

**CONSULTANCY REPORT  
TO  
CAMBODIAN ALLIANCE FOR COMBATING HIV/AIDS (CACHA)**

**HARD LIFE FOR A LEGAL WORK:  
THE 2008 ANTI-TRAFFICKING LAW AND SEX WORK**

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## I. INTRODUCTION

This paper is written as part of my consultancy with the Cambodian Alliance for Combating HIV/AIDS (CACHA). The consultancy is an integral part of a larger research project by CACHA that aims to advocate for positive change in the approaches, practices, policies, and mechanisms employed by authorities, development partners, service providers and civil society vis-à-vis Universal Access (to treatment for HIV) and the right to work through strategic partnership with entertainment/sex workers. The primary purpose of the paper is to identify the challenges of the 2008 'Law on Suppression of Human Trafficking and Sexual Exploitation' on the 'right to work' of 'entertainment/sex workers'. The paper addresses four key issues outlined in the consultancy Term of Reference (TOR): (1) Comparison of Khmer version of law with English translation-especially looking at sections which appear to make sex work illegal; (2) Assessment of the workability of the new law and guidelines based on experiences in other jurisdictions- including South Korea which passed a similar law four years ago; (3) Overview of abuses under new law and anti-trafficking campaigns from collected reports, interviews, and case studies; and (4) Making recommendations for the amendment of the law taking into account the Cambodian legal system.

Between 1980 and 1989, prostitution had been suppressed. The sex industry became more active at the start of the 1990s following the arrival of some 20,000 United Nations Transitional Authority in Cambodia (UNTAC) troops and civilian administrators in 1991. This created a demand for sex services in an environment that was less politically restrictive and supported the economic liberalization in 1993 after UNTAC withdrawal<sup>1</sup>. The number of prostitutes had sky-rocketed, and a large proportion of them had been sold into prostitution<sup>2</sup>.

The 1993 Constitution of the Kingdom of Cambodia prohibits human trafficking and commercial sexual exploitation<sup>3</sup>. In 1996, Cambodia adopted the 'Law on Suppression of the Kidnapping, Trafficking, and the Exploitation of Human Beings'. It criminalized sex trafficking, acts of pimping/obscenities/debauchery, and the operation of places for committing debauchery and obscene acts<sup>4</sup>. In 2008, a new law was enacted entitled the Law on Suppression of Human Trafficking and Sexual Exploitation. It criminalizes all types of human trafficking<sup>5</sup>. It explicitly pronounces illegal various prostitution-associated acts, including acts of obscenity/pimping/debauchery, pornography, soliciting in public, buying child sex, managing prostitution, provision of premises for the purposes of prostitution, and procuring prostitution.

No Cambodian law prohibits 'voluntary prostitution' provided there is no public solicitation. If prostitution is a form of legal employment, why sex workers had been and are being abused under the past and current anti-trafficking laws? What makes it difficult for them to co-exist with the new law? How does the law affect their rights to work? Would it be possible to effectively enforce the law given the nature of the sex industry, and the Cambodian socio-economic and policing situations? These are key questions this paper attempts to answer based on a literature review and the primary data already collected as part of the larger study that the paper will form a part of.

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<sup>1</sup> Hughes, D., 2000, "Welcome to the Rape Camp", *Sexual Exploitation and the Internet in Cambodia*, Journal of Sexual Aggression, Vol. 6, No. 1-2, Winter 2000, p. 4. Brown, L., 2001a, *Sex Slaves: The Trafficking of Women in Asia*, p. 138.

<sup>2</sup> Brown, L., 2001a, *Sex Slaves: The Trafficking of women in Asia*, p. 138.

The Human Rights Task Force on Cambodia, 2001, *Cambodia: Prostitution and Sex Trafficking: A Growing Threat to the Human Rights of Women and Children in Cambodia*, <http://www.hrsolidarity.net/mainfile.php/1996vol06no04/219/> accessed 01 Jan 2009.

<sup>3</sup> Kingdom of Cambodia, *The Constitution*, 1993, Chapter 3, Article 46.

<sup>4</sup> Kingdom of Cambodia, Royal Degree No. 0296/01, *The Law on the Suppression of Kidnapping, Trafficking and Exploitation of Human Beings*, Adopted by the National Assembly on 16 January 1996.

Rasmei Kampuchea Khmer Daily Newspaper, 2007, *National Assembly Discusses New Anti-Human Trafficking Bill*, Year 15<sup>th</sup>, Issue 4466, Wednesday, 19 December 2007, p. A2.

<sup>5</sup> *ibid.*

## **II. COMPARISON OF KHMER VERSION OF THE LAW WITH ENGLISH TRANSLATION, ESPECIALLY SECTIONS WHICH APPEAR TO MAKE SEX WORK ILLEGAL**

The enactment of the 2008 anti-trafficking law, created a widespread misunderstanding that sex work was illegal. This misunderstanding resulted in sudden raids, arrests, and detentions of brothel owners and sex workers. In reality, the law legalizes 'voluntary prostitution'. However, sex workers cannot operate as they wish. The law makes their working lives difficult by prohibiting some prostitution-associated acts, including: public soliciting, procurement of prostitution and child prostitution, management of prostitution, management of establishment for prostitution, provision of premises for prostitution, purchase of child prostitution, soliciting for child prostitution, conditional money loan for child prostitution, contract of child prostitution, sexual intercourse with minors, and indecent act against minors, contract for the act of selling/buying or exchanging of human being and sexual exploitation, and pornography. These restrictions make prostitution a non-viable employment option.

As part of my task to look at the English translation of the law, especially the sections that appear to create the confusion concerning the legal status of sex work in Cambodia, I found the informal English translation by UNICEF dated 03 March 2008 to be acceptable. This suggests that misperceptions could be engendered by official misinterpretation and incorrect implementation of the law, especially regarding article 24 which deals with public soliciting.

## **III. OVERVIEW OF ABUSES UNDER THE NEW LAW AND ANTI-TRAFFICKING CAMPAIGNS**

### **3.1 The enactment of the Law and its aftermath**

The promulgation of the Law on Suppression of Human Trafficking and Sexual Exploitation in February 2008 led to a big wave of raids on brothels and independent prostitutes in Cambodia. Regular night time sweeps of public areas in Phnom Penh that aimed to round up and arrest sex workers, vagrants, beggars, and street children have been conducted by authorities for years. However these actions became far more frequent in 2008. Such operations are normally conducted by district officers, police, security guards, public park guards and/or officials from Municipal Social Affairs Department. The NGO LICADHO suspected that many of the arrests were illegal because apart from the police, none of the aforementioned agencies possess the power of arrest. Even if conducted by police, the arrests seemed to be unwarranted and did not rely on any proper investigation of alleged crimes<sup>6</sup>.

According to an NGO PSI<sup>7</sup>, at least 381 brothels around the country were closed down from March to June of 2008. Among the brothels closed, 121 were in Phnom Penh, 52 in Banteay Meanchey, and 42 in Battambang and Pailin<sup>8</sup>. However, the NGO FHI<sup>9</sup> recorded the closure of 48 brothels in Phnom Penh during which five brothel owners were arrested and an estimated 255 sex workers were affected. FHI further noted that many of these sex workers were arrested and detained. In Kompong Cham and Banteay Meanchey, 20 and 33 brothels were closed respectively and around 250 sex workers affected appeared to have resorted to working at karaoke parlors, massage parlors, and beer gardens, while others have simply disappeared<sup>10</sup>. The NGO AFESIP claimed that over 500

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<sup>6</sup> LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

<sup>7</sup> PSI stands for Population Services International.

<sup>8</sup> PSI cited in Chhay, C. and Lodish, E., 2008, *Brothel Raids, Arrests Worry Health Workers*, The Cambodia Daily, Monday, 01 May 2008, [http://www.camnet.com.kh/cambodia.daily/selected\\_features/cd-May-1-2008.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/cd-May-1-2008.htm) accessed 01 Jan 2009.

<sup>9</sup> FHI stands for Family Health International.

<sup>10</sup> FHI cited in Chhay, C. and Lodish, E., 2008, *Brothel Raids, Arrests Worry Health Workers*, The Cambodia Daily, Monday, 01 May 2008, [http://www.camnet.com.kh/cambodia.daily/selected\\_features/cd-May-1-2008.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/cd-May-1-2008.htm) accessed 01 Jan 2009.

women were arrested for soliciting sex in the first nine months of 2008, and many were forced into rehabilitation Centers- Prey Speu and Koh Kor<sup>11</sup>.

Prey Speu and Koh<sup>12</sup> Kor Social Affairs Centers are Centers run by the Phnom Penh Social Affairs Department under the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MoSVY). Prey Speu Centre (which is otherwise known as the Chom Choa Centre) is located in Prey Speu village, Chom Chao commune, Dangkor district of Phnom Penh. Koh Kor or Koh Rumdoul Centre is on an island in Kandal's Saang district. It is built on the site of a former Khmer Rouge prison, and is accessible by boat<sup>13</sup>. Officially, according to LICADHO, the Centers aim to provide voluntary rehabilitation and education services to the homeless and the poor. Ironically, LICADHO investigations indicated that they are being utilized for systematic unlawful detention of prostitutes, vagrants, beggars, and Phnom Penh street dwellers<sup>14</sup>.

### 3.2 The incorrect implementation of the law

Data and information from various sources, including media reports, NGOs' reports, surveys, and interviews with sex workers, suggested that sex workers among other target groups have been arrested without substantial evidence. In most instances, carrying condoms was the primary cause of arrest<sup>15</sup>. Subsequently, they were forcibly and illegally detained at the two Centers where serious human rights abuses were reported. Reports show that sex workers were detained without being charged or convicted for any offence and without a definite duration. Some were released shortly after paying bribes of between 100,000R<sup>16</sup> and 600,000R (approximately \$25-150<sup>17</sup>) to the Centers' warders and/or officers. Those who could not afford to pay were reportedly detained from between a week up to five months until they were released or managed to escape<sup>18</sup>.

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<sup>11</sup> Afesip cited in AFP, 2008, *Cambodia Faces Problems Enforced New Sex Trafficking Law*, Friday, 26 December 2008, <http://beta.malaysia.news.yahoo.com/afp/20081226/tap-cambodia-prostitution-trafficking-2a5be5e.html?printer=1> accessed 01 Jan 2009.

<sup>12</sup> The term 'Koh' means 'Island'.

<sup>13</sup> LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

AFP, 2008, *Cambodia Faces Problems Enforced New Sex Trafficking Law*, Friday, 26 December 2008, <http://beta.malaysia.news.yahoo.com/afp/20081226/tap-cambodia-prostitution-trafficking-2a5be5e.html?printer=1> accessed 01 Jan 2009.

<sup>14</sup> LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

<sup>15</sup> Doogan, M., *Sex Workers Have Been Forcibly Detained in Rehabilitation Centers Where They Have Been Rap*, Saturday, 14 June 2008, <http://www.indybay.org/newsitems/2008/06/14/18507003.php> accessed 01 Jan 2009.

*Letter of Appeal of Cambodian Ambassador to Australia by Sex Workers Support Group*, June 2008, Support Cambodian Sex Workers, [http://www.scarletalliance.org.au/nm/int/cambodia/letter\\_0608/view](http://www.scarletalliance.org.au/nm/int/cambodia/letter_0608/view) accessed 01 Jan 2009.

*What Do Sex Workers Do When Faced With State Sanctioned Abuse?*

[http://www.sexworkeurope.org/site/index.php?option=com\\_content&task=view&id=218&Itemid=1](http://www.sexworkeurope.org/site/index.php?option=com_content&task=view&id=218&Itemid=1) accessed 01 Jan 2009. AFP, 10 Sept 2008, *Cambodia Faces New HIV Threat As Condom Campaign at Risk*,

[http://afp.google.com/article/ALeqM5js6Lp3KFioJjnmX0M\\_skBDloJWwA](http://afp.google.com/article/ALeqM5js6Lp3KFioJjnmX0M_skBDloJWwA) accessed 01 Jan 2009.

Singh, U., 2008, *Effective Advocacy Case Study on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation*, HACC, <http://healthdev.net/site/post.php?s=3839> accessed 01 Jan 2009.

<sup>16</sup> R stands for Riel- the Cambodian currency. Normally 4,000R equal to one U.S. Dollar.

<sup>17</sup> US Dollar in this paper is represented by \$.

<sup>18</sup> WNU, April 2008, *Case Studies of 11 Sex Workers Who Were Raided, The Human Impact of the Law on the Suppression of Human Trafficking and Sexual Exploitation*.

CACHA, 2008's Survey on Sex/Entertainment Workers and MSM in Phnom Penh, Siem Reap, Sihanouk Ville, and Banteay Meanchey.

HACC, CACHA, CCW, and WNU, 2008?, *Report, Round Table Discussion on Violation Against Entertainment Workers*, 01 Sept 2008, Phnom Penh Hotel, Supported by CAFOD, Development and Peace, and Actionaid.

AFP, 10 Sept 2008, *Cambodia Faces New HIV Threat As Condom Campaign at Risk*, [http://afp.google.com/article/ALeqM5js6Lp3KFioJjnmX0M\\_skBDloJWwA](http://afp.google.com/article/ALeqM5js6Lp3KFioJjnmX0M_skBDloJWwA) accessed 01 Jan 2009.

*Letter of Appeal of Cambodian Ambassador to Australia by Sex Workers Support Group*, June 2008, Support Cambodian Sex Workers, [http://www.scarletalliance.org.au/nm/int/cambodia/letter\\_0608/view](http://www.scarletalliance.org.au/nm/int/cambodia/letter_0608/view) accessed 01 Jan 2009.

LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

Such acts are clearly against Cambodia's Constitution and Laws. As already noted neither the Cambodian Constitution nor the law criminalizes prostitution, thus it is without doubt a legitimate occupation<sup>19</sup>. Although soliciting in public is an offence under the 2008 anti-trafficking law, the detentions remain illegal for two reasons. First, some of those assumed to be sex workers were arrested while walking, eating, and sightseeing. None of these activities constitute sexual solicitation<sup>20</sup>. Second, the detentions occurred without those who were arrested being charged or sentenced for any offence, and the duration of detention went beyond the maximum period established by the law. Article 24 on soliciting states that<sup>21</sup>:

*A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment for 1 to 6 days and a fine of 3,000 to 10,000R (~\$0.75-2.5). A minor shall be exempted from punishment of the offense stipulated in this article.*

Article 38 of the Cambodia's Constitution provides that:

*The law guarantees there shall be no physical abuse against any individual. The law shall protect life, honor, and dignity of the citizens. The prosecution, arrest, or detention of any person shall not be done except in accordance with the law. Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law... Any case of doubt, it shall be resolved in favor of the accused. The accused shall be considered innocent until the judge has passed a final judgment on the case. Every citizen shall enjoy the right to defense through judicial recourse<sup>22</sup>.*

The Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (the 1992 UNTAC law which remains in effect pending the new Criminal Code), states that:

*Article 13: Arrest and Detention*

*No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor...*

*Article 14: Pre-trial detention*

*1. Only the judge, if so petitioned by the prosecutor, may decide to keep an accused in prison,...*

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Doogan, M., *Sex Workers Have Been Forcibly Detained in Rehabilitation Centers Where They Have Been Rap*, Saturday, 14 June 2008, <http://www.indybay.org/newsitems/2008/06/14/18507003.php> accessed 01 Jan 2009.

Ly, P., 2008, *Is Government Legislation Neglecting The Human Rights of Sex Workers?* <http://healthdev.net/site/post.php?s=3604> accessed 01 Jan 2009.

Cheang, S., 2008, *Cambodian Prostitutes Protest Police Crackdown, Allege Physical and Sexual Abuse*, The Associate Press, 04 Jun 2008, <http://www.newser.com/article/d913bi080/cambodian-prostitutes-protest-police-crackdown-allege-physical-and-sexual-abuse.html> accessed 01 Jan 2009.

Chhay, C. and Lodish, E., 2008, *Brothel Raids, Arrests Worry Health Workers*, The Cambodia Daily, Monday, 01 May 2008, [http://www.camnet.com.kh/cambodia.daily/selected\\_features/cd-May-1-2008.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/cd-May-1-2008.htm) accessed 01 Jan 2009.

Health News, 04 Jun 2008, *Cambodia to Investigate Alleged Police Abuse of Sex Workers*, [http://www.monstersandcritics.com/news/health/news/article\\_1409233.php/Cambodia\\_to\\_investigate\\_alleged\\_police\\_abuse\\_of\\_sex\\_workers](http://www.monstersandcritics.com/news/health/news/article_1409233.php/Cambodia_to_investigate_alleged_police_abuse_of_sex_workers) accessed 01 Jan 2009.

Jagan, L., n.d., *Preying on Cambodia's Poor, The Suffering of the Khmer People Seems Never-Ending- The Latest Increasing Problem Being Human Trafficking*, [http://www.bangkokpost.com/071208\\_Spectrum/07Dec2008\\_spec006.php](http://www.bangkokpost.com/071208_Spectrum/07Dec2008_spec006.php) accessed 01 Jan 2009.

<sup>19</sup> Kingdom of Cambodia, Taskforce Against Human trafficking and smuggling, Labor and sexual exploitation of women and children, *Guidelines on implementation of the Law on Human Trafficking and Sexual exploitation*, No. 001 សំណួរអំពីការជំរុញការងារ, 28 October 2008.

<sup>20</sup> Based on 11 in-depth interviews with sex workers who have been arrested, conducted by staff of NGO Women Network of Unity (WNU) in April 2008 at Wat Phnom, Railway Station, and Building Area.

<sup>21</sup> Kingdom of Cambodia, 2008, *The Law on Suppression of Human Trafficking and Sexual Exploitation*, Chapter IV: Prostitution and Child Prostitution, Article 24: Soliciting.

<sup>22</sup> Kingdom of Cambodia, *The Constitution*, 1993, Chapter 3, Article 38.

4. *The duration of a pre-trial detention must in no case exceed four months...*

*Article 16: release of detainees*

*All persons detained or held in a center of detention (prisons) ... shall be considered as illegally detained and shall be immediately released, ... Any person detained or held within a declared center of detention but not listed on the prison registry shall similarly be released<sup>23</sup>.*

Article 204 ‘Cases of Provisional Detention’ of the 2008 Code of the Criminal Procedure of the Kingdom of Cambodia, provides that:

*Provisional detention may be ordered only in case of a felony or of misdemeanors involving a punishment of imprisonment of one year or more<sup>24</sup>.*

Case Study 1 gives an account of a sex worker at the ‘Building Area<sup>25</sup>’ who was arrested illegally and abused by police. The case provides insights into how sex workers’ livelihoods are affected by authorities’ actions.

#### **Case Study 1: A sex worker at Building area**

Somley (an alias), 27, has a 3-year old son who lives with his grandmother in Takeo province. Somley and her second husband own a small plot of arable land that does not produce sufficient rice to sustain them. Poverty forced them to migrate from Kandal province to Phnom Penh in search of a better life. The first time they came to Phnom Penh, her husband worked as a fortune teller and did not make enough money. In desperate need of money to return home, she resorted to sex work. After five days, they saved 50,000R (around \$12.50) to return home. After a fortnight, they returned again to Phnom Penh and stayed on a wooden bed in front of a small house rented by a prostitute at the Building. She returned to sex work without the knowledge of her husband.

One night (April 2008) she went to a park near Phsar Chas to look for customers. While eating papaya salad, she was arrested by two policemen. When they arrived, others managed to escape. She would have done so too if she had been aware that they had come to arrest sex workers. She questioned the policemen as to the reason for her arrest, and they told her that it was because she is a prostitute. Somley recalled that:

*When I arrived at their office, they harassed me and wanted to tie me up. I begged them repeatedly not to tie and beat me because I just delivered a baby. They were kind enough not to do so, but they ordered me to clean the floor and toilet. I told them that I needed to take care of my baby and begged for their mercy to let me go. That’s why I was released. If you were in my situation, you would have no choice but to say whatever is sensible to be freed and safe from the police. I am fortunate enough that they did not beat or rape me.*

Haunted by the ordeal, Somley is afraid to go to the same place for work. She is caught in a dilemma. She is fearful of arrest, while being in desperate need of money to support her son and husband. She said that:

*I do not have a better option than prostitution. I do not think it is bad and dirty to be a prostitute. We need money to survive. I am so concerned that my husband might become aware of my involvement in prostitution. Yet they (her husband and son) are waiting for my remittance. I wish I have \$20 to make my way home. Life is so difficult now.*

Source: S.L from Building Area, interviewed by Ly Pisey, 29 April 2008

<sup>23</sup> Kingdom of Cambodia, *The Provisions Dated 10 Sept 1992 Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period*, Section 2: Criminal Procedure, Article 13, 14, and 16.

<sup>24</sup> Kingdom of Cambodia, *The Code of Criminal Procedure of The Kingdom of Cambodia*, 2008.

<sup>25</sup> Building Area is somehow a squatter in the heart of Phnom Penh. It is located in the middle between the Phnom Penh Center, The Russian Embassy, and the National Assembly.

### 3.3 Abuses reported in the Centres

Detainees' accounts<sup>26</sup> and reports describe the severe abuse and appalling conditions faced by detainees. These inhumane circumstances are unjustifiable in today's Cambodia. The government has vehemently denied the allegation and questioned the veracity of the reports<sup>27</sup>. However there are overwhelmingly consistent reports of physical abuses of detainees by authorities, police, and guards both at the time of arrest and at the Centers. The abuses described include rape, beatings, slapping, pinching, and forced labor. Some former detainees, especially those who are young and good looking, claimed to have been raped by guards- in some cases by more than one guard at a time. In general, such rapes happened outside the Centers' cells. According to ex-detainees, guards took female detainees out, and raped them in a nearby field, mostly without a condom. Some agreed to have sex because of a false promise of release. Those who resisted were beaten heavily. More appallingly, Prey Speu former detainees have claimed that they witnessed resistant women being beaten to death and buried at the Center<sup>28</sup>. LICADHO investigations have found that at least two people had reportedly died in 2008 at the Center, although details regarding the circumstances of these deaths are unclear<sup>29</sup>. Case Studies 2 and 3 provide more insights into the alleged maltreatment.

#### Case Study 2: A sex worker at railway station

Chan, 20, a male prostitute present at a park near Phnom Penh Railway Station, had been arrested along with ten female colleagues by officers from the Department of Social Affairs, and detained at Prey Speu Centre. There he was separated from the ten women. He said that pretty and less pretty women were kept separately. He recalled that: *'We ate like animals. The food is dirty. It was mixed with rice and given to us in a plastic bag. If guards were happy, they gave us a meal, and if not we were deprived of food'*.

He witnessed several guards take women to the field close to the Center and rape them. Those who resisted were beaten, undressed, and tied to a tree to suffer from sun's rays and rain. Some were so depressed that they committed suicide by hanging and biting their tongue. The bodies were buried under a sugar palm tree behind the Center where there were already plenty of bones. Some male detainees became mentally ill after a series of serious corporal punishments by guards. Those who wanted immediate release had to pay at least \$50. He considered himself lucky because he managed to escape.

Source: CH, Sex worker at Train station, interviewed by Pich Sokchea and Proeung Phanny, 01 April 2008.

<sup>26</sup> It is important to note that the NGO Women's Network for Unity (WNU) in April 2008 conducted in-depth interviews with 11 sex workers- most of whom experienced being detained at any of the Centers. The fact that WNU is an NGO that actively promotes the rights to sex work, and that most of the interviewees experienced harassments by authorities, police, and guards, may affect the reliability of the information provided.

<sup>27</sup> Health News, 04 Jun 2008, *Cambodia to Investigate Alleged Police Abuse of Sex Workers*, [http://www.monstersandcritics.com/news/health/news/article\\_1409233.php/Cambodia\\_to\\_investigate\\_alleged\\_police\\_abuse\\_of\\_sex\\_workers](http://www.monstersandcritics.com/news/health/news/article_1409233.php/Cambodia_to_investigate_alleged_police_abuse_of_sex_workers) accessed 01 Jan 2009. Chhay, C. and Lodish, E., 2008, *Brothel Raids, Arrests Worry Health Workers*, The Cambodia Daily, Monday, 01 May 2008, [http://www.camnet.com.kh/cambodia.daily/selected\\_features/cd-May-1-2008.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/cd-May-1-2008.htm) accessed 01 Jan 2009.

Cheang, S., 2008, *Cambodian Prostitutes Protest Police Crackdown, Allege Physical and Sexual Abuse*, The Associate Press, 04 Jun 2008, <http://www.newser.com/article/d913bi080/cambodian-prostitutes-protest-police-crackdown-allege-physical-and-sexual-abuse.html> accessed 01 Jan 2009.

AFP, 2008, *Cambodia Faces Problems Enforced New Sex Trafficking Law*, Friday, 26 December 2008, <http://beta.malaysia.news.yahoo.com/afp/20081226/tap-cambodia-prostitution-trafficking-2a5be5e.html?printer=1> accessed 01 Jan 2009.

<sup>28</sup> WNU, April 2008, *Case Studies of 11 Sex Workers Who Were Raided*, The Human Impact of the Law on the Suppression of Human Trafficking and Sexual Exploitation.

LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

<sup>29</sup> LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

### **Case Study 3: A sex worker at a railway station**

Nearsa, 25, from Prey Veng province, is an independent prostitute. In March 2008, she was arrested along with 20 other prostitutes at Wat Phnom, and detained at Prey Speu Centre for seven days. She reported that meals were provided twice a day in a plastic bag. They had to save the bag for urinating and defecating because there was no toilet. Dirty water from a pond was used for all purposes. Nearsa said that:

*There were two ways to leave the Center- paying or escaping. Guards raped young and pretty women. One day when I went out to take a bath, I saw a dead girl, nude and full of bruises. I think she must have been beaten badly. On behalf of sex workers in Cambodia, I suggest police stop arresting us and treating us inhumanely. We are human-beings who need to make money to support our families, parents, siblings. Without it we die.*

Source: N.S. case study, female sex worker at railway station, interviewed by Keo Tha, 11 April 2008.

Those who made failed attempts to escape paid a high price. At Prey Speu Center some detainees managed to escape by climbing and breaking the roof of the building before jumping down (approximately four meters). Some reported injuries including broken bones. Those wishing to flee from Koh Kor Center have to be able to swim across the river. LICADHO suspected that a young man who has disappeared at Koh Kor may have drowned whilst attempting to swim across the river during an escape<sup>30</sup>. Unsuccessful escapees were tortured as a way to punish and demoralize them. Some were reported dead as a consequence of the severity of the torture or they committed suicide after punishment. Others became mentally ill after long suffering of torment (See Case Studies 4 and 5).

### **Case Study 4: A sex worker at Wat Phnom**

Chanthou (an alias), 23, is the oldest among six siblings. After the death of her parents, her siblings moved to live with others as part of a survival strategy. She had been trafficked to Phnom Penh by a friend who promised her a waitress job which turned out to be prostitution. She had run away after a year, only to become an independent sex worker at Wat Phnom. She remitted money regularly to her aunt who takes care of her son. She was expecting at the time of interview. She reported that life as a sex worker is very hard. On a good day, she got a couple of clients from which she made 7,000 to 8,000R (~\$1.75 - 2). Some days went without one. Being a street woman, she is vulnerable to abuse by gangs, especially robbery and rape. She experienced abuse by clients- some of whom did not pay, and some did not use condoms. She added that today making a living is more challenging because of her pregnancy and constant fear of arrest. Customers prefer young girls to an old and pregnant one. Nevertheless, some felt pity for her so that they chose to go with her.

Chanthou looked stressed when sharing her dreadful ordeal at Koh Kor Centre. She was arrested in April 2008 along with 22 people and detained for almost four months. According to her, the cell was overcrowded, housing 30-40 detainees, and yet there was no water closet. They defecated into a plastic container that was dumped into a pond every three days. Detainees were given 10 minutes a day for taking a bath. Since many had only one set of clothes, they therefore had to return to their cell with wet clothes. She recounted that:

*We were given rice mixed with soup in a plastic bag, including a plastic spoon. Most of us did not have enough to eat. The drinking water, given to us in a plastic container with a plastic glass, originated from a creek which looked red and had small insects. Instead of providing us with any skills training, we were coerced to grow and water morning glory and lemongrass. As the conditions became unbearable, I and several cellmates made an unsuccessful attempt to escape by breaking and jumping from the roof. My arm was broken as I fell from the roof. We were caught, slapped, pinched, and beaten. Detainees could be immediately released as long as they afford to pay between 100,000 and 200,000Riels (\$25-50) to guards.*

Source: P. Chh case study, a sex worker at Wat Phnom, interviewed by Sao Sopheap, 02 May 2008.

<sup>30</sup> LICADHO, 02 July 2008, *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking up Homeless, Beggars and Sex Workers*, <http://www.licadho.org/articles/20080702/79/index.html> accessed 01 Jan 2009.

### Case Study 5: A sex worker at Wat Phnom

Chantha (an alias), 35, from Kompot province, having four children, migrated to work as a prostitute in Phnom Penh in 2003 after being divorced. Her three daughters lived with others at her homeland. Chantha, who was expecting, lives in Phnom Penh with a son. She helps clean public toilets at Wat Phnom where she basically lives. She works from hand to mouth. When she did not have customers, she did cleaning for others for 3,000R a day.

She was arrested in 2007 and detained at Prey Speu for a month. She was only released after she managed to borrow 300,000R (\$75) to bribe the guards. There, she witnessed detainees being punished and dying. Those who had made failed attempts to escape were punished severely. Some were raped by guards with false promises of release. Detainees were forced to grow and irrigate vegetables. She noted that:

*I think the situation of sex workers will deteriorate because I heard that they (police) want to stop prostitution. But I wonder how would they stop our business? Like others, I also do not want to be a prostitute if I have food. I know that we are cheap in others' eyes. We encounter many problems in our daily activity, including, abuse by clients and gang rape. We do not want to do this job, but we really have no other options.*

Source: Chh.S case study, A sex worker at Wat Phnom, interviewed by Sao Sopheap, 02 May 2008.

The Centers' conditions are reported to be awful. If the allegations are valid, it sounds worse than the eight Cambodian prisons or correctional centers I have visited as part of my PhD fieldwork<sup>31</sup>. Conditions in these prisons, where suspects and criminals are detained, are generally bad and unbearable. However, they are far better than these supposed rehabilitation and educational Centers that house non-criminals. Each cell was cramped with people. While the actual size of the cell is unknown, there are reports that each cell housed between 30 and 50 people. There was no toilet in the cell except a plastic bin that functioned as a movable toilet. Detainees slept on the floor without a mat, mosquito net, pillow, and blanket. Clothes<sup>32</sup> and toiletries were not provided. Given the fact that sex workers were rounded up, arrested, and subsequently detained, most of them had only one set of clothes. As clothes were not supplied, they could not change after taking a bath. They had to return to their cell with wet clothes.

There was no separation of men, women, and children. It is reported that young and pretty women were separated from the rest. Children, especially in such circumstances, are prone to both physical and sexual harassment by their cellmates. Detainees were allowed to leave their cells for 10 minutes a day. This time-out was for taking a bath, washing, and irrigating vegetables. The fact that they were not separated, that they did not have much to do, and that they had a great deal of time together, could give rise to sexual activity. Sexual intercourse without the availability of condoms creates the risk of pregnancy, contracting STDs and HIV. It should be noted that in 1997, the HIV prevalence rate in the Cambodian population overall was 3.2%. The rate among sex workers was between 40% and 48.2%, reduced to 20.8% in 2003, and to 12.69% in 2006. The general prevalence in 2007 was 0.9%<sup>33</sup>.

Detainees' most basic rights were seriously restricted. Although meals were provided twice a day, the quality was unacceptable and the quantity was inadequate. Based on the case studies, rice was

<sup>31</sup> As part of my PhD fieldwork, I have made frequent visits to eight prisons/correctional centers around the country to interview convicted human traffickers. They are: correctional center 1, 2, and 3, Koh Kong provincial prison, Battambang provincial prison, Banteay Meanchey prison, Svay Rieng provincial prison, and Kompong Cham provincial prison.

<sup>32</sup> Cambodian prisons/correctional centers do provide clothes (prison uniform in blue color).

<sup>33</sup> Catala, T. & Smith, M.W., 2005, *Mapping Cambodia's Response to HIV/AIDS*, Edited Guzman, M.P.D, Funded UNAIDS, p. 10. CACHA, 2009, *Consultancy TOR*, For report on Impact of Anti-trafficking Law as part of the Project: Research on Policies Environments regarding Universal Access and the Right to Work of Entertainment Workers/Sex Workers Project Implemented by CACHA and supported by WAC, WNU, ICASO/APNSW, ActionAid Cambodia and UNAIDS. AFP, 10 Sept 2008, *Cambodia Faces New HIV Threat As Condom Campaign at Risk*, [http://afp.google.com/article/ALeqM5js6Lp3KFioJNmX0M\\_skBDloJWwA](http://afp.google.com/article/ALeqM5js6Lp3KFioJNmX0M_skBDloJWwA) accessed 01 Jan 2009.

Singh, U., 2008, *Effective Advocacy Case Study on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation*, HACC, <http://healthdev.net/site/post.php?s=3839> accessed 01 Jan 2009.

mixed with soup containing an extremely small amount of vegetables and/or meat, and was provided in a plastic bag. Sometimes a plastic spoon was included. Without a spoon, detainees had to eat with their hands. There was no running water. The drinking water originated from a pond or a creek. This is detrimental to health in many respects. The meals provided insufficient nutrition to sustain life. Food, such as it was, was eaten with bare and presumably unclean hands. The consumption of unsafe water made the detainees more susceptible to diarrhea and water-borne diseases. The HIV<sup>+</sup> persons or those living with AIDS who are on ARV treatment were doubtlessly one of the most affected groups<sup>34</sup>. Some detainees were unable to access their ARV drugs as a consequence of being detained or being prohibited from taking the drugs into their cell<sup>35</sup>.

Former detainees complained about the absence of means to contact family, relatives, or friends. Phone calls were the only means to contact outsiders. Not everyone was able to access the guards' mobile phone as it was not free. Guards did permit most detainees to use their phones charging 500R (\$0.12) per minute. Some had to pay an extortionate fee of \$5 per minute. Many problems will have occurred engendered by the detainees' inability to contact home. Their immediate arrest renders it difficult for family or children to trace the detainees' whereabouts. Without financial support, the detainees' lives will have become more unbearable. For instance, those with money could bribe guards to obtain an immediate release, better treatment, and to purchase better food and safe drinking water, etc.

No skills training was provided to detainees at what were supposedly rehabilitation and education Centers. In the absence of such training, by which the operations of the Centers are justified, the Centers' existence is questionable. One would wonder if these are the rehabilitation and education Centers or merely the Centers used for illegal detention of tramps, beggars, street people, and prostitutes. Without rehabilitation programs, it is not unreasonable to assume the government's motive for detaining these groups- maybe to expose them to a dreadful life in custody in the hope that this might deter them from returning to their previous livelihoods. For example, beggars would be reluctant to beg again after being freed. Sex workers would be too frightened to be caught working again once released.

Case studies 6 and 7 give accounts of ex-detainees who experienced shocking conditions at Prey Speu Center.

**Case study 6: A former detainee at Prey Speu**

Mr. Lundy (a pseudonym), 20, was arrested by police in March 2008 at 10pm when he was walking along a park near Phsar Chas, Phnom Penh. Since he was sure of his innocence, he questioned the reason for his arrest. The police, who were annoyed with his questions, beat him. Initially, he was taken to a Police Station before being transferred to Prey Speu. There, he had his photo taken and was placed in a cell with ten detainees who were female prostitutes, tramps, and beggars. He recounted that: *'Life in the Centre is terrible as we were not treated humanely. The meals they provided were insufficient. We were given rice mixed with food in a plastic bag that looks similar to a pig's meal. There was no spoon, and we, therefore, had to eat with our hands.'*

Source: L.D. Case from Wat Phnom, interviewed by Leng Nai Heng, 08 April 2008

<sup>34</sup> A personal communication with an NGO officer working with sex workers on 14 Jan 2009.

<sup>35</sup> Singh, U., 2008, *Effective Advocacy Case Study on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation*, HACC, <http://healthdev.net/site/post.php?s=3839> accessed 01 Jan 2009.  
*What Do Sex Workers Do When Faced With State Sanctioned Abuse?*

[http://www.sexworkeurope.org/site/index.php?option=com\\_content&task=view&id=218&Itemid=1](http://www.sexworkeurope.org/site/index.php?option=com_content&task=view&id=218&Itemid=1) accessed 01 Jan 2009.

Doogan, M., *Sex Workers Have Been Forcibly Detained in Rehabilitation Centers Where They Have Been Rap*, Saturday, 14 June 2008, <http://www.indybay.org/newsitems/2008/06/14/18507003.php> accessed 01 Jan 2009.

#### **Case study 7: An ex-detainee at Prey Speu**

Bopha (a pseudonym) is a former detainee at Prey Speu Center who had been arrested during a night raid at Wat Phnom by police in cooperation with commune authorities. She has escaped by breaking the Center's windows when guards were not around, after spending some time there. She reported that detainees were not given adequate food. Rice that was mixed with soup containing very little vegetable and meat was provided in a plastic bag. Neither a spoon nor plate was provided. Worse than that, detainees had to save the bag because they had to defecate onto it and disposed of it into a basket- the basket would normally be emptied in a lake where the water was used for drinking. She said that:

*'We slept without nets, and did not have any access to health care. Some of us who made an attempt to escape were punished with heavy penalties, resulting in broken legs or death. The bodies were buried like animal corpses.'*

Source: Case study, interviewed by Leng Nay Heng, translated by Ly Pheareak, 01 May 2008.

## **IV. THE WORKABILITY OF THE LAW AND GUIDELINES BASED ON EXPERIENCES IN OTHER JURISDICTIONS**

### **4.1 The workability of the Law and the Guidelines**

#### ***4.1.1 The effects of the law on sex workers***

After 12 years, the 1996 anti-trafficking law became history. On 20 December 2007, the Senate approved the 'Bill on Suppression of Human Trafficking and Sexual Exploitation' submitted by the National Assembly without amendment. On 15 February 2008, the King signed the Bill, and it has been in effect since then. H.E. Pen Panha, Head of the Legal and Judicial Committee of the National Assembly, maintained that the law consisting of 9 chapters and 52 articles is aimed at superseding the 1996 law. The old law was seen as insufficient and resulted in ineffective enforcement<sup>36</sup>.

The 2008 anti-trafficking law is indeed much more comprehensive. The law focuses on sex, labor, and organ trafficking. Heavier penalties are imposed when a trafficking act is committed by organized crime syndicates. In an apparent attempt to respond to the US Trafficking In Persons (TIP) report regarding the involvement of government officials who were corrupt or abused their power in cases of trafficking, the law inflicts more severe punishment on officials involved in trafficking. Those committing offences under this law towards children or minors (aged under 18 years) also receive much more severe punishment, reflecting the government's concern over children's welfare. To prevent commercial sexual exploitation of human-beings, the law pronounces illegal numerous acts concerning prostitution.

There are aspects of the law that require review because they are directly linked to sex work. The two most significant aspects that were not present in the 1996 law are: soliciting and provision of premises for prostitution. The prohibition of these activities poses major hurdles to voluntary prostitution. Article 23 of the law defines: *'prostitution as having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value. 'Child prostitution' is defined as having sexual intercourse or other sexual conduct of all kinds between a minor and another person in exchange for anything of value'*<sup>37</sup>.

Instead of criminalizing 'prostitution', article 24 makes soliciting in public an offence. It provides that:

<sup>36</sup> Rasmei Kampuchea Khmer Daily Newspaper, 2007, *National Assembly Discusses New Anti-Human Trafficking Bill*, Year 15<sup>th</sup>, Issue 4466, Wednesday, 19 December 2007, p. A2.

<sup>37</sup> Kingdom of Cambodia, 2008, *Law on Suppression of Human Trafficking and Sexual Exploitation*, Chapter 4: Prostitution and Child Prostitution, Article 23: Definition of Prostitution and Child Prostitution, informal translation by UNICEF, 03 March 2008.

*A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment for 1 to 6 days and a fine of 3,000 (\$0.75) to 10,000R (\$2.5). A minor (under 18)<sup>38</sup> shall be exempted from punishment of the offense stipulated in this article.*

The article presents various problems. Firstly, acts constituting ‘soliciting in public’ are not precisely defined. Such acts may include, but are not limited to, waving of a hand, offering to have sex in exchange for money by talking either directly or by phone to a potential customer, advertising sexual services in the media (i.e., radio, newspaper, television, internet), or making gestures that indicate sexual services may be available. Simply wandering around public parks, eating on the public parks or even red-light districts, and carrying condoms should in no way be regarded as soliciting. Unfortunately many prostitutes were arrested and detained for the latter activities. While the article appears to be aimed at ensuring public order, it is technically difficult for sex workers to sell sex without being able to solicit or to communicate their occupation in some ways.

While the article prohibits those aged 18 years and above from soliciting ‘in public’, it unintentionally encourages child prostitution because they are exempted from punishment under the article. It may have the effect of encouraging children to get involved in prostitution, and could unintentionally encourage their exploitation. Law enforcers may ignore soliciting activities by minor sex workers, which may have the effect of spurring traffickers to target minors for prostitution purposes.

Cambodia is not free of child prostitution<sup>39</sup>. Statistics on child prostitution from various studies are worrying. A study by the NGO CWDA<sup>40</sup> found that in 1992 the average age of sex workers was 18 years, and dropped to 15 years by April 1993. A follow-up study by the NGO in February 1994 suggested that 35% of prostitutes were less than 18 years of age. By March 1995, minors aged 12 to 17 represented nearly 31% of prostitutes in Phnom Penh and 11 other provinces studied<sup>41</sup>. Bangkok Post (1997) reported that prostituted girls, mostly aged 15 to 18, were found in the Svay Park<sup>42</sup> red-light district of Cambodia. Many girls were much younger. LICADHO (1997) suggested that 35% of prostitutes in Cambodia were children<sup>43</sup>. An article cited a UNICEF survey that 35% (or 19,250) of Cambodia’s 55,000 prostitutes were children under the age of 16 years. Some were as young as 6 years old<sup>44</sup>. Interestingly, a recent CACHA survey (2008) that surveyed 1,115 entertainment workers in Phnom Penh, Siem Reap, Sihanouk Ville, and Banteay Meanchey concluded that 3.1% of them aged 17 years and below<sup>45</sup>.

In an apparent endeavour to discourage prostitution, the law put restrictions on various aspects of prostitution such as ‘management of prostitution’, ‘management of establishment for prostitution’, and ‘provision of premise for prostitution’. Article 30 and 31 stipulates that:

Article 30: Management of prostitution

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<sup>38</sup> Article 7 of the 2008 anti-trafficking law defines a minor as any person under the age of 18 years.

<sup>39</sup> Phnom Penh Post, Vol. 17, No. 4, Phnom Penh, 22 Feb-06 Mar, 2008, p.5.

<sup>40</sup> CWDA stands for Cambodian Women Development Association

<sup>41</sup> CWDA and Vigilance cited in cited CATW, n.d., *Factbook on Global Sexual Exploitation, Cambodia*, <http://www.uri.edu/artsci/wms/hughes/cambodia.htm> accessed 01 Jan 2009.

The Human Rights Task Force on Cambodia, 2001, *Cambodia: Prostitution and Sex Trafficking: A Growing Threat to the Human Rights of Women and Children in Cambodia*, <http://www.hrsolidarity.net/mainfile.php/1996vol06no04/219/> accessed 01 Jan 2009.

<sup>42</sup> Svay Park was one of the most notorious red-light district in Cambodia which had been closed down around four years ago.

<sup>43</sup> LICADHO, 1997, cited in cited CATW, n.d., *Factbook on Global Sexual Exploitation, Cambodia*, <http://www.uri.edu/artsci/wms/hughes/cambodia.htm> accessed 01 Jan 2009.

<sup>44</sup> *The Younger the Better: 19,250 Children Trapped in Cambodia’s Sex Industry*, <http://acr.hrschool.org/mainfile.php/0112/61/> accessed 01 Jan 2009.

<sup>45</sup> Raw data from the CACHA 2008 survey.

*A person who, directly or through an intermediary, manages, exploits, operates or finances an establishment of prostitution shall be punished with imprisonment for 2 to 5 years.*

**Article 31: Management of Establishment for Prostitution**

*Shall be punished with imprisonment for 2 to 5 years when a person accepts or tolerates that:*

- 1). another person indulges in prostitution inside an establishment or its annexes; or*
- 2). another person seeks clients with a view to do prostitution inside an establishment or its annexes.*

These articles inflict penalties upon those who run or provide support to brothels or establishments which people could use to make a living by selling sex. Sex workers might be able to avoid exploitation by working on their own. In Hong Kong prostitutes work in so-called 'one-woman brothels'. There, each prostitute rents a small apartment and operates alone without being controlled by others<sup>46</sup>. Unfortunately, the Cambodian law further outlaws the 'provision of premise for prostitution'. Article 32 states that:

*A person who sells or makes available to another person premises not utilized by the public, knowing that they will be used by such person to indulge in prostitution shall be punished with imprisonment for 2 to 5 years.*

Under this article, whoever sells, rents, or offers his/her own place (such as hotel/guesthouse room, a room in a house, a house, or any space that they own) to a person knowing that the person will use it for prostitution is liable to punishment with imprisonment from 2 to 5 years.

If the articles 30, 31, and 32 are to be seriously enforced, the only way sex workers can work is within premises they own. It is worth noting that article 32 prohibits those selling a house they know will be used for the purposes of prostitution. It is inconceivable that many sex workers will own a place suitable for their work given their nominal income. If they did, they must use the space without the presence of others, including their family members. If others are found residing with a prostitute in a place of prostitution, they are vulnerable to prosecution under any of articles 26, 27, 28, or 29 depending on situation and the age of the prostitute in question. By living in the same place as a sex worker, they could be regarded as committing acts of 'SACHARAK KAM' or 'Procuring for prostitution'<sup>47</sup>, according to clause 1 of paragraph 1 and clause 2 of paragraph 2 of article 25. The latter defines the act of 'SACHARAK KAM' as:

- (1) drawing a financial profit from the prostitution of others;*
- (2) assisting or protecting the prostitution of others;*
- (3) recruiting, inducing or training a person with a view to practice prostitution;*
- (4) exercising pressure upon a person to become a prostitute.*

*The following acts shall be deemed equivalent to the act of procuring prostitution:*

- (1) servicing as an intermediary between one person who engages in prostitution and a person who exploits or remunerates the prostitution of others;*
- (2) facilitating or covering up resources knowing that such resources were obtained from a procurement;*
- (3) hindering the act of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution or being in danger of prostitution.*

The term SACHARAK KAM is defined so broadly and vaguely that it could facilitate arbitrary and corrupt enforcement. Many different people might be prosecuted under this article, including family

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<sup>46</sup> Data collected during my PhD fieldwork.

<sup>47</sup> While I cannot think of a better term, I do not think the English term 'Procuring for Prostitution' is right translation for the term 'SACHARAK KAM'. The latter is defined so broadly that the term 'procuring for prostitution' may not fully cover.

members and friends of sex workers, ‘Motodub’<sup>48</sup> or taxi drivers, and NGOs working with sex workers. Depending on how the article is interpreted, these persons could be considered to be involved in the act of procuring prostitution. Those found committing ‘SACHARAK KAM’ may be prosecuted according to any of the following articles.

*Article 26: Procurement of Prostitution*

*A person who commits procurement of prostitution shall be punished with imprisonment for 2 to 5 years.*

*Article 27: Aggravated Procurement of Prostitution*

*A person who commits procurement of prostitution shall be punished with imprisonment for 5 to 10 years:*

- 1). when it is committed by a male or female procurer or head of prostitution who is an ascendant, descendant, either legitimate or illegitimate, natural or adoptive, of the prostitute;*
- 2). when it is committed by a male or female procurer or head of prostitution who abuses his or her authority over the prostitute;*
- 3). when a male or female procurer or head of prostitution uses violence or coercion against the prostitute;*
- 4). when the procurement of prostitution is committed by an organized group;*
- 5). when the procurement of prostitution is committed by several persons.*

*Article 28: Procurement with regard to Child Prostitution*

*Procurement of prostitution shall be punished with imprisonment for 7 to 15 years when the prostitute is a minor.*

*The term “prostitution” in the relevant provisions of this Chapter shall be replaced with the term “child prostitution,” when the offense set forth in Paragraph 1 of this article applies.*

*Article 29: Procurement of Prostitution by Torture*

*Procurement of prostitution shall be punished with 10 to 20 years when a male or female procurer or head of prostitution committed such offense by recourse to torture or barbarous act on the prostitute.*

In Cambodia, there is a tendency to assume that most sex workers are destitute given their income is largely generated from the sale of cheap sexual services. A recent large scale survey by CACHA found that 61.7% of 1,115 female entertainment workers (EW) interviewed earned a monthly income of less than \$101, 28.8% earned \$101-200, and 1.9% earned \$401 or more, compared to 90.9%, 6.3%, and 1.7% respectively earned by 591 Men who have sex with men (MSM) interviewed. 38.7% of EWs have 1-3 dependents and 33.8% have 4-5 dependents respectively compared to 50.3% and 27.7% of MSM. From this small monthly revenue, on average an EW can save \$24.4, remit \$38.1 to support their family, and repay \$10.1 for debts respectively compared to \$18.2, \$20.6, and \$24.3 of a MSM. Their minimal income which is not only for themselves but their dependents and the repayment of debt, leaves them with little to live. In such circumstances, it is unrealistic to imagine that a sex worker will own a space, a space in which they must live alone and work, while their dependent(s) live elsewhere.

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<sup>48</sup> ‘Motodub’ is a Khmer term for a “motorcycle taxi”.

**Table 1: Economic situation of EW and MSM**

Type of Interviewee	Monthly income from sex work			# of Dependent		Average monthly saving, Remittance and debt (\$)		
	≤ \$100	\$101-200	≥\$401	1-3	4-5	Saving	Remittance	Debt
<b>EW (N=1,115)</b>	61.7%	28.8%	1.9%	38.7%	33.8%	24.4	38.1	10.1
<b>MSM (N=591)</b>	90.9%	6.3%	1.7%	50.3%	27.7%	18.2	20.6	24.3

Source: CACHA Survey, November 2008, Raw data with privilege access as a consultant

Case study 8 provides further insight into the living standard of a typical sex worker in Cambodia.

**Case study 8:** A common account of many sex workers in Cambodia

Serey (a pseudonym), 20, from Kompong Cham province, is the oldest among six siblings. At first, she migrated to work as a temporary worker at a garment factory in Phnom Penh. She quit the job after more than a month because of the low wage. Later, as she wanted to be with friends and have fun, she joined them as a sex worker at Wat Phnom. At the start of her career, she made between \$10 and \$20 a day chiefly because she was young and pretty. She had to share part of the income with young gangsters in the area or she would be beaten. Before long, she had a partner who left her for another prostitute when she was in her first month of pregnancy. At the time of interview, she was in her eighth month of pregnancy. She complained that:

*It is extremely difficult to get punters because no one wants to have sex with a pregnant prostitute. Sometimes, I get a few clients a day, but mostly none. I am broke and cannot afford the rent, so I sleep at the park. My friends often give me 500 or 1,000R (\$0.12-0.25) for food and buying water for bathing and washing. I generally look for customers at Wat Phnom in the daytime and at the park near Phsar Chas at night. Most clients are 'Motodub'. I charge 5,000R (\$1.25) for every sex act, and the customer is responsible for paying the room fee (5,000R a night at Boeung Kok or 2,000R (\$0.5) at Toul Kork).*

Serey was thinking of giving away her would-be born baby because she was not confident she could raise the child. She will not declare that the baby is her own because of a shameful feeling of having a baby outside a legal marriage.

Source: S.R. case study, interviewed Ly Pheareak, 02 May 2008.

**4.1.2 Comment on the relevant articles of the law**

This review has identified a problem in the interpretation of articles 34 and 42. This may lead to difficulties in enforcement unless clarification is provided. Article 34 on the 'Purchase of child prostitution' states that:

*A person who has sexual intercourse or other sexual conduct of all kinds with a minor who is 15 years of age or above by providing, or promising to provide, anything of value to the minor, an intermediary, a parent, a guardian or any other person who keeps the child under his or her supervision or control shall be punished with imprisonment for 2 to 5 years.*

*Any person who commits the above stated offense with a minor under the age of 15 years shall be punished with imprisonment for 7 to 15 years.*

Article 42 on Sexual intercourse with minors under fifteen years stipulates that '*A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment for 5 to 10 years'.*

Both articles address having sexual intercourse with a minor aged under 15 years. However, where 'anything of value' is promised or provided the punishment is more severe. This makes little sense. It would be preferable to create a single offence and leave the judgement regarding the seriousness of the offence to the judge when delivering the sentence. In addition, it would seem that the law

should take into account the relative ages of the parties. The Ministry of Justice advises that if both parties are under 15, none would be liable to punishment under these articles<sup>49</sup>.

#### **4.1.3 The Guidelines on law enforcement**

Eight months after the promulgation of the law, on 28 October 2008, the Taskforce on Human Trafficking and Smuggling, and Labor and Sexual Exploitation of Women and Children, headed by H.E. Sor Kheng, Deputy Prime Minister, and Minister of Interior (MOI), issued a ‘Guideline on the implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation’<sup>50</sup>. The Guidelines apparently aim to address alleged violations and criticisms of the inappropriate interpretation and implementation of the law by authorities, which resulted in angry protest by sex workers and their advocates. The Guidelines provide four critical instructions for enforcers to follow. They are<sup>51</sup>:

1. *Prior to raids, thorough investigation into the offences and activities must be conducted, and any evidence related to the crime(s) must be collected.*
2. *All suppression operations must be reported prior to operation, and consultation with the relevant prosecutors must also occur in order to obtain directions, instructions and facilitation for the operation.*
3. *All searches for suspects and evidence collections must strictly adhere to the guidelines set out within the new law. All evidence collected must be clearly and properly recorded and all properties seized, whether temporarily or permanently, must also be clearly and properly recorded.*
4. *Prostitutes are to be regarded as victims of procurement for prostitution. Prostitution is not a crime; thus the individual prostitutes are not punished as offenders under the new legislation.*

The first point provides that a raid must be done following thorough investigations. This prevents any impromptu raids leading to arbitrary arrests. The second point advises the authorities to report to their supervisors prior to any suppression operations. Prior consultation with concerned prosecutors will deter the local police from conducting operations which may be motivated by personal matters and from illegally arresting suspects. The third point demand that the authorities properly record all collected evidence as a basis for formal charges. This appears to address the accusations that police have illegally confiscated suspects’ personal belongings at the time of arrest. The fourth and most important point is the clarification that *prostitution is not a crime and sex workers shall be regarded as victims*. This helps to clarify the misconception that prostitution is illegal and thus prostitutes are offenders.

However, the Guidelines also state that ‘*to ensure social order and public security, and the prevention of prostitution activities, authorities must take full action according to legal procedure in the following cases:*

- (1) If there is a complaint from persons in a neighbourhood about prostitution activities;*
- (2) If there is a complaint from the victim who has been forced into prostitution;*
- (3) If there is prostitution of a child;*
- (4) If prostitution leads to public disorder and insecurity’.*

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<sup>49</sup> Ministry of Justice, Kingdom of Cambodia, Ministerial Prakas No. ០១៧២៧សណន/០៩ dated 23/02/2009 on the Implementation of article 42 and 43 of the 2008 Anti-trafficking Law.

<sup>50</sup> Kingdom of Cambodia, Taskforce Against Human trafficking and smuggling, and Labor and sexual exploitation of women and children, Guidelines on Enforcing the Law on Human Trafficking and Sexual exploitation, No. 001 សណនបជ្ជរាស្ត្រ, 28 October 2008.

<sup>51</sup> Excerpt from the Guideline that has been informally translated by UNIAP.

The Guidelines outline measures to address sex activities embedded in massage and karaoke parlours, where according to a recent study of the estimated 17,000 sex workers in Cambodia, 75% (or 12,750) now operate outside the brothel context by becoming independent or indirect sex workers<sup>52</sup>. According to the Guidelines, massage parlour operators will be linked to the procurement for prostitution if:

- (1) *the income from the sex service of a masseuse is shared or paid to the manager of the massage parlour,*
- (2) *the manager asks the masseuse in question to pay for the room and utility costs because this is linked to the provision of the premise for prostitution which is an offence.*

These two points, however, contradict the law as well as the section dealing with karaoke parlours in the Guidelines. Article 31 prohibits persons from tolerating the conduct of prostitution inside their establishment or the establishment's annexes<sup>53</sup>. Article 32 on the provision of premises for prostitution states that: '*A person who sells or makes available to another person premises not utilized by the public, knowing that they will be used by such person to indulge in prostitution shall be punished with imprisonment for 2 to 5 years.*' According to these articles, it is irrelevant whether or not a massage parlour manager receives part of or benefits from the prostitution proceeds. The fact that they allow masseuses or others to use massage rooms for the purposes of prostitution is already a breach of the law. Hotel and guesthouse managers will similarly be in breach of the law should they tolerate sex work on the premises.

Where a karaoke bar is part of a hotel or guesthouse and under the same management, according to the Guidelines the manager will be regarded as committing the act of procuring for prostitution under the following circumstances:

- (1) *If the manager of the hotel or guesthouse also manages and receive income from the sexual services.*
- (2) *If the hotel or guesthouse charges the rental cost, and the hotel/guesthouse management knowingly rents out premises for prostitution activities. This is also considered an offence as it linked to the 'provision of premises for prostitution'.*

The Guidelines further advise that the employers of a karaoke parlour, restaurant, and other entertainment services will be in breach of the article on 'procuring for prostitution' if during the working hours, the employees leave the work place for providing sexual services to clients, and then pay the employer part of the dividend from the sexual services. However, if the payment is a compensation for absence from the work place to engage in sexual services or prostitution, it is not considered to be linked to procurement for prostitution.

The Guidelines reiterate that in any suppression operation, enforcers must follow the four principles outlined above because they are the priorities in the implementation of the law.

In an apparent response to the accusations that independent prostitutes were arbitrarily arrested, detained, and abused, the Guidelines instruct, in its section on 'dealing with the victims' that *the rights of the victims must be respected and they must be handled appropriately so that they will not be re-victimized*. Authorities therefore are advised to take the following actions:

1. *Immediately after the victims are rescued, interviews must be conducted without delay causing prolonged custody of the victims at the office of the justice police.*
2. *After the interview, victims must be referred to other places depending on their situation and characteristics as follows:*

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<sup>52</sup> HACC Video Documentary, 2008, Reflection on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation.

<sup>53</sup> Kingdom of Cambodia, 2008, *Law on Suppression of Human Trafficking and Sexual Exploitation*, Chapter 4: Prostitution and Child Prostitution, Article 31: Management of establishment for prostitution.

- *If the victims are minors, they must be referred to the Office of Social Affairs, Veterans and Youth Rehabilitation (OSAVY), and their parents or legal guardians must be informed.*
  - *If the victims are adults, further action must be based on their consent. Subject to their agreement, they can be referred to the OSAVY, otherwise they may be allowed to go back home.*
3. *All victims' belongings seized must be returned to them.*
  4. *Whether the victims are referred to the OSAVY or allowed to return home, there must be proper records to be submitted to prosecutors.*

The Guidelines, if taken into account by authorities, will allow entertainment/sex workers to better exercise their rights and, to some extent, prevent potential harassment by authorities. It is too early to assess how the Guidelines are working. However, since they were issued, there has only been one report in a newspaper that a brothel in Ratanak Kiri province was closed down, with some ten sex workers were arrested for education<sup>54</sup>. Sex workers and their advocates reported during a focus group discussion that some of them continue to be persecuted by local police simply for being in red-light areas. They were taken to police offices where they were detained and deprived of food for a night or so before being released with guarantees from NGOs or brothel owners. Some were forced by the police to clean their office and toilet. Some were involuntarily referred to NGO shelters for forced vocational training. No sexual harassment was reported<sup>55</sup>. There was no report of sex workers being taken to any of the aforementioned Centres for detention.

At this stage it is possible to say that the Guidelines have had some positive effects, but they are not being followed strictly by local authorities. It is important to note that the Guidelines are not binding documents so relevant authorities do not have to follow them (See the following table for more detail).

**Table 2: the rank of legal documents<sup>56</sup>**

Rank	Legal Document	Description
1	Constitution	Article 150 (New) of the Constitution states that the Constitution is the supreme law of the country. Laws and decisions by State Institutions must be in strict conformity with the Constitution. It is, therefore, the source of law in the country.
2	Law	Law is passed by the National Assembly and the Senate, and is promulgated by the King. All laws in the country must conform to the Constitution.
3	Preah Reach Kret or 'Royal Decree'	Royal Decrees are issued by the King to implement his constitutional powers. Again, all Royal Decrees must be in line with the Constitution.
4	Anukret or 'Sub-Decree'	Sub-Decrees are issued by the Council of Ministers and signed by the Prime Minister. They must be consistent with the Constitution and relevant law.

<sup>54</sup> The article was published in Rasmei Kampuchea Daily Newspaper sometimes in December 2008. Unfortunately I could not locate the full reference.

<sup>55</sup> A Focused-Group Discussion with sex workers and their advocates on 24 Jan 2009.

<sup>56</sup> Legal Support for Children and Women (LSCW), n.d., Handbook on Rights and Laws, Supported by Oxfam Novib, p. 5. OHCHR-Cambodia, 2007, Laws, Legal Documents Currently in Effect in Cambodia, First Edition.

A personal communication with Mr. Yi Yuth Virak, Country Project Coordinator, Asia Regional Trafficking in Persons Project (ARTIP), 18 February 2009.

The Kingdom of Cambodia, 1993, The Constitution, Article 150 (New).

5	Sec Kdey Nenom or Ministerial Prakas or 'Regulation'	Regulations are issued by the Minister, and must be consistent with the Constitution, relevant law and sub-decrees.
6	Sarachor 'Guideline'	Guidelines are issued by the Ministry, to clarify or otherwise provide advice on issues concerning the law and its implementation. Because guidelines are not legally binding, the relevant authorities do not have to follow them.

## 4.2 Prostitution Legislation: Experience in other jurisdictions

### 4.2.1 The South Korean Anti-Prostitution Laws

The Republic of Korea (or South Korea [SK]), though often portrayed as being a straitlaced and conservative Confucian society, has one of the region's most vibrant sex industries. Prostitution has been illegal since 1948, but is widely tolerated and ubiquitous<sup>57</sup>. Statistics collected about any illegal industry including sex work are notoriously unreliable. For example, estimates of the number of women engaged in sex work vary greatly. In 2003 the Korean Institute of Criminology announced that 330,000 Korean women were engaged in the industry. This amounts to 1 in 25 of all Korean women aged over 20. The Ministry of Gender Equality estimated that over 500,000 women and girls are employed in the industry. NGOs have stated that there are between 800,000 and 1.2 million working in prostitution in the country<sup>58</sup>. ECPAT has estimated that up to a third of sex workers are children though their ability to make these claims is extremely limited<sup>59</sup>. Again, it has been claimed that SK's sex industry generates between \$13 billion (1.6% of GDP) and \$22 billion (4% of GDP), annually contributing more to the nation's economy than the combination of both agriculture and fisheries industries<sup>60</sup>. The large variation in amount must generate doubt as the validity of this speculation. A suggested factor regarding income generation is yet another figure which claims that 20% of Korean men in their 20s pay for sex at least four times a month<sup>61</sup>.

South Korea has several laws against commercial sex. The Penal Code, article 242, prohibits the facilitation of the prostitution of minors for profit. The *Child Welfare Act*, Article 29, prohibits the facilitation of the prostitution of children<sup>62</sup>. The 1999 *Juvenile Protection Act* prohibits child prostitution to the extent that it prohibits juveniles from, *inter alia*, exposing their sexual organs, performing lascivious acts, or luring customers on the street for the purpose of making profits. The 2000 *Act on the Protection of Juveniles' Rights in Sex* punishes those having sex with a child in return for money, valuables, other economic or official advantages, or the promise of proprietary

<sup>57</sup> Scofield, D., 2004a, Korea's 'Crackdown Culture'- Now It's Brothels, <http://www.atimes.com/atimes/Korea/FI25Dg05.html> accessed 13 Jan 2009.

<sup>58</sup> Prostitution in South Korea, [https://www.amazines.com/Prostitution\\_in\\_South\\_Korea\\_related.html](https://www.amazines.com/Prostitution_in_South_Korea_related.html) accessed 13 Jan 2009.

Scofield, D., 2004a, Korea's 'Crackdown Culture'- Now It's Brothels, <http://www.atimes.com/atimes/Korea/FI25Dg05.html> accessed 13 Jan 2009.

Prostitution in South Korea, Monday, 16 October 2006, <http://eye4insanity.blogspot.com/2006/10/prostitution-in-south-korea.html> accessed 13 Jan 2009.

<sup>59</sup> ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, p. 16.

<sup>60</sup> Prostitution in South Korea, Monday, 16 October 2006, <http://eye4insanity.blogspot.com/2006/10/prostitution-in-south-korea.html> accessed 13 Jan 2009.

Prostitution in South Korea, [https://www.amazines.com/Prostitution\\_in\\_South\\_Korea\\_related.html](https://www.amazines.com/Prostitution_in_South_Korea_related.html) accessed 13 Jan 2009.

Jack, K. and Eckert, P., 2004, S.Korea in New Anti-Prostitution Drive, <http://www.swissinfo.org/eng/index.html?siteSect=143&sid=5232598> accessed 13 Jan 2009.

Scofield, D., 2004b, *Sex and Denial in South Korea*, <http://www.atimes.com/atimes/Korea/FE26Dg03.html> accessed 13 Jan 2009.

<sup>61</sup> Jack, K. and Eckert, P., 2004, S.Korea in New Anti-Prostitution Drive, <http://www.swissinfo.org/eng/index.html?siteSect=143&sid=5232598> accessed 13 Jan 2009.

<sup>62</sup> The Prevention Project, n.d., *Trafficking Report, South Korea*, [http://www.protectionproject.org/programs/tpp/asia\\_pacific.htm](http://www.protectionproject.org/programs/tpp/asia_pacific.htm) accessed 12 Jan 09.

gains. It punishes facilitators of child prostitution, such as those who operate a “prostitution brokerage” or provide a premise for “teenage” prostitution to occur. The law also punishes offenders of child prostitution by disclosing their personal information on the government websites and bulletins. In 2004, two laws were passed with the aim to stem the sex industry, *‘The Act on the Punishment of Procuring Prostitution and Associated Acts’* and *‘The Act on the Prevention of Prostitution and Protection of Victims Thereof’*. In addition to these laws, the country also has extensive legislation to prevent prostitution and to provide assistance to sex workers<sup>63</sup>.

The ‘Act on the Punishment of Procuring Prostitution and Associated Acts’, in article 2, defines ‘prostitution’ as sexual intercourse or quasi-sexual intercourse by means of part of the body including the oral cavity and/or anus, or with a sexual apparatus, in exchange for money, valuables or property benefits, or the promise of these things<sup>64</sup>. Paragraph 2 of the article defines the term ‘procuring for prostitution and associated acts’ as:

- (1) An act of procuring or offering prostitution, alluring or coercing a person to be a counterpart in the purchasing of sex;
- (2) An act of providing a place for prostitution; and
- (3) An act of providing funds, land, or buildings with the knowledge that they are used for prostitution<sup>65</sup>.

Article 4 on Prohibition states that: *No one shall take part in activities falling under any part of the following subparagraphs:*

1. *Prostitution;*
2. *Procuring prostitution and associated acts;*
3. *Human trafficking for the purpose of prostitution;*
4. *An act of employing and recruiting another person for the purpose of prostitution, or introducing and intermediating work with the knowledge that the work is associated with prostitution; and*
5. *An act of advertising for activities and/or an agency where such activities are carried out, which fall under subparagraphs 1, 2, or 4*<sup>66</sup>.

“Victims” of prostitution are defined, in article 2, as persons forced to sell sex, persons who sell sex under the influence of drugs, juveniles, persons with mental or serious disabilities, and persons trafficked for purposes of prostitution<sup>67</sup>.

Those who force others to sell sex: by means of assault or threat; by deceptive schemes or similar methods; and by using the fact that protection and supervision is provided for the person as a result of their relationship as family, relatives, or of employment or other types of relationship, are punishable by imprisonment for no more than 10 years or by a fine not exceeding 100,000,000Won (\$107,000)<sup>68</sup>. Article 19 provides that procuring, recruiting or facilitating prostitution may be punished with a maximum prison term of three years or fine of 30,000,000Won (\$32,000). Profiting from or procuring, recruiting or facilitating prostitution as a business is subject to a maximum punishment of seven years imprisonment or a fine of 70,000,000Won (\$74,800). Article 20 stipulates that involvement in advertising for purpose of prostitution may be punished with up to

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<sup>63</sup> ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, p. 18.

<sup>64</sup> Republic of Korea, 2004, *Act on the Punishment of Procuring Prostitution and Associated Acts*.

Republic of Korea, 2004, *Act on the Prevention of Prostitution and Protection of Victims Thereof*.

<sup>65</sup> Republic of Korea, 2004, *Act on the Punishment of Procuring Prostitution and Associated Acts*, Article 2: Prohibition.

<sup>66</sup> *ibid*, Article 4: Prohibition.

<sup>67</sup> ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, p. 18.

<sup>68</sup> Republic of Korea, 2004, *Act on the Punishment of Procuring Prostitution and Associated Acts*, Article 18.

three years imprisonment or a maximum fine of 30,000,000Won (\$32,000)<sup>69</sup>. Under article 21 of the law, those who buy or sell sex are punishable with up to a year imprisonment or a fine of up to 3,000,000Won (\$3,200).

The tough implementation of the 2004 anti-prostitution acts resulted in a crackdown and prosecution of alleged criminals. A survey conducted by the Ministry of Gender Equity and Family showed that 86% of male respondents indicated that they bought sex services less frequently following the passage of the Acts, and the number of establishments in red-light districts declined by over 30%<sup>70</sup>. Courts prosecuted 35,000 clients in 2005<sup>71</sup>, 34,795 in 2006 from 12,739 in 2003. However, more than 90% of offenders received minor punishments such as fines, educational training, community service and warnings<sup>72</sup>. Between July 2006 and June 2007, a total of 665 establishment owners were arrested and warned. Arrest of procurers increased by 30% from 2,824 in 2004 to 3,653 in 2006<sup>73</sup>.

Harsh law and enforcement methods have not abolished SK's ancient sex industry<sup>74</sup>. Records of the National Police Agency however revealed that the number of brothels has gradually declined from 1,696 in 2004 to 1,061 in 2005 and to 992 in 2006. Interestingly, the number of non-traditional brothels such as: karaoke parlours, barber shops, coffee houses, and massage parlours that front as legal businesses, increased to 139,273 in 2006 from 111,663 in 2003<sup>75</sup>. The industry has not diminished but simply shifted its modus operandi<sup>76</sup>. People resort to different ways to buy and sell sex such as sending spam messages from cell phones that urge the recipients to call back right away<sup>77</sup>. The cyber world is another avenue enabling people to sell and buy sex.<sup>78</sup>

Not long after the laws were passed, on 07 October 2004, over 2,000 prostitutes took to the streets of Seoul in protest. They have been making forceful public statements against these threats to their livelihood and well-being, and those of their families. They have protested at the police crackdowns that force them to work clandestinely, exposing them to great danger. They object to being arrested along with clients, brothel operators, and pimps. They claim that the new law is in effect an instrument of harassment<sup>79</sup>.

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<sup>69</sup> ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, pp. 18-9.

<sup>70</sup> Jeong Bong-hyup of Ministry of Gender Equality and Family cited in ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, p. 20.

<sup>71</sup> AFP, *South Korea Gets Tough on Sex Tourism*, 08 October 2007, <http://www.humantrafficking.org/updates/723> accessed 13 Jan 2009.

<sup>72</sup> *Anti-Prostitution Law Makes South Koreans Buy Sex Online*, <http://www.hulig.com/37158/anti-prostitution-law-makes-south-koreans-buy-sex-online> accessed 13 Jan 2009.

<sup>73</sup> *3 Years with Prostitution Prevention Acts: Progresses and Challenges*, n.d., <http://www.stop.or.kr/english/webzine2/0101.html> accessed 21 Jan 2009

<sup>74</sup> Scofield, D., 2004a, *Korea's 'Crackdown Culture'- Now It's Brothels*, <http://www.atimes.com/atimes/Korea/FL25Dg05.html> accessed 13 Jan 2009.

<sup>75</sup> *Anti-Prostitution Law Makes South Koreans Buy Sex Online*, <http://www.hulig.com/37158/anti-prostitution-law-makes-south-koreans-buy-sex-online> accessed 13 Jan 2009.

Weaver, T., 2006, *South Korea Improves Efforts to Stem Prostitution, Sex Trade Adapting as Government Strengthens Laws*, <http://www.stripes.com/article.asp?section=104&article=40914> Accessed 13 Jan 2009.

<sup>76</sup> *Anti-Prostitution Law Makes South Koreans Buy Sex Online*, <http://www.hulig.com/37158/anti-prostitution-law-makes-south-koreans-buy-sex-online> accessed 13 Jan 2009.

<sup>77</sup> Weaver, T., 2006, *South Korea Improves Efforts to Stem Prostitution, Sex Trade Adapting as Government Strengthens Laws*, <http://www.stripes.com/article.asp?section=104&article=40914> Accessed 13 Jan 2009.

<sup>78</sup> Korea Beat, n.d., *Another Vital Expose of Korean Prostitution*, <http://koreabeat.com/?p=1657> accessed 13 Jan 2009.

ECPAT, 2006, *Global Monitoring, South Korea, Report on the Status of Action Against Commercial Sexual Exploitation of Children*, p. 11.

<sup>79</sup> Sealing Cheng, 2004, *Korean Sex Trade 'Victims' Strike for Rights, Speaking Freely*, <http://www.atimes.com/atimes/Korea/FL22Dg01.html> accessed 13 Jan 2009.

Jack, K. and Eckert, P., 2004, *S.Korea in New Anti-Prostitution Drive*, <http://www.swissinfo.org/eng/index.html?siteSect=143&sid=5232598> accessed 13 Jan 2009.

A study has suggested that the government not attempt to eliminate the industry but to regulate it. It is argued that it is important to guarantee workplace safety and workers' rights while dealing with the abhorrent aspects of the industry. This enables revenue from the regulated industry to be taxed for the benefit of the larger society<sup>80</sup>.

The SK law differs from the Cambodia's. The Korean laws criminalize prostitution. Voluntary sex workers, clients, pimps, brothel/sex establishment owners, providers of premises for prostitution are all punishable under the law. Unlike the Cambodian law, the Korean Act on the Prevention of Prostitution and Protection of Victims Thereof requires the government to take necessary measures to prevent prostitution and support the protection and self-reliance of the victims of prostitution and those who sell sex<sup>81</sup>. It includes: the provision of preventive education on prostitution, and facilities for General Assistance, Juvenile Assistance, Assistance for Foreign Women, Self-support, Counselling, and support for medical expenses<sup>82</sup>.

#### 4.2.2 The Thai Anti-Prostitution Law

On 14 October 1996, the King of Thailand promulgated new anti-prostitution law called the 'Prostitution Prevention and Suppression Act B.E. 2539 (1996)'. This repealed the 'Prostitution Suppression Act B.E. 2503 (1960)'. 'Prostitution' is defined in section (article) 4 as: *'the acceptance of sexual intercourse, the acceptance of any other act, or the commission of any other act for sexual gratification of another person in a promiscuous manner for remuneration or any other benefit, irrespective of whether the person who accepts such act and the person who commits such act are of the same or opposite sex'*<sup>83</sup>.

While it decriminalizes 'Prostitution', it punishes various acts such as: soliciting, pimping, advertising, buying child prostitution, procuring prostitution, managing prostitution establishments, forcing someone to undertake prostitution, and being accomplices in the aforementioned acts. Article 5 stipulates that: *'Whoever, for the purpose of prostitution, offers, solicits, introduces oneself to, follows, or importunes another person on a street, in a public place, or any other place and such act is overtly and shamelessly committed or causes nuisance to the public, shall be punished with a fine not exceeding one thousand Baht'*<sup>84</sup>. This means one can solicit as long as such acts are not done in public and do not cause a nuisance. The punishment itself is relatively small – a fine of \$25 and no imprisonment.

Under article 6, *'whoever congregates with another person in a prostitution establishment for the benefit of prostitution of that person or of another person shall be punished with imprisonment not exceeding one month, or a fine not exceeding 1,000Baht (\$25), or both'*. However, if such offence is committed under circumstances beyond the control of the person, such as being coerced, the person will be regarded as innocent. 'Prostitution establishment' is defined, in article 4, as *'the place or premises arranged for prostitution or allowed for prostitution, and shall include the place used for making contact or procuring another person for prostitution'*. Those involved in advertising, inducing, or introducing with printed material, disseminating information for prostitution of that person or of any other person will be punished with imprisonment of between six months and two years, or fine of 10,000 (\$250) to 40,000Baht (\$1,000), or both<sup>85</sup>.

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<sup>80</sup> Scofield, D., 2004a, Korea's 'Crackdown Culture'- Now It's Brothels, <http://www.atimes.com/atimes/Korea/FI25Dg05.html> accessed 13 Jan 2009.

Scofield, D., 2004b, Sex and Denial in South Korea, <http://www.atimes.com/atimes/Korea/FE26Dg03.html> accessed 13 Jan 2009.

<sup>81</sup> Republic of Korea, 2004, Act on the Prevention of Prostitution and Protection of Victims Thereof, Article 3.

<sup>82</sup> *ibid*.

<sup>83</sup> The Kingdom of Thailand, 1996, Prostitution Prevention and Suppression Act B.E. 2539 (1996), Article 4.

<sup>84</sup> *ibid*, Article 5.

<sup>85</sup> *ibid*, Article 7.

Those who procure, seduce, or take away another person to commit acts of prostitution, even with consent of such person are punishable to a prison term of between one and ten years and a fine of 20,000 (\$500) to 200,000Baht (\$5,000). The offender and the accomplice will be punished:

- from 5 to 15 years imprisonment and a fine of 100,000 (\$2,500) to 300,000Baht (\$7,500), if the victim is between 16 and 18 years old,
- from 10 to 20 years imprisonment and a fine of 200,000 (\$5,000) to 400,000Baht (\$10,000), if the victim is under 15 years old,
- one-third heavier than the relevant punishment, if it is committed by using deceitful means, threat, physical assault, immoral influence, or by any other means for mental coercion<sup>86</sup>.

The owner, supervisor, or manager of a prostitution business or prostitution establishment, or controller of a prostitute in the prostitution establishment, shall be punished with imprisonment of three to 15 years, and a fine of 60,000 (\$1,500) to 300,000Baht (\$7,500). The punishment increases from:

- 5 to 15 years imprisonment and a fine of 100,000 (\$2,500) to 300,000 Baht (\$7,500), if the prostitution business or prostitution establishment has children aged 16-18 for prostitution,
- 10 to 20 years imprisonment and a fine of 200,000 (\$5,000) to 400,000Baht (\$10,000), if children aged under 15 years are involved<sup>87</sup>.

Involuntary prostitution is strictly prohibited. Article 12 states that '*whoever detains or confines another person, commits any other act that deprives the liberty of another person, assaults another person, or threatens with any other means to commit a violent act against another person, in order to force such person to prostitution activity, shall be punished with imprisonment of ten to twenty years, and a fine of 200,000 (\$5,000) to 400,000Baht (\$10,000)*'. If the offence causes to the victim: (1) serious bodily harm, the offender shall be punished with life imprisonment, and (2) death, the offender shall be punished with the death penalty or life imprisonment. Accomplices will be punished equally<sup>88</sup>.

Buying the services of child prostitutes is prohibited. Under article 8, those who, for sexual gratification of that person or of another person, commits sexual intercourse or any other act against a person over fifteen years but not over eighteen years of age, with or without his or her consent, in a prostitution establishment, shall be punished with imprisonment of one to three years and a fine of 20,000 (\$500) to 60,000Baht (\$1,500). The punishment doubles if the offence is committed against a child not over fifteen years of age<sup>89</sup>.

The enforcement of the Thai anti-prostitution law did not stem the sex industry. It has been estimated that the industry employs between 150,000 and 200,000 sex workers and a large proportion of them entered the sector before they were eighteen. The implementation of the law has forced the industry to reorient itself away from direct prostitution. Brothels have disappeared and reappeared as karaoke bars, massage parlours, restaurants, fitness clubs, beer halls, go-go bars, and saunas. Sex continues to be traded through agents and online<sup>90</sup>.

The Thai law is conducive to prostitution activities for two reasons. Firstly, the law only prohibits the acts of soliciting that create a public nuisance. Secondly, it does not criminalize provision of premises for prostitution. This allows sex workers to seek customers using subtle ways. They are free to rent a place for their activities. Hotels and guesthouses, notwithstanding their knowledge of the rental purpose, are not prohibited from letting their rooms for the purposes of prostitution.

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<sup>86</sup> *ibid*, Article 9.

<sup>87</sup> *ibid*, Article 11.

<sup>88</sup> *ibid*, Article 12.

<sup>89</sup> *ibid*, Article 8.

<sup>90</sup> Brown. L., 2001b, *STI/HIV, Sex Work in Asia*, WHO, pp. 15-17.

### 4.2.3 The Lao Anti-Prostitution Law

There is a scant research on prostitution in the Lao People's Democratic Republic (Lao PDR or Laos). The sex industry in the country may have increased in line with its neighbouring countries, especially Cambodia, Vietnam<sup>91</sup>, and Thailand. There were reports that Lao children and women are trafficked into Thailand for the purpose of prostitution<sup>92</sup>. Studies have reported that Lao sex establishments include nightclubs, local pubs, hotels, guesthouses, and private homes. Girls are required to sit with customers and encourage them to drink beers from which they get commission. They are also encouraged to make money by having sex with customers<sup>93</sup>.

Laos does not have a separate anti-prostitution legislation, but there are several articles in its Penal Code and other ordinances relevant to prostitution. The Law on Development and Protection of Women states that '*... Women have the right to choose their professions, to be employed and to receive other benefits from their work... Society and family should create conditions for women to exercise the economic rights and to receive the economic benefits mentioned above*'<sup>94</sup>. Prostitution is however illegal in Laos under the Penal Code. The Penal Code provides heavy penalties for those engaged in prostitution. According to article 122 (New)<sup>95</sup>, '*any person engaging in prostitution shall be punished by three months to one year of imprisonment or by re-education with deprivation of liberty and shall be fined from 50,000Kip (\$50) to 500,000Kip (\$500)*'. Those who facilitate or assist prostitution are subject to punishment from three months to one year or re-education without deprivation of liberty and a fine from 300,000Kip (\$300) to 1,000,000Kip (\$1,000)<sup>96</sup>. Those who generate income through procuring prostitution, are punishable from six months to three years of imprisonment and a fine from 5,000,000Kip (\$5,000) to 10,000,000Kip (\$10,000). The punishment increases from three to five years of imprisonment and a fine from 10,000,000Kip (\$10,000) to 50,000,000Kip (\$50,000) if the act of procuring is performed as a regular profession, involves the prostitution of female minor<sup>97</sup> or forcing a female under the offender's guardianship into prostitution<sup>98</sup>.

There are provisions in the Penal Law, especially under Part IV on 'Breach of Marital and Family Relationships and of Customs' and the Law on the Protection of the Rights and Interests of Children<sup>99</sup> prohibiting (child) prostitution and associated acts. Further to criminalizing prostitution, the laws also prohibit acts such as: adultery, indecent acts against children, and pornography.

Article 117<sup>100</sup> (New) on Adultery prohibits a married person from having a sexual relationship with a third person. The offender is subject to three months to one year of imprisonment or to 're-education without deprivation of liberty' and a fine from 500,000Kip (\$500)<sup>101</sup> to 5,000,000Kip (\$5,000). Article 28 (New) states that '*Re-education without deprivation of liberty is a punishment inflicted upon the offender at his place of work or at other locations, [and pursuant to which] five to*

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<sup>91</sup> Efforts to locate the English version of the Vietnamese Ordinance on Prevention and Suppression of Prostitution are not successful, and therefore it is not possible to review anti-prostitution laws in the three Cambodian neighboring countries.

<sup>92</sup> UNHCR, 1998, cited in Brown, L., 2001b, *STI/HIV, Sex Work in Asia*, WHO, p. 20.

<sup>93</sup> The Protection Project, n.d., *Trafficking Report, Laos*, [http://www.protectionproject.org/programs/tpp/asia\\_pacific.htm](http://www.protectionproject.org/programs/tpp/asia_pacific.htm) accessed 12 Jan 09.

<sup>94</sup> Lao People's Democratic Republic, 2004, *The Law on Development and Protection of Women*, Article 15 on Equal Economic Rights.

<sup>95</sup> New here is referred to an amended article.

<sup>96</sup> *ibid*, Article 122 (New), Prostitution.

<sup>97</sup> The Penal Law in its article 17 defined 'minors' as those who have not yet reached the age of fifteen years. However, there is a note that the term minor in article 123 is referred to those under the age of 18 years.

<sup>98</sup> Lao People's Democratic Republic, 1990, *The Penal Law*, Article 123 (New), Procuring.

<sup>99</sup> The translation of the Law on the Protection of the Rights and Interests of Children is endorsed by the Law Committee of the National Assembly of the Lao PDR.

<sup>100</sup> Lao People's Democratic Republic, 1990, *The Penal Law*, Article 117 (New), Adultery.

<sup>101</sup> The normal exchange rate is 1,000Kip to \$1.

*twenty percent of his total salary is remitted to the State in accordance with the court's decision. A penalty of re-education without deprivation of liberty must not exceed one year.*<sup>102</sup>

Under article 120 (New), anyone who engages in sexual intercourse with a child under fifteen years is subject to imprisonment between one and five years and a fine from 2,000,000Kip (\$2,000) to 5,000,000Kip (\$5,000)<sup>103</sup>. The Law on the Protection of the Rights and Interests of Children details the punishment for this indecent act against children. Article 89 provides that those who have sexual relations with a child aged 15-17 years for payment or the provision of any type of benefit are subject to imprisonment from three months to one year or re-education without deprivation of liberty and a fine from 1,000,000Kip (\$1,000) to 2,000,000Kip (\$2,000). The punishment increases from one to five years imprisonment and a fine from 2,000,000Kip (\$2,000) to 5,000,000Kip (\$5,000) if a child aged 12-14 is involved. The article further states that: *'any individual who has sexual relations with a girl or boy under twelve years of age by any means shall be considered as having committed rape and that persons shall be punished by imprisonment from seven to fifteen years and fined from 7,000,000Kip (\$7,000) to 15,000,000Kip (\$15,000)'*<sup>104</sup>. The last paragraph of the article 89 stipulates that: *'any individual who has requested, received, recruited or offered children under eighteen years of age to become prostitute, shall be considered as an offender and shall be punished as stipulated in Article 134 (New) of the Penal Law'*<sup>105</sup>.

Lao legislation has some problems. It fails to define 'prostitution' and 'procuring for prostitution', terms upon which the law relies. This will create difficulties for the implementation of the law. The law treats forced and voluntary sex workers equally, as there are no provisions dealing with coercion in the context of prostitution. The meaning 'facilitating or assisting prostitution' in article 122 is unclear. It is, therefore, not possible to say whether this covers provision of premises for the purposes of prostitution. This law will not eradicate the sex industry. As is the case elsewhere, the law will simply force sex workers to work clandestinely. The strong local demand for sexual services, and limited economic opportunity, will have a greater influence on the prevalence of sex work than law enforcement<sup>106</sup>.

### **4.3 A discussion on human rights and sex work**

Sex work is a resilient occupation that survives in most socio-economic, cultural, and religious contexts<sup>107</sup>. Studies suggest that the size and extent of the global sex business is phenomenal. The industry is capable of dynamic re-structure making effective countermeasures (should they be desired) difficult to design and implement<sup>108</sup>.

A lingering discourse on whether or not 'sex work' should be recognized and legalized is still going on among policy makers, scholars, and human rights advocates. Those who take a sex workers' rights stance suggest that sex work is a form of labour, and thus should be addressed as such. Those taking a victim's stance advocate that sex work is human rights violation and should be abolished. Some abolitionists suggest that this should occur without punishing sex workers themselves because this would constitute blaming and punishing the victim of the crime. Some abolitionists seek to

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<sup>102</sup> Lao People's Democratic Republic, 1990, *The Penal Law*, Article 28 (New), Re-education without deprivation of liberty.

<sup>103</sup> *ibid*, Article 120 (New), Sexual intercourse with a child.

<sup>104</sup> Lao People's Democratic Republic, 2007, *The Law on the Protection of the Rights and Interests of Children*, Article 89, Sexual Relations with Children.

<sup>105</sup> Article 134 (New) on 'Sale of Prohibited Goods' of the Penal Law states that: *'any person selling any prohibited goods shall be punished by three months to two years of imprisonment and shall be fined as provided by customs regulations'*. It is interesting to note that the punishment prescribed in the article 134, assuming that the reference is correct, is less severe compared to punishment set in article 123 of the Penal Law on 'Procuring for prostitution'.

<sup>106</sup> Gotehus, A., 2006, *Crossing the River, Perception of Human Trafficking Among Villagers in Bokeo Province, Northern Laos*, Masters Thesis, Norwegian University of Life Sciences.

<sup>107</sup> Scofield, D., 2004b, *Sex and Denial in South Korea*, <http://www.atimes.com/atimes/Korea/FE26Dg03.html> accessed 13 Jan 2009.

<sup>108</sup> Sarah Shannon, 1999, *Prostitution and the Mafia: The Involvement of Organized Crime in the Global Sex Trade*, p 140.

make the industry illegal and to prosecute and punish all those involved including clients. Sex workers' rights advocates acknowledge the abuses within the industry and seek to correct these, not by abolition but by improving conditions of work and affording legal recognition to the industry.<sup>109</sup>.

This paper adopts the position of sex workers' rights advocates. The 1948 Universal Declaration of Human Rights states in its article 23 that: *'Everyone has the right to work<sup>110</sup>, to free choice of employment, to just and favorable conditions of work and to protection against unemployment'*<sup>111</sup>. Article 31 of the 1993 Constitution of the Kingdom of Cambodia states that: *'The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights'*. Article 36 of the Constitution provides that: *'Khmer citizens of either sex shall enjoy the right to choose any employment according their ability and to the needs of the society'*<sup>112</sup>.

Neither the Cambodian Constitution nor law criminalize prostitution. The sex industry, however, will find it incalculably difficult to peacefully co-exist with the presence of the 2008 law if it is to be seriously and indiscriminately enforced. Given the Cambodian context, it is hard to imagine that the law will be enforced in an unbiased and transparent fashion. Corrupt law enforcers will not act against sex establishments operators/owners with whom they have formed parasitic or symbiotic relationships<sup>113</sup>. Honest officers faced with resource and administrative constraints would be unable to act against such operators/owners and would become de-motivated<sup>114</sup>. Consequently, the only target group that these officers could suppress would be the independent sex/entertainment workers who were unable to afford protection or too destitute to bribe authorities.

Regardless of the actions on the part of the authorities, the sex industry will persist. The raids have resulted in a restructure of the ways in which sexual services are offered<sup>115</sup>. Such actions force workers underground making it difficult:

- (1) for sex workers to survive, to shun exploitation and abuse, to gain the protection necessary in certain circumstances, and to access health care services<sup>116</sup>;
- (2) for the NGOs that provide health care services and/or education, that combat HIV/AIDS, and that assist and advocate for the sex workers and their rights, to locate their target groups for provision of such assistance<sup>117</sup>;

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<sup>109</sup> Ditmore, M., 2002, *Trafficking and Sex Work: A Problematic Conflation*, A Published PhD Dissertation, The City University of New York, p. 80-1.

<sup>110</sup> It is acknowledged that not everyone has the rights to do whatever they want. Some rights are restricted by the government for some reasons.

<sup>111</sup> The United Nations, 1948, *The Universal Declaration of Human Rights*, Article 23.

<sup>112</sup> Kingdom of Cambodia, 1993, *The Constitution of the Kingdom of Cambodia*, article 31 and 36.

<sup>113</sup> Hughes (2000) suggested that *'Corruption of police, military and politicians in Cambodia is a serious problem. Many traffickers and brothels owners pay bribes to officials or officials themselves are the owners of brothels. Traffickers, pimps and official seem to be able to buy, sell, and even kill women with impunity in Cambodia.'* See: Hughes, D., 2000, "Welcome to the Rape Camp", *Sexual Exploitation and the Internet in Cambodia*, Journal of Sexual Aggression, Vol 6, No. 1-2, Winter, 2000, p 15.

<sup>114</sup> Phnom Penh Post, Vol. 17, No. 4, Phnom Penh, 22 Feb-06 Mar, 2008, p.5.

<sup>115</sup> Singh, U., 2008, *Effective Advocacy Case Study on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation*, HACC, <http://healthdev.net/site/post.php?s=3839> accessed 01 Jan 2009.

Cheang, S., 2008, *Cambodian Prostitutes Protest Police Crackdown, Allege Physical and Sexual Abuse*, The Associate Press, 04 Jun 2008, <http://www.newser.com/article/d913bi080/cambodian-prostitutes-protest-police-crackdown-allege-physical-and-sexual-abuse.html> accessed 01 Jan 2009.

<sup>116</sup> Jagan, L., n.d., *Preying on Cambodia's Poor, The Suffering of the Khmer People Seems Never-Ending- The Latest Increasing Problem Being Human Trafficking*, [http://www.bangkokpost.com/071208\\_Spectrum/07Dec2008\\_spec006.php](http://www.bangkokpost.com/071208_Spectrum/07Dec2008_spec006.php) accessed 01 Jan 2009.

Sex Workers and Allies in Cambodian, 2008, *What Do Sex Workers Do When Faced With State Sanctioned Abuse?* [http://www.sexworkeurope.org/site/index.php?option=com\\_content&task=view&id=218&Itemid=1](http://www.sexworkeurope.org/site/index.php?option=com_content&task=view&id=218&Itemid=1) accessed 01 Jan 2009.

<sup>117</sup> Chhay, C. and Lodish, E., 2008, *Brothel Raids, Arrests Worry Health Workers*, The Cambodia Daily, Monday, 01 May 2008, [http://www.camnet.com.kh/cambodia.daily/selected\\_features/cd-May-1-2008.htm](http://www.camnet.com.kh/cambodia.daily/selected_features/cd-May-1-2008.htm) accessed 01 Jan 2009.

- (3) for the government to monitor the sex industry activities and to contain criminal activity that may be associated with clandestine sexual activities;
- (4) for the customers to have access to safer sexual services and to avoid risks associated with patronizing covert sex activities/establishments<sup>118</sup>.

The raids simply force workers to submerge, disperse, and relocate. Closing brothels allow the big and well-protected brothels to take over the market<sup>119</sup>, and force the small ones to alter their modus operandi (i.e. from real brothels to karaoke/massage parlours, or a new form of brothel [Sex workers do not reside in the brothel. They are called in to serve customers and then leave])<sup>120</sup>. A study by COSECAM in 2005 concluded that the closure of Svay Park did not eradicate the sexual and commercial exploitation of the children and girls previously working there. It has merely forced them to disperse and relocate in other areas. The report highlights a need for a different approach to be taken by NGOs, government agencies and police units<sup>121</sup>.

## V. RECOMMENDATIONS FOR THE AMENDMENT OF THE LAW

There are at least three options that might be suggested to achieve the amendment of the law. The first is public advocacy that aims at conveying messages substantiated by sensible and compelling arguments to the government. If the government is convinced of the necessity to reform the law, it may propose amendments to the National Assembly. The second is to convince the deputies (Members of the Parliament) directly. Article 91 (New) of the Constitution stipulates that: *'The Senate members, deputies and the Prime Minister shall have the right to initiate legislation. The deputies shall have the right to propose any amendment to the law (s), but, the proposal(s) shall not be acceptable if they aim at reducing public income or increasing the burden on the people.'* The third is to firstly convince the relevant ministries - in this case the Ministry of Interior, the Ministry of Women Affairs, the National Aids Authorities, the Ministry of Justice, The Ministry of Health, and the Ministry of Social Affairs, Veterans, and Youth Rehabilitation- of the need to modify the law. Ministries might then raise the concerns to the government for consideration.

The third appears to be the most viable alternative in the Cambodian setting because certain ministers [especially the Minister of Interior] have a better chance to discuss their concerns with the Prime Minister. The Prime Minister has the authority to push the matter forward. Interestingly, according to legal specialists, since 1979 few laws have been amended. The government has introduced new laws- and has repealed existing laws but it has never amended laws<sup>122</sup>. For instance,

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Nguon Sovan and Cat Barton, *Anti-trafficking Drive Marred by Claims of Gang Rape, Robbery*, The Phnom Penh Post, 12 June 2008. <http://www.phnompenhpost.com/index.php/200806126709/National-news/Anti-trafficking-drive-marred-by-claims-of-gang-rape-robbery.html>

<sup>118</sup> Singh, U., 2008, *Effective Advocacy Case Study on Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation*, HACC, <http://healthdev.net/site/post.php?s=3839> accessed 01 Jan 2009.

AFP, 2008, *Cambodia Faces Problems Enforced New Sex Trafficking Law*, Friday, 26 December 2008, <http://beta.malaysia.news.yahoo.com/afp/20081226/tap-cambodia-prostitution-trafficking-2a5be5e.html?printer=1> accessed 01 Jan 2009.

<sup>119</sup> A survey conducted Cambodian National Council for Children (CNCC) in 1999 concluded that *'prevention of trafficking was not on the agendas of most NGOs. This inattention was attributed to lack of initiative and resources and to the influence of powerful people who controlled the sex business.'* See: Hughes, D., 2000, "Welcome to the Rape Camp", *Sexual Exploitation and the Internet in Cambodia*, Journal of Sexual Aggression, Vol 6, No. 1-2, Winter, 2000, p 16.

<sup>120</sup> ECPAT, NGO CRC, COSECAM, n.d, *NGO Joint Statistics, Database Report on Trafficking and Rape in Cambodia 2005-2006*, p. 55.

<sup>121</sup> *New Research into Child Prostitution in Cambodia*, 2005, <http://www.humantrafficking.org/updates/277> accessed 01 Jan 2009.

COSECAM, 2005, *Impact of Closing Svay Park: Study of Police and International NGO Assisted Interventions in Svay Park*, Kingdom of Cambodia, <http://www.humantrafficking.org/updates/277> accessed 01 Jan 2009.

<sup>122</sup> A personal communication with Mr. Yi Yuth Virak, Country Project Coordinator, Asia Regional Trafficking in Persons Project (ARTIP), 18 February 2009.

A personal communication with Mr. Heng Kong, Lawyer, Legal Aid of Cambodia Project Manager, Kompong Cham Province, 18 Feb 2009.

after 9 years of advocacy by relevant civil society organisations, the 2001 Land Law was promulgated and it repealed the never-amended 1992 Land Law<sup>123</sup>. It has been 17 years since the enactment of the 1992 UNTAC Law. The government has been working on drafting the Penal Code, instead of making necessary amendments to the law whilst awaiting a new Penal Code<sup>124</sup>. The 1996 anti-trafficking law was not modified. It was replaced after 12 years with the 2008 anti-trafficking law. This practice presents difficulty for any endeavours aimed at amending the law.

The specific articles and issues that are being proposed for consideration following the review of the 2008 anti-trafficking law and the Guidelines are:

1. Personally, I believe that unregulated soliciting in public will affect social order and the Cambodia's image. It is suggested that Article 24 on 'soliciting in public' shall remain in effect with some clarifications and modifications. The article should precisely define acts that constitute soliciting in public. This would help people to be aware of what they should and should not do<sup>125</sup>. Moreover, minors shall also be prohibited from soliciting in public. However, they shall receive alternative punishment to prison term (preferably in the form of education). This will prevent those taking advantages of the loopholes to sexually exploited minors.
2. The term 'SACHARAK KAM' or 'Procuring for prostitution' as defined in article 25 should be redefined to make it more precise and to include the consent of adult sex workers in the prevention, assistance, and re-education efforts by authorities and competent organizations as stated in the clause 3 of paragraph 2 of the article.
3. Article 31 on 'Management of establishment for prostitution' and Article 32 on 'provision of premise for prostitution' should be nullified. First of all, these two articles are almost the same in terms of their restriction on allowing sex workers to seek clients in an establishment and/or use an establishment to indulge in prostitution activities. Prostitution is about the ability to solicit and having a place to provide satisfactory and safe services to punters. If they are prohibited from soliciting in public and in an establishment where they work, then the only venue where they can solicit and service clients is their own place- the place that virtually none could afford. The restriction on those providing a premise by whatever means, including ignorance, renting, and sale, is a major hurdle to independent prostitution.
4. The article 34 on the 'Purchase of child prostitution' and Article 42 on 'Sexual intercourse with minors under 15 years' need to be clarified with regard to: (1) what constitutes a 'promise to provide'. Does verbal promise count? If it does, how realistic it is to prove such a promise? (2) What is meant by 'anything of value'? The article should clearly set a minimum value for the item given or promised to be given.
5. The 28 October 2008 Guideline is of utmost importance to the correct implementation of the law, and to the prevention of further abuses on sex workers due to misinterpretation and incorrect implementation of the law. However, the Guideline should be done taking into account the suggestions to clarify the article 24, 25, 34, and 42. The Anti-Trafficking Taskforce can make law-amendment proposal to the Prime Minister. With the absence of or pending the new Guidelines, it is proposed that the existing Guidelines be elevated into a

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<sup>123</sup> Kingdom of Cambodia, *the Law on Land*, 13 October 1992.

Kingdom of Cambodia, *the Law on Land*, 20 July 2001.

<sup>124</sup> Kingdom of Cambodia, *The Provisions Dated 10 Sept 1992 Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period*.

<sup>125</sup> It is important to note that other members of the research team, and the sex workers, think Article 24 should be repealed.

Ministerial Prakas (Regulation) or a Sub-decree from its current status as a 'Sarachor Nenam' (Guideline).

Relevant authorities, particularly the police, should be trained on the law and the Guideline (or the future Prakas or Sub-decree) in order to avoid misinterpretation and incorrect enforcement. The Prakas or Sub-decree should spell out in detail the disciplinary actions against those wrongly yet intentionally enforced the law. Mechanism to report and deal with police's misconduct should also be established.

In general, the review argues that the best way forward is to regulate prostitution in such a way that eliminates forced prostitution and sexual exploitation while creating suitable conditions for voluntary sex workers to exercise their rights. If 'prostitution' is a form of 'work' it should be treated as such. Legalizing prostitution need not be seen as a moral endorsement of paid sex. If they could operate legally and openly in particular areas, the government may regulate the industry. This also enables the government to proactively engage in education, prevention, protection, and rehabilitation programs<sup>126</sup>.

## VI. CONCLUSION

This study found that the English translation of the Law did not contain any significant errors. Prostitution is legal. Prohibition of public soliciting appears as a prime reason for thinking that prostitution is illegal. Sex workers have, therefore, been subject to arrest for violating the law.

Allegations of serious abuses of sex workers by authorities have been substantiated. Hundreds of them reported being arbitrarily arrested and detained. In most instances, the only evidence justifying the arrests was 'carrying condoms'. Authorities have been accused of misconduct towards sex workers at various stages. At the time of arrest, some reported being beaten, forced to work and sexually harassed. Some reported having their personal belongings and money seized. Later, they were arbitrarily detained at the two rehabilitation centres where the conditions were said to be appalling. They complained of inhumane treatment by guards. Most were detained without being sentenced for a much longer period even if they were found guilty of soliciting under the law.

The law imposes significant restrictions on the practice of prostitution. The law has been subject to misinterpretation and its enforcement has been accompanied by abuse. While the substance of the law is to discourage prostitution, the government today is not in a position to provide meaningful options should any sex worker actually desire this.

The law will likely face tremendous enforcement challenges. Experiences from other jurisdictions informed that prostitution could not be exorcised simply by a strict legislation. Coercive laws and practice will only worsen the situation of voluntary prostitutes while contributing to a resurgence of the HIV/AIDS epidemic. The lack of economic opportunities especially among the least educated and destitute people, the social tolerance for buying sex, the corrupt practices among some law enforcers, and the limited government support and assistance will simply force sex workers to operate covertly. This will disadvantage them, their advocates and helpers, the customers, and the government. The government, however, should not ignore prostitution that results in the sexual exploitation of workers. It should take strict measures with respect to involuntary prostitution, while creating a safe environment for voluntary sex workers.

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<sup>126</sup> See also, Roby, J. L., 2005, *Women and Children in the Global Sex Trade: Toward More Effective Police*, Sage Publication, International Social Work 2005, 48 (2), pp. 136-147.



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