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និងការពារសិទ្ធិមនុស្ស

លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



BUILT ON SLAVERY: DEBT BONDAGE AND CHILD LABOUR IN CAMBODIA'S BRICK FACTORIES

A report issued in
December 2016



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CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

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A boy pulls a cart of unbaked bricks



View of brick factory and workers' accommodation

Introduction



For twenty years Cambodia has undergone a period of rapid economic growth and as a consequence is now experiencing a boom in construction. The largest cities, Phnom Penh, Sihanoukville and Siem Reap, have expanded outwards and upwards with the construction of office blocks, factories, condominiums, housing estates, hotels and shopping malls.¹ These projects require bricks in large quantities and there is a thriving domestic brick production industry supplying them. That industry relies on a workforce of modern-day slaves – multi-generational families of adults and children, trapped in debt bondage.

Debt bondage and child labour are unlawful under Cambodian legislation as well as several international treaties that Cambodia is party to, and yet the practices are flourishing in Cambodia's brick factories. This report is based on research carried out in brick factories north of Phnom Penh and in Tbong Khmum province. It reveals that debt bondage is widely used by factory owners as a way of guaranteeing themselves a long-term, cheap and compliant workforce. Because of the low rates of pay and a system of payment by piece, children are often drawn into factory work alongside their parents. Conditions in factories are hazardous and worker

accommodation is rudimentary and unsanitary. Accidents occur regularly, with some resulting in serious injury, limb loss and even death.

The majority of factories visited for this report are in easy reach of the capital Phnom Penh and are clearly visible from the country's major highways. In all cases, offices of the local police and commune authorities are located nearby. The exploitative practices of the factory owners and the conditions in the factories were not difficult to uncover and are already well-known to those responsible for enforcing the law. And yet the factories continue to operate without hindrance. Government apathy and lack of will on the part of law enforcement agencies, corruption, and the desperation of Cambodia's poorest for any kind of livelihood mean that the law is not enforced and the factory owners face no sanctions.

The Cambodian government has a duty to end debt bondage and child labour and it is within its power to do so. There are immediate and longer-term steps it can take, with the help of the purchasers of bricks and other interested parties, to achieve this goal and the report ends by making a number of recommendations that if followed will enable the government to eliminate these harmful and exploitative practices.

¹ According to the World Bank, the construction and real estate sector made the largest contribution to GDP growth in 2014 and the first half of 2015. World Bank, Cambodia Economic Update, October 2015, <http://documents.worldbank.org/curated/en/115911468188931886/pdf/100537-WP-Box393233B-PUBLIC-Final-October-2015-CEU-report-English-reduce-size.pdf>.

Research for this report was mainly carried out in brick factories in the northern outskirts of Phnom Penh and in Kandal province, along national highways five and six. This location was selected partly because of ease of access for the researchers but also because of its proximity to the capital – Cambodia’s largest and most rapidly-expanding city – which means that it is probably the biggest centre of brick production in the country.

LICADHO identified eleven sites of brick factory production in the research area, some with only one or two factories in each, and others with much larger numbers, up to 39 in one case (see centre page map).² Factories varied in size with some having a small workforce of just a few families and others 20-30 families. In all cases, the workforce lived in shacks inside the factory compound. The total number of families in the research area is therefore hard to calculate but it is certainly in the thousands.

Between June and August 2016 LICADHO staff visited each site and where possible conducted individual interviews with brick factory workers. On other occasions information was collected from small groups of workers together, both adults and children. In total LICADHO staff spoke to around 50 workers during this period. Some preliminary research was also conducted in the first half of 2015 in brick factories in Mien commune, Or Raing Ov district, Tbong Khmum province and in Preah Prasob commune, Ksach Kandal district, Kandal province. Four adults and four children were interviewed in each location during this period, making a total of 16 interviewees.

Whilst private individual interviews are desirable for this type of research, the method of collecting information had to be flexible because of the conditions in the factories and the circumstances of the visits. In most factories it was difficult to find somewhere to conduct a private individual interview and during most visits time was limited as the workers were on their lunch break and had to return to work

shortly. There was no formal selection process for interviewees, rather, interviews were conducted with those who were available and willing to talk at the time of each visit. It should be noted that in some cases factory owners made access difficult or stayed close by when LICADHO staff were attempting to speak to workers. In one factory, most of the workers hid and would not speak to LICADHO staff. One worker explained that the factory owner had told them to do this if any NGO staff came to the factory.

The interviews and group discussions covered a range of topics including details of the interviewees’ daily lives and their work; their financial situations and the amount of debt owed by them or their families; how they had come to brick factory work; employment practices; the use of child labour; access to education; and injuries caused by factory machinery.

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LICADHO staff also spoke to commune chiefs in two areas and one police officer. These were not structured interviews but discussions covered: numbers of factories and families in their communes, child labour in the factories, access to education, workers’ debts, and factory accidents.

As well as the two periods of focused research, LICADHO staff have visited brick factories across the country and spoken to brick factory workers and local authorities on many occasions in the

² The numbers in each area may not be precise. LICADHO staff counted the factories they saw and in some cases these numbers were confirmed by commune authorities.

last two decades. These experiences contributed to and supported the findings of this research.

The full scale of brick factory production in Cambodia is not known but it is likely that factories exist in nearly every province and that the nationwide workforce is in the tens of thousands. By comparison this report is based on just two areas and a relatively low number of factories and workers. Nevertheless, there was

a high level of consistency in the testimonies of brick factory workers in relation to debt bondage, working conditions, employment practices and child labour. Furthermore, these testimonies were consistent with the previous experience of LICADHO staff in other parts of the country. This suggests that the findings of this report are at least valid throughout the two research areas and may well reflect the situation across the whole country.



A boy accompanies his father as he works digging clay

DEBT BONDAGE

Debt bondage is a status that arises when a person's labour is demanded in repayment for a loan. Commonly, bonded labourers receive extremely low pay, often forcing them to become more indebted, and making it impossible for them ever to pay off what they owe. Because of their dependence on the provider of the loan, they are likely to be subject to exploitation and many are forced to work in brutal and dangerous conditions. Bonded labour is recognized under international law as a practice similar to slavery³ and has been acknowledged as a form of modern slavery by the United Nations Special Rapporteur on contemporary forms of slavery.⁴

With one exception, all of the brick factory workers interviewed as part of the research reported that they were in debt to their factories' owners. The lowest debt reported was US\$1,000, but the majority of interviewees owed between US\$2,000 and US\$3,000 to factory owners and one reported that she owed US\$6,000. All of the people interviewed reported that all the other families in their factories were in debt for similar amounts.



Bricks drying before being baked

All of those interviewed told similar stories about how they had come to be in debt to the brick factory owners. Many reported that they had first gone into debt to pay medical bills arising because of pregnancy or sickness in the family. Others had borrowed money for rice seed or animal stock and had been unable to repay because of crop failure. A few stated that they had borrowed money simply because they were poor and had no land to farm and no way to make money.

Many reported that they had first gone into debt to pay medical bills arising because of pregnancy or sickness in the family. Others had borrowed money for rice seed or animal stock and had been unable to repay because of crop failure.

In most cases, they had first borrowed money from a bank or from a local money lender. When they had been unable to repay or had needed to borrow more money, they had transferred the loan to a brick factory owner and agreed to work in the brick factory to pay off the debt. This was an attractive option because the brick factory owner charged no interest on the loan and also provided housing inside the brick factory compound. Many of those interviewed had migrated to work in the brick factories. In the factories near Phnom Penh, there were families from Prey Veng, Kampong Thom, Kampong Cham, Takeo and Svay Rieng. In Tbong Khmum, most of the brick factory workers were originally from Tbong Khmum and so had not

³ Article 1(a) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, United Nations, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>.

⁴ In September 2016 the Special Rapporteur referred to debt bondage as "one of the most prevalent forms of modern slavery", <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20504&LangID=E>. See also Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, 4 July 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/142/67/PDF/G1614267.pdf?OpenElement>.



A teenage boy drives a tractor-load of unbaked bricks to the oven

moved as far. Those who had migrated had heard about brick factory work when fellow villagers, who had already moved to the brick factories, had returned to their villages during national holidays. Brick factory owners had told their workers to spread the word about the possibility of securing loans, housing and work in their brick factories in order to attract more workers.

None of those interviewed had an employment contract. When asked about this, some referred to the loan agreement as this was the one document they had that was evidence of a relationship between them and the factory owner. None of the workers was paid a salary; instead all were paid a piece rate. The amount they received for a day's work varied depending on which part of the brick-making process they worked on and on how many family members were working. Amounts reported were between US\$2.5 and US\$10 per day. For most, this was not enough to live on, let alone to make any significant dent in their debt.⁵ Moreover, these amounts were only possible during Cambodia's

dry season which runs from November to April. From May to October, Cambodia's rainy season, bricks are very slow to dry and workers' incomes drop. Some of those interviewed said they supplemented their incomes by picking wild vegetables to sell at the market but during this time it is very difficult for them to cover their daily living expenses and as a result they take on more debt from the factory owner to tide them over to the beginning of the next dry season. Some interviewees reported that brick factory owners give other forms of material support. For example, one woman said that her factory owner buys 10kg bags of rice at wholesale price to be distributed amongst the workers. However, the cost of the rice is later added to the debt. In this way, the workers' debts increase every year and their chance of escaping diminishes.

Medical bills are a major cause of families becoming more indebted. The hazardous nature of brick factory work and poor living conditions mean that illness and injury are regular occurrences. One particular issue is lack

⁵ Under Article 108 of the Cambodian Labour Law the wage for piece work must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.

of contraception which means that some women have babies every one or two years. In one case, a woman reported that after she became unable to deliver children by natural birth she required two separate emergency caesarean operations to ensure the safe delivery of her youngest two children. The brick factory owner offered to cover the cost of these emergency surgical procedures. However, he subsequently added in excess of US\$500 per operation to her debt – a close to 200% increase on her original debt.

In other cases, when families need a large sum of money urgently and their current factory owner is unwilling to lend any more, they move factories. They borrow an amount from a new factory owner that is higher than their existing debt and which allows them to pay off their old debt and get a few hundred dollars in cash. Almost all of those interviewed had moved factories at least twice in order to take out more debt. One woman, who now owed US\$3,000, had worked in ten brick factories.

As a result of the regular increases in debt taken on by most families, there is no possibility that they will ever repay what they owe and debts are therefore passed from one generation to the next. During the research LICADHO staff met several families with three generations living and working in the brick factory. The original debt had first been taken on by a member of the oldest generation.

PATRON-CLIENT RELATIONSHIP

Despite the extreme difficulties of their lives and the exploitation they experienced, very few of those interviewed expressed any anger towards their brick factory owners or any urge to demand better working conditions or employment rights. This seemed to be because they viewed the factory owners as patrons, rather than as employers, and themselves as clients, not employees. It was commonly expressed by those interviewed that factory owners were good people as they gave loans which allowed them and their families to subsist. As a result they felt dependent on and grateful to the factory owners.

Interviews revealed that this sense of dependence on factory owners prevented the workers from being critical of the ways in which they are being exploited. None of those interviewed expressed dissatisfaction about low wages or the dangerous working environment or the poor housing conditions. And none of them complained that owners are using their debt to

coerce them to work. Rather, they seemed to consider it a kind of benevolence or a favour to be returned.

Many of the factory workers reported that they had been warned by the factory owner that if they tried to leave the factory without repaying their debt, the police would be called and they would be arrested.

This sense of gratitude is combined with and reinforced by fear. Given the lack of any alternative livelihood for brick factory workers, many are afraid of losing the perceived benefits of the relationship with the brick factory owner and this diminishes their ability to challenge the abuse and exploitation they suffer. In the factory where the workers hid from LICADHO staff, the one worker who did not hide, explained that his fellow workers did not want an NGO to know anything about the conditions of their work as they were worried the factory would be closed down and they would lose their homes and their jobs. Fear also arises because of explicit threats; many of the factory workers reported that they had been warned by the factory owner that if they tried to leave the factory without repaying their debt, the police would be called and they would be arrested.

This seems not to be an idle threat. LICADHO staff intervened in one case involving a young man who left his factory because the owner was taking all of his family's earnings to repay their debt, leaving them with no cash. He went to another factory to borrow more money to send home to his parents who were still living and working in the factory he had left. The owner of the first factory called the district police who arrested the man's parents and took them to the police station in order to compel the son to return. LICADHO was able to intervene and the parents were released after a few hours but the case gives an indication of the willingness of the police to use their power to serve the interests of factory owners and to punish brick factory workers who do not do their bidding.



Case Study - Panha

Panha is 37 years old and has been working in brick factories for more than 20 years. He didn't own a house or land in his home village so found it hard to live. He started to work in the brick factory after he borrowed money from the owner to cover the medical bills of his child. The loan eventually grew to US\$1,200 after he borrowed more to pay for daily expenses. He worked for 18 years in that brick factory. Three years ago, he moved to his current brick factory and asked the owner to pay the US\$1,200 he owed to the owner of the previous brick factory. He was happy to leave the last factory because the owner used to call the police whenever anyone wanted to leave and multiply the loans whenever he wanted. He doesn't have an employment contract but he did thumbprint a loan contract when he moved to the factory. He says that the current owner is kind because when any of the family gets sick he takes them to hospital. He also covers the expenses for water, housing and electricity. In the factory Panha works digging clay, transporting bricks and helping to repair the machines. He has five children, three of whom go to school. After school they help in the factory taking bricks out of the oven and transporting them on carts. Panha says he doesn't force them to work but asks them to help to speed up the work so he can make enough bricks to earn the money he needs. After more than 20 years in brick factories he says he is fed up with the work and he doesn't want his children to have the same life.

Two boys put newly-made bricks out to dry

CHILD LABOUR

Child labour is common in brick factories. All of the children interviewed individually said that they work in some capacity at the brick factories where they live with their parents. Most were between 13 and 15 years old but LICADHO staff witnessed some children as young as nine or ten working. In the Phnom Penh area most parents said that at least some of their children helped them with their work in order to increase the family income. There is a considerable incentive to allow children to do so because payment is per piece and therefore the greater the number of bricks the family can produce the higher the income. In some cases, children said they worked so their families could afford food. All of the parents recognized the dangers of brick factory work and did not want their children to work but most felt they had no choice.

Although none of the children said that they performed all the duties in their brick factories, it is clear that children are involved at every stage of the brick making process. At least one of the children interviewed in Tbong Khmum mentioned performing one of the following duties: using axes and shovels to dig out clay from the ground, feeding the clay into small and large brick-making machines, transporting bricks on small wooden carts or with tractors, laying out the clay bricks to dry in the sun, transporting sun-dried bricks to the oven, chopping firewood for the ovens, sealing the ovens with wet mud, and loading the cooked bricks onto trucks.

Brick factory work is extremely physically demanding, particularly for children. One of the children interviewed said he wakes at 3:00 a.m. every day to start digging clay. He does this so that he can finish this labour-intensive part of the brick-making process before the sun becomes too hot. Other children observed working by LICADHO staff during factory visits showed abnormal muscle development, particularly around their spines, as a consequence of the hard manual labour they undertake.

Five out of the eight children who were interviewed individually said that they attend school. They go in the morning or the afternoon, and help their parents during the rest of the day. The three children who do not attend school had attended in the past but had dropped out. One of them, aged 11, began working at the age of five and stopped attending school by the second grade. When asked why they work, three of them said it was because their parents were in debt, the others mentioned their parents' poverty or said that they pitied their parents and wanted to help them.

The family had three children but could only afford to send one of them to school. His siblings said they wanted to join him at school and to learn to read and write but had never been able to attend.

As well as the imperative to work to increase their parents' income, the cost of schooling is an obstacle for many families. Public schooling is supposed to be free but it is commonplace across Cambodia for teachers to charge pupils unofficial fees to attend school. LICADHO staff spoke to one family in a brick factory in Prek Anchanh commune where the cost of public school near the factory was 500 KHR⁶ (US12.5 cents) per day, with extra private lessons in mathematics and Khmer literature from the same teacher charged at 500 KHR per hour. The family had three children but could only afford to send one of them to school. His siblings said they wanted to join him at school and to learn to read and write but had never been able to attend.

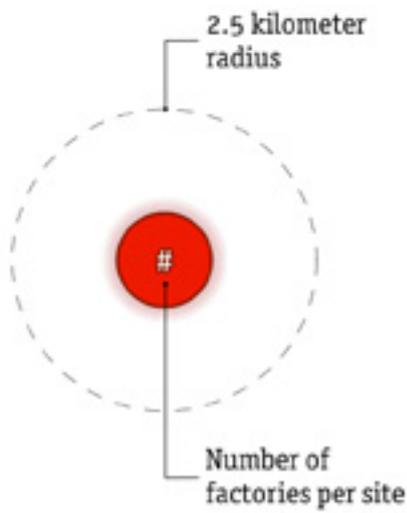
⁶ Khmer Riel.



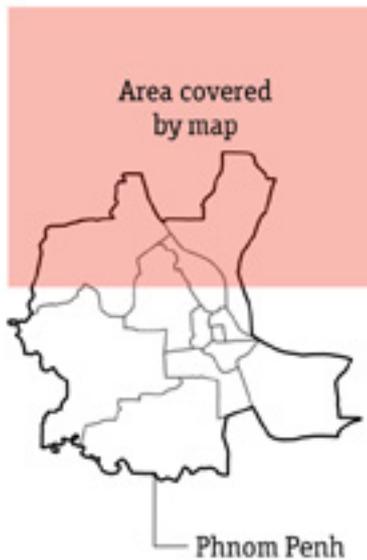
Case Study - Ping

Ping is ten years old. She began working in the brick factory aged 9. She works as a loader, assisting delivery drivers load newly finished bricks onto trucks before they are taken to construction sites across Phnom Penh. She gets paid 1 KHR (US\$0.025 cents) per brick she loads onto the trucks. Each truck carries approximately 15,000 bricks, each weighing around one kilogram. It is common for Ping to load one truck per morning – 15 metric tonnes of bricks – before going to school in the afternoon. During busy times, she skips school and loads trucks all day. Previously, she has loaded up to three trucks in a single day, moving around 45 metric tonnes of bricks. Ping says she works to help her parents pay off their debt to the factory owner. The factory owner insists he does not use child labour, however, he allows the delivery drivers, who are independent contractors, to use child labour within his factory. Her parents owe around US\$3,000. She has two older sisters and two younger brothers and says that if she did not work the family would not be able to afford to eat. Her parents are very worried about her because after one year of work she suffers from constant back pain, chest pains, struggles to breathe and is unable to sleep at night. Although Ping works very hard to get top grades at school, her teacher is concerned about the impact on her education as her grades drop when the factory is busy and she cannot attend school. Ping said she is known to be a good loader and sometimes delivery drivers will pick her up from close to her school to take her to the factory.

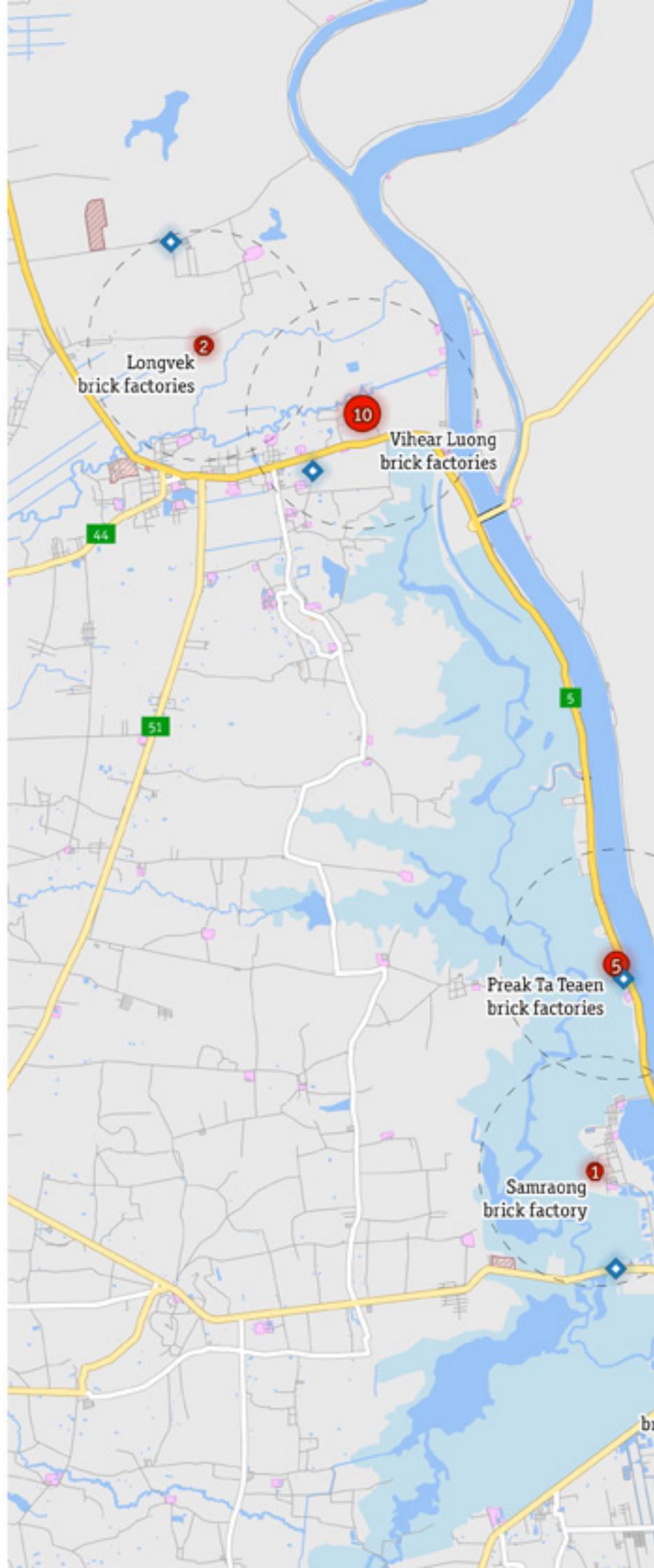
BRICK FACTORY SITES AND NEAREST LOCAL POLICE STATIONS IN AND AROUND PHNOM PENH

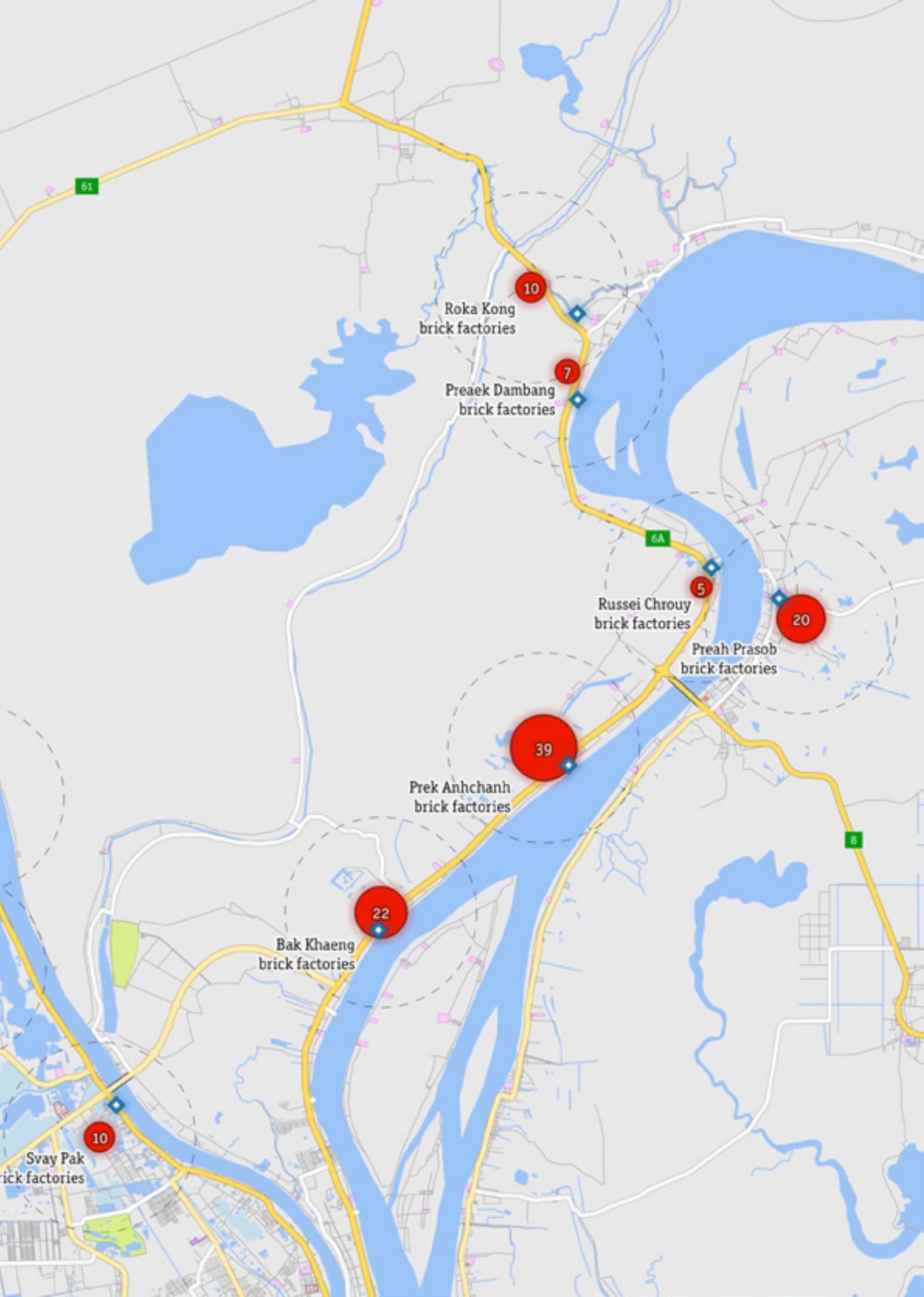


◆ local police stations



0 5 kilometer





Roka Kong
brick factories

Preaek Dambang
brick factories

Russei Chrouy
brick factories

Preah Prasob
brick factories

Prek Anhchanh
brick factories

Bak Khaeng
brick factories

Svay Pak
brick factories



THE BRICK MANUFACTURING PROCESS

Cambodian bricks are manufactured by mixing heavy clay with water and soil, moulding the raw materials into brick form and sun-drying them before baking the bricks at extremely high temperatures in wood-fired ovens. Brick ovens are usually heated to between 900 and 1,200 degrees centigrade.

The process is labour-intensive. In the last decade, some factories have increased mechanization, however, even highly-mechanized processes remain reliant on human labour. In factories using more modern machinery, clay and soil is mechanically fed into machines which combine and mould the bricks in a single process, before the extruded raw bricks are sliced into their final form, ready for drying and baking.

The bricks are heated at extreme temperatures for days, with enormous log piles being burnt for every new batch of bricks. Some factories use domestic rubbish and waste clothing as fuel instead of wood. Most ovens are extremely large, often large enough for workers to drive tractors inside the ovens.

After baking, the bricks are left to cool. The bricks are then ready for use, loaded onto trucks by hand and delivered to construction sites. On average, a single brick will retail for US2-3 cents or 80 to 120 KHR. The piece-work rate per brick for adult labourers is US0.05 cents or 2 KHR.

Children working at a brick-cutting machine



A brick factory owner's house

CONDITIONS IN BRICK FACTORIES

Brick factories are dangerous working environments, with high-temperature brick ovens, fast moving machinery, unstable brick piles and harmful dust. The machinery is often unsafe with exposed moving parts such as conveyor belt motors and blades. Factory sites are strewn with raw materials including firewood and unstable mounds of clay tens of metres high. Heavy plant vehicles regularly move across the factory site, often driven by children with little or no oversight.

As well as working, many debt bonded labourers and their families live on site within the brick factory compound. Some of those interviewed mentioned the provision of housing as an incentive for entering brick factory work but the homes provided by owners are rudimentary and poor-quality constructions of wood and corrugated iron barely fit for habitation. There is little or no distinction between the operational areas of the factory and workers' accommodation, meaning individuals are constantly exposed to the mechanical and environmental hazards listed above. The housing is overcrowded and poorly maintained, with virtually no privacy for individuals from either their families or their colleagues. Most sites visited were lacking in sanitation, with no toilets provided and no fresh running water. In contrast, many factory owners

live in large newly-constructed, modern villas overlooking their factories.

During factory visits, LICADHO staff not only witnessed children working and operating machinery, they also observed young children playing close to ovens, as well as unstable mounds of clay and sun-drying bricks, log splitting machinery and mechanical clay extractors. In one factory, children under the age of two were seen sleeping in hammocks strung between brick ovens in close proximity to workers stoking an operational oven. A child under the age of five was seen in the cabin of an operational excavator while a family member dug clay from one of the many large mounds that surround the brick factory sites.

INJURIES

The nature of the machinery used in brick factories and the fact that children are working, living and playing in the factory compound means that there is a high risk of injury. The long shifts operating dangerous machinery and the exhausting nature of the work also put adults at risk of lapses in concentration that can have severe consequences. The most common accident seems to be above-the-elbow arm loss.

In the last two years, LICADHO has investigated three cases involving children who lost arms in brick factory machinery. One case involved

a seven-year-old boy who was playing near his mother as she worked at a machine with an uncovered conveyor belt motor; one involved a nine-year-old boy who was working putting mud into a machine; and one involved a 14-year-old who was also working loading mud into a machine. The nine-year-old boy died as a result of his injuries.

In the last two years, LICADHO has investigated three cases involving children who lost arms in brick factory machinery...one died as a result of his injuries.

One of the adults who was interviewed individually for this report had lost her right arm ten years previously; another described how her husband had lost his eye after metal sparks entered it and it became infected; one man had broken his hand; and another said that his son had lost a finger after a cart full of bricks fell on him. In all four cases the factory owners paid for immediate hospital treatment but in two of them the cost of the treatment was later added to families' debts. In none of the cases did the factories pay for long-term treatment or pain-management medicine.

The incidence of industrial accidents and injuries is unknown as there is no central record. The injuries mentioned above are only those that were recently reported to LICADHO and which came to light during a small number of interviews, suggesting that such injuries are a regular occurrence.



A saw for cutting wood to feed the brick kilns



Case Study - Sreynich

Sreynich is 50 years old. She started working at the brick factory 15 years ago because she owed money to lots of people and had had to sell all her rice fields. She needed money for the birth of her youngest son so she asked for a loan from the brick factory owner and ended up working there. Her main responsibility is to load bricks onto trucks, load clay and bricks on the cart, and lay out the bricks to dry in the sun. She makes about 5,000 KHR-10,000 KHR (US\$1.25-US\$2.5) per day. Some days, she makes nothing. It depends on whether the trucks come or not. Her earnings are not enough to cover expenses on food, rice, and the things children need to go to school. The family's daily expenses are about 20,000 KHR (US\$5). Her debt is now 6,000,000 KHR (US\$1,500) mainly because of sickness in the family. Whenever someone in the family becomes sick, the owner gives them money and records it. Her husband became blind in one eye because sparks of metal entered his eye while working. The owner helped to transport her husband to a hospital in Kampong Cham province, and then to Phnom Penh. The family spent about 1,000,000 KHR (US\$250) on hospital bills. The owner helped with US\$50. After treatment, her husband continued to work but eventually, the eye became infected, and it had to be taken out completely. He does not work anymore. Sreynich has a dream that she owns a farm and that her children will take care of them. But, she says, because they are poor and owe so much money, the children will be poor as well. They won't be able to leave the factory and will probably grow up to work in the factory.

Legislation covering debt bondage and child labour



TRAFFICKING LAW

Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation⁷ ("Trafficking Law") explicitly criminalises the use of debt bondage. Article 12 creates the offence of "unlawful recruitment for exploitation". "Unlawful recruitment" means to induce, hire or employ a person to engage in any form of exploitation through the use of deception, abuse of power, confinement, force, threat or any coercive means. "Any form of exploitation" is defined under Article 10 and includes debt bondage. The penalty for unlawful recruitment for exploitation is seven to 15 years' imprisonment or 15 to 20 years' imprisonment if the victim is under 18. The dependence of debt bonded workers on factory owners and their complete lack of bargaining power, together with the explicit threats that they will be arrested by the police if they attempt to leave the factory without repaying their debt, would all seem to bring brick factory bonded labour into the scope of "unlawful recruitment".

The practice of debt bondage in brick factories may also fall foul of other articles in the Trafficking Law, in particular those that relate to unlawful removal, which is to "remove a person from his or her current place of residence to a place under the actor's or a third person's control by means of force, threat, deception, abuse of power or enticement". When unlawful removal takes place for the purpose of exploitation – which includes debt bondage – the penalty is also seven to 15 years' imprisonment or 15 to 20 years' imprisonment if the victim is under 18. The Trafficking Law contains no requirement to cross international borders⁸ or a specified minimum

distance for unlawful removal, meaning removal from one's home village for brick factory work would be sufficient. This was the case for all of the brick factory workers encountered by LICADHO. The interest-free loans and housing that are offered to almost all brick factory workers are likely to count as enticement. Where enticement is used, the fact that an individual chooses to move to the brick factory is irrelevant and cannot be used as a defence.⁹

The Trafficking Law also criminalises the act of buying, selling or exchanging an individual. This is defined as transferring control over an individual in exchange for anything of value¹⁰ and carries a penalty of two to five years' imprisonment.¹¹ Where the purpose of the transaction is exploitation, including debt bondage, the penalty is seven to 15 years' imprisonment or 15 to 20 years' imprisonment if the victim is under 18.¹² During this research, LICADHO did not hear of any examples of direct trading of debt bonded workers between factory owners, however, this offence may apply when families move from one factory to another as a way of increasing their borrowing. The loan from the new factory owner is used to pay off the debt owed to the existing factory owner thus releasing the individual from his control but creating a new obligation and relationship of control to the new factory owner.

LABOUR LEGISLATION

The Cambodian Labour Law contains provisions on child labour aimed at protecting children from exploitation and harmful work such as that undertaken in brick factories. Under Article 177, the minimum age for work that may be hazardous to health and safety is 18.¹³

⁷ Law on Suppression of Human Trafficking and Sexual Exploitation, 2008. This law domestically implements the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, United Nations.

⁸ If one constituent act of a trafficking offence is committed within the territory of Cambodia this is sufficient to establish applicability of the Trafficking Law under Article 2.

⁹ Trafficking Law, Articles 8 and 10 read together.

¹⁰ Trafficking Law, Article 13.

¹¹ Trafficking Law, Article 14.

¹² Trafficking Law, Article 15.

¹³ Labour Law, Article 177.



A boy shovels mud into a mixing machine

Cambodia is also bound by international law that prohibits child labour and debt bondage. In 2005, the Cambodian government ratified Convention No. 182 of the International Labour Organization (ILO) that calls “for the prohibition and the elimination of the worst forms of child labour, as a matter of urgency”.¹⁴ That convention classifies debt bondage as one of the worst forms of child labour.

The Ministry of Labour and Vocational Training (MLVT) partnered with the ILO to initiate the “National Plan of Action on the Elimination of the Worst Forms of Child Labour,” in 2005. The plan was to reduce the percentage of child labour among children aged between five and 17 to eight per cent by 2015, and to end the worst forms of child labour by 2016.¹⁵ In 2007 the MLVT issued Prakas 309¹⁶ on the working and living conditions in brick factories. This prakas contains requirements on matters such as

protective clothing and the provision of sanitary facilities and also explicitly prohibits children under 15 from working in brick factories, even to help their parents.¹⁷ Under the Labour Law, labour inspectors are under a duty to carry out visits to all places of employment to ensure the implementation of the provisions of the Labour Law and related prakas and required to take action against owners for violations uncovered.¹⁸ Financial penalties apply when employers do not comply with the law. The penalty for breach of provisions relating to child labour is a fine worth thirty-one to sixty days of the base daily wage.

IMPUNITY

The description above of laws prohibiting and criminalizing the use of debt bondage, child labour and associated practices is non-exhaustive. There are more provisions under the Criminal Code,¹⁹ Labour Law,²⁰ international law,²¹ secondary legislation²² and even the

¹⁴ Worst Forms of Child Labour Convention, 1999, International Labour Organisation, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_INSTRUMENT_ID:312327.

¹⁵ International Labour Organization, CAMFEBA Plan of Action On The Elimination of Child Labor (WF) (CAMFEBA – PAECL) In Cambodia (2012-2016), August 2012 p. 5-6. http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=KHM&p_classification=04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

¹⁶ Prakas are a type of supplementary legislation.

¹⁷ International Labour Organization, Winrock & MLVT, Booklet of Prakas of MLVT, Article 6.

¹⁸ Labour Law, Article 233.

¹⁹ Article 274 of the Cambodian Criminal Code prohibits working conditions incompatible with human dignity.

²⁰ Article 16 of the Labour Law prohibits the debt bondage of workers. Unlike the provisions in the Trafficking Law, violation carries only financial penalty for the employer; Articles 173 and 176 -179 of the Labour Law on child labour.

²¹ For example; Article 8 of the International Covenant on Civil and Political Rights on slavery; Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights on the right to work and to choose employment and minimum conditions of employment; Article 32 Convention on the Rights of the Child on exploitation and child labour; International Labour Organisation No. 29 (Forced Labour Convention); preamble of ILO Convention No. 105 (Abolition of Forced Labour Convention); Article 3 of ILO Convention No. 138 (Minimum Age Convention).

²² Articles 1 and 2 of Prakas 106, Ministry of Social Affairs, Labour, Vocational Training And Youth Rehabilitation (MOSALVY), 2004, prohibit children from working near brick kilns, operating or maintaining transport or machinery, working in extremes of temperature and ban heavy lifting by children; Articles 3 and 4 of Prakas 467, MLVT, 2015, ban the recruitment of young workers for hazardous labour; Prakas 002, MOSALVY, 2008, on forms of labour permitted for children aged 12-15.

constitution.²³ Discussions with commune chiefs and local police in areas with high concentrations of brick factories reveal that both the administrative and law enforcement authorities are fully aware of the practices of brick factory owners including debt bondage and child labour. And yet both practices are flourishing in Cambodia's brick factories and LICADHO is unaware of any brick factory owners being prosecuted or even fined for breach of these laws.

Even in cases of severe injury to child workers, brick factory owners enjoy impunity. In all three cases investigated by LICADHO since 2015, the victims' parents tried to complain to the police but the police refused to forward the cases to court. In the case involving the 14-year-old boy, the police told the parents that the accident was their fault as they had allowed their son to work and therefore there was no point in going to court as they would lose. The owner also claimed that it was not his fault as he had not directly employed the boy. LICADHO encouraged the family to file civil and criminal complaints directly to the court but the family was reluctant as they said the owner had been kind to them. In the end, the police negotiated a financial settlement between the family and the factory owner. The family did not receive any cash but instead the factory owner cut their existing debt in half, from US\$4,200 to US\$2,100. The family did not want to stay in the factory after the deal was negotiated so they took a loan of US\$2,100 from a new factory owner to repay the old owner and moved to a new factory. They are still in that factory and the boy works driving a factory vehicle.

In the case involving the seven-year-old boy the police also refused to accept a complaint from the boy's family. They too said that the accident was the parents' fault and that because the boy had been playing and not working, the factory owner had no responsibility. Again LICADHO encouraged them to go directly to court and, in this case, the family were not prevented by any sense of gratitude as the factory owner was particularly abusive to his workers and often withheld wages. However, the boy's mother had a debt of US\$3,000 which had originally been incurred by her son-in-law but which had passed

to her when her son-in-law ran away from the factory; the police told her that if she filed a complaint to court, the factory owner would file a complaint against her for immediate repayment of the debt and she would go to prison. She was therefore scared to file a complaint and eventually LICADHO heard that the whole family had run away from the factory in the middle of the night to go and live with a relative in another province. They therefore received no compensation or back pay.

The last case, involving the boy who died, is still open. Again the police refused to take action. Following intervention from LICADHO the prosecutor told the police to forward the case to court. The accident took place in April 2016 and the prosecutor asked for the case file in June. As of writing, there has been no further action on the case. Immediately after the boy died, the factory owner gave the boy's family 500,000 KHR (US\$125) but the factory owner's son took back 200,000 KHR (US\$50) saying that this was to cover the cost of the ambulance that had taken the boy to hospital.

The three cases illustrate the main factors that allow brick factory owners to escape unpunished: fear and misplaced loyalty on the part of brick factory workers mean that they are reluctant to push their cases through the justice system; and lack of support from police and local authorities, whose main goal seems to be to protect the factory owners from prosecution, reinforces that reluctance.

The loyalty shown by the police and local authorities to the factory owners is unsurprising in Cambodia – a country whose justice system is riddled with corruption.²⁴ In the cases mentioned above, LICADHO staff have no evidence that payments were made to the police or local authorities, however, staff have witnessed gifts of beer, food and money being made by factory owners to police and local authorities at times of national festivals such as Chinese and Khmer new year. These gifts are a form of patronage and help to ensure the allegiance of the authorities to the factory owners should they ever need it. By contrast, brick factory workers have no means to pay the police or local authorities to work on their behalf and therefore have no chance of ever being well-served by the justice system.

²³ Article 36 of the Cambodian Constitution on the right to choose employment; Article 38 on the protection of human dignity; Article 46 on human trafficking; Article 48 on children's rights and child labour. International human rights standards are also domestically applicable via Article 31 of the Constitution.

²⁴ International Bar Association Human Rights Institute, Justice Versus Corruption: Challenges to the Independence of the Judiciary in Cambodia, September 2015.

Even when accidents do not take place, serious breaches of the Labour Law occur daily, most notably the use of child labour which is unlawful in brick factories even if there is no direct employment relationship between the children and the brick factory owner. Under the Labour Law, brick factories should be subject to regular inspection to ensure such practices are eradicated. However, there is no evidence of this taking place. Of the eight adults interviewed individually in 2015, four said they had never seen anyone coming to conduct an inspection of the factory. This included one person who had worked in brick factories for 17 years and

one for 15 years. One person said that the local police and village chief come to visit sometimes. Another said that in 17 years she had seen an inspector once. The inspector had told the owner to build some toilets for the workers and had told the workers they should send their children to school. The two other interviewees said they did not know if any inspectors ever came. One of the commune chiefs interviewed said that a labour inspector had once come having heard about an accident in which a boy was injured. However, the inspector left without taking any action and nothing happened as a consequence of the visit.



A boy stands on top of a brick-making machine

Conclusion



This report brings to light the widespread use of debt bondage in Cambodian brick factories and the role it plays in encouraging and sustaining child labour. The two practices are closely related and together are responsible for trapping multiple generations of families in a repeating cycle of poverty and servitude.

Brick factory workers all start out poor and because of a variety of factors such as unemployment, landlessness, sickness, and poor education and skills, they turn to brick factory work as a solution to their immediate problem of not being able to provide for themselves. Brick factory owners exploit their poverty and desperation and provide working conditions that mean that it is very unlikely that they will ever escape their poverty. Because of the debts they owe and the low rates of pay, most are only just able to subsist. They are unable to save any money for contingencies such as pregnancy or sickness or injury that require medical treatment and when such events occur they become more indebted. Furthermore, because they are paid per brick made rather than receiving a salary, there is a strong inducement to allow their children to work alongside them in order to increase the family income. One consequence of this is that the children are unable to go to school or drop out of school early and most remain without even basic literacy and numeracy skills. As a result the children become trapped in

the same situation as their parents and the most likely outcome for the children is that they will inherit their parents' debt and eventually pass that debt on to their own children.

The main beneficiaries of this system are the factory owners who, conceivably in perpetuity, profit from a cheap and biddable workforce, and the buyers of bricks – from private individuals building their own homes to Cambodian and international companies undertaking large-scale construction projects – who are able to purchase bricks for a price far below the true value of the labour that goes into making them.

Whilst the poverty that propels people into brick factory work is a complex issue to solve, the impunity that enables their ongoing exploitation is not. Both debt bondage and child labour are illegal, with harsh penalties for the use of debt bondage in particular. However, both persist, usually in full view and in the full knowledge of the authorities who carry at least some of the responsibility for eliminating them. Those authorities and the police must report and take legal action against brick factory owners whose businesses rely on debt bondage and child labour. They must be supported in doing so by the courts, the government and the purchasers of bricks. Until this occurs, this brutal form of contemporary slavery will continue to flourish inside Cambodia.



Brick kilns

RECOMMENDATIONS

►►► **To the Cambodian government**

Order the immediate cancellation of all existing debt between brick factory owners and bonded brick factory workers and announce the exemption from prosecution for past offences of brick factory owners who comply with the order. Ensure that this announcement is communicated to all brick factory owners and workers.

Enforce Cambodia's own laws and international law on bonded labour and in particular ensure that prosecutions take place under the Trafficking Law for those factory owners who continue to hold their workers in debt bondage.

Ensure that local police have sufficient resources to fully investigate offences committed by brick factory owners and raise salaries of police officers, commune officials and labour inspectors in order to undermine the power of factory owners to buy police loyalty.

Issue an order to all police that they must not arrest or detain brick factory workers for non-payment of debt or for attempting to leave a brick factory.

Issue a prakas outlawing payment by piece for brick factory work and guaranteeing payment of at least the minimum wage to all brick factory workers in both wet season and dry season.

Ensure full compliance with domestic and international commitments to eliminate child labour.

Provide sufficient funding to ensure that there is a fully functioning labour inspection regime able to monitor and investigate cases of child labour and enforce appropriate penalties as contained in the Labour Law and related prakas.

Order the prioritization of inspection by the labour inspectorate of hazardous industries such as brick-making.

Together with representatives of the private construction sector and unions, agree a base price for bricks that reflects the true costs of production, in particular brick workers' salaries.

►►► **To foreign governments and their representatives in Cambodia**

In their discussions with the Cambodian government, raise their concerns about the issues of debt bondage and child labour in Cambodian brick factories and encourage them to take measures to combat both practices.

Raise awareness amongst potential and current investors from their own countries about the issues of debt bondage and child labour.

Strengthen legal mechanisms for holding to account private companies, registered or operating in their own countries, which use debt bondage and child labour anywhere in their supply chains.

In cooperation with the private sector and Cambodian government, develop a certification scheme for brick factories which have eliminated debt bondage and child labour.



A boy pulls a cart of freshly-made bricks

