

A LEGAL REVIEW OF DETENTION CENTERS FOR SEX WORKERS IN CAMBODIA, MYANMAR, THAILAND, AND VIETNAM

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June 2018

PUBLISHED BY:

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GLOSSARY

Criminalization: The legal process of prohibiting consensual adult sex work and attaching punishments in law. Criminalization of consensual adult sex work generally takes three different forms, which are applied in a variety of combinations across countries. These can be summarized as:

- Laws that make the sale of sex by consenting adults a criminal offense, including solicitation laws, and under which penalties are imposed upon sex workers.
- Laws that make the organization of consensual adult sex work a criminal offense. These include, but are not limited to, laws against keeping a brothel, promotion of sex work, renting premises for the purposes of sex work, living off the proceeds of sex work, and facilitating sex work through the provision of information or assistance. These laws can result in the imposition of penalties against sex workers for organizing their own sex work and against anyone who assists them.
- Laws that make the buying of sex from consenting adults a criminal offense and that punish buyers.

Criminalization also refers to other laws not specific to sex work (*e.g.*, vagrancy and loitering) that are applied in a discriminatory way against people involved in sex work and/or have a disproportionate impact on sex workers, resulting in *de facto* prohibition. Similarly, immigration laws can be applied in a discriminatory way against migrant sex workers as a *de facto* prohibition on sex work. The criminalization of irregular (sometimes called “illegal”) entry or residence may give rise to — or exacerbate — the penalization of sex work by migrants, as engaging in this type of work may make them more visible and liable to being targeted by state authorities.

Decriminalization: The legal process of allowing consensual adult sex work in law. A fully decriminalized system of sex work does not mean an absence of laws and policies on sex work. Rather, it would involve the following law and policy changes:

- Removing laws that make sex workers, clients and others involved in sex work criminals because of the sex work in which they are involved.
- Preventing local councils from making by-laws that can be used unfairly against sex workers, but allowing restrictions on offensive signage.
- Introducing new laws to protect sex workers and their clients, for example, by obligating clients to practice safer sex and brothel owners to promote safer sex, and giving sex workers the same labor and occupational health and safety protections given to other workers.
- Promoting human dignity, so that discrimination on the basis that someone is a sex worker or has been a sex worker would be illegal.

- Maintaining laws against public indecency.¹

Human trafficking: The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) defines trafficking as constituting three elements:

- An “action”: that is, the recruitment, transportation, transfer, harboring or receipt of persons;
- A “means” by which that action is achieved (*e.g.*, threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person);
- A “purpose” (of the action/means): specifically, exploitation.

All three elements must be present to constitute “trafficking in persons” under the Protocol. The only exception is when the victim is a child, in which case, a trafficking-in-persons crime is deemed to have been committed, even if none of the aforementioned “means” are involved.

Prostitution/prostitute: “Prostitution” is a term that was commonly used in legislation enacted in the 19th and 20th centuries to refer to sex work. The terms “prostitution” and “prostitute” have negative connotations and are considered stigmatizing by sex work advocates. This report only uses the term “prostitution” when quoting directly from specific legislative or treaty provisions, or other works that use the term. Otherwise, the term “sex work” is used.

Sex work: The exchange of sexual services between consenting adults for some form of remuneration. Sex work can take many forms, and varies between and within countries and communities. Sex work also varies in the degree to which it is more or less “formal” or organized.

Sex worker: Adults of all genders (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally.

¹ Sex Rights Africa Network, *An Easy Guide to Sex Work Law Reform: The difference between criminalisation, decriminalisation, legalisation and regulation of sex work*. Available at: <https://www.sexrightsafrika.net/wp-content/uploads/2016/04/Sex-work-reform-120919guide.pdf>.

SUMMARY

At the request of Asia Catalyst, the Cyrus R. Vance Center for International Justice worked with two law firms and four local offices of these law firms to conduct a literature review on the legal provisions governing police arrests and compulsory detention of sex workers in Cambodia, Myanmar, Thailand, and Vietnam. Based on extensive research on the laws, regulations, and procedures available, this report finds that:

- In all four countries, sex workers are subject to periodic crackdowns and raids by police or non-police personnel. Sex workers are arrested and charged under various laws, including prostitution laws, human trafficking laws, or public nuisance laws.
- In Cambodia, the 2008 *Law on Suppression of Human Trafficking and Sexual Exploitation* prohibits solicitation for sex work; however, sex work itself is not criminalized and sex workers are considered “victims” of human trafficking. Nevertheless, sex workers are still subjected to frequent crackdowns. Sex workers can be sent to centers run by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSVY) without being charged with or convicted of specific offenses. Centers run by NGOs were also reported. In many cases, the detention of sex workers was found to be arbitrary and illegal under Cambodian and international law.
- In Myanmar, sex work is a criminal offense and subject to up to three years’ imprisonment and fines. Offenses related to sex work are processed as other criminal offenses. However, the Department of Social Welfare operates centers for rehabilitation and care facilities for different populations. Four Vocational Training Centers house girls (over the age of 12) sent by the Juvenile Court, girls between the ages of 16 to 18 apprehended for sex work, or sentenced women who need protection from the general prison population (*e.g.*, women who have been identified as informants may be targeted for retribution by some in the general prison). Similarly, Centers for Women Care are centers for sentenced sex workers and imprisoned women who are HIV positive, who are sent by the Department of Prisons and detained for up to three months. There are currently two such centers, which together can accept around 150–200 women, but there are only 3 or 4 women currently in these centers in total. The 1949 *Prostitution Act* is currently under review and special rehabilitation centers for sex workers are being proposed in the new draft law.
- Thailand’s *Prevention and Suppression of Prostitution Act* criminalizes sex work and related activities. The primary detention centers for sex workers, called “Protection and Occupational Development Centers,” are run by the Department of Social Development and Welfare, a part of the Ministry of Social Development and Human Security. Women deemed in need of protection and rehabilitation are sent to these centers and are not allowed to leave without authorization. However, many sex workers are also labeled “victims of trafficking” who need protection. They are held as witnesses in human trafficking cases, rather than for the purpose of

rehabilitation, and are held at temporary shelters. These shelters provide medical care, legal assistance, counseling services, informal education, and vocational training.

- In Vietnam, sex work is illegal and sex workers are subject to administrative punishments. Until 2012, sex workers were sent to compulsory detention centers for re-education, medical checks, and vocational training. Vietnam has since abolished these centers and sex workers are no longer subject to administrative detention, but are penalized with fines.

Laws governing human trafficking are often applied in the arrest and detention of sex workers in Cambodia, Myanmar, and Thailand. The conflation of human trafficking with sex work — no differentiation between those voluntarily engaging in sex work as opposed to those trafficked into the industry — has resulted in sex workers being labeled as either “victims” or “criminals.” This conflation provides no effective protection for actual victims of trafficking and leaves sex workers vulnerable to violence and multitudes of rights violations.

These law enforcement actions and the detention of sex workers are often arbitrary and lack a clear legal basis. Research is scant on the laws and procedures for detaining sex workers and has proved challenging. While there are centers specifically established to detain them, sex workers are commonly held involuntarily alongside people who use drugs, homeless people, and others. Further research is required to understand the implementation and conditions of these centers, as well as the impact on the health, safety, and human rights of sex workers.

INTRODUCTION

In 2012, Asia Catalyst (AC) worked with two sex worker organizations in China to research detention faced by sex workers there. The study found that the Custody and Education (C&E) system authorizes police to detain female sex workers and their clients for up to two years without trial. Sex workers are subjected to forced labor, compulsory testing for sexually transmitted diseases, bearing the high cost of living while incarcerated (detainees must pay fees while detained in the centers), humiliation, and physical violence.² AC published the findings of the research in a landmark report, *Custody and Education: Arbitrary Detention for Female Sex Workers in China*, and worked with its Chinese community partners to lead advocacy campaigns to dismantle the C&E system. As a result, the government began to publicize the number of C&E centers, as well as reports from cities that have closed these centers.

The experience of sex workers in China is not unique. Across Asia and the globe, sex work is criminalized in the vast majority of countries and sex workers face harsh law enforcement measures. They can be detained for months for “treatment,” or “rehabilitation.” Detainees experience a wide range of human rights abuses, including violations of the right to freedom from arbitrary arrest and detention; denial of due process and a fair trial; exposure to torture and cruel, inhuman, and degrading treatment; forced labor; and compulsory medical testing and treatment. However, sex worker advocacy on these issues is still nascent in Asia. Our work in China found that, due in part to the criminalization of sex work, the stigma and discrimination faced by sex workers, and the lack of channels for sex workers to make their voices heard, the C&E system remained largely unknown to the public until we published our report.

Continued public ignorance, scant evidence, and the absence of community-led advocacy allow sex worker detention centers to continue to operate in China and elsewhere, and sex workers who are held extrajudicially lack avenues through which to seek justice. To foster community advocacy actions, more research into the legal frameworks governing sex work in these countries is needed, and, where such centers exist, how they are regulated and managed must be studied. Such information is critical to advancing advocacy and building on the momentum both within China and internationally.

Advocacy to stop the detention of sex workers is also important within the broader context of sex work decriminalization. A wide body of evidence shows that criminalization of sex work significantly increases sex workers’ vulnerability to violence and disease, threatening their health and safety. The Global Commission on HIV and the Law found that punitive laws, discriminatory and brutal policing, as well as denial of access to justice for people with and at risk of acquiring HIV are fueling the epidemic.³ The World Health Organization (WHO) recommends that all countries work toward

² Asia Catalyst, “*Custody and Education: Arbitrary Detention for Female Sex Workers in China*” (December 2013). Available at: http://www.asiacatalyst.org/wp-content/uploads/2014/09/AsiaCatalyst_CustodyEducation2013-12-EN.pdf.

³ Global Commission on HIV and the Law, *Risks, Rights & Health* (July 2012). Available at: <https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>.

decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.⁴ In 2016, Amnesty International announced its policy of protecting sex workers' human rights, which recommends "decriminalization of all aspects of adult consensual sex work ... it is necessary not only to repeal laws which criminalize the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organization of sex work (such as prohibitions on renting premises for sex work) a criminal offense."⁵

While criminalization of sex work takes many forms, it often involves policing and detention, which comprise the major human rights violations that sex workers encounter. Global research points to law enforcement officers as among the main perpetrators of sexual, physical, and emotional violence against sex workers.⁶ It is also well documented that police often use condoms as evidence of sex work, leading to the fear of carrying and using condoms among sex workers.⁷ Detention, over either short or longer periods, puts sex workers at risk of violence, humiliation, and mandatory testing for HIV and sexually transmitted infections (STI). Understanding the actions that lead to detention and the legal procedures driving them are the first steps to address these human rights violations.

In June 2016, Asia Catalyst reached out to the Cyrus R. Vance Center for International Justice (the Vance Center), whose mission is to advance global justice by engaging lawyers across borders to support civil society and an ethically active legal profession, for technical assistance on a legal review of sex worker detention centers in the region. The Vance Center maintains a wide network of law firms across the globe with which it collaborates to support civil society organizations on a *pro bono* basis.

This report is the product of a collaboration between AC and the Vance Center. AC identified the need and scope of this study, and the Vance Center worked with the law firms in its network to carry out the research. This study is primarily based on a literature review of the legal bases and procedures governing sex work, especially detention centers for sex workers in four countries: Cambodia, Myanmar, Thailand, and Vietnam. The review provides information regarding the legal frameworks of the region's less-known detention/rehabilitation centers for sex workers. It may be a useful resource for international organizations, community-based organizations, UN agencies, advocates for sex worker rights, and others to advocate for the end of unlawful and arbitrary detention of sex workers.

⁴ World Health Organization, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach* (December 2012). Available at: <http://www.who.int/reproductivehealth/publications/rtis/9789241504744/en/>.

⁵ Amnesty International, *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (May 26, 2016). Available at: <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>.

⁶ Global Network of Sex Work Projects, *Policy Brief: The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence*. Available at: http://www.nswp.org/sites/nswp.org/files/impact_of_criminalisation_pb_prf01.pdf.

⁷ Asia Catalyst, *The Condom Quandary: A Survey of the Impact of Law Enforcement Practices on Effective HIV Prevention among Male, Female, and Transgender Sex Workers in China* (July 2016). http://asiacatalyst.org/wp-content/uploads/2014/09/The-Condom-Quandary-Report_en.pdf.

AC's mission is to empower marginalized individuals and groups with tools and resources to advocate for the human rights of their communities. Our experience of working with marginalized communities in the region over the past decade shows that, when supported with the right mix of knowledge, tools, and networks, civil society leaders are poised to secure rights-based protections with great potential for broad-reaching impact. This impact would increase exponentially if broader, sustainable movement-building was supported and invested in. We hope that this report will inspire further documentation and advocacy work on detention centers for sex workers and decriminalization of sex work.

METHODOLOGY

This report is based on extensive desk research conducted over several months by one law firm in the United States and a regional law firm's offices in Myanmar, Thailand, Cambodia, and Vietnam. Each of the local law firm's offices provided information on the legal and factual situation in its country and the U.S. law firm supervised and coordinated the work. With the agreement of all parties involved, the identities of the law firms are being kept confidential.

The law firms were recruited by the Vance Center and provided their services on a *pro bono* basis. Several meetings between the law firms, the Vance Center, and Asia Catalyst were conducted by phone to discuss preliminary findings. The Vance Center and Asia Catalyst reviewed several drafts of the research and provided feedback.

The law firms produced individual memoranda for each country. Each memorandum included (i) a factual summary of the situation in the country regarding the detention of sex workers, (ii) an overview and analysis of the domestic legal regime as it relates to such detention and the criminalization of sex work, and (iii) an overview of international human rights obligations applicable to the country and an analysis of whether the detention of sex workers complies with or contravenes these international obligations.

The law firms relied on open sources, such as reports by international organizations and national and international human rights NGOs, as well as published articles and local media reports. They reviewed national legislation, and government-issued regulations, policies, and guidelines, as well as international conventions and treaties. In rare cases, where possible, they also interviewed staff from local NGOs and officials involved in the management of the detention centers, who spoke on the condition of anonymity.

One of the major challenges in conducting this study was the lack of available literature on detention centers in all four countries. With the exception of Cambodia, where information on the conditions in the detention centers was more available, there was very limited literature in the other countries on the types of and conditions in such centers. Even in Cambodia, the lawyers who undertook this study found little legal information.

This study is entirely based on the information available in the public domain. A further in-depth study that explores and engages direct actors, including government ministries and implementers such as police and legal support providers, as well as sex workers, should be conducted to have a complete understanding of the impact of detention centers. This study should be considered as an initial preliminary mapping of the legal mechanisms for the arrest and detention of sex workers and available evidence on their implementation.

CAMBODIA

Overview

Sex workers in Cambodia, particularly in Phnom Penh, commonly are subjected to crackdowns and raids by police or non-police personnel, such as district or public park security guards, government officials, and employees of centers run by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSVY). These crackdowns have taken place in one form or another for decades, but, as discussed in more detail below, they reportedly increased in frequency and scope after the enactment of a 2008 Cambodian law that included a provision criminalizing solicitation. While the law criminalizes solicitation, reports indicate that sex workers caught in the crackdowns are rarely charged. Instead, those who are not released after paying fines or bribes, or are not sent to NGO facilities, are frequently sent to detention centers run by MOSVY. While we were unable to find any information addressing the legal basis of the detention centers themselves, it appears that the detention of many, if not the vast majority, of the sex workers there is arbitrary and illegal under both Cambodian law and under international treaties to which Cambodia is a party.

Process, regulations, laws, and practices before, during, and after detention

Municipal Social Affairs Office

Sex workers arrested in periodic crackdowns and raids typically are taken first to a police station or district office, where they are detained for indeterminate lengths of time. In the provinces, sex workers arrested in crackdowns are typically released straight to NGOs.⁸ In Phnom Penh, some may be released almost immediately after paying a fine or a bribe. Those who are not released are transferred to the Municipal Office of the MOSVY, which then refers them to a government Social Affairs Center (also administered by the MOSVY) or to an NGO. They may be held at the Municipal Office for a period of time ranging from several hours to two days.⁹

As documented in an extensive 2010 report by Human Rights Watch (HRW) on the detention of sex workers in Cambodia, detainees reported incidents of violent abuse and sexual harassment at the government-run municipal Social Affairs Centers.¹⁰

⁸ Human Rights Watch, "Off the Streets: Arbitrary Detention and Other Abuses against Sex Workers in Cambodia," July 2010. Available at <http://www.hrw.org/report/2010/07/19/streets/arbitrary-detention-and-other-abuses-against-sex-workers-cambodia>, at 42. This report was the most extensive and authoritative that we found on the detention of sex workers in Cambodia, and we cite it frequently in this report. We also recommend reviewing the report for a thorough background and discussion of the abuses faced by sex workers in Cambodia and the conditions at some of the detention centers.

⁹ *Id.* at 42–43.

¹⁰ *Id.* at 42–44.

Government Social Affairs Centers

In Phnom Penh, sex workers detained by the Municipal Social Affairs Office who are not released to NGOs are released to a government Social Affairs Center. As explained in a 2008 report by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), officially these centers exist to provide rehabilitation services and other services to the homeless and individuals living in poverty who voluntarily agree to stay in them.¹¹ However, investigations by LICADHO and other observers have indicated that the centers have been used for the unlawful detention of sex workers, homeless people, and others arbitrarily arrested on the streets of Phnom Penh.¹²

The primary, and most notorious, of these detention facilities is the Phnom Penh Municipal Social Affairs Center, formerly known as Prey Speu, and currently officially known as Por Sen Chey Vocational Training Center. This center was operational at least since 2004, but was reportedly shut down in 2012 in the wake of reports of abusive treatment of detainees.¹³ HRW's report details the conditions and abuses that occurred at Prey Speu up to 2010.¹⁴ Other articles, including some cited here, include more recent reports on the conditions at the center. A June 2016 report indicates that Prime Minister Hun Sen suggested that the center should be closed if conditions did not improve.¹⁵ Reports as recent as August 2017 indicate that, on at least one occasion, the number of detainees being held there had grown to nearly double the capacity of the center.¹⁶

It is unclear how long detained sex workers remain at the center. While the government's position is that people stay at Prey Speu on a voluntary basis, HRW reported instances of sex workers being forcibly detained for periods ranging from a few days to a whole month.¹⁷ Sex workers also told HRW that center staff warned them that they could be detained for up to three months if they were arrested again.¹⁸

Other reports suggest that sex workers who end up at the center may be released after being held for a short amount of time. For those who are arrested in a crackdown intended to "clean up" the streets prior to a public holiday or other events, this may mean

¹¹ Cambodian League for the Promotion and Defense of Human Rights (LICADHO), "Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers," July 2, 2008. Available at <http://www.licadho-cambodia.org/articles/20080702/79/index.html>.

¹² *Id.*

¹³ Sen David and Alice Cuddy, "Prey Speu Detention Centre Still Going Strong," *The Phnom Penh Post*, February 20, 2015. Available at <http://www.phnompenhpost.com/prey-speu-detention-centre-still-going-strong>. Other reports suggest that the facility was operational prior to 2004.

¹⁴ HRW, "Off the Streets," at 45–51.

¹⁵ Kong Meta and Erin Handley, "Prey Speu Detention Centre Put on Notice by PM," *The Phnom Penh Post*, June 1, 2016. Available at <http://www.phnompenhpost.com/national/prey-speu-detention-centre-put-notice-pm>.

¹⁶ Erin Handley and Mech Dara, "Population at Notorious Prey Speu Detention Centre Twice Capacity, UN Envoy Says," *The Phnom Penh Post*, August 17, 2017. Available at <http://www.phnompenhpost.com/national/population-notorious-prey-speu-detention-centre-twice-capacity-un-envoy-says>.

¹⁷ HRW, "Off the Streets," at 46.

¹⁸ *Id.*

being released once the holiday or event has passed. This is different from the situation faced by people who use drugs, who may be detained at the center for longer and indefinite periods of time. Also, as noted above, some sex workers who are arrested in crackdowns never make it to the center to begin with, as they may pay a fine or a bribe to ensure their release prior to their transfer to the center.

Still, as recently as August 2017, at least one report indicated that some detainees in Prey Speu said that they had been there for “many weeks or many months,” although this report does not clarify whether sex workers were among those detainees making this claim.¹⁹

NGOs

While the scope of this project focuses on detention centers run by the government, we note that there have been at least some reports of sex workers being detained at facilities run by NGOs. As noted above, sex workers who are detained in Phnom Penh are released either to the Social Affairs Center or to an NGO. In its 2010 report, HRW noted that in 2009, some sex workers told HRW that two NGO facilities had arbitrarily detained them for periods of several hours to a few days.²⁰ HRW reported that the NGOs subsequently informed HRW that they had changed their policies and no longer detained any individual, even for a brief period.²¹ According to HRW, no new cases of detention by an NGO were reported in 2010.²²

Legal status of sex work in Cambodia and justifications given for arrest/detention of sex workers

2008 Law on Suppression of Human Trafficking and Sexual Exploitation

In 2008, the Cambodian government passed the *Law on Suppression of Human Trafficking and Sexual Exploitation*.²³ As HRW explained in its 2010 report, certain aspects of this law had a negative effect on the government’s treatment of sex workers.²⁴ Specifically, the 2008 law prohibited “soliciting,” which had previously not been criminalized. The law provides that the penalty for solicitation is to be imprisonment from one to six days and a fine from 3,000 to 10,000 riels. Prior to the 2008 law, police who arrested sex workers could not charge them with soliciting, as it was not an offense.

¹⁹ Erin Handley and Mech Dara, “Population at Notorious Prey Speu Detention Centre Twice Capacity, UN Envoy Says,” *The Phnom Penh Post*, August 17, 2017. Available at <http://www.phnompenhpost.com/national/population-notorious-prey-speu-detention-centre-twice-capacity-un-envoy-says>.

²⁰ HRW, “Off the Streets,” at 51–52.

²¹ *Id.*

²² *Id.*

²³ *Law on Suppression of Human Trafficking and Sexual Exploitation*, The Kingdom of Cambodia, No. 140 c.l, February 20, 2008. Available at http://www.unodc.org/res/cld/document/khm/2008/law_on_suppression_of_human_trafficking_and_sexual_exploitation_html/Cambodia_03_-_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf.

²⁴ HRW, “Off the Streets,” at 9.

After the enactment of the 2008 law, authorities were thereafter able to charge sex workers with solicitation. Critics of the law argued that this criminalization of solicitation gave authorities an additional tool to threaten sex workers with detention. Indeed, reports indicate that crackdowns and raids on sex workers increased in 2008 and 2009 after the enactment of the law. Cambodian authorities have also explicitly referred to the provision in the 2008 law criminalizing solicitation as justification for detaining sex workers.²⁵

Guidelines on the Implementation of the Law on Suppression on Human Trafficking and Sexual Exploitation

After the enactment of the 2008 law, the Inter-Ministerial Task Force to Fight Human Trafficking, Smuggling, Exploitation and Sexual Exploitation of Woman and Children issued its “Guidelines on the Implementation of the Law on Suppression on Human Trafficking and Sexual Exploitation.” According to the Guidelines, “Prostitutes are to be regarded as victims of procurement for prostitution. Prostitution is not a crime; thus the individual prostitutes are not punished as offenders under the new legislation.”²⁶ The Guidelines also state that “the law does not define prostitution as an offense. Any person identified as a prostitute must not be punished as an offender.”²⁷

Notably, the Guidelines also address the treatment of victims. The Guidelines provide, in relevant part:

The rights of the victims must be respected and victims must be appropriately and compassionately handled. . . . In terms of victims, the following actions must be taken by appropriate authorities:

As soon as victims are rescued, an interview must be conducted without delay or detention at the offices of the justice police.

After the interview, victims must be sent from the office of the justice police to locations based on the individual cases and characteristics of the victims.

. . .

Adult victims can be handled on the basis of their individual choice:

²⁵ Taylor O’Connell and Ben Sokhean, “Official Denies Abuse of Sex Workers by Police,” *The Cambodia Daily*, January 19, 2016. Available at <http://www.cambodiadaily.com/news/official-denies-abuse-of-sex-workers-by%e2%80%88police-105835>.

²⁶ “Guidelines on the Implementation of the Law on Suppression on Human Trafficking and Sexual Exploitation,” unofficial translation by UNIAP (United Nations Inter-Agency Project on Human Trafficking). Available at <http://chendakeo.files.wordpress.com/2010/08/moi-guideline-on-ht-law-nov-19-11-2008.pdf>.

²⁷ *Id.*

If they agree to go to the Offices of Social Affairs Veterans and Youth Rehabilitation, then they can be handled by these offices for further assistance.

If they do not agree, they are free to return to their homes.²⁸

The Guidelines, however, are just that; they have no legal force.²⁹ HRW noted in its 2010 report that “as of April 2010, it seemed that many government officials, police, and even some NGOs were not aware of the existence of the guidelines.”³⁰

Other Justifications: Maintenance of Social Order and the Prevention of Disease

Authorities have also attempted to justify crackdowns and raids based on preventing the spread of HIV and on the maintenance of “social order.” For example, in a 2009 report on the arrest of a number of suspected sex workers ahead of Cambodia’s Water Festival, a district deputy governor cited health concerns as a reason behind the crackdown: “We don’t want to see the boat racers bringing diseases such as HIV/AIDS back to their wives. We want to protect the men in case they get caught up in the festivities and forget about health and safety.”³¹

The crackdowns are common in advance of events at which prominent international visitors will be in attendance. For example, prior to an October 2016 visit to Phnom Penh by Chinese President Xi Jinping, more than 50 people were taken off the streets and sent to a detention center.³² Discussing the raid, a City Hall spokesperson explained, “We have to round up the beggars, the homeless and sex workers to beautify our Phnom Penh for the special arrival of the Chinese president. We did that for the beauty and order of our Phnom Penh.” Similarly, prior to a 2012 Association of Southeast Asian Nations (ASEAN) summit, more than 800 people, including sex workers, were reportedly taken off the streets of Phnom Penh.

Legal basis (or lack thereof) for detention centers / detention

We were unable to find any laws or regulations explicitly addressing the establishment and maintenance of the detention centers themselves. Several regulations and statements from MOSVY or other government officials refer generally to “rehabilitation” of individuals, but no specific reference is made to detention centers. A 2011 Sub-decree on the Organization and Functioning of MOSVY contains language that could arguably be

²⁸ *Id.*

²⁹ HRW, “Off the Streets,” at 23–24.

³⁰ *Id.*

³¹ Mom Kunthear, “City Police Arrest 17 Suspected Prostitutes,” *The Phnom Penh Post*, October 30, 2009. Available at <http://www.phnompenhpost.com/national/city-police-arrest-17-suspected-prostitutes>.

³² Kong Meta and Ananth Baliga, “Homeless, sex workers swept away for Xi visit,” *The Phnom Penh Post*, October 14, 2016. Available at <http://www.phnompenhpost.com/national/homeless-sex-workers-swept-away-xi-visit>.

applicable to the centers,³³ but we did not find anything suggesting that MOSVY or other agencies would view such provisions as the legal basis for the centers. Reports from HRW, LICADHO, and other organizations address the legality of the detention of sex workers, but do not reference any laws or regulations serving as the legal basis for the detention centers.

Although the legal basis of the detention centers themselves appears uncertain (at least based on the available information), what is much more certain is that many, if not most, of the sex workers who are detained in the centers after crackdowns are arrested and detained illegally.

The Cambodian constitution provides that “[t]he prosecution, arrest, or detention of any person shall not be done except in accordance with the law.” However, according to reports by HRW, LICADHO, and others, non-police personnel who do not have the legal authority to arrest people often arrest sex workers. These non-police personnel include private security guards, public park and other municipal security guards, district security guards, and MOSVY staff. The arrested sex workers are typically taken to a district office or district police station, as discussed above.

Cambodia’s *Code of Criminal Procedure* provides that a person may be arrested without a warrant during or immediately after the commission of a crime. Accordingly, although solicitation is illegal and could therefore be the basis for a warrantless arrest if the sex worker is arrested during or immediately after the purported solicitation, it is not illegal to be a sex worker in Cambodia, and there is no legal basis for an arrest on that status alone. Cambodian law provides no legal basis for the detention of individuals who, like the majority of the sex workers caught in crackdowns, have not been charged, convicted of, or sentenced for committing a crime. Reports indicate that cases where actual criminal charges are brought against a sex worker for solicitation or some other crime are rare.

³³ Sub-decree No. 54 ANKR.BK, dated March 24, 2011, on the Organization and Functioning of the Ministry of Social Affairs, Veteran and Youth Rehabilitation contains a number of provisions that could implicate the establishment and maintenance of detention centers. These provisions include:

Chapter 2, Article 3, which provides that among MOSVY’s tasks are the following:

Establishing policies and managing social services of the state to support vulnerable groups and the poor, especially the elderly, the deprived, the disabled, street children, orphaned children, prostitutes living with HIV/AIDS, and the poorest people in the country.

Setting up disability protection principles and rehabilitating livelihoods for people with all kinds of disabilities.

Cooperating with relevant institutions to take legal action to prevent prostitution, trafficking in persons, and sexual abuse of children.

Chapter 7, Article 14, which provides that the following are among the duties of the Department of Social Welfare:

Prepare action plans and rescue programs for the most vulnerable and disadvantaged poor in the society to prevent risk and risk migration.

Establishment of social work centers for temporary resettlement, rehabilitation, care training and vulnerability integration.

As HRW further explained:

The fact that individuals are involuntarily detained at social affairs centers without due process renders the detentions arbitrary and illegal under international law. Those held in the centers, whether sex workers or others, go through no legal process before being sent to the centers. There is no clear legal basis on which they are transferred and then detained at the centers. At no stage during their detention do detainees have access to legal representation. There is no judicial review of their detention nor is there an opportunity for detainees to appeal their detention. Illegal detention or unlawful deprivation of liberty is a crime in Cambodia, whether committed by state or non-state actors.³⁴

This extrajudicial detention of sex workers also appears to violate certain international treaties, to which Cambodia is a party, that address human rights issues relevant to the detention of sex workers. As discussed by HRW, these treaties include the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT), the *Convention on the Rights of the Child* (CRC) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).³⁵

Article 9 of the ICCPR, for example, guarantees that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

³⁴ HRW, "Off the Streets," at 46.

³⁵ *Id.* at 53.

Any detention of sex workers in Cambodia that is not in accordance with these provisions, and those of other treaties to which Cambodia is a party, is arbitrary and unlawful.

As HRW concluded in a section of its report regarding Cambodia's obligations under the treaties to which it is a party:

The actions of police and other government officials routinely violate these basic rights, which Cambodia is legally bound to uphold. For instance, arresting adult sex workers in brothels or on the streets only to transfer them to shelters from which they cannot freely leave, yet for which there is no lawful basis to detain them, violates their right to liberty and security.³⁶

Conclusion

Based on existing reports, our research confirmed that sex workers in Cambodia have been and continue to be subject to arbitrary and illegal detention by the government. While the existing reports do not provide a well-defined range for the lengths of the periods of detention, reports of some detainees have indicated that they were detained or threatened with periods of detention lasting up to three months.

Although we were unable to find information confirming the legal basis for the establishment and maintenance of the detention centers, reports by HRW, LICADHO, and other organizations on the arrests and detention of the sex workers indicate that for the majority of sex workers detained in periodic crackdowns, their detention is arbitrary and in violation of Cambodian law and certain international treaties to which Cambodia is a party.

³⁶ *Id.* at 55

MYANMAR

Overview

In Myanmar, sex work is a criminal offense prosecuted under Myanmar law in the same manner as other criminal offenses, with accused and convicted sex workers not treated differently from others in the criminal justice system. However, this research has found existing facilities operated by the Department of Social Welfare that detain pre-conviction and sentenced female populations of both adults and minors.

Myanmar Law on Prostitution

Myanmar's *Suppression of Prostitution Act, 1949*, as amended in 1998 (the "Prostitution Act"), is a comprehensive law imposing fines and prison sentences for a variety of offenses related to engaging in sex work, procuring persons to engage in sex work, and managing brothels. It does not include any offenses for customers of sex workers. A summary of offenses and penalties is set forth below:

Offense	Citation	Punishment
Soliciting customers for prostitution	Sections 3(a) and (b) of the Suppression of Prostitution Act, 1949	Imprisonment for a term not less than one year and not more than three years with hard labor and may also be subject to a fine
Person who depends on a person whose occupation is prostitution	Section 5(1) of the Suppression of Prostitution Act, 1949, as amended in 1998	Imprisonment for a term not less than one year and not more than five years and may also be subject to a fine
Person who manages a brothel	Section 5(1) of the Suppression of Prostitution Act, 1949, as amended in 1998	Imprisonment for a term not less than one year and not more than five years and may also be subject to a fine

The amounts to be imposed for fines are not specified in the Prostitution Act and are left to the discretion of the sentencing judge. Pursuant to the Penal Code, such amounts are unlimited but must be reasonable.

There are no specific provisions in the Prostitution Act concerning rehabilitation or training facilities or programs for persons engaging in sex work. There is, however, this wording in Section 17 which authorizes special facilities for offenders:

“Section 17. [The sentencing judge] may direct that, instead of detaining in a prison an offender under Section 3 or the person engaging in acts described under Section 7(1)(a), such offender may be detained at specified detention facilities.”

[Unofficial translation; no official English version]

The offenders referenced in Section 17 who may be detained at specified detention facilities are persons who publicly solicit customers for prostitution (Section 3) and persons who make their living from engaging in prostitution (Section 7(1)(a)).

We are of the opinion that the Prostitution Act specifically authorizes the use of specialized detention centers for persons who publicly solicit customers for sex work or who repeatedly engage in sex work. There are no further details in the Prostitution Act concerning such detention facilities.

Detention under the Criminal Procedure Act

The *Criminal Procedure Act* provides that a police officer who arrests a person without a warrant must not detain the person for more than 24 hours before bringing them to the police station and then before a magistrate. The magistrate may detain the arrested person “in such custody as the magistrate thinks fit” for up to 15 days if the alleged offense carries a sentence of not more than seven years, and may detain the person for up to 30 days for an alleged offense for which a prison sentence of more than seven years could be imposed (Section 167).

Thereafter, if a decision is not made to release the person, the magistrate must “take cognizance of the offense from the police report” (Section 170) and commit the person for trial and consider bail or commit the person to custody pending trial. Until and during the trial, the magistrate shall commit the accused to custody (Section 220). Thus, the magistrate at the pre-trial stage has broad authority to commit an accused sex worker or other accused person to detention facilities pending trial.

Myanmar’s jails house both pre-trial and convicted persons. A significant proportion of the jail populations are persons in pre-trial status. By law, these populations are to be housed separately, but it is widely reported that this is often not the case.

The Myanmar Criminal Justice System and Detention Facilities for Sex Workers

Usually, law enforcement and other components of the justice system do not place adult sex workers in any special rehabilitation or training programs or special facilities for sex workers. Women accused or convicted of prostitution offenses are normally processed in the same manner as other offenders. However, there are various facilities for different populations operated by the Ministry of Social Welfare, Relief and Resettlement’s Department of Social Welfare (DSW) that provide vocational training, educational assistance, care facilities for HIV positive prisoners, and safe houses for victims of crime. According to an official with the DSW, there are no other similar facilities in Myanmar.

Vocational Training Centers for Women

Juveniles apprehended for suspected prostitution activities may be taken to one of four Vocational Training Centers for Women operated by the DSW, located in Yangon, Mandalay, Myeik, and Kyaing Tong. The first was opened in Yangon in 1960. The

training centers provide informal education, vocational training (e.g., sewing, embroidery, knitting, and tapestry), recreational activities (e.g., sports, reading, TV), and job placement.

The DSW says the population of the Vocational Training Centers consists of:

- (1) girls over the age of 12 who have been sent by the Juvenile Court under the *Child Law*, Article (33)(a)
- (2) sentenced women who are in need of protection by court order
- (3) girls who are between the ages of 16 and 18 sent pursuant to the *Suppression of Prostitution Act (1956)* Article (6)(d)
- (4) trafficked victims

According to an official of the DSW, currently there are over 80 women and girls in Vocational Training Centers. The detainees are allowed to leave in accordance with court orders in the case of juveniles and women sent by the courts, and women sent by the Department of Prisons are permitted to leave after their sentence ends, with the approval of the Department of Prisons.

Centers for Women Care (CWC)

CWC are special centers for sentenced sex workers and imprisoned women who are HIV positive. They are sent to CWCs by the Department of Prisons after they have been convicted. There are two CWC facilities, in Yangon (Ah-Lan-Oat Village near Twentay) and Mandalay (Angel Village). The Yangon CWC opened in 2000 and the Mandalay CWC opened the following year. These centers can accept around 150–200 women in total but the Women’s Development Division of DSW reported to us in early 2018 that there were only three or four women in these facilities at that time.

CWCs are operated through a collaboration of the DSW, the Department of Health, and the Department of Prisons. According to the DSW, activities provided at the CWCs include psychosocial counseling, basic education skills in reading, writing, and math, vocational training (e.g., sewing, embroidery, knitting, macaroni crafts, and tatting lace handicrafts), and preparing to return to living with parents and guardians. The period of stay is usually quite short, *i.e.*, one to three months, and is determined by the Department of Prisons.

A DSW official informed us that the CWCs usually face a problem of insufficient anti-retroviral therapy drugs for their detainees living with HIV.

Proposed Changes to Myanmar Laws Affecting Sex Workers

In 2013, a member of Parliament proposed decriminalizing prostitution, but that proposal was quickly rejected. In 2015, amendments to the Myanmar *Suppression of Prostitution Act* were proposed, including amendments that would punish clients, as well as sex

workers. The amendments were widely criticized, with some lawmakers asserting that laws should protect sex workers instead of imprisoning them. The proposed amendments were referred to committee, and the efforts to amend the Prostitution Act were not pursued to completion at that time.

However, the interest in revising or replacing the Prostitution Act has continued. Various government agencies have been considering provisions for a new law to replace the outdated 1949 Act. A series of meetings and consultations were held in 2017 between government agencies and advocacy organizations, as well as UN agencies, concerning provisions for a proposed new Prostitution Law and an amendment has been drafted. According to an official translation of the draft made available to Asia Catalyst, a two-month detention at a DSW Vocational Training Center if a sex worker is arrested a second time for the offense of engaging in sex work has been proposed. Non-governmental organization workers involved in the process anticipated that the new law would be passed by Parliament in 2018. A DSW official confirmed that many ministries have been involved in the review process, and the draft amendment is now being studied by the DSW. The official also informed us that the CWCs described above will likely become special centers for sex workers after enactment of the new prostitution law.

THAILAND

Overview

Sex work has been illegal in Thailand since 1960. Thai law prohibits sex work in public places and brothels, and sex workers may be fined or jailed for conducting sex work openly or in a “prostitution establishment”.³⁷ The primary compulsory detention centers in Thailand are called “Protection and Occupational Development Centers.” However, the detainees are mainly held as witnesses in trafficking cases, rather than for the purpose of rehabilitation or recovery from trafficking.

The two primary laws relating to the detention of sex workers in Thailand are: (1) the *Prevention and Suppression of Prostitution Act* BE 2539; and (2) the *Prevention and Suppression of Human Trafficking Act* BE 2551. Both are related to two areas addressed in this report: (a) the procedures, regulations, laws, and practice before, during, and after detention; and (b) the legal basis for the detention centers.

The Prevention and Suppression of Prostitution Act BE 2539 (“Prostitution Act”)³⁸

Under the Prostitution Act, there are procedures related to detention described in regulations or policies issued by the Protection and Occupational Development Commission (“POC”).³⁹ Offenders or persons accused under the Prostitution Act are to be admitted to the Preliminary Admittance Center. Later, upon certain conditions and discretion as provided in the Prostitution Act, the offenders or the accused persons are to be admitted to protection and occupational development centers.

Diagrams explaining the procedures for the reception and orientation process can be found at the website of the Kredtrakarn Protection and Occupational Development Center, operated by the Ministry of Social Development and Human Security’s Department of Social Development and Welfare.⁴⁰

The Kredtrakarn website also sets out the steps in the protection process for detainees.⁴¹ Under this process, detainees are categorized according to the following target groups, as described in the website: (1) persons in need of protection according to the Prostitution Act; (2) women who suffer from social problems; and (3) women and children who are victims of human trafficking. The individuals then go through the protection process,

³⁷ UNDP, *Sex Work and the Law in Asia and the Pacific* (October 2012). Available at: <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>.

³⁸ <http://un-act.org/publication/view/thailands-prevention-and-suppression-of-prostitution-act-1996/>.

³⁹ The Commission members are appointed in accordance with Sections 14 and 15 of the Prostitution Act.

⁴⁰ http://kredtrakarnhome.com/NP-30360-orientation_process.html.

⁴¹ http://kredtrakarnhome.com/NP-30361-protection_process.html.

which includes medical care, legal assistance, counseling services, informal education, and vocational training.⁴²

As mentioned above, the centers' objectives cover three types of detainees:

- (1) women under the age of 18 years old who need to be under the protection of the Prostitution Act or women over 18 years old who voluntarily submit to protection;
- (2) women and children, both Thai and non-Thai, who are victims of human trafficking; and
- (3) women and children who suffer from social problems.

Most of the detainees are domestic sex workers and under-aged women involved in sex work. The most recent numbers of detainees available, based on our information, was from 2015. In 2015, there were 157 detainees (53 Thais, 81 Laotians, 15 Burmese, 7 Cambodians and 1 Ethiopian). Most migrant workers without work permits will be sent to the Immigration Detention Center for deportation.

Provisions of the Prostitution Act on the procedures for detention

Sections 32 to 38 of the Prostitution Act contain provisions on the procedures for detention. Highlights of these provisions include:

Section 4: Definitions:

- “*Preliminary Admittance Center*” [PAC] refers to a place established under the Prostitution Act by the Government or by a foundation, association or any other institution for the temporary admission of persons receiving protection and occupational development in order to consider the protection and occupational development appropriate for each of them.
- “*Protection and Occupational Development Center*” [PODC] refers to a place established by the Government or by a foundation, association or other institution in order to render welfare protection and occupational development to persons receiving protection and occupational development under the Prostitution Act.

Section 32: During an inquiry or a court trial, the alleged offender may be kept in custody in accordance with the laws on criminal procedure, provided that he or she is kept separately from other alleged offenders.

Sections 33 and 34: These sections provide that where an offender is under the age of 18 and is not alleged to have committed any other offense, or where the court finds that punishment for an offense would be inappropriate and should be replaced by admission

⁴² The Center provides practice for different types of vocational skills for the detainees, including sections for beauty salon, Thai traditional massage, handicrafts, and traditional weaving.

to a PAC, such offender is to be admitted to the care of a PAC. An offender over the age of 18 can also be admitted to the care of a PAC if he or she wishes.

Section 35: The PAC is to consider the personality, educational and training background of the offender and the cause of the commission of the offense, conduct an aptitude test and then consider the admission of the person under its care under Section 33 or Section 34 to an appropriate PODC in order to receive protection and occupational development during such period as specified in the rules prescribed by the POC; *provided* that such period shall not exceed six months from the date of admission of that person to the PODC.

Subject to Section 34, in the case where the PAC is of the opinion that admitting the offender to protection and occupational development is not yet necessary, it may decide, in accordance with the rules prescribed by the POC, not to admit such person to a PODC.

Section 37: The person receiving protection and occupational development must stay to receive the same in the PODC in accordance with the rules prescribed by the POC for a term of not more than two years from the date of admission of that person to a PODC.

Section 38: If any person, while under the care of the PAC or undergoing protection and occupational development in a PODC, escapes therefrom, the officials of the PAC or PODC have the power to pursue such person for the purpose of admitting such person to the PAC or PODC, as the case may be. For this purpose, the PAC or PODC may request assistance from the police. Upon the end of the term of protection and occupational development, the officials of the PAC or PODC are to send the admitted person back to his or her residence or domicile unless the POC considers it expedient to proceed otherwise.

The Prevention and Suppression of Human Trafficking Act BE 2551 (“Human Trafficking Act”)⁴³

Under the *Human Trafficking Act*, witnesses to or victims of human trafficking may be detained as witnesses for human trafficking cases. Section 29 of the Act provides for temporary detention for a period of not more than 24 hours or, with court permission, a maximum of seven days in a shelter or secure venue. Under Section 29, such detention may occur “[i]n case of necessity, for the purpose of fact finding in relation to human trafficking and security protection of a person, where there is reasonable grounds to believe that he or she is a victim of a human trafficking offense.”

Section 29 also provides that the performance of any duties under this section is to strictly take into account principles of human rights, but it does not provide any more detail regarding what those principles may be, in what manner they must be taken into account, or what the consequences might be for failing to do so.

⁴³ http://thailaws.com/law/t_laws/tlaw0380.pdf.

Section 33 of the Act provides for the provision of temporary shelter and other services for victims of human trafficking. Under this section, the Ministry of Social Development and Human Security is the agency to provide appropriate assistance to a victim of human trafficking for, among other things, food, shelter, medical treatment, physical and mental rehabilitation, legal aid, repatriation, and legal proceedings. In providing such assistance, the Ministry will take into account “human dignity and the differences in sex, age, nationality, race, and culture of the victim, and informing the victim of his/her rights to receive protection at each stage, whether before, during or after the provision of assistance, including the timeframe in giving assistance at each stage.” This section also provides that, under these circumstances, the opinion of the victim is to be taken into consideration beforehand.

Section 33 also stipulates that, in providing the assistance outlined above, officials may place the victim in the care of one of the shelters provided under the Prostitution Act (as described above) or other governmental or private welfare centers.

List of centers

There are both state-run and non-governmental shelters. The state-run facilities include the following nine protection and occupation development centers.

Protection and occupation development centers are operated by the Committee of the National Operation Center on Human Trafficking, Ministry of Social Development and Human Security under the Human Trafficking Law.⁴⁴

Name	Address	Contact
Kret Trakan Protection and Occupation Development Center	34/1 Moo 2, Kho Kret, Pak Kret, Nonthaburi 11120	Tel.: 0-2584-5115-6 E-mail: kredtrakarn@hotmail.com Website: www.kredtrakarnhome.com
Nari Sawat Protection and Occupation Development Center	1422 Suranarai Rd., Nai Mueang, Amphoe Mueang, Nakhon Ratchasima 30000	Tel.: 0-4423-0368, 0-44-25-5271 E-mail: bannaree@yahoo.com Website: www.baannaree.com
Song Khwae Protection and Occupation Development Center	492/4 Moo 17, Bang Rakam, Phitsanulok 65140	Tel.: 0-5527-9235, 0-5527-9236 E-mail: songkhawe@thaimail.com Website: www.songkhawehome.com
Si Surat Protection and Occupation Development Center	39 Moo 1, Surat-Na San Rd., Khun Talay, Amphoe Mueang, Surat Thani 841000	Tel.: 0-1894-0670 E-mail: bansrisurat@hotmail.com
Pathumthani Protection and Occupation	2/4 Moo 2 Rangsit Tanyaburi Pathumthani	Tel.: 0-2577-3826

⁴⁴ <http://www.m-society.go.th/>.

Name	Address	Contact
Development Center	Province 12110	
Songkla Protection and Occupation Development Center	215 / 7 Moo 1 Satingmor sub-district Singhanakon District Songkla Province 90280	Tel.: 0-7433-197
Chiangrai Protection and Occupation Development Center	230 Moo 2 Rongsearten Soi 3 Maekok Rd. Rimkok District Meaung Chiangrai 57100	Tel.: 0-5371-7704
Ranong Protection and Occupation Development Center	219/2 Moo 2 Prachapituk 1 Rd. ngav Meaung Ranong Province 85000	Tel.: 08-4860 3327, 077-813375
Pak Kred Reception Home for Boys (Bannpumvet)	2/2 Moo 1 Pumvet Rd. Bangtalad Pakkred Nontaburi 11120	Tel.: 02-5833500, 02-5838345 E-mail: pkrboyhome@dsw.go.th E-mail: phoomvet@hotmail.com Website: www.pkrboyhome.org

VIETNAM

Introduction

Sex work is prohibited in Vietnam. However, only those who harbor sex workers or those who entice or procure sex workers are subject to criminal charges. If an individual is arrested for either one of those charges, he or she will be prosecuted in accordance with Vietnam's *Penal Code* and *Criminal Procedure Code*, and if sentenced, will be sent to prison along with other types of criminals.

A sex worker who receives payment in exchange for his or her sexual services will not be charged in accordance with criminal laws. Instead, persons committing acts of prostitution are administratively sanctioned in accordance with the law.⁴⁵ If arrested, he or she will be released within 12 hours⁴⁶ and will not be subject to any measures such as being sent to detention or re-education centers.⁴⁷

Before the effective date of the 2012 *Law on Handling Administrative Violations* (i.e., July 1, 2013), sex workers were, depending on the nature and seriousness of their violations, subject to re-education at the local authorities or being sent to medical treatment centers.⁴⁸ Pursuant to such regulations, sex workers could be sent to medical treatment centers for re-education, medical checks, and vocational training. Such medical treatment centers were unofficially deemed to be places to “re-create dignity” for sex workers.

Under the *Ordinance on the Handling of Administrative Violations* (2002), sex workers aged 16 to 55 could be sent to medical treatment centers. However, the 2012 *Law on Handling Administrative Violations*, which replaces the Ordinance, has removed this measure. We believe the reason the authorities ceased sending sex workers to medical treatment centers was to “increase the application of social measures to the voluntary return of prostitutes.”

In practice, because of discrimination, many sex workers are not able to reintegrate into the community after being sent to re-education centers. Further, according to a report from the Standing Committee of the National Assembly, the regulations used for sending sex workers to medical institutions were removed to stop situations where sex workers were being sent to medical facilities even though they did not suffer from any diseases. Also, sending a sex worker to a medical facility was not the intent of the regulations. If the regulations were applied to sex workers who were not suffering from any disease, the regulations could be deemed as restraining their freedom. This consequence was deemed to be too severe and was not in proportion to the nature and extent of the violation. As a result, levying fines for sex workers according to the provisions of the *Ordinance on*

⁴⁵ Resolution No. 24/2012/QH13, Article 2.1.

⁴⁶ Per Article 114.1 of *Criminal Procedure Code*, 2015, which came into effect on January 1, 2018, the deadline for release is now 12 hours.

⁴⁷ *Criminal Procedure Code*, 2003, Article 83.1.

⁴⁸ Ordinance No. 10/2003/PL-UBTVQH11, Article 24.

Prostitution Prevention and Control was seen as the most appropriate response, and the National Assembly proposed removing the regulations for sending sex workers to medical institutions.

In Vietnam, individuals who violate laws relating to social order and safety or public security, but whose violations do not constitute crimes, may be subject to the following measures in addition to administrative sanctions:

- (1) re-education at the local authority;
- (2) being sent to a reformatory;
- (3) being sent to a compulsory re-education center; or
- (4) being sent to a compulsory detoxification center.

Measures (2), (3), and (4) could be considered as measures to gather offenders into re-education centers. To the best of our knowledge, the main purposes of these centers are re-education, the dissemination of law, and vocational training for such individuals with the goal of reintegrating them into their communities.

While compulsory detoxification centers are established by the people’s committee at the provincial level and are under the control of the provincial Department of Labor, Invalids and Social Affairs,⁴⁹ centers for compulsory re-education and reformatories are established by and under the control of the Ministry of Public Security.⁵⁰ The number of these centers varies according to the economic and social conditions of each city/province.

Legal aspects

Certain legal aspects of these centers and the process for sending offenders to these centers are described below.

General information

The table set forth below provides some general information about the re-education measures:

	Reformatories	Compulsory Re-education Centers	Compulsory Detoxification Centers
Subjects	Persons aged 12–14 who have intentionally committed acts with	Persons who have committed acts of infringing upon the	Drug addicts 18 years or older who have been subject to re-

⁴⁹ Decree No. 221/2013/ND-CP, Article 33.

⁵⁰ Decree No. 02/2014/ND-CP, Article 4.

	Reformatories	Compulsory Re-education Centers	Compulsory Detoxification Centers
	<p>signs of being very serious crimes as prescribed in the <i>Penal Code</i>;</p> <p>Persons aged 14–16 who have unintentionally committed acts with signs of being very serious crimes as prescribed in the <i>Penal Code</i>;</p> <p>Persons aged 14–16 who have intentionally committed acts with signs of being serious crimes as prescribed in the <i>Penal Code</i> and who have previously been subject to re-education at the local level; or</p> <p>Persons aged 14–18 who have, within six months, committed two or more acts of petty theft, petty swindling, petty gambling, or who have caused public disorder, but who are not liable to criminal prosecution and who have previously been subject to re-education at the local level.⁵¹</p>	<p>property of domestic or non-Vietnamese organizations or the property, health, honor and/or dignity of Vietnamese or non-Vietnamese individuals, breaking social order and safety habitually, with two instances or more within six months but not to the extent of being subject to criminal liability, and who have been subject to re-education at the local level, or have not yet been subject to the application of this measure and have no stable place of residence.⁵²</p>	<p>education at the local level but are still addicted, or who have not yet been subject to the application of this measure and have no stable place of residence.⁵³</p>

⁵¹ *Law on Handling Administrative Violations*, 2012, Article 92.

⁵² *Id.*, Article 94.

	Reformatories	Compulsory Re-education Centers	Compulsory Detoxification Centers
Exceptions	<p>Persons who lack the capacity for administrative liability;</p> <p>Pregnant women, as certified by a hospital;</p> <p>Mothers or sole nurturers of children under 36 months old, as certified by the commune-level people's committee where such person resides.⁵⁴</p>	<p>Persons who lack the capacity for administrative liability;</p> <p>Persons under 18 years old;</p> <p>Women over 55 and men over 60 years old;</p> <p>Pregnant women, as certified by a hospital;</p> <p>Mothers or sole nurturers of children under 36 months old, as certified by the commune-level people's committee where such person resides.⁵⁵</p>	<p>Persons who lack the capacity for administrative liability;</p> <p>Pregnant women, as certified by a hospital;</p> <p>Mothers or sole nurturers of children under 36 months old, as certified by the commune-level people's committee where such person resides.⁵⁶</p>
Duration of Stay	6–24 months ⁵⁷	6–24 months ⁵⁸	12–24 months ⁵⁹
Delay in executing a sentence	<p>Persons who have been sentenced but have not yet been sent to reformatories, compulsory re-education centers, or compulsory detoxification centers, may have the execution of their sentences delayed in the following cases:</p> <ul style="list-style-type: none"> • the person is seriously ill, as certified by a hospital; or • the person's family is dealing with special difficulties, as certified 		

⁵³ *Id.*, Article 95.

⁵⁴ *Id.*, Article 92.5.

⁵⁵ *Id.*, Article 94.2.

⁵⁶ *Id.*, Article 96.2.

⁵⁷ *Id.* Article 91.2.

⁵⁸ *Id.* Article 93.2.

⁵⁹ *Id.* Article 95.2.

	Reformatories	Compulsory Re-education Centers	Compulsory Detoxification Centers
	<p>by the president of the commune-level people's committee where such person resides.</p> <p>When the conditions for delaying the execution of a sentence no longer exists, the sentence will resume being executed.⁶⁰</p>		
Exemption from execution of a sentence	<p>Persons who have been sentenced but have not yet been sent to reformatories, compulsory re-education centers, or compulsory detoxification centers, may be exempted from the execution of their sentences in the following cases:</p> <ul style="list-style-type: none"> • the person is seriously ill, as certified by a hospital; • during the period of delay of execution of a sentence, the person has shown notable progress in observing the law or records merits or is no longer addicted to drugs; • the person is pregnant, as certified by a hospital.⁶¹ 		
Reduction of sentence	<p>If persons who are serving sentences at reformatories, compulsory re-education centers, or compulsory detoxification centers and who have served at least half of their terms, make notable progress or record merits, they are to be considered for a partial reduction of, or exemption from, serving the remainder of their sentence.⁶²</p> <p>If such persons are ill with serious diseases and must be sent back to their families for treatment, they will be temporarily suspended from serving their sentences. The duration of their medical treatment will count towards the duration of their sentences. If, after their recovery from their ailment, the remaining duration of their sentence is three months or more, such persons must continue to serve the balance of their sentences at the centers. If, during the temporary suspension of their sentences, such persons have made notable progress or recorded merits, they are to be considered for exemption from serving the remainder of their sentences. Persons suffering from serious illnesses and pregnant women are exempt from serving the remainder of their sentences.⁶³</p>		

⁶⁰ *Id.* Article 111.1.

⁶¹ *Id.* Article 111.2.

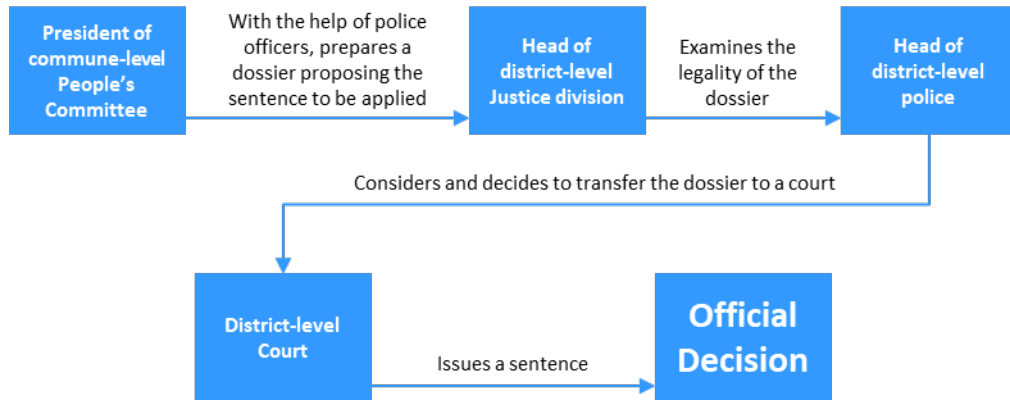
⁶² *Id.* Article 112.1.

⁶³ *Id.*, Article 112.2.

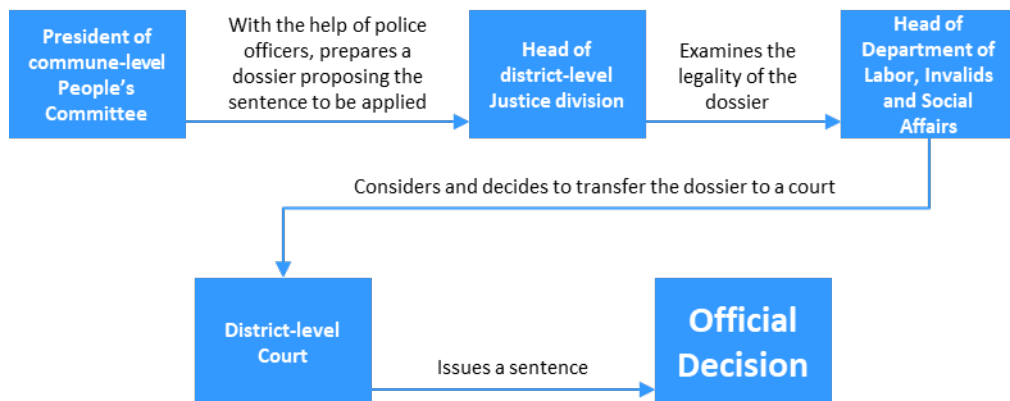
Legal process for sending violators to re-education centers

In general, a person is officially sent to a re-education center by a court decision only. Please see the following charts, which set forth the legal process for sending offenders to re-education centers or detoxification centers:

Process for sending offenders to Reformatories/Compulsory Re-education Centers



Process for sending offenders to Compulsory Detoxification Centers



DISCUSSION AND RECOMMENDATIONS

Discussion

The legal reviews find some commonalities among Cambodia, Myanmar, Thailand, and Vietnam. The laws in all four countries prohibit various aspects of sex work and law enforcement actions against sex workers are frequently carried out resulting in their arrest and detention. However, the reviews show that only Cambodia and Thailand impose compulsory detention for sex workers, while Vietnam closed down its compulsory detention centers for sex workers in 2012. In Myanmar, their establishment is being proposed in the new draft of the revised prostitution law.

Available evidence shows that detention centers for sex workers have led to an increase in human rights violations. Asia Catalyst's research on China's Custody and Education (C&E) system found that humiliation, physical and verbal abuse, and violence, including torture, underpinned the arrest and entire ensuing judicial process — *i.e.*, the investigations, convictions and detentions. Interviewees recounted unlawful gathering of evidence, forced stripping during arrest, beating, and electrocution to coerce confessions from sex workers. The experiences of detainees at the centers were also marked with multiple rights violations. This included forced labor without compensation, compulsory physical examinations, and forced testing for sexually transmitted infections (STI), without informing the detainees of the results. Moreover, detainees are required to pay the costs of living in the detention centers. The costs are expensive and have left many sex workers in debt. Other inhumane treatment included controlled toilet breaks that resulted in long-term medical disorders for some sex workers, as well as monitored communications with family and friends.⁶⁴

Until 2012, Vietnam held sex workers in similar centers called “05 centers.” These centers detained sex workers for periods ranging from three to 28 months. Detainees were forced into strict regimens, compulsory STI testing, as well as “political and ethical classes and vocational training.”⁶⁵

Similar abuses were documented in Prey Speu, a government social affairs center, which detains the so-called “undesirables,” including sex workers, drug users, homeless people and others arbitrarily arrested on the streets of Phnom Penh, Cambodia. Research found that staff at the center beat, raped, and mistreated detainees, including children. Detainees' movements were severely restricted, including being followed by guards when they used the toilets. Hygiene and sanitation standards were extremely low: they were allowed limited access to bathe in a pond and provided unclean drinking water and inadequate and low-quality food. The center provided very little or no health services,

⁶⁴ Asia Catalyst, *Custody and Education*.

⁶⁵ UNAIDS, UNDP, UNFPA, *Sex work and the Law in Asia Pacific*, 168–169 (2012). Available at <http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf>.

including basic healthcare needs. Anti-retroviral therapy and other HIV-related health services were not available.⁶⁶

These law enforcement actions and the detention of sex workers are usually arbitrary and lack legal basis. The detainees' procedural rights are often not respected: there is no effective hearing, no right to a defense, limited access to legal assistance, no external supervision, no trial, and a limited opportunity to challenge the arrest or detention. The lack of due process and the extrajudicial detention of sex workers are not only in violation of the countries' own laws, but are also illegal under international treaties or conventions to which these countries are signatories.

In addition, three out of the four countries under review associate sex work with trafficking in their legal framework and law enforcement actions. The conflation of trafficking with sex work undermines the security, health, and human rights of sex workers. It victimizes those who make conscious and rational decisions to cross borders to sell sex.⁶⁷ Law enforcement operations force these sex workers into one of two statuses: either they are illegal immigrants or illegal sex workers. They are detained in rehabilitation centers, deprived of the right to make their own decisions, and then deported.

Advocacy efforts are already underway in the region to close down these detention centers. In China, activists and lawyers launched several campaigns to urge the government to release information about the centers, and several proposals were submitted to the National People's Congress to abolish the centers. In Vietnam, after years of advocacy efforts by the UN and civil society groups, the government closed down the detention centers for sex workers in 2012. In Cambodia, advocacy by sex workers and human rights advocates resulted in the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSVY) to announce in July 2009 that sex workers would not be detained at the Prey Speu detention center. However, as recently as 2016, reports showed that Prey Speu remained open, sex workers were still being detained involuntarily, and the conditions at the center had not improved.⁶⁸ For Myanmar, where rehabilitation centers are being proposed in the new Prostitution Law, local groups should monitor how the law is implemented and how the centers operate and impact sex workers' human rights.

There is limited documentation on the conditions in the detention centers and how the detention process works generally. Further research is needed to document the treatment of sex workers and their experiences in those centers; also necessary is support for sex worker-led groups to conduct policy advocacy to protect their rights.

⁶⁶ Human Rights Watch, *Cambodia: Death Highlights Detention Center Abuses*, December 6, 2014. Available at: <http://www.hrw.org/news/2014/12/06/cambodia-death-highlights-detention-center-abuses>.

⁶⁷ Global Network of Sex Work Projects, "Briefing Paper #3: Sex work is not trafficking." Available at: http://www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking_Summary.pdf.

⁶⁸ Kong Meta and Audrey Wilson, "Phnom Penh sex workers stuck between Prey Speu and the street," *The Phnom Penh Post*, August 26, 2016. Available at <https://phnompenhpost.com/post-weekend/phnom-penh-sex-workers-stuck-between-prey-speu-and-street>.

Recommendations

Based on the research, Asia Catalyst makes the following recommendations to relevant stakeholders:

To governments, law enforcement, and policy makers:

- End criminalization of all aspects of sex work to protect sex worker health and well-being. Evidence has shown that criminalization is the primary cause of sex workers' vulnerability to ill health and violence.
- Review laws, such as those using condoms as evidence of sex work, which conflicts with and undermines sex worker healthcare access and policies to promote public health.
- Ensure that the implementation of anti-trafficking laws does not infringe upon the rights of adults to engage in consensual sex work.
- End campaigns that allow regular crackdowns on sex workers. End police extortion, abuse, and violence against sex workers. Investigate and punish officers who abuse or extort sex workers. Train law enforcement officials to recognize and uphold sex workers' human rights.
- Guarantee due process when sex workers and other vulnerable groups are arrested or charged.
- Halt any further admission of sex workers into compulsory detention centers, and work towards the closure of these centers. Establish judicial and other independent oversight of the process.
- Address the intersections of gender, sexuality, poverty and inequality that create lack of opportunity, stigmatization and discrimination against sex workers.

To the international community and donors:

- Provide technical support for governments to move away from criminalization of sex work and towards closure of compulsory detention centers.
- Invest in capacity-building for groups led by sex workers with sustained funding to advocate for their rights.
- Support community-led outreach, health, and legal services, and documentation and advocacy on human right abuses against sex workers.

To community-based and civil society organizations:

- Invest in educating communities about their rights and actions they can take in case of arrest and detention.
- Identify and build partnerships with legal organizations that can provide *pro bono* legal services for sex workers when they are arrested and/ or detained.
- Systematically document the arrests and/or detention of sex workers, and the impact of these arrests and other abuses.
- Strengthen community capacity to advocate for decriminalization and unify their efforts with other marginalized groups, by building and strengthening networks with people who use drugs, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, and others. Partner with leading human rights NGOs, legal aid providers and national women's groups to strengthen advocacy efforts on common goals.

ABOUT THE PUBLISHERS

About Asia Catalyst

Asia Catalyst promotes the rights of marginalized communities by supporting a vibrant network of advocates committed to ending stigma, discrimination, and criminalization. We strengthen civil society by providing training and resources for community based organizations to become more effective and responsive to community needs, and to conduct rigorous human rights documentation and advocacy. We work side by side with grassroots activists to ensure that their voices are fully represented in local, national, regional, and global policymaking.

About the Cyrus R. Vance Center for International Justice

The Vance Center advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession. The Vance Center is a unique collaboration of international lawyers catalyzing public interest innovation. A non-profit program of the New York City Bar Association, we bring together leading law firms and other partners worldwide to pioneer international justice initiatives and provide *pro bono* legal representation to social justice NGOs and others.