Structure of the Gendarmerie. However, Amendment to Law on Criminal Procedure (Art. 36), Jan 2002, reduced the power of the section of the gendarmerie in charge of criminal tasks to offenses relating only to military affairs.

Of 4,767 prison inmates interviewed by LICADHO in 2001 and 2002, 385 of them (8%) claimed to have been mistreated in police custody after arrest.<sup>7</sup> The real amount of police torture is likely to be higher than this figure, for reasons noted in the methodology section above. Legal Aid of Cambodia (LAC), a non-government organization which provides free legal services to criminal defendants, estimates about 30% of its clients claim they were beaten or seriously tortured in police custody.<sup>8</sup>

Of 4,767 prisoners interviewed by LICADHO, information from 4,152 of them (including 281 of the total of 385 who alleged police mistreatment) has been further analysed by LICADHO<sup>9</sup>. Data from this analysis is presented below.

### Geographic location of torture

An indication of the extent of torture found in each Cambodian province is shown in Table 1.

**Table 1: Proportion of prison inmates in each province allegedly mistreated in police custody in 2001 and 2002.**

Province	Number of inmates interviewed	Number who alleged police mistreatment	Percentage of mistreatment
Phnom Penh*	327	47	14.3%
Kandal	343	16	4.6%
Takeo	163	22	13.5%
Kompong Cham	428	16	3.7%
Kompong Chhnang	267	15	5.6%
Kompong Thom	251	10	4%
Kompong Speu	152	18	11.8%
Kompong Som	205	25	12.2%
Kampot	274	8	2.9%
Koh Kong	165	8	4.8%
Prey Veng	220	17	7.7%
Pursat	135	8	5.9%
Battambang	493	14	2.8%
Banteay Meanchey	269	10	3.7%
Siem Reap	329	28	8.5%
Svay Rieng	131	19	14.5%
<b>TOTAL</b>	<b>4,152</b>	<b>281</b>	<b>6.7%</b>

\* Interviews were conducted in the following prisons: CC1 (formerly known as T3), CC2 (formerly known as Prey Sar prison), Toul Sleng and PJ.

While Svay Rieng, Phnom Penh and Takeo seem to have particularly high levels of torture, possible variables affecting these findings need to be taken into account. For example, inmates may be more willing to disclose information about torture in some provinces (the level of the fear in a prison, the degree of confidentiality of interviews, and the personality and quality of the interviewer may all be influencing factors). Without further analysis, it is difficult to accurately ascertain which provinces have the worst records for torture.

<sup>7</sup> Interviewees include pre-trial detainees and convicts. The question asked of them was: “Were you intimidated, threatened or tortured in any form while under police custody?” Those who answered ‘yes’ were asked to describe the alleged mistreatment.

<sup>8</sup> Author’s interviews with LAC representatives from seven provinces: Koh Kong, Kompong Cham, Phnom Penh, Kompong Som, Siem Reap, Kandal and Svay Rieng.

<sup>9</sup> Because of resource limitations in 2002, information from the remaining prisoner interviews has not yet been inserted into LICADHO’s database and is unavailable for further analysis.

Nevertheless, the available information indicates a pattern of frequent, systematic torture of detainees by police throughout the country. It appears to be understood as normal practice by police officers to force suspects to confess. The use of threats and violence, as well as the police emphasis on securing confessions, is apparent in the high rate of confessions given in police custody. About 90% of prison inmates state that they confessed during interrogation in police custody, according to LICADHO interviews. Furthermore, when questioned about why they believed they were mistreated in custody, many interviewees stated that the police were seeking a confession or other information about the alleged crime.

### **The victims**

The majority of inmates beaten in custody are male adults, but children and women are also vulnerable to police brutality. Of the sample group of 281 prisoners who alleged police mistreatment, 7 were women and 15 minors aged under 18.

#### **Example: Torture of a minor**

A 16-year-old boy in Kampong Speu province was riding on a bicycle borrowed from a friend one night when villagers, who knew the boy did not own a bicycle, falsely accused him of stealing the bike. The boy was beaten by several villagers and taken to a commune police station. Over the next 12 hours, police beat the boy on at least four occasions, including whipping him with a belt, stomping on his body as he lay on the ground, kicking him, and hitting in the face with a gun. At one point, several police opened a window and told the boy that if he could run away he would be free. The boy climbed through the window and crawled 30 meters away, before the same police brought him back and beat him again. The boy was released without charge the following day, after the bicycle owner testified to the police that he had lent the bike to the boy. The boy spent two and a half months in hospital recovering from his injuries, and was unable to walk for more than a month. No police were prosecuted for the torture. A court prosecutor, upon receiving a criminal complaint filed by the boy's parents, failed to file charges but instead negotiated an out-of-court cash settlement between the police perpetrators and the victim's family.

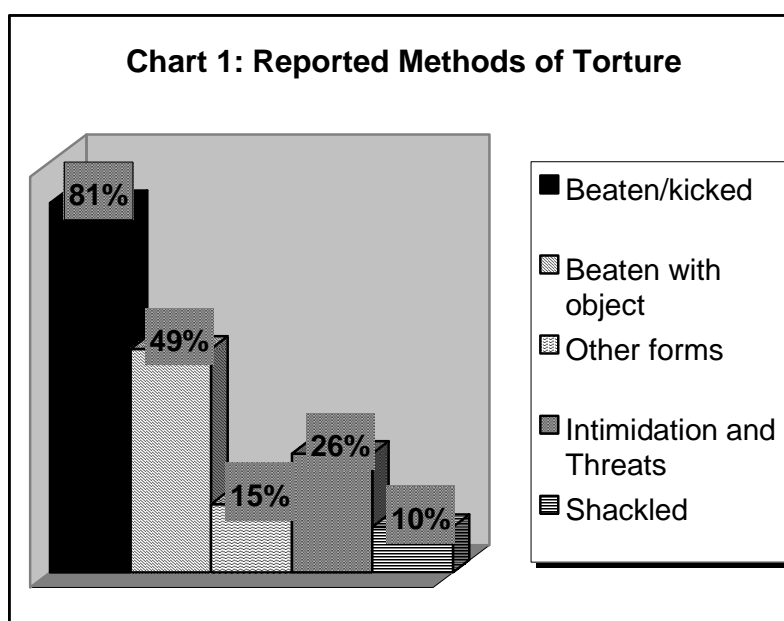
The 281 respondents who alleged police mistreatment were all Cambodian, except for one foreigner (Vietnamese). Their alleged crimes ranged from murder to illegal fishing. The majority of cases involved theft or robbery, but this may be due to the commonness of these crimes. It is difficult to align a crime with the degree of abuse a criminal suspect may receive. However, it does appear that several factors may lead to more severe torture: a police officer's personal dislike for a criminal suspect; if the suspect is a 'known' criminal or has previously been imprisoned; if a relative or friend of the police are victims of the suspect's alleged crime; or if the police are seeking further information, such as the names of accomplices, about the crime. In cases where the police believe the suspect has money, the abuse may be more severe for the purpose of extortion.

### **Methods of Torture**

Of the 281 prisoners who alleged police mistreatment, most described serious physical violence. Methods of torture reported by them can be divided into five categories:

- § Beaten/kicked with hands or shoes and boots
- § Beaten with the use of an object (gun, stick, etc)
- § Other forms of physical torture, such as: limbs crushed, electric shocks and near suffocation from plastic bags placed over their heads.
- § Intimidation/threats
- § Prolonged handcuffing/shackling

The reported methods used against the respondents are outlined in Chart 1.<sup>10</sup> The chart includes multiple responses, as victims may experience more than one form of torture. The cases of shackling and verbal intimidation or threats shown in the chart are all accompanied by some form of physical violence.



### Severity of torture

Some 7.9% of respondents claimed they fell unconscious during the torture, and 21.7% complained of prolonged health problems requiring medication.<sup>11</sup> Many respondents reported injuries or other health effects from the torture, including coughing up blood, swelling and bleeding of body parts, chest pains and, in some cases, permanent scars.

It was commonly reported that more than one policeman carried out the torture.

Typically, respondents reported being handcuffed or otherwise tied up, and blindfolded, during the torture. Restraints such as handcuffs prevent victims from any attempts to protect themselves, and blindfolding adds to their fear and makes it harder for them to identify perpetrators.

An example of a particularly serious case of torture:

A suspect sent to a police station in Svay Rieng province in 2002 was, upon arrival, handcuffed and told to sit on the floor. Three policemen kicked him until he fell unconscious. When he regained consciousness, they beat the sole of his foot with a wooden stick and kicked his back about five times, to try to force him to confess. That night, he was tortured again. He was handcuffed and his face covered with a cloth. Police kicked his chest 10 times and threatened to shoot him if he didn't confess. The man confessed to committing robbery; he later told LICADHO that he confessed because he was afraid of being tortured to death.

<sup>10</sup> Twenty-nine respondents are excluded from the chart due to inadequate descriptions of the alleged torture.

<sup>11</sup> While this gives an indication of the severity of the violence, the prior health of the victims should also be taken into account.

## **Beaten and kicked**

The majority of respondents, 81%, reported being beaten or kicked by the police during interrogation. The victims usually described serious beatings, rather than one or two slaps. Commonly reported abuse included kicks to the face, chest or stomach, or under the armpits, and slaps to the face and the pulling of hair. The violence was usually committed during police attempts to extract confessions or information about alleged crimes from the victims. An example is a man detained by police in 2002 who claimed:

At midnight, a policeman beat me during interrogation and accused me of robbery. When I denied it, he hit me with his elbow on my backbone five or six times, causing me pain, and he kicked me hard on my chest three times, causing more pain. I could not shout and I fell unconscious. At 4am, the police came to interrogate and beat me again. He used his elbow to strongly beat me on my backbone three times.

At the time of interview, some weeks after the alleged abuse, the man still complained of pain.

Another man, arrested in Kompong Chhnang, stated:

In the detention room I was hit on the chest and back with an iron chain and was seriously hurt. After this, another policeman in uniform came into the detention room, grabbed my hair and slammed my head into the door. He kicked my back and when he finished another policeman hit my legs and stomach with an electric baton. I fell to the ground and was in a lot of pain. The next day the same three policemen who had tortured me the day before took me to the detention room for questioning again. One of them used an iron chain to hit my back and my bottom, while another one kicked me in the stomach, waist, back and neck. I fell to the ground. They ordered me to stand up again and when I stood all of them hit and kicked me again until I fainted.

This man has permanent scars and, at time of interview, still complained of pain.

## **Beaten with an object**

Forty-nine percent of the inmates who reported police mistreatment said they were beaten or whipped with an object of some kind, most commonly a gun butt, wooden or bamboo stick, baton, belt, plastic pipe, iron bar, chain or rope.

### **Example: Beating with an object**

A man was arrested on a theft charge and detained at a Svay Rieng police station in 2002. When he arrived, two policemen forced him to remove his clothes. When he was naked, they took his pants and tied his hands with them. One policeman struck the suspect's chest with a plastic stick and tried to force him to confess to stealing a car. The suspect denied this, and the policeman then struck his back and chest with a wooden stick. When the victim still refused to confess, and the policeman continued to beat him harder and harder with the stick. When the suspect coughed up blood, the policeman stopped beating him. When interviewed in prison by LICADHO, the victim complained of continuing pain on one side of his body and of difficulty sleeping.

## **Other forms of torture**

Fifteen percent of respondents reported various other methods of torture, including: electric shocks; having a plastic bag placed over their head to near suffocation; being submerged in water; and cigarette burns. There were also reports of limb crushing, which involved the interrogator shackling and stepping on their feet for a significant length of time, or stomping on other parts of their body with heavy boots. Methods such as these were particularly common in Kompong Thom and Banteay Meanchey provinces. A few cases of insertion of

nails into victims' ears were reported in another province, Kompong Som. One inmate explained:

When I arrived [at the police station], three policemen tortured me; they kicked my back many times and I was beaten on the chest very hard. After this, a policeman put a plastic bag on my head and slapped my ears. They tortured me until I passed out. When I regained consciousness, the police inserted a nail into my ears until blood came out.

In prison, the man complained of chest pains and of coughing up blood.

### **Verbal threats and intimidation**

Verbal threats or other acts of intimidation were described by 26% of the 281 prison inmates who reported mistreatment. In all cases, the intimidation was accompanied by physical violence. All acts of torture or mistreatment are deliberate forms of intimidation that cause fear to the victim, but this category covers only those respondents who actually described specific threats or intimidation by the police. The intimidation reported included: threats to shoot or beat the victims to death if they did not confess; a gun being placed on a table in front of them during interrogation; threats to hand them over to mobs of people to be beaten to death; and threats to send them to prison if questions were not answered 'correctly'.

In one case in Kompong Thom, military policemen allegedly threatened five female detainees with rape.

Particularly high rates of verbal threats and intimidation were reported in Kompong Chhnang, Kompong Thom, Koh Kong and Kompong Cham provinces, but it was also common throughout the country.

### **Shackled or handcuffed**

Prolonged shackling or handcuffing can cut into the flesh, restrict blood circulation and prevent movement, causing severe pain and even permanent disability. Ten percent of respondents claimed they were kept in shackles or handcuffs overnight while in custody. Half of the detainees interviewed in Kompong Cham province reported being shackled in the police station after arrest.

## **Perpetrators & Place of Torture**

The majority of the 281 prisoners, 81.5%, stated that the torture occurred after arrest, while they were detained in a police station or other institution. Nearly 12% said they were mistreated both during their arrest and at the police station afterward.

### **Example: Torture during arrest**

A man in Siem Reap was arrested at his house by a group of police in 2001. The police threatened him by firing a gunshot between his legs. They tied him to a column and tried to shoot a gun near his ear, but the gun did not fire. At this point, a policeman stated that the man must have magic powers, and then beat him unconscious with the gun. After the man regained consciousness, he was marched to a police post, and the police kicked, beat and threatened to shoot him along the way. He had serious head injuries by the time he arrived at the police post.

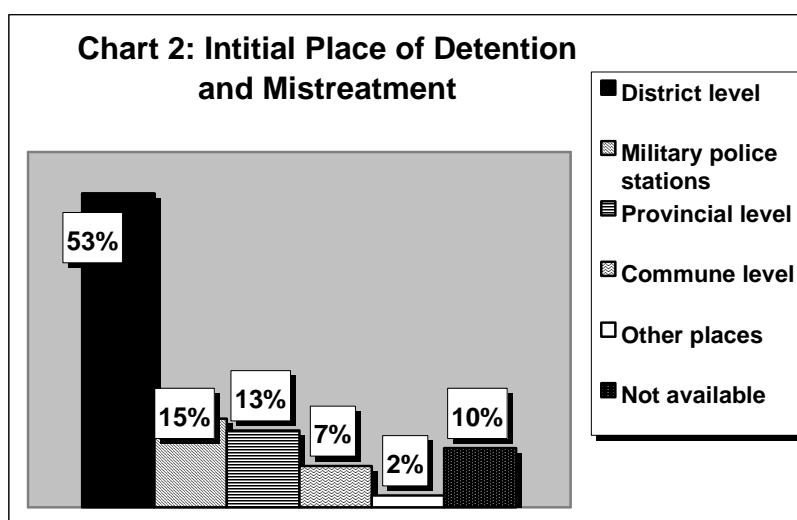
During police arrests, 7.4 per cent of respondents claimed they were beaten by members of the public. It is uncertain whether the arresting police tried to deter such violence, but the



figure does indicate a degree of complacency on the part of the police towards public violence on suspected criminals.

The reported place of initial detention and mistreatment are outlined in Chart 2. Most respondents, 53%, were initially detained and mistreated at district-level civil police stations, 15% were detained by the military police, and 13% were held at provincial civil police stations. A further 7% were detained in commune level civil police stations, and 2% were held in other places such as military bases or by security guards.

Many of the torture cases reported in Kompong Thom, Battambang and Banteay Meanchey provinces, in particular, occurred during detention by the military police. In January 2002, the powers of the military police nationwide to arrest and detain civilian suspects were curtailed, but the law is somewhat unclear and often they continued to exercise this power.



There were four reported cases of the detention and mistreatment of civilian suspects on military bases, despite the fact that soldiers have no lawful power to arrest civilians.

**Example: Military torture of a civilian**

In 2001, two military officers eating at a restaurant in Kompong Speu had an altercation with three men who beat them with bottles and glasses. The three men escaped. At 11pm that night, 10 soldiers from a military training center surrounded and arrested the three men at a cottage. During the arrest, one of the three was kicked 10 to 20 times and beaten 10 to 15 times with an iron bar. The soldiers also struck the man with a wooden stick, until it broke in half, and cut his arm with an axe. At one point, the man was struck several times on the head with an iron bar. After the beating, the soldiers detained and shackled the man in the military center. He was later sent to the civil police and put in prison. As a result of arm and head injuries, he suffered prolonged health problems.

While the figures above refer to the initial place of detention, it was found that approximately a quarter of the victims were detained in more than one place. Typically, arrested persons were sent up the chain of command from commune to district level, or from district to provincial level. In some cases, victims were tortured in more than one police station.

## Deaths in Police Custody

It is difficult to determine the number of people who die at the hands of the police during detention. The police will usually cover up the crime, thorough investigations are rare, and witnesses are reluctant to talk.

One death in police custody was reported in 2001:

Eath Oeurn, an alleged buffalo thief, was arrested in Ba Phnom district in Prey Veng province on July 26, 2001 and died three days later from injuries allegedly caused by torture. Before his death, he named, in front of witnesses, three police officers that he accused of torturing him.

Photographs of Eath Oeurn's body showing numerous wounds and bruises, as well as statements from witnesses, were sent by LICADHO to a forensic pathologist at the University of Philippines in Manila, who concluded: "Based on the available information regarding the circumstances of his death craniocerebral injuries are strongly considered as direct cause and the manner of death is thus classified as homicide."

Under pressure from international and local human rights groups, the Prey Veng court charged two policemen with voluntary manslaughter in February 2002, more than six months after Eath Oeurn's death. A third policeman was charged in July 2002. At time of writing, the case had yet to go to trial. Such prosecutions of alleged police torturers are extremely rare.

## Causes of Torture in Police Custody

Why are people regularly and routinely mistreated in police custody? Today's methods of torture, and its basic aims, remain the same as techniques used in Cambodia's past. Physical and mental torture was primarily inflicted throughout Cambodian history for the purposes of:

- § Extracting confessions or other information;
- § Punishing perceived wrongdoers;
- § Extorting money from detainees.

These continue to be the main motives for torture by the police today. These factors, however, cannot successfully operate alone. They are supported by other elements, including: inadequate law enforcement procedures and skills, especially a dependence on confessions as a primary form of evidence against criminal suspects; incommunicado detention by the police and lack of outside scrutiny of their behaviour; the judiciary's failure to confront torture; and social attitudes toward suspected criminals.

Torture is also fueled by long-held notions of power and authority, hierarchy and patronage, which rely on the principle of a less powerful person submitting to the authority of a more powerful person. As a consequence of this system, there is a lack of accountability before the law of criminals who hold power or influence. The fact that torture is used by persons in positions of authority who are supposed to protect society, and people's rights, illustrates the resilient nature of old attitudes of power. In summary, police torture occurs because it is accepted and allowed.

## **Primary Causes of Torture:**

### **Police use torture to obtain a confession**

Torture to obtain a confession is an institutionalized instrument employed by the police. There is a long-standing police reliance on obtaining a confession from alleged offenders, which is considered the central element of any criminal investigation. This is perpetuated by the judiciary's general willingness to accept forced confessions as evidence of an accused's guilt, and a lack of will from higher authorities to deter such a practice. As previously mentioned, 90% of prison inmates said they confessed during police interrogation. For example, one man detained in Koh Kong explained:

They asked me, "Did you kidnap somebody and where did you hide the money?" I told them I didn't know anything about a kidnapping, but before I could even finish talking they kicked me in my chest four times, hit my neck and thighs with a plastic stick three times, and threatened to shoot me. A policeman said, "If you don't say that you did this kidnapping, I will shoot you and your child!" When I heard this, I became frightened and said, "I really don't know about the kidnapping. Even if you shoot me, I don't have any information to tell you." They calmed down for a few minutes and then they continued to question me again. They continued to torture me again and finally I couldn't stand it anymore so I just responded as they wanted me to.

In Prey Veng, an 18-year-old boy accused of stealing a cow stated:

I was taken to the police office and ordered to kneel down and confess that I had associated with other thieves. I denied this and I was beaten with a bat twice on the head and once on the back. Then a policeman came in and kicked me twice and then forced me to thumbprint a statement [confession].

It is uncertain how many criminal suspects may be convicted of crimes based on confessions extracted by torture.<sup>12</sup> A prosecutor in Kompong Som province, however, confirmed that a confession is included in most criminal files sent to court by the police. Police emphasis on obtaining confessions is primarily supported by the acceptance by judges and prosecutors of these confessions in court, whether they are forced or not.

### **Police use torture to extort money**

In LICADHO interviews with 281 prisoners who claimed police mistreatment, 14% revealed that the police demanded money from them during their detention. This figure is an indication only, and it is difficult to gauge the real extent of police torture for the purpose of extortion. As corruption is rife in Cambodia, interviewees may not consider police extortion an important piece of information to disclose. Also, in addition to those victims of torture and extortion who end up in prison, it is uncertain how many other people may be arrested by police but released after being forced to pay money.

#### **Example: Extortion & torture**

A man arrested and detained at a Phnom Penh district police station in September 2002 said he was taken into a darkened room for interrogation. A policeman accused him of committing robbery and asked him "Do you have any money? If you want to be released, you must pay \$500 [US]." The man told the policeman that he was not a robber and that he had no money to pay. The policeman responded by beating his face and kicking his body, until the man eventually made a confession and was later sent to court.

<sup>12</sup> Cambodia's Constitution (Art. 38) and Transitional Criminal Law (Art 24.3) prohibit the use of forced confessions as evidence in court. Furthermore, under the criminal law, even if there is no evidence that a confession was forced, it cannot be used to convict an accused unless it is corroborated by other evidence.

## **Secondary Causes of Torture:**

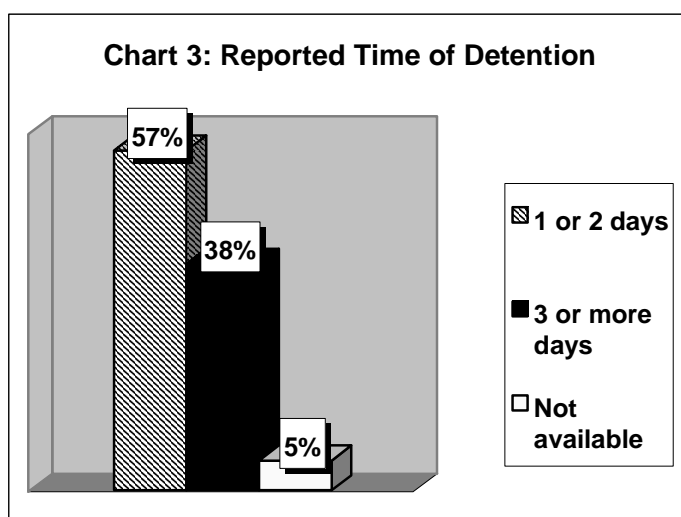
Among the many reasons why police commit torture, the following – which strengthen and support the causes of torture cited above – are most critical and in need of urgent attention.

### **Inadequacies in law enforcement techniques**

Torture is an effect of chronic problems in Cambodia’s law enforcement system, evidenced by improper arrest and investigation practices. There seems to be a general misunderstanding amongst police as to when investigations should occur. Instead of investigating a crime, collecting evidence and then arresting a suspect, the police often act in the reverse order: arrest before investigation. Suspects are usually arrested on hearsay or suspicion, rather than evidence, and then the police set about proving the case – often by extracting confessions from the arrested person. This dates back to a decades-old attitude under previous regimes that “arresting the wrong person is better than releasing the wrong person”, one Legal Aid of Cambodia lawyer explained. The police’s dependency on confessions as evidence is compounded by their lack of ability or willingness to use other investigation techniques.

An arrested person can be detained by police for up to 48 hours before being brought to a court or released.<sup>13</sup> The police understand this to mean that they have 48 hours to compile all necessary evidence against a suspect, and therefore need to use all means possible to obtain ‘evidence’ quickly. This ignores the fact that the police are supposed to have some evidence *before* they arrest a suspect – and in the most cases the police require a court warrant to make a lawful arrest, which demands prior investigation. If the police had evidence prior to an arrest, there would be less need to obtain confessions, sometimes violently. Nevertheless, police and government officials often blame the 48-hour detention proviso as an investigating obstacle which forces evidence to be found quickly. This attitude led to a law amendment in 2001 to extend the detention period by 24 hours for serious crimes.<sup>14</sup>

LICADHO prisoner interviews found that police frequently do not follow correct arrest and investigating procedures, which increases the risk of a suspect being tortured. Of the 281 interviewees who claimed police mistreatment, 38% were detained for a period of three or more days, in violation of law (see chart 3).



<sup>13</sup> Transitional Criminal Law, 1992 (Art. 13); Law on Criminal Procedure, 1993 (Art. 47).

Furthermore, a significant proportion was arrested without an arrest warrant. Of the 281 inmates:

- § 32.7% were arrested during a police search (the police were searching a particular location or intentionally seeking the suspect); 75% of this group stated the police did not have an arrest warrant.
- § 24.2% were arrested near the scene of a crime, meaning their arrests may have been lawfully conducted without arrest warrant.<sup>15</sup>
- § 21.7% were ‘invited’ to a police station and then arrested; 80% of them claimed to have been detained without an arrest warrant.
- § 16.7% were detained in other ways, which included being taken to a police station by members of the public.

### **Lack of access to police stations**

Police frequently detain criminal suspects incommunicado, without access to family members, legal representatives or human rights observers. The whereabouts of arrested persons are often unknown to other people or, if known, the police refuse or strictly control any visitors to them. This is of grave concern as police mistreatment typically occurs during the first stages of detention, especially during interrogation. Some 57% of the torture cases cited in this paper occurred during the first 48 hours of detention. At this time, arrested persons are at the mercy of the police, who have full and exclusive control over them. This facilitates abuses such as torture.

Cambodian law and policy are unclear on precisely who, if anyone, has access to police detainees. Although police procedures provide in theory for access by family members and lawyers, the reality is often different. The police procedures are also contradicted by the government’s apparent policy that no-one except for “competent agent[s]” is allowed contact with detainees in the first 48 hours of detention, a period in which the police are “aiming at interrogation”.<sup>16</sup>

**Family access:** Family members are sometimes allowed access to detainees, but often only to give them food – the police themselves generally do not feed people in their custody. Relatives may be permitted only very brief visits with detainees, and be instructed not to talk to them. Police procedures state that suspects have the right to communicate with relatives and friends to inform them of their detention, and to receive visits from them.<sup>17</sup> In reality, such access is entirely random and erratic, dependent on the whim of the particular police on duty at the time. Relatives may be asked to pay bribes to see detainees. Police are unlikely to permit family members to meet a suspect who is being or has been tortured.

**Legal access:** Cambodian law states that “the right to assistance of an attorney or counsel is assured for any person accused of a misdemeanor or a crime”, and that no one can be detained for more than 48 hours without access to a family member, lawyer or other

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<sup>14</sup> November 2001 Amendment of Article 38 of Law on Criminal Procedure (1993). The 24-hour extension applies only in certain circumstances, including: a serious crime; clear evidence implicating the suspect; and written approval by a prosecutor.

<sup>15</sup> Police are allowed to arrest without warrant a person caught in the act of a crime (Art. 35, Law on Criminal Procedure & Art. 18, Transitional Criminal Law). It should be taken into account that some of the inmates in this category may have been present at the scene of the crime but incorrectly identified as offenders.

<sup>16</sup> Royal Government of the Kingdom of Cambodia report on UN Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 2003, para. 124

<sup>17</sup> National Police of Cambodia, Judicial Police Procedures Manual. p. 3-17 & 3-50.

representative.<sup>18</sup> Once sent to court from a police station, a suspect has the right to have a lawyer present during interrogation by an investigating judge.<sup>19</sup> But the law does not specify that suspects have the right to legal assistance while detained at a police station, and particularly during interrogation, prior to being taken to court. Police procedures, however, do state that suspects have “the right to communicate with a legal representative and have that person present during the questioning.”<sup>20</sup>

In fact, criminal suspects generally do not have access to legal representation while detained in police custody. Police officers who intend to force confessions from suspects are unlikely to explain their legal rights to them, or respond to a request for a lawyer to be present. Lawyers themselves generally do not attempt to visit suspects at police stations. Legal Aid of Cambodia (LAC) lawyers explained that they do not usually know when a person is arrested and detained and, if this information is reported to them, they will usually be denied access. A representative from another legal aid group, the Cambodian Defenders Project (CDP), concurred: “They [police] are afraid when lawyers want access to clients in police custody. They will delay access and seek the approval of their boss or higher authorities.”

Interviews with police and court staff indicated that the procedure to be followed by a lawyer to gain access to a person in police custody is unclear. The current practice for a suspect to obtain a lawyer is a cumbersome one which requires an application and court approval; this invariably does not happen until after the suspect has been taken to court and usually sent to prison for pre-trial detention. Police officers seem unaware of a suspect’s right to a lawyer while in police custody. One policeman appeared confused when asked what he would do if a lawyer asked to see to a suspect in custody. He stated that he would first seek permission from the prosecutor, and then a joint meeting would be held between the lawyer, police inspector, prosecutor and the police. Disturbingly, he also inferred that a lawyer should never meet or talk to a suspect alone.

In reality, criminal suspects usually do not obtain legal assistance until well after their initial arrest and detention, and some go to trial without a lawyer. Nearly 60% of pre-trial detainees and convicts interviewed by LICADHO did not have legal representation at time of interview, or at the time of their trial.<sup>21</sup> It is often one or two months after arrest and initial detention before a suspect meets a lawyer for the first time, according to LAC lawyers. Such delays in legal representation are in direct violation of Cambodian law.<sup>22</sup>

***Human rights access:*** Human rights workers face similar difficulties in obtaining access to suspects. They may visit police stations to ask about specific detainees, but the degree of information they may receive varies widely. They are rarely permitted to see or interview suspects in detention.

### **Impunity: Judicial failure to confront police torture**

Police commit torture because they know they can get away with it. It is extremely rare for police officers to be prosecuted for torture. There have been only three cases in the past two years. In the first, the Svay Rieng provincial court sentenced three policemen to suspended

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<sup>18</sup> Transitional Criminal Law (Art. 10).

<sup>19</sup> Law on Criminal Procedure (Art. 75).

<sup>20</sup> National Police of Cambodia, Judicial Police Procedures Manual. p. 3-17

<sup>21</sup> In LICADHO interviews, both pre-trial detainees and convicts were asked about their legal representation: pre-trial detainees were asked if they had a lawyer at the time of interview, and convicts were asked if they had a lawyer when they went to trial.

<sup>22</sup> The problem is exacerbated by a shortage of lawyers in Cambodia.

prison terms in April 2002 for torturing two children.<sup>23</sup> The other two cases, one of which relates to the 2001 death of Eath Oeurn in Prey Veng (see ‘Deaths in police custody’ section, above), have yet to go to trial.

In the rare cases of police officers being convicted, lenient sentences – such as suspended prison terms, meaning that the perpetrator does not have to spend a day in prison – are the norm. The last known case of a policeman actually serving prison time as punishment for committing torture was in 1995, when a Prey Veng military policeman spent four months in prison for beating a 13-year-old boy who died during interrogation.<sup>24</sup>

Primary reasons for the rampant impunity of police torturers include:

- § Many victims are too frightened to speak out about torture or forced confessions to a prosecutor or judge, or lodge a complaint against their torturers.
- § Lack of evidence of torture due to delays in lawyers, medical or human rights workers or others in getting access to detainees; bruises and marks have usually healed by then.
- § Judicial complicity: the acceptance of forced confessions from suspects as evidence in court and failure to investigate alleged torturers.

A lawyer from CDP explained that it is difficult to raise the issue of torture and forced confessions during a suspect’s trial. The judge will usually not accept such claims, and demand that a separate case be filed against the police to be heard at a later date (which rarely happens). In fact, raising the subject of torture has proven to be an ineffective tactic for defense lawyers. The judiciary tends to be uninterested in allegations of forced confessions, even if, in some cases, there is visible evidence that torture occurred.

Victims who do dare to complain about torture are at risk of reprisals from their torturers, their police colleagues, or even the courts. A case in point is a trial held in Svay Rieng three years ago during which the accused complained he had been tortured to confess by the police. The judge summoned the police to court and asked them to explain. The police denied the allegation. The judge arbitrarily added another charge against the accused – defamation of the police officers – and convicted him and imposed a one-month prison sentence, on top of the sentence he received for the original charges against him.<sup>25</sup>

The clear message sent to the police by the judiciary is that torture to extract confessions is acceptable and that torturers will not be held accountable for their actions.

**Example: Judicial complicity by ignoring evidence**

In Kompong Som, three policemen arrested a suspect based on a description given by the victim of a robbery. The suspect was seriously tortured in police custody, and showed visible injuries when he appeared in court three days after his arrest – for instance, his face was black and swollen. On inquiries by the judge to his condition, the accused said the police had tortured him.

<sup>23</sup> The case involved two arrested high school students who were repeatedly beaten by the three policemen, who were drunk, to try to get them to confess to indecent assault. The students were later released without charge. Convicted of physical assault, the policemen received three-month suspended prison sentences and were ordered to jointly pay US\$175 compensation to the victims’ families. See Legal Aid of Cambodia Quarterly, Issue 4, February 2003.

<sup>24</sup> The military policeman was charged and convicted of physical assault, but not with manslaughter. He received a two-year prison sentence, of which all but four months were suspended. See “Less Than Human: Torture in Cambodia”, LICADHO, June 2000, p. 104.

<sup>25</sup> Interview with Legal Aid of Cambodia lawyers.

Also, the robbery victim told the police and court officials that they had arrested and detained the wrong person. Despite this, the accused was kept in pre-trial imprisonment for three and a half months before being released by the court. The victim did not file a complaint against the police torturers, because he said he did not have enough money and was 'alone'. His torturers were never prosecuted.

### **Social Attitudes: crime and justice in Cambodia**

Social attitudes may reinforce the practice of torture in police custody. Given Cambodia's tragic recent history, society too easily regards violence as a normal characteristic of life. This, combined with a frustration with crime and a weak, corrupt judicial system, ultimately perpetuates the abuse of criminal suspects. Furthermore, it could be argued that there is a broader cultural influence in which the abuse of the powerless by the powerful is, to an extent, accepted within Cambodian society.

There is no greater illustration of the result of such attitudes than when the public takes justice into their own hands. Mob beatings or killings of suspected criminals illustrate society's expectations of how to punish a person, and stop crime. The United Nations recorded 65 incidents of mob violence in Cambodia from May 1999 to May 2002, including a three-fold increase in attacks since between December 2001 and May 2002.<sup>26</sup>

The police are a part of society, and reflect this outlook. The police sometimes assist, or stand by passively watching, mob attacks. Occasionally, they use 'mobs' as a form of torture.

#### **Example: Mobs as a form of torture**

A man arrested in Kompong Cham in 2001 stated: I was eating dinner when four or five people came to arrest me. They tied my hands back with a rope and took me to the police post. On the way, they seriously beat me. Suddenly, the police arrived, but the police didn't help me. Instead the police hit my body with a wooden stick five or six times and kicked my chest. They tried to get me to confess and asked me, "What place did you rob?" When the people saw the police torturing me, they also continued to beat me and helped the police. They kicked and hit me very hard and someone cut my left arm with a knife. Afterwards I was sent to the police inspection office for questioning. When I was there, I didn't confess to anything so the police let the people beat me again. This time I was beaten so hard that I agreed to say what they wanted. I was very badly injured and the police had to send me to the district hospital for treatment. I was in the hospital for three nights and while I was there, I was handcuffed. After this, the police took my statement and forced me to thumbprint it.

Many inmates interviewed by Licadho explained that one of the reasons they were mistreated in custody was that the police despised and wanted to punish them. For instance, a prisoner in Kompong Chhnang said a policeman beat him for being an ex-convict: "A policeman came into the detention room and asked, 'Were you released from prison?' I said yes, and the policeman suddenly punched me in the face and temple, causing me to fall to the ground."

### **Consequences of Torture**

Torture has serious physical and mental consequences for the victim, and serious consequences for the families of victims and for their society.

<sup>26</sup> Special Representative of the Secretary-General for human rights in Cambodia, "Street Retribution in Cambodia", June 6, 2002, and "Situation of Human Rights in Cambodia", September 27, 2002 (para. 16).



### **Physical consequences**

The effects of beating and kicking, or other forms of torture, may include: head injuries, damage to internal organs, broken bones, bruises, cuts and open wounds and, if the abuse is very serious, permanent disability (such as blindness or deafness) or death.

### **Psychological consequences**

As well as physical injuries, torture causes serious psychological symptoms for most victims. These can include: fear; anxiety and worry; depression; and sleeping problems such as nightmares or insomnia. These mental consequences can last for many years, and serious affect the health and life of victims and their families.

### **Societal consequences**

Torture and other forms of violence erode people's morals and respect for human life, and encourage a general attitude in society that violence is acceptable. Torture breaks down Cambodian traditional and religious values, and hinders the growth of a society based on rule of law and mutual trust and respect between its members. The knowledge that the authorities can do what ever they want without any recourse, creates insecurity and fear in society.

## **Cambodian & International Law Against Torture**

The Cambodian Government is bound by domestic and international commitments to protect persons from torture during arrest and detention.

### **Cambodian law**

Cambodia's 1993 Constitution requires that "there shall be no physical abuse against any individual and that the law shall protect all citizens," and specifically prohibits the mistreatment of detainees and convicts.<sup>27</sup> As in many countries, there is no legislated crime of 'torture' in Cambodia. Perpetrators can, however, be prosecuted under Cambodian criminal law for each specific crime that may comprise an instance of torture: illegal confinement, battery, rape, manslaughter, etc.

The Transitional Criminal Law, 1992, states that "no one shall be subjected to cruel, inhumane or degrading treatment or punishment, nor be beaten or tortured." (Art. 12.1). Public agents, including police or military, who commit torture should be punished by imprisonment of one to five years under the law.<sup>28</sup> Both the Constitution and the criminal law prohibit the use of confessions obtained by physical or mental force.<sup>29</sup>

In summary, the protection of persons against torture is explicitly stated in Cambodian law. Correct procedures for the arrest and detention of criminal suspects are also outlined in the Transitional Criminal Law and the Law on Criminal Procedure.

### **International law**

Cambodia signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1992. Under the convention, Cambodia is required to take action against torture and other "cruel, inhuman or degrading" acts. According to Article 2 of the convention, Cambodia must "take effective legislative, administrative, judicial or

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<sup>27</sup> Constitution (Art. 38).

<sup>28</sup> Transitional Criminal Law (Art. 22.2 & 57).

<sup>29</sup> Constitution (Art. 38.5) & Transitional Criminal Law (Art. 24.3).

other measures to prevent acts of torture”. An order from a superior officer or a public authority is not a lawful justification of torture, the article also states.

In particular, Articles 4 and 12 of the convention obligate Cambodia to:

- § Ensure that all acts of torture (including attempts to commit torture or any complicity or participation in torture) are offences under its criminal law. These offences must be punishable by appropriate penalties, which take into account their grave nature.
- § Ensure that its authorities conduct prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.

The International Covenant on Civil and Political Rights, ratified by Cambodia in 1992, also requires action to protect persons from torture and arbitrary arrest or detention.<sup>30</sup>

Police are bound by Cambodian law to observe the UN Code of Conduct for Law Enforcement Officials.<sup>31</sup> Article 5 states: “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.”

### **Access to Police Stations & Independent Monitoring: Mechanisms to Reduce Police Torture**

Torture is easily committed against detainees being held incommunicado, without being allowed to speak to anyone, such as their family, a lawyer or human rights worker. Lack of access to police stations, and the unaccountability of officers during the detention stage of police investigations, are major hindrances to the protection of detainees.

Currently, as highlighted in this paper, police holding suspects at police stations believe they have an unaccountable 48 hours in which to extract a confession. In most cases, it is not known that a person has been tortured by police until a month or so later when a human rights worker or lawyer interviews the victim in prison. Additionally, the perpetrators are rarely prosecuted because of a lack of evidence of torture at this time, and a lack of judicial or political will.

Consequently, safeguards to prevent torture are urgently required. Firstly, the right of detainees to receive visitors while in police custody – which may deter or minimize police mistreatment – should be guaranteed by law and police procedures. Family members and lawyers should be allowed to meet and talk to detainees. Given the shortage of lawyers in Cambodia, human rights organizations should also be permitted to meet detainees. The principle should be followed that a suspect or an accused person has the right to family members, a lawyer and other representatives at all stages of a criminal investigation.<sup>32</sup>

Secondly, there is a need for access to police stations on a *regular basis*. This will send a clear message to the police that access *should be permitted* at the detention stage and, importantly, deter the torture of suspects. Regular monitoring of conditions of detention at police stations by human rights and legal groups is urgently needed. Such monitoring could

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<sup>30</sup> Articles 7 & 9.

<sup>31</sup> See the Transitional Criminal Law (Art. 6.1).

<sup>32</sup> The office of the High Commission for Human Rights in Cambodia (UNHCHR) has suggested that Articles 85, 90, 131, 133, 138 & 533 of the Draft Criminal Procedure Code be amended to comply with this principle.

be done in conjunction with training and technical assistance to improve police investigation and evidence-gathering skills, to minimize their reliance on obtaining confessions.

The potential benefits of external monitoring are illustrated by Cambodian prisons, which are regularly visited by LICADHO and other human rights or medical groups. LICADHO has found that monitoring of prisons is the most feasible way to systematically collect information, provide assistance, and prevent human rights violations. Monitors have been making prison visits throughout Cambodia since 1996.<sup>33</sup> Torture of inmates by prison guards appears to have decreased in recent years – 1.2% of inmates interviewed in 2001, and 0.4% in 2002. Reported torture committed in police custody, however, is much higher; one critical influencing factor this discrepancy is likely to be the lack of monitoring and access to police stations.

The generally open nature of Cambodian prisons is a credit to the government, and displays its willingness to work with outside organizations to improve human rights conditions and respect for the law. It is a model which should be applied to police stations.

## Conclusion

If you are arrested and detained in a police station in Cambodia, you are in danger of being threatened, beaten or kicked. LICADHO research has found a worrying level of police torture, which is systematic throughout the country. Most acts of abuse occur at police stations, often at the district level, during interrogation of suspects. Higher authorities and court officials regularly ignore these offences.

The emphasis on extracting a confession, and the practice of extorting money from detainees, are two main reasons why torture occurs. Police reliance upon confessions and their general lack of investigation before making arrests greatly contribute to the prevalence of torture. These problems are compounded by the regular acceptance of forced confessions as evidence by the courts, and the fact that police torturers are seldom investigated, disciplined or prosecuted.

There is an urgent need for the Royal Government of Cambodia to make a concerted effort to tackle these causes of torture in order to reduce torture in police custody, and to ensure punishment of torturers according to the law. Furthermore, LICADHO believes that greater access to police stations and regular independent monitoring of detention conditions are also critically needed to protect detainees from abuse.

## Recommendations

LICADHO urges the following action:

### *The Royal Government of Cambodia:*

- § Ensure that the new draft criminal code and the criminal procedure law explicitly contain provisions that fulfill all of Cambodia's obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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<sup>33</sup> The prison project team works in conjunction with the medical team at Licadho to assess human rights conditions and overall welfare of prisoners.

- § Ensure that the new criminal laws, and applicable police regulations, guarantee the rights of anyone placed under arrest to communicate with a legal representative and have that representative present during any questioning by the police. They should also guarantee a detainee's right to communicate with a friend, relative, human rights defender or other person while in custody.
- § Permit human rights and legal organizations to regularly visit places of police detention, to monitor conditions of detention and treatment of detainees.
- § Take all action necessary to ensure that any public official who commits, participates in or is complicit in any way in torture or other cruel, inhuman or degrading acts is punished according to the law.
- § Provide effective training to the judiciary, police officers and all officials involved in custody, interrogation or medical care of persons in police custody. In addition to education on the law, training should focus on providing police with alternative skills to collect evidence than relying on confessions.

***Cambodian and International NGOs:***

- § Make concerted efforts to document cases of torture in police custody and take urgent action against police abuses.
- § Intensify training programs on principles of human rights and law – particularly those relating to arrest, detention and interrogation – for police, military and judicial officers nationwide.
- § Conduct visits to places of detention on a regular basis, with outcomes documented and disseminated.

***Foreign Governments and Donor Agencies:***

- § Urge the Cambodian Government to take action, as recommended to the government above, against the practice of torture in police custody.
- § Support local and international NGOs in these recommendations, and provide logistical and financial support to projects that aim to reduce torture.