

CAMBODIA

Prison life in Phnom Penh

BRETT MASON has seen conditions in a Phnom Penh prison first hand.

T-3 Prison is in central Phnom Penh. It was built early this century by the French to house criminals and political malcontents.

To the busy street the prison casts a dilapidated look. Soft Tuscan pastels give it a strangely cosy look. Rusty barbed wire hangs uselessly off the walls. T-3 Prison is not a daunting spectacle.

Despite United Nations credentials the prison guards resist our entry. Come back at 2 o'clock they urge. My colleague, a Khmer-speaking United Nations human rights officer, tells the guards that we have the legal right to enter at any time to ensure that human rights standards are being observed within the prison. Finally, after many long grasping handshakes we are allowed entry.

Our prison escort is a man with a ready smile but few teeth to complement it. He takes us through a courtyard where proud French architecture sits uneasily with urine stained porticos and walls punctured with restraining devices.

As we approach 'D Block' where most of the prisoners are housed you cannot help being distracted by the smell. The evil vapours grow stronger as you near the prisoners caged within their cells.

Upon our arrival the prisoners are pushing and shoving — vying for a place in the barred window from which to see us. In one of the cells a prisoner makes a joke and they all laugh.

After some precautionary words about security from our prison escort, the door to the cell is opened. First, I am struck by the stench. And, second, I cannot believe how crowded it is.

The room is about 12 metres long and 5 metres wide. The ceiling, adorned by a single globe, is about 4 metres high. At the rear of the cell I can make out a small wooden room — about 1.5 metres square. My interpreter guesses that this is the toilet. The stench absorbs my curiosity and I do not feel the need to confirm his judgment.

The prisoners sleep on raised concrete partitions on either side of the cells. Each jealously guards a straw mat which they tightly jam against competing mats to secure living space. With four dozen men caged within the cell there is literally no room to spare.

Given the appalling living conditions I readily assume that violence must be commonplace among prisoners. The inmates, however, tell a different story. All are involved in the same struggle to survive, they say. Why fight?

Certainly, there was little tension evident among the prisoners. Compared to inmates in many western countries the Cam-

bodian prisoners displayed a far greater sense of common purpose. Deference was paid to the sick and the weak; they ate first and were helped by others to wash and exercise. Not suprisingly, this unity of purpose was buttressed by universal dislike of the prison authorities.

Searching the room for an inmate to interview I notice a young man with aggressive pretensions. Given his small stature and sickly look, his flirt with machismo is awkwardly misplaced.

Unusually for a Cambodian, he does not smile when I introduce myself and he remains cheerless even when offered a cigarette. Through my interpreter I ask him if he is willing to be interviewed. 'Anything to get outside', he answers.

The prisoner's name is Chuos Sok. The prison guard is quick to point out that Sok robbed and murdered a man in Kandal Province, south of the Cambodian capital of Phnom Penh, in 1985. Before asking the guard to leave I ask whether Sok has ever been tried. The guard answers 'I am not sure but I do not think so'. Prison records confirm the guard's hunch: in nine years the allegations against Sok have never been tested before a court.

Chuos Sok does not know his birthday but believes he is 29-years old. With his loose forelock and smooth dark complexion he does not look his age.

He recalls that his father was killed by the Khmer Rouge. Without emotion Sok describes his father's death. Upon marching into Phnom Penh in April 1975 the Khmer Rouge sought to find all Cambodians that had served as military officers in the defeated United States' backed Lon Nol regime. So hated by the Khmer Rouge was Sok's father that when they captured him they cut out his liver and ate it.

Sok's brother was conscripted into the army of the State of Cambodia — the Vietnamese backed army which defeated the Khmer Rouge in 1979. He died recently after stepping on a land mine in western Cambodia. His mother and sisters are still alive but as they are poor and live some distance from the prison they can only visit Sok once a year.

Amidst this depressing introduction I ask Sok about the crime he is said to have committed. He vigorously denies that he has been involved in any wrongdoing. It was all fabricated by the police.

Sok is more comfortable describing prison life. Boredom, sickness, and mosquitoes are the great perils of life inside T-3 prison, he says. (To this list he should have added 'stench'. On several occasions during the interview I had to stop myself from gagging.) Strangely, Sok says that the prison food is adequate. Inspecting lunch a few minutes later, however, I was not so sure. It looked like rice and grass. We were invited to join the guards for lunch but graciously declined.

On two occasions during our short interview Sok abruptly stopped talking. He was terrified by the sight of a prison officer carrying an outsized cassette player and was sure he was being recorded. Before continuing I gently insisted that the prison guard leave the area. After the requisite shadow boxing and veiled threats the guard complied with my wishes but maintained a steely glance from across the courtyard.

Today, Sok spends his time waiting for his trial. He has waited nine years so far and unless the United Nations can

secure his release he may be waiting a lot longer. That is, unless he can raise a few hundred dollars. Then he can buy his way out.

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POLICING

Naked abuse

Strip searches by police in Melbourne. JUDE McCULLOCH and GREG CONNELLAN report.

For most Victorians, the news of the Tasty Nightclub raid by police in August this year probably came as a shock. Prior to the raid, most people never imagined that if they were out at a night spot having a dance, a drink, or something to eat, that it was possible that dozens of armed police officers would arrive, stand everybody in the venue up against a wall, and demand that they strip naked. This is exactly what happened to more than 400 people in August this year at a nightclub in the city.

Unfortunately for legal centre workers and some of the people we see, the behaviour of the police came as less of surprise. For years legal centres have been seeing people who have been made to strip by police. Apart from the people we see in legal centres, sex workers and Aboriginal women have long complained that the police make them strip as a way of sexually harassing them. In addition, visitors to prisons are frequently made to strip as a condition of their visit, and prisoners are routinely required to strip naked.

In October 1992, a legal centre worker presented a paper titled 'Sexual Assault at the Hands of the State' at a conference on sexual assault, which pointed out that strip searches are frequently carried out by police and prison officers and that these searches are experienced as sexual assault by those suffering them and would be considered sexual assault if engaged in by civilians. The paper also pointed out that the police and prison authorities were virtually unaccountable in their use of this power.¹

In October 1992, legal centres wrote to the police and requested, under freedom of information legislation, police statistics relating to strip searches. Legal centres were trying to find out how often police strip searched people, who they strip searched, and with what result. When the answer came back that no records were available in relation to police strip searches, legal centres wrote to the Ombudsman complaining that as no records were kept it was impossible to judge whether the procedure was being abused, and that given the invasive nature of the searches police should at least be required to keep records. The Ombudsman wrote back saying he could not see any problem with the police not keeping records and that people who thought the police were abusing the procedure could complain.

Over the past few years, a number of people have lodged formal complaints about police strip searches. These complaints have been investigated by police. The Deputy Ombudsman (Police Complaints) oversees the complaints. None of these complaints has led to changes in police behaviour or guidelines.

Several months prior to the nightclub raid, legal centres and other concerned community organisations wrote an eight-page letter to the Attorney-General, Jan Wade, pointing out that the police were carrying out strip searches, that people experiencing the searches were extremely traumatised by them and that the police in some cases appeared to be using the procedure to intimidate and sexually harass people, rather than for any investigative purpose. Legal centres suggested that a law needed to be put in place which required police to get a Magistrates' Court order prior to conducting strip searches. The letter also predicted that the police and government would be sued if police continued to strip search people without any checks on their use of the procedure. The Attorney-General did not reply to the letter until after the nightclub raid, and after some publicity which pointed out her tardiness in replying.

Since the publicity surrounding the night club raid, more and more people are coming forward, who have suffered these searches at the hands of police. Legal centres and the Legal Aid Commission are acting for a number of people who are suing the police for their behaviour. In addition, about 150 people from the Tasty Nightclub raid are taking action against the police, and six actions have already been issued in the County Court.

Despite the fact that police have been strip searching people for years, the research about the legal status of strip searches carried out since the nightclub raid seems to indicate that the police have no, or only very limited, power to conduct these searches, and that probably thousands of people have been illegally searched in a fashion that makes the conduct by police a sexual assault or indecent act. The research also indicates that the prison authorities may be acting illegally in routinely strip searching prisoners.

At common law, the police have very limited powers of search. It is worth noting the words of Donaldson LJ in the English case *Ludley v Turner* (1981) 1 QB at 134 and 135. After citing Halsbury's Laws of England 'There is no general common law right to search a person who has been arrested', Donaldson LJ held:

It is the duty of the courts to be ever zealous to protect the personal freedom, privacy and dignity of all [persons] . . . such rights are not absolute. They have to be weighted against the rights and duties of police officers, acting on behalf of society as a whole . . . what can never be justified is the adoption [by police] of any particular measures without regard to all the circumstances of the particular case . . . the officer having custody of the prisoner must always consider . . . whether the special circumstances of the particular case justify [a search] . . . he should appreciate that they [searches] involve an affront to the dignity and privacy of the individual . . . in every case a police officer ordering a search or depriving a prisoner of property should have very good reasons for doing so.

The new *Crimes Act 1958* (Vic.) provisions with respect to forensic procedures (ss.464(2), 464 R,S,T,U,V and W) clearly include strip searches within the definition of forensic procedure. There is a very strong argument to be put that the *Crimes Act* now covers the field so far as strip searches are concerned in Victoria. If this view is adopted by the courts, then strip searches will only be able to be carried out within the terms of the *Crimes Act*.

This would mean strip searches may only be requested by police (and only police) if there are reasonable grounds to believe the strip search would tend to confirm or disprove the involvement of the suspect in an indictable offence. The police may only act on their request if the suspect gives his or her informed consent or the Magistrates' Court makes an order in response to a police application.