

**Building an Enabling Legal Environment for Cambodia's HIV  
Response:  
National Legal Review Report**

**14 November 2013**

**Review Conducted by:**

**John Godwin, International Consultant**

**Serey Phal, National Consultant**

**Commissioned by National AIDS Authority with Support from UNAIDS**

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## List of Acronyms

|         |                                                                                                  |
|---------|--------------------------------------------------------------------------------------------------|
| ACTED   | Agency for Technical Cooperation and Development                                                 |
| ARV     | Antiretroviral                                                                                   |
| ASEAN   | Association of South East Asian Nations                                                          |
| AUA     | ARV Users Association                                                                            |
| BC      | Bandanh Chaktomuk                                                                                |
| BCoPCT  | Boosted Continuum of Prevention to Care and Treatment for MARPs                                  |
| CARD    | Council for Agriculture and Rural Development                                                    |
| CBCA    | Cambodian Business Coalition on AIDS                                                             |
| CBO     | Community-based organization                                                                     |
| CCJAP   | Cambodia Community Justice Assistance Partnership                                                |
| CCW     | Cambodian Community of Women Living With HIV/AIDS                                                |
| CHEC    | Cambodian HIV/AIDS Education and Care                                                            |
| CPN+    | Cambodia People Living with HIV Network                                                          |
| CPU     | Cambodian Prostitutes Union                                                                      |
| CSSD    | Cooperation for Social Services and Developmentt                                                 |
| CWDA    | Cambodian Women's Development Agency                                                             |
| CWPD    | Cambodian Women for Peace and Development                                                        |
| DoSH    | Department of Occupational Safety and Health                                                     |
| ESCAP   | Economic and Social Commission for Asia and the Pacific                                          |
| HACC    | HIV/AIDS Coordinating Committee                                                                  |
| ILO     | International Labour Organization                                                                |
| KHANA   | Khmer HIV/AIDS NGO Alliance                                                                      |
| LGBT    | Lesbian, Gay, Bisexual and Transgender                                                           |
| MARP/s  | Most-at-risk population/s                                                                        |
| MoI     | Ministry of Interior                                                                             |
| MoInf   | Ministry of Information                                                                          |
| MoLVT   | Ministry of Labour and Vocational Training                                                       |
| MoNASRI | Ministry of National Assembly-Senate Relations and Inspection                                    |
| MoSVY   | Ministry of Social Affairs, Veterans, and Youth Rehabilitation                                   |
| MoWA    | Ministry of Women's Affairs                                                                      |
| MSIC    | Marie Stopes International Cambodia                                                              |
| MSM     | Men who have sex with men                                                                        |
| NAA     | National AIDS Authority                                                                          |
| NACD    | National Authority for Combatting Drugs                                                          |
| NCHADS  | National Centre for HIV/AIDS, Dermatology and STDs                                               |
| NGO     | Non-government organization                                                                      |
| NOVCTF  | National Orphans and Vulnerable Children Multisectoral Task Force                                |
| NSP III | National Strategic Plan for Comprehensive and Multisectoral Response to HIV/AIDS III (2011-2015) |
| OI      | Opportunistic infection                                                                          |
| OSH     | Occupational Safety and Health                                                                   |
| OVC     | Orphans and vulnerable children                                                                  |
| PCPI    | Police Community Partnership Initiative                                                          |
| PEP     | Post-exposure prophylaxis                                                                        |
| PLHIV   | People living with HIV                                                                           |
| PMTCT   | Prevention of Mother-to-Child Transmission                                                       |
| PSK/PSI | Population Services Khmer / Population Services International                                    |
| RoCK    | Rainbow Community Kampuchea                                                                      |
| SABC    | Solidarity Association of Beer Promoters in Cambodia                                             |
| SIT     | Save Incapacity Teenagers                                                                        |
| SOP     | Standard operating procedure                                                                     |
| SRH     | Sexual and reproductive health                                                                   |

|        |                                                                  |
|--------|------------------------------------------------------------------|
| STI    | Sexually transmitted infection                                   |
| TB     | Tuberculosis                                                     |
| TRIPS  | Trade-related Aspects of Intellectual Property Rights            |
| TSE    | Trafficking and Sexual Exploitation                              |
| USAID  | United States Agency for International Development               |
| UNAIDS | Joint United Nations Programme on HIV/AIDS                       |
| UNDP   | United Nations Development Programme                             |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| VC     | Vithey Chivit                                                    |
| VCCT   | Voluntary and Confidential Counselling and Testing               |
| WNU    | Women's Network for Unity                                        |
| WTO    | World Trade Organization                                         |

Note: In this report the term 'MARPs' (most-at-risk populations) is used to refer to entertainment workers who sell sex / sex workers and their clients, men who have sex with men (MSM), transgender people, and people who use or inject drugs.

## Executive summary

This report presents the key findings and recommendations of the review of Cambodia's legal framework and its impact on access to health and HIV prevention and treatment services for people living with HIV and most-at-risk populations (MARPs).

The National AIDS Authority (NAA) led the national review and consultation process with support from the Joint United Nations Programme on HIV/AIDS (UNAIDS). The review was conducted from September – November 2013. The review involved the following process:

- Literature review.
- Consultation meetings with government, development partners, NGOs, CBOs, people living with HIV and most-at-risk populations.
- Interviews with key informants.
- A National Legal Review Meeting, convened in Phnom Penh on 16-17 September 2013.
- Analysis of all inputs to define key recommendations.
- A meeting of the National Legal and Policies Technical Working Group convened on 4 November 2013 to review a draft version of this report and provide comments and additional recommendations.
- Finalization of the report.

The recommendations of the Global Commission on HIV and the Law were used as a key reference throughout the review process.

## Recommendations

To support a more enabling legal and policy environment for HIV responses it is recommended that the Royal Government of Cambodia in partnership with MARP communities, donors, UN partners including UNAIDS and its cosponsors consider the following actions:

### Updating the Law on the Prevention and Control of HIV/AIDS

- 1) Revise the Implementing Guidelines on the *Law on the Prevention and Control of HIV/AIDS* and consider updating the *Law on the Prevention and Control of HIV/AIDS* to take into account developments since 2002 including:
  - a. The change in the profile of the epidemic with an increased need to target MARPs, particularly MSM and transgender people, people who use or inject drugs, and entertainment workers/sex workers;
  - b. Recent policy developments, particularly the importance of alignment of the Village Commune Safety Policy with the scaled-up Police Community Partnership Initiative (PCPI), the Boosted Continuum of Prevention to Care and Treatment (BCoPCT) and adoption of harm reduction as national policy, ensuring key institutions are engaged in these developments (e.g. Cambodia Community Justice Assistance Partnership (CCJAP);
  - c. The need for law, policy and law enforcement practices to fully support 'Cambodia 3.0' objectives in relation to increased access to HIV services; and
  - d. The need to ensure members of the judiciary, police and health service providers receive training on the *Law on the Prevention and Control of HIV/AIDS*.

### **Village Commune Safety Policy and Police Community Partnership Initiative (PCPI)**

- 2) Develop a detailed national Implementing Guideline and training on HIV and the Village Commune Safety Policy that directly addresses the need to ensure police practices targeting MARPs do not undermine HIV or harm reduction responses.
- 3) Strengthen and expand PCPI to new provinces, based on national guidelines and training for PCPI currently being developed, and drawing on lessons learned from pilots and the MoI/FHI360 Baseline Survey, in particular the need to improve engagement of MARP representatives in coordination, improve the capacity of police to make referrals to services and improve police understanding of and support for harm reduction concepts.

### **Access to justice**

- 4) Support the expansion of access to justice and legal empowerment initiatives for people living with HIV and MARPs, drawing on lessons from the Community Legal Service for Entertainment Workers, other existing legal aid and legal information services, and the Toolkit for Scaling up Comprehensive Legal Services in the context of HIV being developed by CPN+ with support from UNAIDS and KHANA. These initiatives should include: expanded access to free or affordable legal advice and representation, paralegal services, legal and human rights education, legal advice hotlines and access to rapid response teams to address incidents of violence or other serious rights violations.
- 5) Strengthen the capacity of CBOs representing people living with HIV and MARPs to conduct legal and human rights advocacy and education on legal rights for their communities.
- 6) Assess the role and capacity of community justice mechanisms such as Commune Dispute Resolution Committees to address protection of people living with HIV and MARPs from human rights violations and to resolve HIV-related discrimination complaints.
- 7) Encourage the Commission on Human Rights of the National Assembly to engage in dialogue with community networks to address HIV-related discrimination at the national level through community education.
- 8) Include information on HIV and HIV-related laws in judicial education and training.

### **People living with HIV**

- 9) Update the *Law on the Prevention and Control of HIV/AIDS* and its Implementing Guidelines to:
  - a. Assign responsibility for handling complaints under the *Law on the Prevention and Control of HIV/AIDS* to government bodies with sectoral responsibilities in employment, education and health care and require reporting to NAA of the number of complaints received and how they were resolved. Priority should be given to ensuring an accessible and effective complaint-handling mechanism exists for addressing HIV-related health care complaints.
  - b. Prohibit discrimination against people living with HIV by law enforcement officers and in prisons and detention / rehabilitation centres.
  - c. Consider the removal of the HIV-specific criminal penalties for disease transmission and develop guidelines for court officials on the very limited circumstances of intentional and malicious conduct in which prosecutions of people living with HIV for disease transmission should be considered, noting that reported cases of intentional HIV transmission have been exceptional, that the *Penal Code* addresses sexual assaults and the importance of minimizing the risk of unfairly stigmatizing and discriminating against people living with HIV.

- 10) Review arrangements for HIV treatment and care provision to ensure all HIV-related primary care is provided for free through the public system including in remote areas as required by the *Law on the Prevention and Control of HIV/AIDS*, while ensuring respect for the confidentiality of people living with HIV.
- 11) Strengthen enforcement of the *Law on the Prevention and Control of HIV/AIDS* by educating people living with HIV and lawyers about rights under the Law and how to lodge complaints if violations occur, and educating health care workers, employers and schools about their responsibilities not to violate rights. Develop and disseminate a plain language guide to lodging complaints under the *Law on the Prevention and Control of HIV/AIDS*.
- 12) Integrate HIV and AIDS into the national and sub-national Plan of Law Dissemination, so as to promote understanding of the *Law on the Prevention and Control of HIV/AIDS* among duty bearers.
- 13) The MoLVT should distribute and reinforce the implementation of Prakas 086 and the MoLVT *Guidelines on HIV/AIDS in the Workplace* (2010). The MoLVT should promote the development of HIV/AIDS workplace policies in all sectors, covering the rights of paid and unpaid workers, and which address the participation of the private sector in the implementation of workplace policies, especially in casinos and industrial plantations.

#### **Entertainment workers / sex workers**

- 14) Give priority in legislation and policies to measures that empower entertainment workers / sex workers to protect themselves from HIV and STIs.
- 15) Provide training to police on the Ministry of Justice *Explanatory Notes* on the *Law on the Suppression of Human Trafficking and Sexual Exploitation* particularly in relation to prohibition on use of condoms as evidence, the legality of selling sex in private (which is legal between consenting adults), and the restrictive meaning of ‘soliciting’.
- 16) The Government should clarify that the *Village Commune Safety Policy* should not be used to justify detention or harassment of entertainment workers/sex workers.
- 17) Apply labour standards to provide workplace health and safety rights for entertainment workers and other persons who sell sex. Take all necessary measures to enable entertainment workers who sell sex and other sex workers to enjoy work-related protections, including access to HIV prevention information, condoms and protection from violence, abuse and discrimination, as well as access to care and treatment service packages. Such measures should take into account the need to address the rights of people who sell sex at or around entertainment establishments but who are not considered to be employees of the establishment.
- 18) Ensure that referral of sex workers to rehabilitation centres occurs on a voluntary basis, rather than by compulsion.

#### **MSM and transgender people**

- 19) The Ministry of Interior should issue a policy on sexual orientation and gender identity to address police abuses and discrimination by police against MSM and transgender people and provide instructions to police directing them to prevent and respond to incidents of violence against MSM and transgender people.
- 20) A law should be enacted to provide transgender people with identity rights recognizing change of gender. The law should give transgender people the right to have their affirmed gender recognized in identification documents, without the need for prior medical procedures.
- 21) Consider legislative and policy options for providing protections to MSM and transgender people from discrimination on the grounds of sexual orientation and

gender identity including in provision of health care services, employment and education.

#### **People who use / inject drugs**

- 22) Noting that possession of small amounts of illicit drugs for personal consumption does not cause serious social harm, the National Authority for Combatting Drugs (NACD) should clarify and strengthen a common understanding of the correct intent of *the Law on Control of Drugs 2012* at sub-national and local level that possession of small amounts of illicit drugs for personal consumption should not be penalized. To achieve this, NACD should issue an explanatory note and conducting training especially with law enforcement and local authorities.
- 23) NACD should play a leadership role in delivering harm reduction training to police and ensuring PCPI is expanded to support people who use drugs to access HIV and other health services.
- 24) While they are still operating, ensure residents of drug treatment and rehabilitation centres have access to HIV information and education, condoms, psychological and psychiatric care and support, evidence-based drug dependence treatment including pharmacotherapies such as methadone maintenance therapy, ARVs and treatment and care for opportunistic infections.
- 25) Phase out compulsory drug treatment and rehabilitation centres and increase access to voluntary, evidence-based drug treatment and harm reduction services in community settings consistent with international good practice. Promote the understanding of drug dependence as a health disorder, requiring a health and social sector response, undertaken within the community.

#### **Women and girls**

- 26) Issue instructions to health care workers prohibiting coercion of women and girls living with HIV to undergo sterilization or abortion and integrate them in the Guidelines on Prevention of Mother-to-Child Transmission (PMTCT) and related refresher trainings.
- 27) Issue a national policy on post-exposure prophylaxis (PEP) for survivors of sexual assaults to provide for free access to PEP services and appropriate health and non-health referral services.
- 28) Promote implementation of the *2nd National Action Plan to Prevent Violence Against Women* at district and commune level through an implementation plan that addresses the specific needs of female sex workers, females who use drugs, transgender women and women living with HIV.
- 29) Ensure MARPs who experience gender-based violence in domestic as well as non-domestic settings have access to legal protections and are aware of protections under the *Penal Code 2010* as well as the *Law on the Prevention of Domestic Violence and the Protection of the Victims 2005*.

#### **Children and young people**

- 30) Promote compliance with the legal requirements for birth registration to local authorities, parents, guardians and others to ensure universal birth registration at commune and village level.
- 31) Update the Social Protection Situation and Response Analysis and reinvigorate child protection efforts for OVC by strengthening provincial working groups and promoting the *Standards and Guidelines for the Care, Support and Protection for OVC* of MoSVY.
- 32) Update the *Implementing Guidelines for the Law on the Prevention and Control of HIV/AIDS* to reduce the age at which a person may consent to an HIV test without involvement of their parents to 15 years. The update should clarify that health care workers are under no obligation to seek parental consent to an HIV

test if the minor requests that the parents or guardians not be consulted, provided that the health care worker is of the opinion that a test is in the child's best interests and the child consents.

- 33) Update the National Youth Policy to specifically address the HIV and sexual and reproductive health (SRH) needs of young people living with HIV, young people who use drugs, and young people who are MSM or transgender or who sell sex.

#### **Prisoners and people in police custody**

- 34) Prohibit discrimination against people living with HIV by law enforcement officers and in prisons and detention / rehabilitation centres.
- 35) Expand and strengthen national implementation of the *Policy and SOP for HIV, STI, TB Prevention, Treatment, Care and Support in Prisons and Correction Centres 2012*.
- 36) Introduce a prison methadone maintenance programme (learning from the experiences of Indonesia and Malaysia).
- 37) Provide condoms in prisons and consider options for making bleach or other materials available to prisoners for sterilizing injecting equipment.
- 38) The Ministry of Interior should issue instructions to police to facilitate access to ARVs if access is requested by people living with HIV in police custody.

#### **Migrants and other mobile populations**

- 39) Ensure policies and advocacy efforts support cross-border and sub-regional coordination of delivery of healthcare to ensure continuity of supply of ARVs to migrants and mobile populations.
- 40) Ensure migrants working in Cambodia including undocumented migrants returning home, have access to information about HIV testing services and ARVs. Strengthen capacity of healthcare providers at the Department of Occupational Safety and Health (DoSH) of the Ministry of Labour and Vocational Training (MoLVT), which provides medical check-ups to migrant workers, to inform migrants on proper VCCT protocol and procedures and referral to HIV information and services.
- 41) Strengthen capacity of healthcare services especially along the Thai and Vietnam border to respond to HIV-related health care needs of migrants.
- 42) Engage in dialogue with other countries where significant numbers of Cambodians migrate for work to ensure access to HIV testing and ARVs and related health care services. This should include liaison with the Royal Government of Thailand to monitor implementation of HIV-related aspects of the new Thai national health care scheme for Cambodian migrant workers and their families.
- 43) Engage in dialogue with other countries to encourage removal of all HIV-related travel and migration restrictions, including the requirement of an HIV test or an HIV negative test result as a condition for work, study abroad or other migration reasons.

#### **Patents and Access to Medicines**

- 44) Ensure TRIPS flexibilities are fully addressed in intellectual property legislation so that access to medicines is not restricted when Cambodia commences recognition of pharmaceutical patents:
  - a. Enact the draft Law on Compulsory Licensing.
  - b. Amend Article 136 of the *Law on Patents, Utility Model Certificate and Industrial Design 2003* so as to extend the date of exclusion of pharmaceutical products from patent protection until 1st July 2021, unless Cambodia graduates from being a least developed country to being a lower-middle income country before that date.

- c. Not agree to trade or investment agreements that impose ‘TRIPS plus’ requirements.
- d. Review the existing provisions of the *Law on Patents, Utility Model Certificate and Industrial Design 2003* to remove any TRIPS- plus provisions including criminalization of pharmaceutical patent infringements.

**Implementation of recommendations**

- 45) The capacities of rights holders (particularly people living with HIV and MARPs) and duty bearers (including MoH, MoI, MoLVT and other relevant ministries) should be strengthened in addressing legal and policy issues. Regular dialogue between duty bearers and rights holders should occur focused on resolving challenging legal and policy issues.
- 46) Institutional, technical and funding support should be made available for critical players in translating the recommendations of this National Legal Review report into action.

# 1 Introduction

## 1.1 Objectives and Method

This report provides findings and recommendations from the National Review of Cambodia's legal framework and its impact on access to health and HIV prevention and treatment services for people living with HIV (PLHIV) and most-at-risk populations (MARPs). The National Review was conducted from September – November 2013.

The objectives of the National Review were:

- to analyze the legal environment (including laws, policies, law enforcement practices and access to justice) and assess its impact on access to and uptake of HIV prevention, treatment, care and support services by people living with HIV and key HIV-affected populations; and
- to make concrete recommendations for removing legal and policy barriers to improve the enabling environment for HIV responses.

The National AIDS Authority (NAA) led the National Review and consultation process. The National Review involved the following process:

- Literature review.
- Consultations with NGOs, development partners, people living with HIV and most-at-risk populations.
- National legal review meeting, convened in Phnom Penh on 16-17 September 2013, which focused on validation of consultation findings and prioritization of issues.
- Interviews with key informants.
- Analysis of all inputs to define key recommendations. The analysis also required assessing the compliance of Cambodia with the recommendations of the Global Commission on HIV and the Law.<sup>1</sup> A table summarizing findings of this assessment is included in Annex II of this report.
- A meeting of the National Legal and Policies Technical Working Group convened on 4 November 2013 reviewed a draft version of this report and provided comments and additional recommendations.

## 1.2 Background

The National Review was conducted to support the Royal Government of Cambodia in meeting its international commitments, in particular:

- The commitments made at the High-Level Meeting on HIV/AIDS as set out in the *UN Political Declaration on HIV/AIDS* (2011), which commits States to reviewing laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programs to people living with and affected by HIV;<sup>2</sup>
- The Millennium Development Goals (MDGs), which commit States to support universal access to HIV services (MDG6); and
- Resolutions of the UN Economic and Social Commission for Asia and the Pacific (ESCAP) meeting, which commit States to conduct national reviews of HIV-related laws and policies.<sup>3</sup> ESCAP *Resolution 66/10* of 2010 commits States to: "...ground universal access in human rights and undertake measures to address stigma and

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<sup>1</sup> Global Commission on HIV and the Law (2012). *Risks, rights and health*, New York: UNDP.

<sup>2</sup> Resolution adopted by the UN General Assembly, 65/277. *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, A/65/L.77, Clause 78.

<sup>3</sup> The Regional Framework to implement the UN *Political Declaration on HIV/AIDS* of 2011 was agreed at the 68<sup>th</sup> ESCAP meeting.

discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations”. ESCAP *Resolution 67/9* of 2011 commits States to: “... a review of national laws, policies and practices to enable full achievement of universal access with a view to eliminating discrimination against people at risk of infection or living with HIV, in particular key affected populations.”

Cambodia’s *National HIV/AIDS Strategic Plan 2011-2015* (NSP III)<sup>4</sup> includes the strategy of ensuring a supportive legal and public policy environment for the national HIV response. The National Review contributes to the mid-term review of the National Strategic Plan III (2011-2015) and supports implementation of the ‘Cambodia 3.0 Strategy’, which aims to eliminate new HIV transmissions by 2020.

This review will also assist the Royal Government of Cambodia to implement the HIV-related components of the *National Strategic Development Plan 2014-2018* of the Ministry of Planning.

## 2 Cross-cutting themes

### 2.1 Update and strengthen enforcement of protective laws and policies

The National Review confirmed that Cambodia has many existing protective laws and policies that contribute to an enabling environment for HIV responses. The most important law is the *Law on the Prevention and Control of HIV/AIDS* of 2002<sup>5</sup> and its Implementing Guidelines. The *Law on the Prevention and Control of HIV/AIDS* provides a strong human rights-based framework but it does not take into account developments since 2002. These developments include:

- changes in the epidemiological profile of the epidemic to a more concentrated epidemic among MARPs;
- adoption of harm reduction as national policy;
- and the need for alignment of the Village Commune Safety Policy with the Police Community Partnership Initiative (PCPI), and the Boosted Continuum of Prevention to Care and Treatment for MARPs (BCoPCT)).

Further, there are significant gaps in implementation and enforcement of the *Law on the Prevention and Control of HIV/AIDS* and other protective policies and laws. Health care workers, employers and service providers need to be educated about their legal responsibilities not to discriminate. People living with HIV require information about the practical steps to be taken if their rights are violated. MARPs require avenues for redress, for example if they experience police abuses or discrimination by health care workers.

Cambodia is a signatory to international human rights treaties including the *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, *Convention on the Rights of the Child*, *Convention on the Rights of Persons with Disabilities* and the *Convention on the Elimination of all forms of Discrimination Against Women*. These treaties establish legally binding obligations on States that are parties to the treaties. The application of international human rights treaties to HIV has been considered in detail by a range of UN Committee reports.<sup>6</sup> Further, the *Constitution of the*

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<sup>4</sup> National AIDS Authority (2011). *National Strategic Plan for Comprehensive and Multisectoral response to HIV/AIDS III (2011-2015)*.

<sup>5</sup> *Law/Kram No. NS/RKM/0702/015 of 10 July 2002 on the Prevention and Control of HIV/AIDS*, available at: [http://www.ilo.org/aids/legislation/WCMS\\_113128/lang--en/index.htm](http://www.ilo.org/aids/legislation/WCMS_113128/lang--en/index.htm).

<sup>6</sup> See e.g. Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, U.N. Doc. E/C.12/2000/4 (2000); Committee on the Rights of the Child, 32nd session, 13-31 January 2003, *General Comment No. 3 (2003). HIV/AIDS and the rights of the child*; Committee on

*Kingdom of Cambodia* recognizes all of the human rights guaranteed by the United Nations Charter, the *Universal Declaration of Human Rights*, and the covenants and conventions related to human rights.<sup>7</sup> Periodic systematic reviews of laws and policies to ensure compliance of Cambodia with treaty obligations relating to HIV (as defined by the relevant UN Committees) would ensure laws and policies meet international standards of human rights protection consistent with the Royal Government of Cambodia's commitments and obligations. The conduct of such reviews of HIV-related laws and policies can be incorporated into Cambodia's regular treaty reporting obligations.

## 2.2 Resolve conflicts between the Village Commune Safety Policy and HIV initiatives

The Ministry of Interior's Village Commune Safety Policy (2010) urges authorities at the village / commune level to ensure that there is no drug production or dealing, prostitution or child trafficking, and other prescribed crimes. The consultations and National Legal Review Meeting confirmed that the implementation of the Village Commune Safety Policy presents obstacles to effective HIV responses with MARPs. Other related policies that emphasize public order, such as the Clean Cities Policy, can also result in police action targeting MARPs that can interfere with health promotion efforts. Points made at the National Legal Review Meeting included:

- The Village Commune Safety Policy has support from local village communities because it keeps the streets quiet at night, but enforcement of the Policy has led to concerns from health workers that their ability to reach MARPs is undermined if MARPs are being forcibly removed or dispersed. There can be tension between the duty of police to ensure public order and the concerns of health authorities. Poor relationships between local police and MARP communities disrupt peer outreach and MARPs might avoid services if they fear arrest or stigma.
- Sometimes enforcement of the Policy results in the arrest of people who use drugs, entertainment workers and MSM who are found on the streets or in parks late at night. Local police implementing the Clean City policy sometimes also target MARPs when towns are competing for country honors ('clean tourist' locations, such as Wat Phnom or Wat Botum Park). When Phnom Penh hosted the ASEAN summit, police took action to remove people from certain areas. There have been reports of police abuses affecting MARPs such as verbal abuse and physical assaults, including gang rape of entertainment workers.
- Some police have judgmental attitudes and make generalizations about MARPs, assuming if one person is guilty then they are all guilty of a crime.

To address concerns about the harms to HIV responses caused by police practices, policy initiatives have been introduced including the PCPI and BCoPCT. Government agencies (NAA, Provincial AIDS Committees, Ministry of Interior, Local Authorities, and the National Centre for HIV/AIDS, Dermatology and STDs (NCHADS) now actively support and promote the policy that police must not obstruct HIV prevention or treatment interventions and must not confiscate condoms. NCHADS developed *Standard Operating Procedures (SOP) for a Continuum of Prevention to Care and Treatment for Female Entertainment Workers* in 2009.

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the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health* (art. 24), U.N. Doc. CRC/C/GC/15; Committee on the Elimination of Discrimination against Women, *General Recommendation 15: Avoidance of Discrimination against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS)*, U.N. Doc. A/45/38 (1990); Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health*, U.N. Doc. A/54/38/Rev.1 (1999).

<sup>7</sup> Article 31. Cambodia's Constitutional Council decision No 092/003/2007 found that Cambodian law includes the international human rights treaties to which Cambodia is party and that arguments based on treaty obligations can be raised in domestic court proceedings to inform interpretation of domestic laws, see: Ministry of Justice (2013), *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation*, p.12.

The *Boosted Continuum of Prevention to Care and Treatment for MARPs* updated the SOP and is also applied to MSM, transgender people, and people who use drugs.

Participants in the consultations and National Legal Review Meeting urged the government to strengthen implementation of PCPI and the BCoPCT to enable HIV prevention and harm reduction programmes to operate more effectively through collaboration between MARPs, the government, law enforcement agencies and NGOs. These collaborative efforts should aim to enhance the ability of law enforcement agencies to support and facilitate HIV prevention programmes.

### 2.3 Strengthen and expand the Police Community Partnership Initiative

Consultations identified PCPI as a positive initiative that needs to be expanded beyond the limited locations<sup>8</sup> where it is currently being implemented.

The management framework for the PCPI engages representatives of local authorities, police, health care workers, civil society organizations and MARPs. The aim is to ensure an enabling environment for coordinated implementation of HIV prevention and treatment services and non-health-related services for entertainment workers, MSM, transgender people and drug users. PCPI training has been developed that clarifies implementation of the Village Commune Safety Policy, the *Law on the Suppression of Human Trafficking and Sexual Exploitation* and the concerns of people living with HIV and MARPs.

PCPI aims to provide a supportive environment through teams operating at the local level made up of community representatives, local authorities, law enforcement officials, health and paralegal workers and local service NGOs for the delivery of HIV and related services. Some aspects of Legal services as well as health and social services are included in the PCPI design. The Ministry of Interior and FHI360<sup>9</sup> have piloted PCPI in several localities including Banteay Meanchey Province. The pilots were fund to have strengthened collaboration among Provincial AIDS Committees, local authorities, police, military police, development partners, NGOs and MARPs. Local authorities, health care providers and NGO staff conducted sensitization information sessions for the police on the HIV prevention needs of MARPs and the role of the police in supporting HIV prevention efforts.

PCPI creates partnerships through capacity building and facilitates dialogue and problem solving during coordination meetings at community level. The process entails a series of sensitization workshops and trainings, co-facilitated by government and implementing NGO partners. Police then conduct coordination meetings every two months at post level and quarterly meetings at sub-district and municipal levels to address barriers to HIV efforts

The Ministry of Interior and FHI360 reported that positive changes were seen in Banteay Meanchey as a result of PCPI. More than 300 people who use drugs reported accessing services without fear of police, police no longer used possession of condoms as evidence for arrest and condom displays in entertainment venues were visible. Police were found to be discussing drug related arrests more carefully with other service providers, resulting in the police distinguishing drug dealers from drug users and then releasing drug users back to the community.<sup>10</sup> Findings from this pilot indicate that PCPI has improved police attitudes towards MARPs and reduced fear of police among MARPs. There has been an increase in the utilization of HIV services, better communication between the police and concerned partners,

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<sup>8</sup> Phnom Penh, Siem Reap, Banteay Mean Chey, Battambang, Sihanoukville, Kampong Cham and Kandal were the initial sites selected for implementation of PCPI.

<sup>9</sup> FHI360 is supported by AusAID's HIV/AIDS Asia Regional Project (HAARP), USAID and the Global Fund.

<sup>10</sup> Thomson N., Supheap Leang, Kannarath Chheng, Weissman A., Shaw G., Crofts N. (2012), The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: finding a balance, *Harm Reduction Journal*, 9:31.

and confidence amongst entertainment establishment owners to cooperate with NGO partners in providing condoms.<sup>11</sup>

Although there has been progress at the Banteay Meanchey pilot sites, a PCPI Baseline Survey report published in 2013 illustrates ongoing challenges for PCPI in Phnom Penh. The Survey found that police attitudes remain inconsistent with a harm reduction approach to HIV prevention.<sup>12</sup> 94 per cent of police believed arresting and detaining MARPs was an appropriate solution for reducing HIV and drug use. A high proportion of police believed that MARPs should be arrested for using drugs (97 per cent), selling sex (88 per cent) and carrying needles and syringes (55 per cent). Further, 63 per cent of police reported making an arrest for drug use at last arrest. These results indicate that police in Phnom Penh are not making the distinction between drug users and drug dealers when identifying people for arrest.

73 per cent of police reported conducting personal searches of MARPs to look for condoms, needles and syringes and illicit drugs in the past six months.<sup>13</sup> One quarter of MARPs reported being verbally threatened or body searched in the past six months. 13 per cent of entertainment workers reported being forced to pay money to avoid arrest or harassment, and 5 per cent reported exchanging sex with police to avoid arrest or harassment. The Phnom Penh study also found that levels of fear among MARPs remain high with regard to carrying condoms, needles and syringes, and accessing health services.

The Baseline Survey made the following recommendations for strengthening the PCPI:<sup>14</sup>

- Advocate for the need to differentiate drug users from drug dealers when making arrests during police training (given high rates of arrest of MARPs for drug use and low rates of referrals to services by police).<sup>15</sup>
- Ensure participation of all MARP groups in PCPI coordination meetings.
- Broaden the participation in PCPI meetings to include all relevant stakeholders who can improve access to services including NGOs, government and local authorities, and provide comprehensive information at meetings on the range of health services, prevention programmes and legal assistance available to MARPs
- Improve understanding of the harm reduction approach among law enforcement officers, explaining the benefits and the various mechanisms of harm reduction (especially needle and syringe programmes and methadone maintenance therapy).
- Improve the ability of police and MARPs to make referrals to needle and syringe programmes and the methadone clinic (current referral rates were found to be low and the methadone programme is not operating at full capacity).
- Improve dissemination of information following PCPI coordination meetings.

Consultations and the National Legal Review Meeting identified the following issues and priorities:

- Although PCPI is a good policy, it is challenging to implement and difficult to achieve full cooperation from all relevant local authorities. For example, PCPI meetings at district level are sometimes too brief to allow adequate time to discuss or report current issues. PCPI needs to be expanded but this means to do it with higher political priority.
- Education is required of local authorities, law enforcement officers and MARPs on the Explanatory Notes regarding the implementation of the *Law on Suppression of*

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<sup>11</sup> UNAIDS/UNDP submission to UN Community of Practice, July 2013.

<sup>12</sup> Ministry of Interior and FHI360 (2013). *Baseline Survey on the Enabling Environment for Most At Risk Populations in Phnom Penh, Cambodia 2012*. Phnom Penh: FHI360.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p.30.

*Human Trafficking and Sexual Exploitation*, BCoPCT and other laws and policies that protect MARPs from police abuses.

- Participants confirmed that PCPI has been effective in reaching high-ranking officials in the Ministry of Interior and the Police, the Drug Control Department and the Anti-Human Trafficking Department, but has been less effective in reaching lower ranking officials and field level police personnel.

## 2.4 Expand Access to Justice Initiatives

Participants at consultations and the National Legal Review Meeting identified the need for expanded access to legal information, advice and representation services for people living with HIV and MARPs. A small scale Community Legal Service for Entertainment Workers has been operating in Phnom Penh.<sup>16</sup> However, apart from this service there are very limited options available for free or affordable legal advice and representation for issues such as police abuses, violence protection and discrimination complaints. The legal aid services provided by the Bar Association of Cambodia are under-funded, and are not known to have any experience of addressing HIV-related issues. Legal services are predominantly provided by NGOs for specific issues and in targeted areas. To inform efforts to develop new legal service options to address HIV-related legal problems, a *Toolkit for Scaling up Comprehensive Legal Services in the context of HIV* is being developed by CPN+ with support from UNAIDS and KHANA.

CBOs and NGOs provide advocacy support but have limited access to professional legal services. CBOs that play an advocacy role on human rights issues include: the Cambodia People Living with HIV/AIDS Network (CPN+); Rainbow Community Kampuchea (RoCK) and the national MSM network, Bandanh Chaktomuk (BC); and sex workers' organizations including the Women's Network for Unity (WNU), Cambodian Prostitutes Union (CPU) and the Cambodian Women for Peace and Development (CWPD).

Community justice mechanisms focus on encouraging dialogue between the offender and the victim to resolve issues outside of the formal court system. Community justice mechanisms may be effective to address some HIV-related problems, such as some forms of discrimination perpetrated due to ignorance or prejudice by health care workers or in schools. However, community justice mechanisms can also be problematic in some cases of serious rights violations, particularly where gender-based violence has occurred. Incidents such as rape and other sexual assaults should, as a matter of practice, always be referred to police and the courts to ensure justice for and safety of victims (e.g. rape). Some MARPs may find it difficult to raise issues at community level. For example, people who use drugs are often perceived as a public safety problem and the high degree of stigma associated with drug use may mean that community justice mechanisms do not address their concerns fairly or effectively.

Consultations and the National Legal Review Meeting identified the following issues and priorities:

- Expanded access to telephone hotline services is important to address urgent matters that arise particularly in relation to violence and police abuses;
- In addition to legal advice and representation, communities need training in the law and human rights so that they can understand their legal rights and advocate for themselves and their peers if a lawyer is not available;
- Existing community justice mechanisms could be used for resolving some HIV-related complaints; and

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<sup>16</sup> A joint partnership of UNAIDS, ILO, OSI, AIDS Fonds, and the Michel Kirby Centre

- MARPs should be supported to monitor human rights abuses and to systematically document cases so that a record exists that can be used for advocacy to prevent further abuses.

## 2.5 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia in partnership with MARPs, NGO Partners, donors and the UN should:

- (i) Revise the Implementing Guidelines on the *Law on the Prevention and Control of HIV/AIDS* and consider updating the *Law on the Prevention and Control of HIV/AIDS* to take into account developments since 2002 including:
  - a. The change in the profile of the epidemic with an increased need to target MARPs particularly MSM and transgender people, people who use or inject drugs, and entertainment workers/sex workers;
  - b. Recent policy developments, particularly the importance of alignment of the Village Commune Safety Policy with the scaled-up Police Community Partnership Initiative (PCPI), BCoPCT and adoption of harm reduction as national policy, and the importance of ensuring key institutions are engaged in these developments (e.g. CCJAP)<sup>17</sup>; and
  - c. The need for law, policy and law enforcement practices to fully support ‘Cambodia 3.0’ objectives in relation to increased access to services.
  - d. The need to ensure members of the judiciary, police and health service providers receive training on the *Law on the Prevention and Control of HIV/AIDS*.
- (i) Develop a detailed national Implementing Guideline on HIV and the Village Commune Safety Policy that directly addresses the need to ensure police practices targeting MARPs do not undermine HIV or harm reduction responses.
- (ii) Strengthen and expand PCPI to new provinces, based on national guidelines and training for PCPI currently being developed, and drawing on lessons learned from pilots and the MoI/FHI360 Baseline Survey, in particular the need to improve engagement of MARP representatives in coordination, improve the capacity of police to make referrals to services and improve police understanding of and support for harm reduction concepts.
- (iii) Support the expansion of access to justice and legal empowerment initiatives for people living with HIV and MARPs, drawing on lessons from the Community Legal Service for Entertainment Workers, other existing legal aid and legal information services, and the Toolkit for Scaling up Comprehensive Legal Services in the context of HIV being developed by CPN+/KHANA with support from UNAIDS. These initiatives should include: expanded access to free or affordable legal advice and representation, paralegal services, legal and human rights education, legal advice hotlines and access to rapid response teams to address incidents of violence or other serious rights violations.
- (iv) Assess the capacity of existing community justice mechanisms such as Commune Dispute Resolution Committees to address protection of MARPs from human rights violations and to resolve HIV-related discrimination complaints.
- (v) Encourage the Commission on Human Rights of the National Assembly to engage in dialogue with community networks to address HIV-related discrimination at the national level through community education.
- (vi) Include information on HIV and HIV-related laws in judicial education and training.

<sup>17</sup> The Cambodia Community Justice Assistance Partnership (CCJAP) is a joint programme of the Ministry of Interior and the Government of Australia that provides assistance to legal and judicial reform. It was previously known as the Cambodia Criminal Justice Assistance Project.

- (vii) Provide resources for implementation of the findings of this National Legal Review, noting:
- a. The capacities of rights holders (particularly people living with HIV and MARPs) and duty bearers (including MoH, MoI, MoLVT and other relevant ministries) should be strengthened in addressing legal and policy issues. Regular dialogue between duty bearers and rights holders should occur focused on resolving challenging legal and policy issues.
  - b. Institutional, technical and funding support should be made available for existing mechanisms especially the National Legal and Policies Technical Working Group as a critical player in prioritizing and translating the recommendations of this National Legal Review report into action.

### 3 People living with HIV

#### 3.1 Context

##### ***The Law on the Prevention and Control of HIV/AIDS***

The *Law on the Prevention and Control of HIV/AIDS* (2002) includes wide-ranging provisions on public health measures and human rights protections for people living with HIV. The *Law on the Prevention and Control of HIV/AIDS* has contributed to broader efforts to reduce stigma and discrimination by promoting non-discriminatory attitudes and practices.

The *Law on the Prevention and Control of HIV/AIDS* prohibits acts of discrimination against people living with HIV or people suspected of having HIV and their families in the following areas: health care, employment, education, housing, freedom of movement, credit, loans, insurance and in seeking public office. These provisions address direct discrimination against people living with HIV, and in addition compulsory HIV testing is specifically prohibited as a condition of employment, admission to educational institutions, housing, travel, and provision of medical services or other services.<sup>18</sup> However, it is unclear from the wording of the relevant provisions whether other cases of ‘indirect’ discrimination are illegal. Indirect discrimination arises where a rule is applied that is not specifically directed against people living with HIV, but which nonetheless indirectly disadvantages people living with HIV, such as workplace rules or conditions that apply to all workers. The application of the *Law on the Prevention and Control of HIV/AIDS* to cases of indirect discrimination could be clarified in updated implementing guidelines.

Breach of confidentiality of HIV-related information is also illegal. There is no specific offence for discrimination by law enforcement officers or in prisons or detention centres.

The Law requires HIV tests must be done with voluntary and informed consent.<sup>19</sup>

The State is required to ensure that people living with HIV receive primary health care services free of charge.<sup>20</sup>

Intentional transmission of HIV to other people is prohibited and a penalty of between 10 and 15 years imprisonment applies.<sup>21</sup>

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<sup>18</sup> Article 20.

<sup>19</sup> Article 19.

<sup>20</sup> Article 26.

<sup>21</sup> Articles 18 and 50.

### **Other legal redress mechanisms for people living with HIV**

The *Constitution of the Kingdom of Cambodia* recognizes all of the human rights guaranteed by the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights. The Human Rights Committee of the Royal Government of Cambodia may investigate complaints of violations, however there are no reports of the use of this mechanism to address HIV-related complaints. People living with HIV may lodge a complaint through the court system, however this is complex and difficult for poor people to access due to cost factors. The Commission on Human Rights of the National Assembly has a role in community education and promoting compliance with human rights obligations.

The *Penal Code* (2010) prohibits discrimination on the grounds of disability, health status and gender.<sup>22</sup>

### **Promotion and enforcement of the *Law on the Prevention and Control of HIV/AIDS***

The Cambodia National Stigma Index study conducted in 2010 found that HIV-related stigma and discrimination are widespread in Cambodia. Findings of the study included:<sup>23</sup>

- 17 per cent of people surveyed reported discrimination as a factor in loss of work;
- 10 per cent were denied access to sexual and reproductive health service;
- 6 per cent reported breach of confidentiality by health care services;
- 12 per cent experienced being forced to change place of residence or unable to rent accommodation because of their HIV status;
- 9 per cent reported that children were dismissed, suspended or prevented from attending schools because of their parents' HIV status; and
- 4 per cent of respondents were denied health services including dental care.<sup>24</sup>

These findings suggest that more needs to be done to promote awareness of and compliance with the *Law on the Prevention and Control of HIV/AIDS*.

Although, in theory, violations of this Law can be addressed through administrative or criminal law sanctions, enforcement of the human rights provisions of the *Law on the Prevention and Control of HIV/AIDS* through the courts has not occurred to date, and it is not known whether administrative action has been taken to address violations of this law. The only court action taken under the *Law on the Prevention and Control of HIV/AIDS* is understood to have been the prosecution of a person for intentional HIV transmission.<sup>25</sup>

A person who commits discrimination may be fined or imprisoned for between one month and six months. Professional licenses may also be revoked and civil servants may be penalized by administrative sanctions.<sup>26</sup> In order to commence legal proceedings, evidence of a breach of the relevant section of the Law must be presented to a court prosecutor, for decision as to whether legal proceedings against the alleged perpetrator will be commenced.

NAA published detailed *Implementing Guidelines* for the *Law on the Prevention and Control of HIV/AIDS* in 2005.<sup>27</sup> The Guidelines provide specific detail on the responsibilities of people and institutions to implement the law and to increase awareness and understanding of the law. In 2009, the National Assembly published a *Parliamentary Handbook on HIV/AIDS*,

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<sup>22</sup> Article 265.

<sup>23</sup> Based on interviews with 399 people living with HIV,

<sup>24</sup> Cambodian People Living With HIV Network (2010). *People living with HIV Stigma Index. HIV-related stigma & discrimination in Cambodia: Summary of recent findings*.

<sup>25</sup> IRIN News (2006), Court ruling under HIV/AIDS law upholds women's rights, see: <http://www.irinnews.org/report/60180/cambodia-court-ruling-under-hiv-aids-law-upholds-women-s-rights>

<sup>26</sup> Article 52.

<sup>27</sup> National AIDS Authority (2005) *Implementing Guidelines of the Law on the Prevention and Control of HIV/AIDS*, Phnom Penh: National AIDS Authority and the Policy Project.

which encourages parliamentarians to play a leadership role in advocating implementation of the *Law on the Prevention and Control of HIV/AIDS*.<sup>28</sup>

Little analysis has occurred as to the reasons for the lack of court actions to enforce the human rights protections of the Law. Limited access to legal advice services and concerns about the complexity, costs and publicity associated with court actions may be factors.

### **HIV/AIDS in the workplace**

After the *Law on the Prevention and Control of HIV/AIDS* was enacted, additional regulations (*Prakas* – regulations issued by the relevant Minister) were issued to support implementation of the *Law on the Prevention and Control of HIV/AIDS* in the context of employment. The *Prakas 086 on the creation of the HIV/AIDS committee in enterprises and establishments and the prevention of HIV/AIDS in the workplace* issued by the Minister of Labour and Vocational Training in 2006 aimed to stimulate discussion, raise awareness and promote workers' education on HIV prevention in the workplace. Enterprises are required to establish HIV/AIDS Working Groups or HIV/AIDS Committees and to promote respect for the human rights and dignity of persons infected or affected by HIV/AIDS as guided by the ILO *Code of Practice on HIV/AIDS in the World of Work* (2001). The Ministry of Labour and Vocational Training also developed *Guidelines on HIV/AIDS in the Workplace* (June 2010) to promote compliance with *Prakas 086* and the relevant provisions of the *Law on Prevention and Control of HIV/AIDS*.

*Prakas 086* facilitated access to HIV awareness, programmes and services in large-scale enterprises such as garment factories and in other sectors. In 2011, the Ministry of Labour and Vocational Training (MoLVT), with support from the ILO, agreed to expand efforts on *Prakas 086* to entertainment establishments, including to casinos in border areas. HIV/AIDS Committees have the potential to play an active role in facilitating a supportive environment and access to HIV information and other HIV-related services (including legal services) for entertainment workers.

## **3.2 Issues raised during consultations and National Review Meeting**

Participants at the consultations and National Legal Review Meeting highlighted the following issues and priorities relating to the rights of people living with HIV:

- Despite the existence of legal protections, discrimination affecting people living with HIV is widespread. Examples include the common practice of charging people living with HIV higher fees for some surgical services to cover infection control costs, refusal of a hospital to provide care to a pregnant woman on the grounds of her HIV status, and employment discrimination such as dismissal from a restaurant position. Stigma and discrimination in health care arises because of ignorance and prejudicial attitudes of some health care workers towards MARPs and poor people. Discrimination drives MARPs away from services, employment, family and education and as a result MARPs face more risks of infection. Discrimination impacts on social relationships and income security.
- Further focused work is required to understand barriers to the implementation of the *Law on the Prevention and Control of HIV/AIDS* and the reasons why it has not been enforced through prosecutions or other action. This included exploring how to promote this Law more effectively to communities including explaining who is responsible for taking enforcement action when a violation of the Law occurs.
- *Prakas 086 on HIV in the Workplace* (2006) is a helpful regulation requiring each workplace to act against discrimination and it has encouraged some companies to accommodate the needs of workers with HIV by allowing time off to attend health

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<sup>28</sup> Parliament of Cambodia (2009), *Parliamentary Handbook on HIV and AIDS*, UNAIDS, National AIDS Authority, UNDP, Prasit, Asia Pacific Leadership Forum on HIV/AIDS.

care services. Some employers have helped workers to set up workplace HIV/AIDS committees and contributed funds for workers to organize meetings and events. The implementation of Prakas 086 was active during the first two years, but after that implementation efforts dropped from year to year. Implementation constraints for Prakas 086 include funding for implementation and lack of penalties or other sanctions to ensure compliance. Special attention is required to ensure rights of unpaid workers are considered (see discussion of beer promotion workers in the sex work section, below) and that the private sector takes a more active role in implementing workplace policies particularly in casinos and industrial plantations.

- Some foreign companies are unaware of or ignore Cambodian laws and workplace regulations. There are rumors that some foreign companies impose requirements for an HIV test when applying for jobs. Some companies do not provide time off for health care or any other form of support for workers living with HIV to access care and treatment.
- The criminal offence for intentional HIV transmission in the *Law on the Prevention and Control of HIV/AIDS* (Articles 18 and 50) was originally meant to protect women, but it could also be used against women, particularly entertainment workers / female sex workers. This provision includes severe penalties of up to 15 years imprisonment and may add to the stigma experienced by people living with HIV and MARPs. People living with HIV might avoid going to health services if they fear prosecution. This review recommends that such HIV-specific provisions be repealed, as they may be misused to target MARPs for harassment or prosecution. The UN recommends that cases of intentional transmission be addressed under the general criminal law, rather than HIV-specific laws. Therefore, if an assault or sexual assault occurs, this should be dealt with under the provisions of the *Penal Code* relating to acts of violence,<sup>29</sup> rather than the *Law on the Prevention and Control of HIV/AIDS*.
- The Council for Agriculture and Rural Development (CARD) and NAA with support from UNAIDS and UNDP has conducted a review on HIV-sensitive social protection. The review highlighted the importance of incorporating special needs and circumstance of people living with, affected by and vulnerable to HIV into existing general social protection schemes and policies. Social protection schemes need to be broadened to address the needs of poor people living with HIV and to ensure income security for people living with HIV and their children. There is a policy framework for social security that has included HIV but it is yet to be fully implemented. MoLVT developed a Work Injuries Scheme for the formal sector a few years ago, and is also developing other schemes including for health care insurance and pensions.
- Under the *Law on the Prevention and Control of HIV/AIDS*, primary health care is meant to be free for people living with HIV, yet people are still charged for accessing different services. There are also issues around the quality of medicines and care such as use of drugs that have expired. Community health care, insurance and referrals mechanisms (e.g. community-based health insurance) should be reviewed to ensure ARVs and treatments for opportunistic infections are free to people living with HIV.
- Regarding confidentiality rights, there is no mechanism to monitor or determine whether institutions or individuals disclose HIV status without consent. No data has been collected to confirm whether these laws related to disclosure and confidentiality are upheld.

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<sup>29</sup> For example, the *Penal Code* (2010) includes penalties for intentional violence resulting in permanent disability, with a maximum penalty of 10 years imprisonment or 20 years in the case of rape (Articles 223, 242).

### 3.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- (i) Update the *Law on the Prevention and Control of HIV/AIDS* and its Implementing Guidelines to:
  - a. Assign responsibility for handling complaints under the *Law on the Prevention and Control of HIV/AIDS* to government bodies with sectoral responsibilities in employment, education and health care and require reporting to NAA of the number of complaints received and how they were resolved. Priority should be given to ensuring an accessible and effective complaint-handling mechanism exists for addressing HIV-related health care complaints.
  - b. Prohibit discrimination against people living with HIV by law enforcement officers and in prisons and detention / rehabilitation centres.
  - c. Consider the removal of the HIV-specific criminal penalties for disease transmission and develop guidelines for court officials on the very limited circumstances of intentional and malicious conduct in which prosecutions of people living with HIV for disease transmission should be considered, noting that reported cases of intentional HIV transmission have been exceptional, that the *Penal Code* addresses sexual assaults and the importance of minimizing the risk of unfairly stigmatizing and discriminating against people living with HIV.
- (ii) Review arrangements for HIV treatment and care provision to ensure all HIV-related primary care is provided for free through the public system as required by the *Law on the Prevention and Control of HIV/AIDS*.
- (iii) Strengthen enforcement of the national *Law on the Prevention and Control of HIV/AIDS* by educating people living with HIV and lawyers about rights under the Law and how to lodge complaints if violations occur, and educating health care workers, employers and schools about their responsibilities not to violate rights. Develop and disseminate a plain language guide to lodging complaints under the *Law on the Prevention and Control of HIV/AIDS*.
- (iv) Integrate HIV and AIDS into the national and sub-national Plan of Law Dissemination, so as to promote understanding of the *Law on the Prevention and Control of HIV/AIDS* among duty bearers.
- (v) The MoLVT should distribute and reinforce the implementation of Prakas 086 and the *MoLVT Guidelines on HIV/AIDS in the Workplace* (2010). The MoLVT should promote the development of HIV/AIDS workplace policies in all sectors, covering the rights of paid and unpaid workers, and which address the compliance of the private sector in the implementation of workplace policies, especially in casinos and industrial plantations.

## 4 Entertainment workers / sex workers

### 4.1 Context

The legal status of entertainment work / sex work and activities associated with sex work such as recruiting a person to be a sex worker and profiting from another person's sex work are addressed by several different laws and policies including the *Constitution of the Kingdom of Cambodia*, the *Penal Code* (2010), the *Law on the Suppression of Human Trafficking and Sexual Exploitation* (2008), the *Village Commune Safety Policy* and policies relating to condom use. Workplace laws are also relevant to entertainment workers including the *Labor*

Law (1997)<sup>30</sup> and Prakas 086.

Confusion has arisen in relation to the legality of selling sex due partly to the overlapping operation of multiple laws and policies. In 2013, the Ministry of Justice addressed this confusion by issuing *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation*. The Explanatory Notes confirm that the sale of sex in private is not illegal. The Explanatory Notes are very helpful for HIV responses because they clarify the rights of entertainment workers to carry condoms and to sell sex in private without fear of arrest.

However, the overall legal framework for sex work arguably remains problematic from the perspective of HIV prevention efforts and the rights of entertainment workers to a healthy and safe workplace. Ultimately, a more supportive and enabling legal environment could be created by decriminalizing activities associated with voluntary adult sex work, including management of sex work premises, soliciting (which is an offence under the *Penal Code* as well as the *Law on Suppression of Human Trafficking and Sexual Exploitation*) and procuring (procuring includes drawing a financial profit from another person's work as a sex worker, assisting or protecting a sex worker, and recruiting, inducing or training a person with a view to practice sex work).

However, decriminalization of these activities is considered controversial in the Cambodian context. Consideration needs to be given to compliance with Article 46 of the Constitution of the Kingdom of Cambodia, which states:

*The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.*

Consideration also needs to be given to Article 36 of the Constitution, which states that citizens have the right to choose any employment according to their ability and to the needs of the society; the right to obtain social security and other social benefits as determined by law; and the right to form and to be members of trade unions.

If all aspects of operating a sex work business were decriminalized, the sale of sex could be regulated as a legitimate form of labour, with legal rights to occupational health and safety and protection from violence, coercion, exploitation and discrimination. This would enable law enforcement efforts to focus on child prostitution and trafficking involving coercion of adults into sex work as a form of labor exploitation. The Global Commission on HIV and the Law supports this approach of full decriminalization. The Report of the Global Commission recommended: "Countries must repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against 'immoral' earnings", 'living off the earnings' of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers."<sup>31</sup>

Similarly, the UNAIDS Advisory Group on HIV and Sex Work recommends:<sup>32</sup>

- States should move away from criminalizing sex work or activities associated with it. Decriminalization of sex work should include removing criminal laws and penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.
- Where governments have recognized the legality of sex work, health regulations □related to sex work should not require mandatory medical procedures, should

<sup>30</sup> The *Labor Law* (1997) does not include specific HIV provisions but prohibits discrimination based on race, colour, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities in employment.

<sup>31</sup> Global Commission on HIV and the Law (2012), *Risks, rights and health*, New York: UNDP, p.43.

<sup>32</sup> UNAIDS (2012). *UNAIDS Guidance Note on HIV and Sex Work*, Geneva: UNAIDS.

respect sex workers' right to meaningful participation in health services, and give priority to measures that empower sex workers to protect themselves from HIV and other sexually transmitted diseases.

However, decriminalization of brothel management, soliciting in public or other aspects of commercial sex is not considered a current priority in Cambodia, given that the existing law does not criminalize sex work between consenting adults in private.

Although the legality of sex work in private is recognized by the Ministry of Justice Explanatory Notes, the government has not yet introduced laws or regulations to address workplace health and safety rights relating to HIV, sexual health and violence protection needs of entertainment workers / sex workers. NSP III requires the alignment of the *Law on the Suppression of Human Trafficking and Sexual Exploitation* with the provisions of the *Law on the Prevention and Control of HIV/AIDS* and the establishment of an enabling environment for prevention including protection of human rights and access to prevention, care and treatment services without fear of harassment, arrest or punishment. The *Boosted Continuum of Prevention to Care and Treatment* provides a sound policy framework for addressing the HIV and sexual health needs of entertainment workers.

### **The Trafficking Law**

The *Law on the Suppression of Human Trafficking and Sexual Exploitation* includes offences that criminalize most aspects of the sex industry. The Law prohibits public soliciting, procurement of prostitution, management of an establishment of prostitution and provision of premises for prostitution. Soliciting in public for the purpose of prostitution is an offence. The penalty for soliciting is imprisonment from one to six days and/or a fine from 3,000 to 10,000 riels.<sup>33</sup>

The Ministry of Justice *Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation* clarify the application of the law to sex workers:

It is important to note that the TSE Law (*Trafficking and Sexual Exploitation Law*) does not punish a person for engaging in prostitution (neither the prostitute nor the client), but instead criminalizes only certain related activities. Even in such cases, the TSE Law does not consider the prostitutes as offenders; the offenders under the TSE Law are the pimps, heads of prostitution and others who draw a profit from the prostitution of others (that is, from the activities of the prostitutes). Therefore prostitutes are never offenders: persons who are voluntarily engaging in commercial sex work (and who are therefore, by definition, not victims of trafficking) are not punished under this law. Trafficking victims are also not punished under this law for those acts. However, prostitutes may be punished if found guilty of the offence of soliciting for prostitution in a public place (see Article 24). In the latter case, they are punished not for engaging in prostitution but for soliciting in public, which is considered as affecting public order...It should be noted that prostitution by freely consenting adults is not illegal under the TSE Law.

The Explanatory Notes provide a narrow definition of soliciting:

The term "to solicit" means that there must be a specific communication or behavior by the offender that interferes with the public, which leads to public disorder and which conveys that the offender is willing to engage in sexual activity in exchange for anything of value.

This understanding of the offence of soliciting is reinforced by the Ministry of Interior's *Guidelines on the Implementation of the Law on the Suppression of Human Trafficking and*

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<sup>33</sup> Article 24.

*Sexual Exploitation* which state that action by the authorities regarding prostitution should be undertaken only in the following situations:<sup>34</sup>

- (i) If there is a complaint from the people in the neighborhood about prostitution activities that affect their daily lives;
- (ii) If there is a complaint from a victim that has been forced into prostitution in that location;
- (iii) If there is child prostitution; and
- (iv) If prostitution leads to public disorder and insecurity

### **Penal Code 2010**

The Penal Code also criminalizes soliciting and procuring. Any person who solicits another person in a public place in order to incite her/him to have sexual relations is punishable for a fine of between 5,000 Riels to 50,000 Riels.<sup>35</sup>

### **Prakas 086 on HIV in the Workplace**

*Prakas 086* relates to HIV prevention for employees in the workplace. However, the *Labor Law 1997* and *Prakas 086* have limited application to the sale of sex by entertainment workers because many entertainment workers based in bars, karaoke venues and massage parlours are not regarded as employees. Many are not employed under regular employment contracts and sale of sex is not part of their formal work requirements. MoLVT is exploring options for a Ministerial *Prakas* to address the vulnerability of these ‘irregular’ staff, for example women who work in Karaoke venues or as beer promotion workers.

### **Village Commune Safety Policy**

The Village Commune Safety Policy directs local authorities to “take action to eliminate any prostitute women and children trafficking.” Although the policy intention is to address human trafficking, in practice law enforcement authorities reportedly enforce the law against any people engaged in selling sex, including voluntary adult entertainment workers.

### **Law enforcement issues**

‘Entertainment workers’ who sell sex operate primarily from massage parlours, guesthouses and entertainment establishments such as bars, beer gardens, restaurants and karaoke clubs. Street or park-based sex workers represent a small proportion of all people selling sex. Street-based sex workers are more likely to report being targeted by police than venue-based workers. Police abuses of street-based workers include extortion, forced sex and other violence, which impacts access to HIV services, including condoms and testing.<sup>36</sup>

From time to time exceptional cases arise where police have reportedly confiscated condoms. These incidents suggest that some local police are unaware of government policies promoting condom use, the *Explanatory Notes on the Law on the Suppression of Human Trafficking and Sexual Exploitation* and orders issued in 2011 directing police not to confiscate condoms. The Ministry of Interior and FHI360 reported that positive changes were seen in Banteay Meanchey as a result of PCPI in that police no longer used possession of condoms as evidence for arrest and condom displays in entertainment venues were visible.

Some sex workers have been held in Social Affairs Centres under the Ministry of Social Affairs, Veterans, and Youth Rehabilitation. These centres are intended to provide voluntary rehabilitation and education services to the homeless and the poor. However, reports indicate that sex workers (particularly street workers) have been compulsorily detained in these

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<sup>34</sup> Ministry of Interior (2008). ‘*Guidelines on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation*.’

<sup>35</sup> Article 298.

<sup>36</sup> Maher L., Mooney-Somers J., Phlong P. et al (2011), Selling sex in unsafe spaces: Sex work risk environments in Phnom Penh, Cambodia, *Harm Reduction Journal* 2011, 8:30.

centres during periodic public security crackdowns.<sup>37</sup>

### **The 100% Condom Use Policy and CoPCT**

Prior to 2008, the 100% Condom Use Policy (Prakas 066) contributed to an increase in condom use and a sharp decrease in STI and HIV prevalence among sex workers and their clients. A major police crackdown on brothel-based sex work interfered with the operation of the 100% condom use programme. Given that the nature of the sex industry was changing, a new policy response was formulated with a focus on condom programming to non-brothel entertainment establishments, as expressed in the *SOP for CoPCT for Entertainment Workers* and in the subsequent Boosted CoPCT. For entertainment workers, the CoPCT approach responded to the increase in the number of women selling sex in non-brothel establishments and changes in the nature of transactional sex. The approach recognizes improved understanding of the importance of early HIV diagnosis and treatment to prevention. A complementary initiative is the Community Peer-Initiated Testing and Counselling programme of NCHADS, which recruits peers to promote early voluntary HIV testing among entertainment workers.

The SOP for BCoPCT promotes peer-based interventions and a multi-sectoral approach engaging non-health services (such as legal aid and rape crisis services) as well as health services. Programme strategies include: strengthened policy frameworks, coordination, outreach and service linkages to support improved service provision for entertainment workers. Committees at the District and Provincial levels (CoPCT Coordinating Committees, chaired by the relevant Governor or Vice-Governor) are responsible for monitoring compliance with administrative orders (e.g. relating to condom availability in entertainment establishments) and ensure that law enforcement is not negatively affecting implementation of the programme. Representatives of entertainment workers sit on the committees overseeing the programme.

In 2011, the Ministry of Interior issued a Letter of Declaration clarifying that the 100% Condom Use Policy does not conflict with the *Trafficking Law*. The Declaration stated that police will not use condoms as an evidence for arrest except in rape-related cases.<sup>38</sup> This is further supported by the Ministry of Justice *Explanatory Notes* issued in 2013.

## **4.2 Issues raised during consultations and National Review Meeting**

Participants at the consultations and National Legal Review Meeting highlighted the following issues and priorities:

- It was noted that *Prakas 066* on the 100% Condom Use Policy is a positive example of an enabling policy that promoted cooperation between health authorities, entertainment workers, communities and all other concerned parties and had delivered prevention results by encouraging condom use. It was noted that the policy laid the foundations for further policy innovation that addressed the need to reach entertainment workers in non-brothel establishments, such as the SOPs for CoPCT for Entertainment Workers<sup>39</sup> and the Boosted CoPCT.
- Programmes are required that empower entertainment workers to represent their interests and participate in HIV programming. For example, the Smart Girls project (supported by FHI360 with USAID funding and UNFPA support) has used peer-based approaches to promote empowerment. This project supports entertainment workers to gain more control over their work thereby providing a more enabling

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<sup>37</sup> Keo (2009), op cit.

<sup>38</sup> HIV/AIDS Coordinating Committee (2011), *National AIDS Authority continues to work to strengthen the implementation of Prakas 66*, available at: [http://hacccambodia.org/view\\_news.php?id=151](http://hacccambodia.org/view_news.php?id=151)

<sup>39</sup> *Standard Operating Procedures (SOP) for a Continuum of Prevention to Care and Treatment for Female Entertainment Workers in Cambodia 2009*.

environment for health policies on condoms and the BCoPCT to operate. It is also important that community-based research is supported to generate more evidence about the needs of entertainment workers to inform policies.

- The consultations also observed that the *Law on the Suppression of Human Trafficking and Sexual Exploitation* had been subject to misunderstandings, particularly in relation to whether police were justified in using condoms as evidence or to justify arrests. There are ongoing reports of condom confiscation and arrest of sex workers. As a result, some shops do not want to stock condoms.
- Difficulties are faced in implementing *Prakas 086 on HIV in the Workplace* for entertainment workers because of their irregular employment status e.g. beer promotion girls work for beer companies or their contractors and are technically not employees of the entertainment venues. Entertainment workers have limited workplace rights and do not have legal protections from discrimination. Young women working in venues to promote beer companies do so without any entitlement to a regular wage. At the end of each month each woman is paid based on the number of beer cans sold. In addition, she may receive tips from the clients who purchase her beer. It is important that workplace conditions are provided for these young women that address their HIV prevention needs, and which do not unfairly disadvantage unpaid women compared to paid women.
- Some entertainment workers are required to undergo HIV testing by the entertainment venues and reportedly are fired if they test positive to HIV.
- There has been progress in including sex workers in the *National Plan of Action on Violence Against Women*. Implementing this policy will be challenging if sex workers fear reporting incidents of violence.
- The Community Legal Service for Entertainment Workers in Phnom Penh is an example of good practice. Similar initiatives are required for entertainment workers in other localities and for other MARPs.
- Participants of the National Legal and Policies Technical Working Group support maintaining the penalties for brothel operation and suggested that dissemination of the Explanatory Notes would help to clarify that sale of sex involving consenting adults is not illegal and would address the negative consequences of maintaining penalties associated with other aspects of sex work.

### 4.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia in partnership with the UN, donors and MARPs:

- (i) Give priority in legislation and policies to measures that empower entertainment workers / sex workers to protect themselves from HIV and STIs.
- (ii) Provide training to police on the Ministry of Justice *Explanatory Notes on the Law on the Suppression of Human Trafficking and Sexual Exploitation* particularly in relation to prohibition on use of condoms as evidence, the legality of selling sex in private (which is legal between consenting adults), and the restrictive meaning of ‘soliciting’.
- (iii) The Government should clarify that the *Village Commune Safety Policy* must not be used to justify arrest, detention or harassment of entertainment workers/sex workers.
- (iv) Apply labour standards to provide workplace health and safety rights for entertainment workers and other persons who sell sex. Take all necessary measures to enable entertainment workers who sell sex and other sex workers to enjoy work-related protections, including access to HIV prevention information, condoms and protection from violence, abuse and discrimination, as well as access to care and treatment services packages. Such measures should taken into account the need to address the rights of people who sell sex at or around entertainment establishments, but who are not considered to be employees of the establishment.

- (v) Ensure that referral of sex workers to rehabilitation centres occurs on a voluntary basis, rather than by compulsion.

## 5 MSM and transgender people

### 5.1 Context

Sex between adult men is not criminalized in Cambodia. The age of consent for both heterosexual sex and homosexual sex is 15.<sup>40</sup> However, the law does not recognize same-sex relationships.

There are no laws relating to the legal identity of transgender people. The Global Commission on HIV and the Law recommends that laws should enable transgender people to change their gender on identification documents or for other purposes and that MSM and transgender people should have legal protection from stigma and discrimination on the grounds of their sexual orientation or gender identity.

There is no law on hate crimes in Cambodia that specifically addresses violence targeting homosexual people or transgender people e.g. by providing for more severe penalties for violence offences motivated by hatred against people because of their sexual orientation or transgender status. The *Constitution of the Kingdom of Cambodia*, the *Penal Code*<sup>41</sup> and the *Labor Law* include provisions relating to discrimination on the grounds of sex, but not on the grounds of sexuality, sexual orientation, or transgender status.

A *National Guideline For STI and HIV/AIDS Response Among MSM, Transgender and Transsexual People* has been developed that recognizes the rights of citizens to full and free expression of sexual identity. The Guideline states that MSM, transgender and transsexual people have the right to comprehensive access to HIV services free of stigma and discrimination. However, although there is a supportive national policy, there are no administrative penalties or other prescribed sanctions for committing discrimination, as there is no enforceable anti-discrimination law relating to sexual orientation and gender identity.

The *2nd National Action Plan to Prevent Violence against Women* (2013-2017) identifies the need to respond to violence against transgender women.

A study of social exclusion of Lesbian, Gay, Bisexual and Transgender (LGBT) persons in families and communities has been conducted by the Social Protection Coordination Unit, Cambodian Social Protection Research Fund of Council of Ministers. The study showed that LGBT persons experience high levels of stigma, discrimination, gender-based violence and exclusion in a variety of settings including the home, school, workplace, health facilities and in public spaces.<sup>42</sup>

In 2011 the MSM network Bandanh Chaktomuk published a report describing the arrest of eleven MSM during a raid of the Rainbow Spa Massage Parlour in Phnom Penh. Twenty nine people were reportedly arrested in the raid which occurred after the police received information that the Spa was providing sexual services to customers. The arrested employees were held in custody for five nights. Bandanh Chaktomuk worked collaboratively with Men's Health Social Service to seek the release of those arrested.

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<sup>40</sup> *Law on Suppression of Human Trafficking and Sexual Exploitation 2008*, Article 42; *Penal Code* Article 239.

<sup>41</sup> *Penal Code* Article 265 prohibits discrimination based on family situation, sex, or state of health.

<sup>42</sup> UNAIDS and UNDP submission to UNDP Community of Practice, 2013.

## 5.2 Issues raised during consultations and National Review Meeting

Participants at the consultations and National Legal Review Meeting highlighted the following issues and priorities relating to MSM and transgender people:

- Public order offences are sometimes enforced by police against MSM and transgender people in relation to conduct in public places. Police reportedly justify arrests of MSM and transgender people to maintain peaceful communities at night, as required by the Village Commune Safety Policy. There are reports of harassment of MSM and transgender people by the authorities and of misuse of laws and policies. For example, some MSM reported being detained, assaulted and transported by police many kilometres before being released far from their homes.
- The Village Commune Safety Policy has reportedly been used particularly to target MSM and transgender people, who are vulnerable because they congregate in dark and inconspicuous parts of towns, such as unlit parks, in an attempt to avoid the attention of their families and the authorities. Due to pervasive discrimination and negative stereotyping, the authorities assume they are engaged in soliciting and selling sex, although often they are simply socializing. This puts MSM and transgender people at risk of prosecution and discriminatory treatment by police, and makes it difficult to conduct peer education activities because MSM and transgender people remain hidden.<sup>43</sup>
- Some MSM and transgender people report discriminatory attitudes from health care workers.

## 5.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that:

- (i) The Ministry of Interior should issue a policy on sexual orientation and gender identity to address police abuses and discrimination by police against MSM and transgender people and provide instructions to police directing them to prevent and respond to incidents of violence against MSM and transgender people.
- (ii) A law should be enacted to provide transgender people with identity rights recognizing change of gender. The law should give transgender people the right to have their affirmed gender recognized in identification documents, without the need for prior medical procedures.
- (iii) The Royal Government of Cambodia should consider legislative and policy options for providing protections to MSM and transgender people from discrimination on the grounds of sexual orientation and gender identity including in provision of health care services, employment and education.

# 6 People who use or inject drugs

## 6.1 Context

### **Nature of drug use and the policy response**

The majority of drug dependent people in Cambodia are methamphetamine users. Smoking is the most common method of consumption. However, some people who use drugs are shifting to injection. Overall, there is a growing risk of HIV transmission among people who use

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<sup>43</sup> See also: Cambodian Center for Human Rights (CCHR), Asia Pacific Network of People Living with HIV (APN+) and Sexual Rights Initiative (2013), *Submission to Universal Periodic Review of Cambodia, 18th Session, January/February 2014*, p.7; CCHR (2012), *Rainbow Khmer: From Prejudice to Pride*, Phnom Penh: CCHR.

drugs and their partners, either from people sharing injection equipment, or from people who use drugs who have unprotected sex.<sup>44</sup>

NSP III adopts harm reduction as a guiding principle and the *National Strategic Plan for Illicit Drug Use Related to HIV/AIDS 2011-2015* includes the objective of improving the enabling environment. The AusAID-supported HIV/AIDS Asia Regional Program is providing assistance to government efforts to promote harm reduction approaches in addressing HIV among people who inject drugs.

In 2010, the World Health Organization (WHO) and the Ministry of Health launched a pilot methadone maintenance program in the Khmer-Soviet hospital in Phnom Penh. The National Authority for Combatting Drugs (NACD) has authorized some NGOs to implement needle and syringe distribution programs including community outreach and drop-in centre activities.

### **Law on Control of Drugs**

The *Law on Control of Drugs 2012* criminalizes possession and use of narcotics,<sup>45</sup> as well as supply and manufacture.

The *Law on Control of Drugs 2012* provides a legal framework for harm reduction services that was absent from the previous law (*Law on Control of Drugs 1997*). The 2012 Law also increased the penalties applicable to drug offences. Provisions of the *Law on the Control of Drugs 2012* that address harm reduction include:

- Article 100 provides that the State shall ensure the provision of services to reduce harms resulting from drug abuses, of health services and national policies aiming to reduce health, social and economic harms due to drugs on individuals, communities and societies.
- Article 4 defines “harm reduction service” as a service, programme or any activities with the benefits of reducing harms caused by drug abuse to human health, communities, the economy, and society as a whole.
- Article 56 provides a legal framework for authorization of needle and syringe programs. Article 56 provides an offence for keeping or transporting of equipment used for consumption of narcotics. Penalties include imprisonment from 1 to 5 years, and fines. Article 56 does not apply to provision of health care services or harm reduction services for drug users authorized by a competent authority.

### **Law enforcement issues**

There are ongoing tensions between local law enforcement authorities and organizations implementing harm reduction programmes, particularly needle and syringe programmes. This arises where local law enforcement authorities are unaware of harm reduction programmes or their role in supporting programme implementation. Law enforcement officers at the local level are sometimes not adequately involved in initial planning of needle and syringe programmes. Inadequate local level participation of the general community and police in local policy and planning development can lead to a lack of cooperation from the law enforcement community.<sup>46</sup>

The increased penalties for drug possession in the *Law on Control of Drugs* and the Village Commune Safety Policy may have had the unintended affect of making some people who use drugs more difficult to access by HIV services due to actions of law enforcement officers,

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<sup>44</sup> WHO (2009). *Assessment of compulsory treatment of people who use drugs in Cambodia, China, An application of selected human rights principles*. Manila: WHO WPRO.

<sup>45</sup> Articles 40, 45 and 53.

<sup>46</sup> Chheng K., Leang S., Thomson N., Moore T., Crofts N. (2012), Harm reduction in Cambodia: a disconnect between policy and practice, *Harm Reduction Journal*, 9:30.

especially at the commune level.<sup>47</sup> The Village Commune Safety Policy requires authorities to:

Take action to cut off and eliminate production, dealing and use of illegal drugs at the village commune by following Guideline No 052 National Department of the Police dated 2006 on the implementation of a warlike approach to fighting any drug crime and to especially focus the law on drug control.

In response to these concerns, the Ministry of Interior has been supporting PCPI and harm reduction training. PCPI pilots have reported some success in increasing the number of people who use drugs attending services without fear of arrest. According to an assessment of the FHI360-supported PCPI pilots:<sup>48</sup>

... it became clear that ultimately the Ministry of Interior needed to be able to lead efforts that were being designed to work with law enforcement officials at the local level, especially in relation to HIV prevention among people who use drugs. The Ministry of Interior agrees and has now specifically requested that resources be redirected so that they can train and build the capacity of all of its law enforcement agencies to play a collaborative leadership role in HIV prevention among MARPs.

NACD and FHI360 are integrating a harm reduction component into the curriculum for police schools including developing a resource that defines the specific role of police and local authorities in harm reduction. Standard Operating Procedures on harm reduction are being developed by the Ministry of Interior and FHI360 is implementing a harm reduction training curriculum for six police academies.

### **Compulsory treatment and rehabilitation**

The *Law on Control of Drugs 2012* defines the limited circumstances in which forced treatment and rehabilitation may legally be justified. Article 107 provides that no one shall be forced into treatment and rehabilitation for drug addiction unless they are severely affected by drug addiction and there is an explicit threat to instant and severe danger to him/herself or to others. Forced treatment and rehabilitation can also be used if a drug dependent person is lacking the capacity to express his/her intention to accept voluntary treatment and rehabilitation.

Although the *Law on Control of Drugs* restricts circumstances in which forced treatment and rehabilitation is legally justified, in practice many drug dependent people continue to be held in rehabilitation centers.

In the drug treatment centers, the staff is mainly composed of administrative and law enforcement officials, with few health professionals. The treatment provided is entirely abstinence-based and residents who suffer from withdrawal symptoms are simply isolated as long as the symptoms persist. Most of the centres have limited HIV related information. Some facilities have informal agreements with NGOs to supply ARVs to the centres for residents who are former clients of the NGOs. The centres do not have trained psychologists or counsellors available onsite and few have doctors and nurses. Most staff members are administrative and law enforcement officials. The centres do not offer methadone or pharmaceutically assisted drug treatment, psychosocial assistance, and are unable to provide testing, counselling and treatment for HIV, STIs or TB.<sup>49</sup> Government drug treatment centers are run by several different ministries with no unified standard of care. They are primarily compulsory military-style boot camps that emphasize detention and control, providing very

<sup>47</sup> National AIDS Authority (2012), *Cambodia Country Progress Report, Monitoring the Progress towards the Implementation of the Declaration of Commitment on HIV and AIDS*, p.15

<sup>48</sup> Thomson N., Supheap Leang, Kannarath Chheng, Weissman A., Shaw G., Crofts N. (2012), The village/commune safety policy and HIV prevention efforts among key affected populations in Cambodia: finding a balance, *Harm Reduction Journal*, 9:31.

<sup>49</sup> WHO (2009). Op cit.

little in the way of addiction programming, with the exception of one community-based treatment centre in Banteay Meanchey.<sup>50</sup>

There are no formal criteria to determine the length of the stay in the treatment centre. Usually, participants tend to stay three to six months, depending on how long the family is able to pay for the treatment.<sup>51</sup> It has been the practice of centres to ask for a treatment contract to be signed between the parents /family of the resident or the arresting police officer and the centre, even when the resident is over 18 years old. After release from the centres, people often suffer from discrimination and are denied access to employment, which can lead to relapse.

### **Community-based drug treatment**

Community-based models provide an alternative to compulsory detention centres. An evaluation was conducted of a community-based drug outreach programme in 2009. Ten Community Counselling Teams were formed and trained in pilot areas, and within the first year of operation 462 drug and alcohol users were contacted. Comprising former drug users, family members affected by drug use and health care staff, the Teams were supported village elders, who are involved in the planning and reporting stages. The evaluation concluded:<sup>52</sup>

While the Community Counselling Teams with their basic training in addiction counselling are in no position as yet to either provide or refer clients to treatment, they can provide brief interventions, organise self help groups, and most importantly provide an alternative to law enforcement. By taking a development centred approach, with emphasis on community, empowerment and inclusion, it provides a constructive and inclusive alternative to medical approaches and the compulsory drug treatment centres.

A joint Royal Government of Cambodia and UN Country Team programme is supporting the expansion of community-based treatment and care services for drug users (including HIV prevention, treatment and care). The joint programme aims to provide a cost-effective alternative to compulsory centres for drug users. The programme builds on lessons learned from implementing community-based drug treatment in Banteay Meanchey Province.

## **6.2 Issues raised during consultations and National Review Meeting**

Participants at the consultations and the National Legal Review Meeting highlighted the following issues and priorities relating to people who use drugs:

- PCPI is having beneficial impacts for some drug user communities, although in limited localities.
- People who inject drugs remain a hidden, underground part of society and there is low uptake of harm reduction services. HIV infection rates remain worryingly high among people who inject. The needle and syringe programme is small in scale and it is hoped licenses to distribute needles and syringes will be issued to ensure increased coverage. Methadone maintenance therapy is only available from one fixed hospital site. Increasing the number of people accessing harm reduction services should be a priority.
- The drug rehabilitation centre in Banteay Meanchey is not free. User fees are a barrier to access to services.
- The attitude of the police in the past has been that their role is only to suppress crime. For the police to play a supportive role in harm reduction they need to understand that

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<sup>50</sup> State Department (2013), *International Narcotics Control Strategy Report 2012*, Washington; State Department, p.149.

<sup>51</sup> WHO (2009). Op cit.

<sup>52</sup> Klein A, Saphonn V., Rei S. (2012), Reaching out and reaching up - developing a low cost drug treatment system in Cambodia, *Harm Reduction Journal*, 9:11.

their role is also an enabling one requiring them to educate their peers and the community about the public health objectives of harm reduction.

- Action to educate the public about harm reduction within the context of the Village Commune Safety Policy is required which may require use of radio, TV or community discussions.

Presentations at the National Legal Review Meeting highlighted that other Asian countries such as Indonesia and Malaysia have scaled up national harm reduction programmes, introduced methadone maintenance therapy in prisons, phased out compulsory drug rehabilitation (in Malaysia) and introduced community-based treatment options. The Global Commission on HIV and the Law recommends decriminalization of personal use of drugs and possession of small quantities of drugs, enabling police efforts to focus on trafficking.

### 6.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- (i) Noting that possession of small amounts of illicit drugs for personal consumption does not cause serious social harm, NACD should clarify and strengthen a common understanding of the correct intent of *the Law on Control of Drugs 2012* at sub-national and local level that possession of small amounts of illicit drugs for personal consumption should not be penalized. To achieve this, NACD should issue an explanatory note and conducting training especially with law enforcement and local authorities.
- (ii) NACD should play a leadership role in delivering harm reduction training to police and ensuring PCPI is expanded to support people who use drugs to access HIV and other health services.
- (iii) While they are still operating, ensure residents of drug treatment and rehabilitation centres have access to HIV information and education, condoms, psychological and psychiatric care and support, evidence-based drug dependence treatment including pharmacotherapies such as methadone maintenance therapy, ARVs and treatment and care for opportunistic infections.
- (iv) Phase out compulsory drug treatment and rehabilitation centres and increase access to voluntary, evidence-based drug treatment and harm reduction services in community settings consistent with international good practice. Promote the understanding of drug dependence as a health disorder, requiring a health and social sector response, undertaken within the community.

## 7 Women and girls

### 7.1 Context

Key protective laws and policies for women and girls include the *2nd National Action Plan to Prevent Violence against Women* (2013-2017), the *Law on the Prevention of Domestic Violence and the Protection of the Victims* (2005), the *Law on Suppression of human Trafficking and Sexual Exploitation*, the *Labor Law* and the sexual assault and personal violence provisions of the *Penal Code* (2010). The *Penal Code* (2010) includes provisions relating to rape and other forms of sexual assaults and sexual harassment (e.g. Sections 239, 248) that offer some protections to women and girls who experience sexual violence in non-domestic circumstances e.g. entertainment workers. The *Labor Law* prohibits discrimination in employment on the grounds of sex and the *Penal Code* prohibits discrimination on the ground of sex in employment or access to goods and services.<sup>53</sup>

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<sup>53</sup> Article 265-270.

The Ministry of Women's Affairs employs Judicial Police Agents to help women seek protection under the *Law on the Prevention of Domestic Violence and the Protection of the Victims*. The Judicial Police Agents advocate for women and girls and support them through the legal process.

The *2nd National Action Plan to Prevent Violence against Women* gives prominence to developing legal protection and services, integrates the needs of sex workers, females who use drugs, transgender women and women living with HIV as women at a higher risk for gender-based violence. It also includes a new emphasis on violence prevention measures. To strengthen implementation, the *National Action Plan to Prevent Violence Against Women* needs to be promoted at district and commune level. HIV prevention options for survivors of sexual assault are limited because there is no free provision of post-exposure prophylaxis (PEP) services.

There is a need to address discrimination and coercion of women in the context of health care provision. Thirty five per cent of HIV-positive women report being asked to undergo sterilization during pregnancy, and HIV-positive women face discrimination from health care workers before, during and after their delivery.<sup>54</sup>

The *National Social Protection Strategy for the Poor and Vulnerable (2011-2015)* includes home-based care and referral support for people living with HIV and a comprehensive package of care for vulnerable women and children including poor female-headed households, and women and children living with HIV.

## 7.2 Issues raised during consultations and National Review Meeting

Participants at the consultations and National Legal Review Meeting highlighted the following issues and priorities relating to people who use drugs:

- The legal and policy response to gender-based violence is focused on the domestic violence – other types of violence such as violence in the work place are not covered, to protect entertainment workers.
- The new *National Action Plan on Violence Against Women* includes attention to issues affecting MSM, transgender people and entertainment workers. It is an important step forward to link national anti-violence policy with HIV policy. However, no action plan for implementation has yet been developed.
- There is a strong policy framework in relation to violence against women, but gender-based violence (including marital rape) remains a widespread problem that contributes to HIV vulnerability.
- Specific issues for women living with HIV include coerced sterilization, access to prevention of mother-to-child transmission (PMTCT) services, and experiences of discrimination in the delivery of health care services particularly for pregnant women and girls.

## 7.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- (i) Issue instructions to health care workers prohibiting coercion of women living with HIV to undergo sterilization or abortion and promote guidelines on PMTCT.

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<sup>54</sup> Women of the Asia Pacific Network of People Living with HIV (2012), *Positive and Pregnant: How dare you, A study on access to reproductive and maternal health services for women living with HIV in Asia*, Bangkok: APN+, p.29.

- (ii) Issue a national policy on post-exposure prophylaxis (PEP) for survivors of sexual assaults and provide free access to PEP to survivors.
- (iii) Promote implementation of the *2nd National Action Plan to Prevent Violence against Women* at district and commune level through an implementation plan that addresses the specific needs of female sex workers, females who use drugs, transgender women and women living with HIV.
- (iv) Ensure MARPs who experience gender-based violence in domestic as well as non-domestic settings have access to effective legal protections from violence and are aware of their rights and how to enforce the legal protections under the *Penal Code* as well as the *Law on the Prevention of Domestic Violence and the Protection of the Victims*.

## 8 Young people

### 8.1 Context

Birth registration is required by the *Civil Code* and Sub-Decree 103 of the Ministry of Interior 2000, which requires that parents must register their babies at the commune or sangkat authority within 30 days after birth. However, 50 per cent of children under five do not have a birth certificate.<sup>55</sup>

The *National Social Protection Strategy for the Poor and Vulnerable (2011-2015)* gives priority to the development of social safety nets and welfare services for special vulnerable groups including orphans and vulnerable children living with or affected by HIV. The Strategy includes programmes for care, food assistance and social services to children living with or in families affected by HIV. *Standards and Guidelines for the Care, Support and Protection for OVC* have been developed by the Ministry of Social Affairs, Veterans and Youth Rehabilitation which address access to food, health, education, psychological support, livelihood and others services including legal services.

The *Civil Code* defines a minor as a person under the age of 18.<sup>56</sup> The *Law on the Suppression of Human Trafficking and Sexual Exploitation* states the age of consent to sex is 15. The *Implementing Guidelines for the Law on the Prevention and Control of HIV/AIDS* state that the age at which a child can consent to an HIV test without parental consent is 18. Article 19 of the *Law on the Prevention and Control of HIV/AIDS* provides that all HIV tests shall be done with voluntary and informed consent. For those who are minors (under 18 years)<sup>57</sup>, a written informed consent must be obtained from a parent or guardian. Where the written consent of a minor's guardian cannot be obtained, an HIV test can be performed on the minor only if the test is in the best interests of the minor, and the minor provides written informed consent.

The UN Committee on the Rights of the Child has stated that governments should consider allowing children to consent to certain medical interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and SRH services.<sup>58</sup>

<sup>55</sup> Demographic Health Survey 2010.

<sup>56</sup> Article 17.

<sup>57</sup> National AIDS Authority (2005), *Implementing Guidelines of the Law on the Prevention and Control of HIV/AIDS*, Phnom Penh: National AIDS Authority and the Policy Project, states: "Although the age at which a person ceases to be a "minor" varies under different Cambodian laws, the appropriate definition of a minor for the purposes of HIV testing is a person who is under the age of 18 years." (p.22).

<sup>58</sup> Committee on the Rights of the Child (CRC). 2013. *General Comment No.15. The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health*, 17 April 2013, CRC/C/GC/15, para 31.

As a signatory to the *Convention on the Rights of the Child*, the Royal Government of Cambodia has a duty to ensure that children have access to HIV information and education through formal channels such as the education system, as well as informal channels that can reach other children such as children living on the streets or in institutions. Signatories to the Convention must ensure that children have the opportunity to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.

Under Article 3 of the *Law on the Prevention and Control of HIV/AIDS* the State has an obligation to integrate teaching on HIV prevention into education curricula. The *Implementing Guidelines for the Law on the Prevention and Control of HIV/AIDS* require HIV/AIDS education initiatives to reach upper primary as well as secondary school students and take account of the lower retention rates for girl students in secondary schooling. The Ministry of Education, Youth and Sport's *Education Strategic Plan 2009-2013* includes requirements for "strengthening and expanding the School Health Promotion Program," and training for "sub-national staff on sexual, reproductive health, HIV/AIDS, awareness on violence, gender, drug and relevant topics."

## 8.2 Issues raised during consultations and National Review Meeting

Participants at the consultations and National Legal Review Meeting highlighted the following issues and priorities relating to children and young people:

- A Situation and Response Assessment on Orphans and Vulnerable Children (OVC) was conducted in 2007 with extensive recommendations. This needs to be updated to determine progress. OVC and families affected by HIV should be entitled to receive a standard minimum package of support. Provincial Working Groups on OVC should be convened to provide training and develop implementation plans that can be integrated into the Commune Investment Plan. Terms of reference should clarify the roles and responsibilities relating to OVC of these Provincial Working Groups and the Provincial AIDS Committees.
- There are numerous policies that relate to child welfare but no standard principles for child protection.
- Participants at the consultations and the National Legal Review Meeting raised concerns about the inconsistency between the age of consent to sex (15) and the age of independent consent to an HIV test, and how this can restrict young people to access sexual health and HIV services. The *Law on the Prevention and Control of HIV/AIDS* allows a minor to consent to an HIV test on his or her own behalf if parental consent cannot be obtained. However, the way the law is phrased indicates that the health care worker may be under an obligation to seek the parent's consent as the first option. The health care worker should only seek the minor's consent as a second option, if the parent's consent cannot be obtained.

The *Law on the Prevention and Control of HIV/AIDS* does not directly address the situation in which a minor does not want the health care worker to contact the parents at all, even if their whereabouts are known, because of concerns about disclosure of sexual or drug use conduct. In such a situation, if the health care worker knows the location of the parents, to comply with the *Law on the Prevention and Control of HIV/AIDS* the consent of a parent should be sought first. Participants suggested review of the requirements so as to effectively reduce the age of consent to an HIV test to 15 (in line with the age of consent to sex), so that young people who are worried about HIV can be tested without requiring written parental consent.

There was discussion at the National Legal Review Meeting as to whether a change to the law is required to address these concerns or whether changes to the

Implementing Guidelines will be sufficient. The relevance of the age of majority specified in the *Civil Code* needs to be considered.

- Access to sexual reproductive health services for young people is problematic, particularly for young people living with HIV. These services are generally not youth-friendly. Attitudes of health care workers are influenced by cultural assumptions that young unmarried people should not be engaging in sex. The National Youth Policy (*National Policy on Youth Development 2011*) should address HIV issues and the need for greater access to youth-friendly HIV and sexual and reproductive health (SRH) services for most-at-risk young people.
- HIV-related services for young people would be improved by supporting the active participation of young people including adolescents living with HIV in development of policies and programmes addressing their needs.

### 8.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- (i) Promote compliance with the legal requirements for birth registration to local authorities, parents, guardians and others to ensure universal birth registration at commune and village level.
- (ii) Update the Social Protection OVC Situation and Response Analysis and reinvigorate child protection efforts for OVC by convening provincial working groups.
- (iii) Update the *Implementing Guidelines for the Law on the Prevention and Control of HIV/AIDS* to reduce the age at which a person may consent to an HIV test without involvement of their parents to 15 years. The update should clarify that health care workers are under no obligation to seek the parent's consent to an HIV test if the minor requests that the parents or guardians not be consulted, provided that the health care worker is of the opinion that a test is in the child's best interests and the child consents.
- (iv) Update the National Youth Policy to specifically address the HIV and sexual and reproductive health needs of young people living with HIV, young people who use drugs, and young people who are MSM or transgender or who sell sex.

## 9 Prisoners

### 9.1 Context

Cambodia's prison populations have been growing by roughly 14 per cent annually, with national prisons reaching 179 per cent over capacity in 2011, and drug-related arrests quadrupling in 2011, following the introduction of the Village Commune Safety Policy.<sup>59</sup>

*A Policy and SOP for HIV, STI, TB Prevention, Treatment, Care and Support in Prisons and Correction Centres 2012* has been developed. The SOP addresses provision of HIV information but distribution of condoms is not specifically addressed.

The Global Commission on HIV and the Law recommended that prisoners be provided with HIV treatment, condoms, harm reduction services including methadone, and drug dependence treatment.<sup>60</sup>

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<sup>59</sup> Ministry of Interior and FHI360 (2013), op cit.

<sup>60</sup> Global Commission on HIV and the Law (2012), op cit.

It is anticipated that there will be concerns raised by correctional staff regarding any proposal to introduce condoms in Cambodia's prisons. Policy makers should therefore have regard to international evidence of the effectiveness of prison condom distribution. The UN (WHO, UNAIDS and UNODC) reviewed prison condom programmes internationally in 2007, and concluded that prison condom programs are feasible, accepted by a majority of correctional staff and inmates, have resulted in no reported security problems or serious incidents resulting in injury, and do not lead to increased sexual activity or drug use. The international review found that no prison system allowing condoms has reversed its policy, and that condom access is unobtrusive to the prison routine, represents no threat to security or operations, does not lead to an increase in sexual activity or drug use, and is accepted by most prisoners and prison staff once it is introduced.<sup>61</sup> Over 80 per cent of European Union prison systems, and prisons in Angola, Australia, Brazil, Canada, Indonesia, Iran, South Africa, Zimbabwe, and some states of USA provide condoms to prisoners.<sup>62</sup> Studies from Australia have found no evidence that condom provision to prisoners increased consensual or non-consensual sexual activity in prison, but condom provision did increase safe sex practices among those who did engage in sexual activity.<sup>63</sup>

Given the low cost of providing condoms relative to the cost of treating HIV, and that very few HIV infections would need to be prevented to cover the costs of the program, providing condoms may prove to be a cost-savings measure over time.<sup>64</sup>

## 9.2 Issues raised during the consultations and National Review meeting

Participants at the National Legal Review Meeting confirmed that testing and treatment of HIV and tuberculosis are provided to prisoners. However there is no access to condoms, methadone or clean injecting equipment in prisons. Participants were also concerned about lack of access to ARVs and methadone for people in police custody. People held in police custody are particularly vulnerable due to lack of access to health services.

## 9.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- (i) Prohibit discrimination against people living with HIV by law enforcement officers and in prisons and detention / rehabilitation centres.
- (ii) Strengthen national implementation of the *Policy and SOP for HIV, STI, TB Prevention, Treatment, Care and Support in Prisons and Correction Centres 2012*.
- (iii) Introduce a prison methadone maintenance programme (learning from the experiences of Indonesia and Malaysia).
- (iv) Provide condoms in prisons and consider options for making bleach or other materials available for sterilizing injecting equipment.
- (v) The Ministry of Interior should issues instructions to Police to facilitate access to ARVs if requested by people living with HIV in police custody.

<sup>61</sup> WHO, UNAIDS, UNODC (2010), *Evidence for Action Technical Papers: Effectiveness of Interventions to Manage HIV in Prisons – Provision of condoms and other measures to decrease sexual transmission*. Geneva: WHO.

<sup>62</sup> Ibid.

<sup>63</sup> Butler T., Richters J., Yap L., Donovan B. (2013), Condoms for prisoners: no evidence that they increase sex in prison, but they increase safe sex. *Sex Transm Infect* 83(3).

<sup>64</sup> See: Lukas K. et al. (2011), *Evaluation of a Prisoner Condom Access Pilot Program Conducted in One California State Prison Facility*. California Department of Health.

## 10 Migrants and mobile populations

### 10.1 Context

Policies and regulations are in place to address the needs of migrant and mobile populations, but implementation requires strengthening. A *Prakas* was issued in 2007 by the Minister of Labour and Vocational Training that addresses the rights of Cambodian migrant labourers to HIV information.<sup>65</sup> At the regional level there is a *Joint Action Program (2012–2014) for the Greater Mekong Subregion Memorandum of Understanding to reduce HIV vulnerability associated with population movement*.

The HIV-related health care needs of migrants and other mobile populations are not adequately addressed. This is a concern both for Cambodians working abroad and for foreign migrants working in Cambodia, including industrial plantations (of cassava or eucalyptus) is also a concern as there have been anecdotal reports on lack of information and health care services for the workers.

The *National Strategic Plan (NSP) for Migrant & Mobile Population & HIV/AIDS 2010-2014* encourages cross-border collaboration but there is a lack of clear joint strategies and financial support. The NSP enforces the pre-departure HIV education for registered migrants through the Ministry of Labor and Vocational Training. However, undocumented migrants are not covered by the NSP.<sup>66</sup> In theory, migrant workers in Cambodia who are living with HIV are entitled to ARVs and HIV-related health care. There is no monitoring of whether this is occurring in practice.

In 2013, the Government of Thailand announced plans to give migrant workers from Cambodia and their families access to national health services and affordable healthcare plans without having to undergo a nationality identification process.<sup>67</sup> Workers and their families will reportedly be able to register for national healthcare using fingerprints and photo identification.

### 10.2 Issues raised during consultations and the National Review Meeting

Participants at the National Legal Review Meeting raised concerns that Cambodian migrant workers in Thailand have limited access to ARVs or other HIV-related health services. This has public health implications for both Thailand and Cambodia for when migrant families return. Cambodia will be unable to reach its Cambodia 3.0 targets of eradication of HIV unless prevention and treatment needs of mobile populations are addressed. Bilateral and sub-regional cooperation is required to better address this issue. There is a need for regional and cross-border collaboration to ensure migrants have access to ARVs and other HIV services.

### 10.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, it is recommended that the Royal Government of Cambodia:

- i. Ensure policies support cross-border and sub-regional coordination of delivery of healthcare to ensure continuity of supply of ARVs to migrants and mobile

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<sup>65</sup> See: Ministry of Labour and Vocational Training, *Prakas/Guidelines No. 108 M.L.V.T. of 31 May 2006 on Education on HIV/AIDS, Safe Migration, and Labour Rights for Cambodian Workers Abroad*, Ministry of Labour, 3 May 2007.

<sup>66</sup> Government of Cambodia (2012), *Country Situation; Policy Initiatives and Proposed Action for HIV/AIDS and Mobility*, Presentation, Bangkok, July 11-13th, 2012.

<sup>67</sup> Migrants to be granted access to health care, *The Nation*, September 6, 2013.

- populations;
- ii. Ensure that migrant populations within Cambodia and Cambodian migrants including undocumented migrants returning to the country have access to information about HIV testing services and ARVs. Strengthen capacity of healthcare providers at the Department of Occupational Safety and Health (DoSH) of the Ministry of Labour and Vocational Training (MoLVT), which provides medical check-ups to migrant workers, to inform migrants on proper VCCT protocol and procedures and referral to HIV information and services;
- iii. Strengthen capacity of healthcare services especially along the border to respond to migrants' HIV-related health care needs; and
- iv. Engage in dialogue with other countries where significant numbers of Cambodians migrate for work to ensure access to HIV testing, ARVs and related health care services. This should include liaison with the Royal Government of Thailand to monitor implementation of HIV-related aspects of the new Thai national health care scheme for Cambodian migrant workers and their families. Similar efforts should also be made in other countries such as Malaysia, South Korea and China;
- v. Engage in dialogue with other countries to encourage removal of all HIV-related travel and migration restrictions, including the requirement of an HIV test or an HIV negative test result as a condition for work, study abroad or other migration reasons.

## 11 Patents and access to medicines

### 11.1 Context

Cambodia joined the World Trade Organization (WTO) in 2004. Members of WTO are required to comply with patent protection standards defined by the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), including requirements to provide for patent protection of pharmaceuticals.

The TRIPS Agreement allows countries to take measures to ensure that the approach taken to implementing TRIPS requirements in domestic laws does not interfere with public health objectives. These are known as 'TRIPS flexibilities'. The WTO *Doha Declaration on TRIPS and Public Health* (2001) affirms the right of poor countries to make full use of TRIPS flexibilities to protect public health and to enhance access to essential medicines.

The supply of affordable generic medicines such as ARVs may be restricted if Cambodia's legislation on patents fails to include adequate flexibilities enabling supply of affordable medicines for public health purposes, or if Cambodia enters into trade agreements that require Cambodia to take measures to restrict access to generic medicines.

Some safeguards are in place in the existing *Law on Patents, Utility Model Certificate and Industrial Design* (2003) that enable Cambodia to access generic medicines. Article 136 states that pharmaceutical products are excluded from patent protection until 1st January, 2016. However, by January 2016, the patenting situation of HIV-related medicines, particularly second and third-line treatments and diagnostics, will be even more complex than it was in 2001 when the Doha Declaration was adopted. Therefore Cambodia will continue to need maximum flexibility beyond January 2016 with respect to their TRIPS obligations in order to address their public health needs.<sup>68</sup> Least Developed Countries including Cambodia are required to comply with TRIPS provisions by 2021 (this deadline was extended from 2016 to 2021 by WTO in 2013).<sup>69</sup> If Cambodia achieves middle-income status before 2021,

<sup>68</sup> See: UNAIDS (2011). *Implementation of TRIPS and access to medicines for HIV after January 2016: Strategies and options for least developed countries*. Geneva: UNAIDS.

<sup>69</sup> The Cambodian delegation at the World Trade Organization supported extension of the due date for TRIPS compliance for Least Developed Countries from January 2016 to July 2021. Some commentators have suggested

TRIPS provisions will apply. It is therefore in Cambodia's public health interests to amend Article 136 to bring it into line with the new WTO deadline for compliance with TRIPS requirements for Least Developed Countries of July 2021.

Compulsory licensing is an example of a TRIPS flexibility that allows countries to import or manufacture generic medicines. In 2012, the Ministry of Health with the National Committee on Intellectual Property Rights, UNDP and UNAIDS developed a Draft Law on Compulsory Licensing for Public Health. This draft law would enable the Government of Cambodia to issue compulsory licenses including to import generic medicines for public non-commercial use in government programmes. This draft law includes provisions for importation to ensure Cambodia as a country with limited drug manufacturing capacities can make effective use of compulsory licensing. This draft has been submitted to the Council of Ministers to be adopted by the National Assembly in 2014.

Another important TRIPS flexibility is parallel importing. Parallel imports are imports of a patented product from a country where it is already marketed. For example, if a drug company that holds patent rights for an ARV sells the ARV in India for a cheaper price than the price the same company sells the drug in Cambodia, then Cambodia can import the drug without the company's consent. The existing *Law on Patents* allows for parallel importing.<sup>70</sup>

Some provisions of Cambodia's existing *Law on Patents, Utility Model Certificate and Industrial Design 2003* go beyond the minimum standards required by the TRIPS Agreement (e.g. criminalization of patent infringements<sup>71</sup>). Such 'TRIPS-plus' provisions may result in future restrictions on access to generic medicines.

Free Trade Agreements involving Cambodia can also potentially restrict access to generic medicines by imposing 'TRIPS-plus' conditions e.g. the European Union-ASEAN trade agreement proposes to introduce data exclusivity requirements that disadvantage manufacturers of generic medicines. Examples of 'TRIPS-plus' measures include data exclusivity for pharmaceuticals, linking between patents and requirements for registration of medicines and restrictions on the possible reasons for issuing a compulsory license.

## 11.2 Issues raised during consultations and National Review Meeting

The need for the *Law on Patents, Utility Model Certificate and Industrial Design 2003* to be updated was confirmed during the National Legal Review Meeting. Discussions focused on the need to ensure the law maximizes access to affordable generic medicines through compulsory licensing and avoids TRIPS-plus provisions.

## 11.3 Recommendations

To provide a more enabling legal and policy environment for HIV responses, the Royal Government of Cambodia should ensure that TRIPS flexibilities are fully addressed in intellectual property legislation so that access to medicines is not restricted when Cambodia commences recognition of pharmaceutical patents. This requires the following actions:

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that the legal effect of this extension on patents relating to pharmaceuticals may be challenged due to conflicting WTO statements: <http://www.ip-watch.org/2013/08/02/what-does-wto-extension-for-lDCs-to-enforce-ip-mean-for-pharmaceuticals/>

<sup>70</sup> Article 44(i) of the *Law on Patents, Utility Model Certificate and Industrial Design* (2002). This provides that patent rights do not extend to acts in respect of articles that have been put on the market in or outside Cambodia by the owner of the patent or with his consent. The holder of patent rights therefore cannot enforce the rights when the product has already been put on the market, see: Phin Sovath (2010) Domestic Exhaustion of Patent Rights: A Theoretical and Practical Analysis, *2010 Cambodian Yearbook of Comparative Legal Studies* 99.

<sup>71</sup> As provided by Article 133 of the *Patents Law*.

- (i) Enact the draft Law on Compulsory Licensing.
- (ii) Amend Article 136 of the *Law on Patents, Utility Model Certificate and Industrial Design 2003* so as to extend the date of exclusion of pharmaceutical products from patent protection until 1st July 2021, unless Cambodia graduates from being a least developed country to being a lower-middle income country before that date.
- (iii) Not agree to trade or investment agreements that impose ‘TRIPS-plus’ requirements.
- (iv) Review the existing provisions of the *Law on Patents, Utility Model Certificate and Industrial Design 2003* to remove any TRIPS-plus provisions including criminalization of pharmaceutical patent infringements.<sup>72</sup>

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<sup>72</sup> See UNDP Community of Practice submission: <http://www.hivapcop.org/announcement/e-discussion-opportunities-and-strategies-address-challenges-and-further-advance-reco-1>

## **Annex I .....Selected references**

### **Laws and Government documents**

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*Law on the Prevention and Control of HIV/AIDS 2002*

*Law on Suppression of Human Trafficking and Sexual Exploitation 2008*

*Law on Patents, Utility Model Certificate and Industrial Design 2003*

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## Annex II Actions required in response to recommendations of the Global Commission on HIV and the Law

| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>Discrimination</b><br/>Law on Prevention and Control of HIV/AIDS 2002 prohibits discrimination against PLHIV or suspected of having HIV/AIDS and their families in the following areas:</p> <ul style="list-style-type: none"> <li>• Health care.</li> <li>• Employment.</li> <li>• Education.</li> <li>• Housing.</li> <li>• Freedom of movement.</li> <li>• Credit, loans, insurance.</li> <li>• In seeking public office.</li> </ul> <p>Penalties include fines, prison, administrative sanctions.<br/>Prakas 086 on HIV/AIDS in the Workplace &amp; Ministry of Labour HIV/AIDS Workplace Guidelines 2010 also address discrimination<br/>National HIV and AIDS Strategic Plan 2011-2015.</p> <p><b>Health care complaints</b><br/>Policy, Strategy and Guidelines for HIV Counseling &amp; Testing 2002 &amp; Law on the Prevention and Control of HIV/AIDS 2002:</p> <ul style="list-style-type: none"> <li>• Prohibits hospitals and other health care providers from discriminating against PLHIV.</li> <li>• Requires HIV test results to be confidential, subject to exceptions.</li> <li>• Requires HIV tests to be voluntary and with informed consent.</li> <li>• Prohibits compulsory HIV testing in employment, admission to schools, housing, travel, and health care or other services.</li> </ul> | <p><b>Discrimination</b></p> <p>Although it is illegal to discriminate against people living with HIV (PLHIV) and a person ‘suspected of having HIV/AIDS’, there are no laws specifically prohibiting discrimination on the grounds of homosexuality, gender identity, or history of drug use.</p> <p>Discrimination by police / law enforcement and prisons is not specifically addressed in the Law on the Prevention and Control of HIV/AIDS.</p> <p>Enforcement is weak: Gap between law and practice. Stigma Index study shows discrimination is widespread.</p> <p>There are no examples of enforcement of the Law on the Prevention and Control of HIV/AIDS by prosecutions or court actions to penalize people for discrimination, breach of confidentiality or non-consensual testing.</p> <p><b>Health care complaints</b><br/>Lack of free, speedy, confidential mechanisms for addressing health care complaints.</p> | <p><b>1. Discrimination</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>• Prohibit discrimination on the basis of actual or perceived HIV status</li> <li>• Prohibit discrimination against key populations and people at risk of HIV.</li> <li>• Prohibit discrimination against children living with or affected by HIV, especially in the context of adoption, health and education.</li> <li>• Ensure that schools do not bar or expel HIV-positive children or children from families affected by AIDS.</li> <li>• Ensure that human rights protections are enforced.</li> </ul> <p><b>Health care complaints</b><br/>Ensure mechanisms for addressing health care complaints.</p> |

| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <ul style="list-style-type: none"> <li>Requires pre-test and post-test counseling</li> <li>Provides PLHIV have a right to free primary health care.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>2. Entertainment workers &amp; sex workers</b></p> <p>Constitution (prohibits ‘exploitation by prostitution’)</p> <p>Law on the Suppression of Human Trafficking and Sexual Exploitation of 2008 (Soliciting, pimping and profiting from the sex industry are illegal)</p> <p>Ministry of Justice (2013), Explanatory Notes for the Law on Suppression of Human Trafficking and Sexual Exploitation (clarifies selling sex is not illegal)</p> <p>Police Community Partnership Initiative (PCPI)</p> <p>Continuum of Prevention to Care and Treatment for Female Entertainment Workers 2009 &amp; ‘Boosted’ Continuum of Prevention to Care and Treatment</p> <p>Sangkat and Commune Safety Policy (‘No prostitute women’)</p> <p>Prakas 066 (100% Condom Use Policy)</p> <p>Prakas 086 (HIV in the workplace) &amp; HIV/AIDS Workplace Guidelines 2010</p> <p>Ministry of Interior Letter on 100% CUP (police must not use condoms as evidence)</p> <p>Regulation on 100% condom use program in Phnom Penh</p> | <p><b>2. Entertainment workers &amp; sex workers</b></p> <p>Selling of sex in private is legal but street based sex workers are vulnerable to arrest for soliciting and police abuses.</p> <p>Lack of protections for entertainment workers under Labor Law 1997. Entertainment workers are not criminalized but irregular workers lack legal protections for workplace health and safety.</p> <p>Global Commission recommends full decriminalization of sex work sector so that workers labor rights can be protected. This would require amending the Law on the Suppression of Human Trafficking and Sexual Exploitation.</p> <p>PCPI supports partnerships of police, health services, local authorities, NGOs and entertainment workers / sex workers. PCPI needs to be scaled-up nationally. Tensions between health priorities and law enforcement priorities may still cause problems at local level.</p> <p>Ongoing confusion in relation to Law on the Suppression of Human Trafficking and Sexual Exploitation persists at local level. Training on the Explanatory Notes for police, lawyers, judges and commune chiefs is required.</p> | <p><b>2. Entertainment workers &amp; sex workers</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>Repeal laws that prohibit consenting adults to buy or sell sex, or that prohibit the sex industry.</li> <li>Take legal measures to ensure safe working conditions to sex workers.</li> <li>Stop police harassment and violence against sex workers. Ensure public nuisance offences are not used to harass sex workers.</li> <li>Prohibit mandatory testing of sex workers.</li> <li>Ensure enforcement of trafficking laws is targeted to punish those who use force, dishonesty, coercion, debt bondage, violence or deprivation of liberty.</li> <li>Shut down compulsory detention or rehabilitation centres for sex workers.</li> <li>Provide sex workers with evidence-based, voluntary, community empowerment services.</li> </ul> |

| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>Municipality 2008 (requires monthly STI tests)</p> <p>2nd National Action Plan to Prevent Violence against Women (2013-2017) “laws that criminalize sex work can increase women and transgender sex workers’ and entertainment workers’ risk for violence and restrict their access to justice.”</p>                                                                                                                                                                                                                                                                                                                                                                                                      | <p>Application of Prakas 086 to entertainment establishments could be considered.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>3. Men who have sex with men (MSM) and transgender people</b></p> <p>National Guideline For STI and HIV/AIDS Response Among MSM, Transgender and Transsexual People recognizes the rights of citizens to full and free expression of sexual identity; MSM, transgender and transsexual people have the right to comprehensive access to HIV services free of stigma and discrimination.</p> <p>2nd National Action Plan to Prevent Violence against Women (2013-2017) identifies the need to respond to violence against transgender women</p> <p>Police Community Partnership Initiative (PCPI)</p> <p>Boosted Continuum of Prevention to Care and Treatment</p> <p>Sangkat Commune Safety Policy</p> | <p><b>3. Men who have sex with men (MSM) and transgender people</b></p> <p>Gap between policy and practice. MSM and transgender still people face stigma and discrimination from health services (Study on Social exclusion of Lesbian, Gay &amp; Transgender persons in families &amp; communities, Social Protection Coordination Unit).</p> <p>There are reports of police abuses including extortion and violence (‘Coming out in the Kingdom’ report of the Cambodian Center for Human Rights). Police abuses and raids on MSM venue may add to stigma and harm HIV prevention efforts. PCPI needs to be scaled up to prevent abuses.</p> <p>There is no law enabling transgender people to have their chosen gender recognized in identification documents, without the need for medical procedures.</p> | <p><b>3. Men who have sex with men (MSM) and transgender people</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>• Repeal laws that criminalize homosexual sex.</li> <li>• Remove legal barriers to the formation of MSM and transgender community organizations</li> <li>• Prevent violence against MSM and transgender people.</li> <li>• Repeal laws that punish cross-dressing.</li> </ul> <p>Ensure transgender people are able to have their chosen gender recognised in identification documents, without the need for medical procedures.</p> |
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| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                                                                                            | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>4. People who inject drugs</b></p> <p>Law on the Control of Drugs 2011:</p> <ul style="list-style-type: none"> <li>• Criminalizes possession and use of narcotics</li> <li>• Permits harm reduction services (including in effect permitting needle &amp; syringe programmes: distribution of equipment for drug use by authorized health services, Section 54)</li> <li>• Permits compulsory treatment and rehabilitation for people “severely affected by drug addiction” if there is a threat of “severe danger” to themselves or others</li> <li>• Highly dependent drug users may be held in drug treatment and rehabilitation. Treatment and rehabilitation in public centers will last from 6 months to 2 years.</li> <li>• Pilots of community based treatment in Banteay Meanchey.</li> </ul> <p>Needle and Syringe Programme Policy &amp; Standard Operating Procedures are being finalized.</p> <p>Police Community Partnership Initiative (PCPI)</p> <p>Boosted Continuum of Prevention to Care and Treatment</p> <p>Sangkat and Commune Safety Policy (‘No illicit drug use’)</p> | <p><b>4. People who inject drugs</b></p> <p>Law enforcement needs to focus on drug traffickers, not drug users.</p> <p>PCPI is making progress in ensuring police support for harm reduction but needs to be scaled up nationally.</p> <p>Drug detention rehabilitation centres will continue to exist for difficult and exceptional cases. Drug detention rehabilitation centers do not provide adequate access to drug treatment and HIV/TB services.</p> <p>Access to community-based drug treatment is limited</p> | <p><b>4. People who inject drugs</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>• Offer access to harm reduction services.</li> <li>• Shut down all compulsory drug detention centers and replace them with evidence-based, voluntary treatment services.</li> <li>• Abolish national registries of drug users, compulsory HIV testing and forced treatment.</li> </ul> <p>Decriminalize the possession of drugs for personal use.</p> |
| <p><b>5. Women and girls</b></p> <p>Law on the Prevention of Domestic Violence and the Protection of the Victims 2005</p> <p>Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 &amp; Explanatory Notes</p> <p>2nd National Action Plan to Prevent Violence against Women (2013-2017), gives prominence to developing legal protection</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p><b>5. Women and girls</b></p> <p>There is a strong policy framework in relation to violence against women, but violence (particularly domestic violence) remains a widespread problem.</p> <p>The National Action Plan to Prevent Violence Against Women needs to be promoted &amp; implemented at district and commune level.</p>                                                                                                                                                                                  | <p><b>5. Women and girls</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>• Prohibit domestic violence, rape, sexual assaults, including marital rape.</li> <li>• Fully enforce laws to protect women and girls from violence.</li> <li>• Provide health services, including post-exposure prophylaxis, legal services and</li> </ul>                                                                                                    |

| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                    | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>and services, integrates the needs of sex workers, females who use drugs, transgender women and women living with HIV as “women at a higher risk for gender-based Violence (GBV)”.</p> <p>National HIV and AIDS Strategic Plan 2011-2015</p> <p>National Strategy for Reproductive and Sexual Health 2012-2016</p> <p>National Social Protection Strategy for the Poor and Vulnerable (2011-2015) includes home-based care and referral support for PLHIV and a comprehensive package of care for vulnerable women and children including poor female-headed households, women and children living with HIV.</p> <p>Implementing Guidelines of the national Law on the Prevention and Control of HIV/AIDS recognize that women and girls bear most of the burden of caring for family members.</p> <p>The minimum legal age of marriage is 16 with parental consent and 18 without parental consent (Civil Code).</p> | <p>35% of HIV-positive women report being asked to undergo sterilization during pregnancy, and HIV-positive women face discrimination from health care workers before, during and after their delivery (‘Positive and Pregnant’ study)</p> <p>Availability of post-exposure prophylaxis (PEP) for survivors of sexual assaults is required</p>                                 | <p>social protection for survivors of violence,</p> <ul style="list-style-type: none"> <li>• Prohibit forced abortion and coerced sterilisation of HIV-positive women and girls, and other forms of violence against women and girls in health care settings.</li> <li>• Remove legal barriers to sexual and reproductive health services.</li> <li>• Ensure women have equal access to inheritance, property including no gender discrimination upon separation, divorce or death</li> <li>• Ensure that social protection measures respond to the needs of HIV-positive women, women whose husbands have died of AIDS and women who take on caregiving roles in HIV-affected households</li> <li>• Prohibit early marriage.</li> </ul> |
| <p><b>6. Children and young people</b></p> <p>Civil Code and Sub-Decree 103, Ministry of Interior 2000: parents must register babies at commune or sangkat within 30 days after birth.</p> <p>National Social Protection Strategy for the Poor and Vulnerable (2011-2015) gives priority to the development of social safety nets and welfare services for special vulnerable groups of people living with HIV and orphans made vulnerable or affected by HIV. The Strategy includes programmes for care, food assistance and social services to children living with or in</p>                                                                                                                                                                                                                                                                                                                                          | <p><b>6. Children and young people</b></p> <p>50% of children under five do not have a birth certificate (Demographic Health Survey 2010)</p> <p>The age at which children can consent to an HIV test without parental consent should be lower than 18, recognizing that the legal age of consent to sex is 15.</p> <p>Clarification is required of the legal age at which</p> | <p><b>6. Children &amp; young people</b></p> <p>Countries must:</p> <ul style="list-style-type: none"> <li>• Ensure that the birth of every child is registered.</li> <li>• Ensure that every orphaned child is appointed an appropriate adult guardian. HIV-positive adults should not be prohibited from adopting.</li> <li>• Support community-based foster care if adoption not appropriate.</li> <li>• Ensure HIV-sensitive social protection e.g. direct cash transfers.</li> </ul>                                                                                                                                                                                                                                                |

| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Areas where action required to strengthen compliance with Global Commission recommendations                                 | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>families affected by HIV.</p> <p>Cambodian National Youth Development Policy 2011</p> <p>National Guidelines for Adolescent Friendly Reproductive and Sexual Health Services 2005.</p> <p>National HIV and AIDS Strategic Plan 2011-2015: focus on targeted HIV prevention for most-at-risk young people</p> <p>Ministry of Education, Youth and Sports implements integrated Life Skills Education curriculum. Policy on Child Friendly School (Dimension 1: Schools seeking out excluded children).</p> <p>Implementing Guidelines for the Law on the Prevention and Control of HIV/AIDS require parental consent for HIV tests of children under 18.</p> <p>The Penal Code and Law on Suppression of Trafficking and Sexual Exploitation define the legal age of consent to sex as 15.</p> | <p>adolescents can access sexual and reproductive health services, methadone programs and needles and syringes.</p>         | <ul style="list-style-type: none"> <li>• Ensure that orphans can inherit parental property regardless of their sex, HIV status or the HIV status of family members.</li> <li>• Ensure the right of every child, in or out of school, to comprehensive sexual health education.</li> <li>• Reform laws to ensure that the age of consent for autonomous access to HIV and sexual and reproductive health services is equal to or lower than the age of consent for sex.</li> <li>• Ensure young people who use drugs have legal and safe access to HIV and health services.</li> </ul> |
| <p><b>7. Prisoners</b></p> <p>Policy and Standard Operating Procedures (SOP) for HIV, STI, TB Prevention, Treatment, Care and Support in Prisons and Correction Centres 2012</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p><b>7. Prisoners</b></p> <p>Implementation of the SOP needs to be scaled up nationwide, including condom availability</p> | <p><b>7. Prisoners</b></p> <p>Prisoners and detainees must have access to:</p> <ul style="list-style-type: none"> <li>• Antiretroviral therapy;</li> <li>• HIV prevention and care;</li> <li>• Condoms;</li> <li>• Harm reduction services;</li> <li>• Voluntary treatment for drug dependence.</li> </ul> <p>Health care services must be evidence-based, voluntary and offered only where clinically indicated.</p>                                                                                                                                                                 |
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| Existing national laws & policies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                            | Global Commission Recommendations                                                                                                                                                                                                                              |
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| <p><b>8. Access to justice</b><br/>The Community Legal Service provides legal information and advice to entertainment workers in Phnom Penh</p> <p>NGOs can make representations to government if rights are violated.</p> <p>Commissions of the National Assembly (Human Rights, Health &amp; Women &amp; Social Welfare) and oversight mechanisms in national ministries and sub-national democratic development institutions are responsible for enforcement.</p> <p>Ministry of Women's Affairs employs Judicial Police Agents to help women seek protection under the Domestic Violence Law. The Judicial Police Agents advocate for women and support them through the legal process.</p> | <p><b>8. Access to justice</b></p> <p>Legal aid and advocacy services are very limited</p> <p>It is difficult for PLHIV to take court action to prove a violation of rights.</p> <p>Access to affordable legal advice and help with complaints is limited.</p> <p>Use of traditional dispute resolution mechanisms or mediation should be explored.</p> <p>Judicial Police Agents are needed at district and commune levels.</p>                       | <p><b>8. Access to justice</b></p> <p>Countries must ensure targeted action on access to justice / legal aid.</p>                                                                                                                                              |
| <p><b>9. Criminalization of HIV transmission</b></p> <p>Law on Prevention and Control of HIV/AIDS 2002: Intentional transmission of HIV to another person is prohibited. A penalty of 10 to 15 years imprisonment applies.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p><b>9. Criminalization of HIV transmission</b></p> <p>To comply with the Global Commission recommendation, cases should be prosecuted under the assault or rape offences of the Penal Code instead of the Law on Prevention and Control of HIV/AIDS.</p> <p>The HIV-specific offence for disease transmission with heavy penalties is stigmatizing, may be used to target or harass sex workers and deter people from accessing health services.</p> | <p><b>9. Criminalization of HIV transmission</b></p> <p>Countries must not enact HIV-specific laws that criminalize transmission, exposure or failure to disclose HIV status. Prosecutions should be limited to intentional or malicious HIV transmission.</p> |

| Existing national laws & policies                                                                                                                                                                                                                                                      | Areas where action required to strengthen compliance with Global Commission recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Global Commission Recommendations                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p><b>10. Migrants</b><br/>The national Law on the Prevention and Control of HIV/AIDS 2002 prohibits compulsory HIV testing as a condition of the exercise of freedom of abode and travelling. ARVs are available to migrants in Cambodia.</p>                                         | <p><b>10. Migrants</b><br/>Migrant workers including migrant sex workers have a right to access ARVs under national policy but may face difficulties accessing HIV services if they have irregular migration status</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>10. Migrants</b><br/>Countries should not require HIV tests for foreigners.<br/>Countries should allow registration of migrants with health services and to ensure they can access the same quality of services as citizens.</p>                                                                                                                                                                                   |
| <p><b>11. Patent law and access to treatment</b></p> <p>Draft Law on Compulsory Licensing</p> <p>Draft Law on Undisclosed Information and Trade Secrets</p> <p>Law on Patents 2003, Article 136: Pharmaceutical products are excluded from patent protection until 1 January 2016.</p> | <p><b>11. Patent law and access to treatment</b></p> <p>Provisions for use of TRIPS flexibilities after 2016 have not yet been introduced in Law. An amendment could delay introduction of pharmaceutical patents until July 2021 or until Cambodia graduates from Least Developed Country status.</p> <p>Concerns have been raised that the draft Law on Compulsory Licensing is not strong enough.</p> <p>Provisions of Law on Patents that go beyond the minimum standards set in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) should be removed</p> <p>Free Trade Agreements can restrict access to generic anti-retroviral drugs (ARVs) by imposing ‘TRIPS-plus’ conditions e.g. (European Union-ASEAN trade agreement proposes to introduce data exclusivity).</p> | <p><b>11. Patent law and access to treatment</b></p> <p>Countries should:</p> <ul style="list-style-type: none"> <li>• incorporate TRIPS flexibilities, in national patent laws.</li> <li>• not enact anti-counterfeiting legislation that inaccurately conflates the problem of counterfeit medicines with access to generics.</li> <li>• use other areas of law and policy to increase access to medicines.</li> </ul> |

## Annex III Participants: National Review and Consultations on Legal frameworks

16-17 September 2013

| #  | Name                | Title                         | Institution          |
|----|---------------------|-------------------------------|----------------------|
| 1  | Meas La             | Chief of HR bureau            | Council of Ministers |
| 2  | Sok Srey Leak       | staff                         | MoWA                 |
| 3  | Narmada Dhakal      | Soc. Mobilization Advisor     | UNAIDS               |
| 4  | Annette Moron       | Soc. Mobilization             | UNAIDS               |
| 5  | Chour Eang Ly       | Deputy Director               | MoLVT                |
| 6  | Chea Phalline       | Advisor                       | MoInf                |
| 7  | Phoung Chanthorn    | Youth LEAD                    | NAA                  |
| 8  | Map Somaya          | Executive Director            | Mith Samlanh         |
| 9  | Un Sopheap          | Deputy Director               | MoNASRI              |
| 10 | Tim Vora            | Executive Director            | HACC                 |
| 11 | Keo Sichan          | Program Coordinator           | CWDA                 |
| 12 | Chhun Mony Vichara  | Excom                         | BC                   |
| 13 | Ung Polin           | Program manager               | PSK/PSI              |
| 14 | Nhem Chanthea       | Trainer                       | CWPD                 |
| 15 | Neat Thirith        | Training Coordinator          | ACTED-PSF            |
| 16 | Sat Bunsoeurn       | Program coordinator           | SIT                  |
| 17 | Kith Marady         | Program manager               | Save the Children    |
| 18 | Klang Pichet        | Program coordinator           | NOVCTF               |
| 19 | Luch Peou           | Medical coordination          | Mith Samlanh         |
| 20 | Mey Sovanara        | Senior Com, Officer           | KHANA                |
| 21 | Pok Vanthat         | Medical doctor                | MoLVT                |
| 22 | Try Chen            | staff                         | VC                   |
| 23 | Chhorn Chanthon     | staff                         | VC                   |
| 24 | Eng Dany            | Officer                       | WHO                  |
| 25 | Chan Dyna           | Network Coordinator           | EW network/CPU       |
| 26 | Tia Phalla          | Vice Chairman                 | NAA                  |
| 27 | Ly Thavy            | Adm/finance Officer           | CCW                  |
| 28 | Pamela Teichman     | Senior HIV Prevention advisor | USAID                |
| 29 | Chap Sam Oeun       | Producer                      | Hang Meas TV         |
| 30 | Sou Sina            | Program officer               | CPN+                 |
| 31 | Chan Vutha          | Program office                | CPN+                 |
| 32 | Han Bun Vireak      | MSM program officer           | CPN+                 |
| 33 | Chhoeung Rachna     | Staff member                  | ROCK                 |
| 34 | Hong Reaksmeay      | Policy manager                | KHANA                |
| 35 | Some Polin          | Staff                         | NAA                  |
| 36 | Ros Seilavath       | Deputy Secretary General      | NAA                  |
| 37 | Voeung Yanath       | Deputy CRM department         | NAA                  |
| 38 | Hang Vibol          | Adm/finance department        | NAA                  |
| 39 | Keo Kheng           | Women's representative        | CWPD                 |
| 40 | Kong Bunthorn       | Coordinator                   | BC                   |
| 41 | Kol Chamnol         | Producer                      | Hang Meas TV         |
| 42 | Seang Seng          | Staff                         | SABC                 |
| 43 | Sok Sophaalla       | Staff                         | NAA                  |
| 44 | Ros Sokunthy        | Staff                         | WNU                  |
| 45 | Seng Sut Wantha     | Gender expert                 | Freelance            |
| 46 | Soth Nimol          | Program officer               | UNESCO               |
| 47 | Chun Bora           | Executive Director            | CBCA                 |
| 48 | Phoun Pisey Sapanak | Staff                         | NAA                  |
| 49 | Chham Ratha         | Staff                         | NAA                  |

| #  | Name               | Title                    | Institution |
|----|--------------------|--------------------------|-------------|
| 50 | Kim Sochetra       | A/F                      | NAA         |
| 51 | Ung Sopheak        | PA                       | AUA         |
| 52 | Heng Phirum        | Deputy director          | CHEC        |
| 53 | Sieng Sorya        | Deputy Secretary General | NAA         |
| 54 | Marie-Odile, Emond | Country Coordinator      | UNAIDS      |

**NGO Group Consultation, 09<sup>th</sup> September 2013**

| #  | Name          | Title               | Institution       |
|----|---------------|---------------------|-------------------|
| 1  | Kasem Kolnary | Director            | CHEC              |
| 2  | San Vandin    | ED                  | PC                |
| 3  | Chev Chan     | TA/NOVCTF           | Save the Children |
| 4  | Tim Vora      | Executive director  | HACC              |
| 5  | Pich Lisay    | Program officer     | MSIC              |
| 6  | Neang Hour    | Medical doctor      | Korsang           |
| 7  | Heng Kiri     | Outreach officer    | KHANA             |
| 8  | Meas Chanthan | Executive director  | CSSD              |
| 9  | Ros Sokunthy  | Manager             | WNU               |
| 10 | Mey Sovanara  | Senior C. Officer   | KHANA             |
| 11 | Loun Monyl    | Executive director  | Inthanou          |
| 12 | Heang Phyrun  | Program coordinator | PSK               |
| 13 | Nith Sopha    | Program manager     | FHI360            |

**Government organizations and Development partners Group Consultation, 10<sup>th</sup> September 2013**

| #  | Name            | Title                         | Institution |
|----|-----------------|-------------------------------|-------------|
| 1  | Younge Yanath   | Deputy director CRM dept.     | NAA         |
| 2  | Chea Sok Ny     | Deputy director of dept.      | MoLVT       |
| 3  | Ros Seilavath   | Deputy Secretary general      | NAA         |
| 4  | Chhun Bun Meng  | HAARP program manager         | AusAID      |
| 5  | Amara Bou       | Program Analyst               | UNDP        |
| 6  | Sarah Knibbs    | Deputy Representative         | UNFPA       |
| 7  | Narmada Acharya | SMPA                          | UNAIDS      |
| 8  | Pamela Tiechman | Senior HIV prevention advisor | USAID       |
| 9  | Un Sopheap      | Deputy Director               | MoNASRI     |
| 10 | Sieng Sorya     | Deputy secretary general      | NAA         |

**Community Groups Consultation, 10<sup>th</sup> September 2013**

| # | Name              | Title                   | Institution |
|---|-------------------|-------------------------|-------------|
| 1 | Seang Seng        | Staff                   | SABC        |
| 2 | Lach Srey Vann    | Outreach worker         | SABC        |
| 3 | Choun Neth        | Outreach worker         | Korsang     |
| 4 | Lim Sethea        | Outreach worker         | Korsang     |
| 5 | Phoung Chanthorn  | MARP coordinator        | KHANA       |
| 6 | Noun Chanthou     | Outreach worker         | CPU         |
| 7 | Sor Sambo         | Staff                   | CWDA/CPU    |
| 8 | Chhun Mony Vichra | Excom                   | BC          |
| 9 | Horn Bun Virak    | MSM program coordinator | CPN+        |

|    |                |                     |               |
|----|----------------|---------------------|---------------|
| 10 | Kong Bunthorn  | Coordinator         | BC            |
| 11 | Prum Dalish    | Acting coordinator  | CCW           |
| 12 | Tang Sokunthea | Network coordinator | CWPD          |
| 13 | Im Yarin       | Social worker       | Mith Samlanh  |
| 14 | Khieu Kunthea  |                     | Mith Samlanh  |
| 15 | Panh Pun       |                     | Mith Samlanh  |
| 16 | Hout Tortim    | Executive director  | Vithei Chivit |
| 17 | Pich Sokthea   | Peer educator       | WNU           |
| 18 | Soe Sonita     | CLS                 | WNU           |
| 19 | Sou Sina       | Program officer     | CPN+          |