CAMBODIAN
HIV/AIDS AND HUMAN RIGHTS
LEGISLATIVE AUDIT

DECEMBER 2003

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EXECUTIVE SUMMARY

Auditing human rights is a new model of human rights monitoring that attempts to bridge the gap between international obligations and national practice as implemented in legal systems. The audit is designed as a quality assurance device using the benchmarks contained in the International Guidelines on HIV/AIDS and Human Rights, and ultimately aims to promote an enabling environment for responding effectively to the HIV/AIDS pandemic through promoting respect for human rights in the context of HIV/AIDS at the national level.

The audit process involves legal research for production of a draft audit report. The draft report makes a preliminary assessment of the degree to which the legal system being audited is consistent with the standards contained in the International Guidelines on HIV/AIDS and Human Rights. The draft audit report is then refined through consultation with stakeholders to assess both the accuracy of the legal research, and to collect information about how the legal system operates in practice.

Previous audits have been conducted in several jurisdictions in Australia; however the Cambodian audit was the first time that the audit methodology had been applied in a developing country. The audit tool developed for use in Australia employed 10 indicators consisting of a series of questions examining different aspects of the legal system, based on the justiciable elements contained in the International Guidelines. The 10 indicators used in Australia dealt with: public health; criminal laws and transmission offences; anti-discrimination; privacy and confidentiality; sexual offences and the sex industry; prisons/correctional laws; employment law; equality of legal status of vulnerable populations; regulation of health care professionals and ethical research; treatment, therapeutic goods, testing, and other issues.

Because the audit tool used in Australia contained some assumptions that are more valid to the legal systems of developed rather than developing countries, a need was identified for a version of the audit tool which recognizes the reality of resource constraints in some developing countries, and the need for the progressive realization of rights. Consequently a new version of the audit tool was developed which attempts to address the different characteristics and circumstances of legal systems of developing countries.

The audit tool developed for use in Cambodia uses eight indicators rather than 10, while at the same time addressing the justiciable elements of the International Guidelines. It does so by consolidating some of the elements of separate Australian indicators together. The eight indicators used in the Cambodian audit dealt with: public health; criminal laws and transmission offences; anti-discrimination and privacy; sexual offences and the sex industry; prisons and correctional laws; employment law; equal legal status and communication rights; and therapeutic goods and ethical research. The full set of indicators appears in Appendix 1 to this report.

The audit piloted in Cambodia largely focused on the Law on the Prevention and Control of HIV/AIDS passed by Cambodia's National Assembly in July 2002. This law has many positive features and is regarded as a best practice framework in the Asian region, particularly in relation to anti-discrimination, privacy and confidentiality, and voluntary counseling and testing protections. The implementing guidelines currently being drafted by Cambodia's National AIDS Authority will promote implementation of the law through further articulation of the roles and responsibilities of government and civil society in responding to the HIV/AIDS epidemic in Cambodia. The implementing guidelines will also augment regulatory and monitoring aspects of the legal framework concerning HIV/AIDS in Cambodia. In addition to the Law on the Prevention and Control of HIV/AIDS, the audit also examined other relevant legislation and features of the legal system.

The Cambodian audit revealed that challenges which face the Cambodian legal system as a whole are also a feature of the legal and regulatory framework concerning HIV/AIDS. These challenges include a scarcity of resources for the creation and operation of enforcement mechanisms, and generally a low level of legal expertise which is part of the legacy of Cambodia's recent turbulent history including the brutality and systematic destruction of infrastructure under the Khmer Rouge regime. The relative fragility of the legal system was made apparent through the process of the audit, however it has been much improved over the last decade, and efforts to strengthen the rule of law continue through a variety of programs and reforms.

Summaries of the findings in relation to the eight indicators are set out below.
Public Health

There is a legal duty to implement universal infection control procedures and testing of blood, blood products, and organ and tissue donations, with penalties including fines and imprisonment for breaches of the law. In practice there do not appear to be significant problems of HIV infection through either of these routes, despite the use of paid blood donors (which in other countries has been identified as a risk factor for contamination of the blood supply), and the cost of infection control equipment. In many cases, sterile injecting equipment will be provided by patients, for example in child immunization programs.

As required by law, the epidemiological monitoring program uses coded data rather than identifying information, in order to protect patient privacy. This system appears to work well, despite the lack of a formal legal requirement on testing agencies to report HIV test results. The law prohibits mandatory HIV testing, and requires voluntary informed consent for an HIV test to be performed; however the law does not impose penalties for breaches of this requirement. HIV testing centers are required to be accredited and to provide pre-test and post-test counseling. At the time the research and consultation was conducted for production of this report (July-December 2003) the law had not yet established a system of accreditation, but this will be dealt with through the implementing guidelines for the Law on Prevention and Control of HIV/AIDS. There are no penalties for failing to provide pre-test and post-test counseling, and participants at the public consultation suggested that some testing takes place without pre-test or post-test counseling (for example at some pharmacies), and that secret HIV testing without consent takes place at some hospitals and medical clinics.

Criminal Laws and Transmission Offences

There are several provisions in the Law on the Control of Drugs that enable diversion of drug offenders from the criminal justice system to treatment and rehabilitation facilities. This is a progressive feature of the Cambodian law, particularly in comparison to the approach to illicit drug users taken by the legal systems of some other countries in the region, and has the potential for better health outcomes for drug offenders, and for a more effective response to the epidemic in Cambodia. However more resources are urgently needed to give effect to these provisions, as at present there are few drug rehabilitation facilities in Cambodia.

A pilot needle and syringe program has recently begun operating in Phnom Penh. At the time the audit was conducted the legal status of the program was unclear due to the potential implications of the incitement provisions of the drug law. However in late December 2003 the Co-Minister of Interior approved a 12-month pilot of a needle and syringe program among injecting street youth. There is widespread access to sterile injecting equipment at pharmacies, as there are no restrictions on the purchase of injecting equipment. There is some evidence that HIV transmission in the drug-using population is beginning to occur through the sharing of injecting equipment.

The UNTAC Penal Code has provisions prohibiting rape and indecent assault, as well as other offences involving violence. In some cases there are enforcement problems with these laws, due to problems with the rule of law in general, and also in relation to police practices. A draft law on domestic violence was delayed in parliament due to the national elections in July 2003, but it does not appear to provide for recognition of rape in marriage. The HIV/AIDS law penalizes the intentional transmission of HIV, as opposed to the mere exposure to the risk of transmission, but does not provide for defenses such as partner consent. The HIV/AIDS law also prohibits quarantine or isolation of HIV positive people, with penalties for non-compliance. There do not appear to be significant problems with deliberate transmission of HIV, and there is no evidence of coercive detention of HIV positive people.

The Constitution of Cambodia provides for the right to be defended in legal proceedings, but resource constraints mean that this right is not always given effect in practice. However there are some NGO programs that provide legal assistance, such as the Cambodian Defenders Project and Legal Aid Cambodia.

Anti-discrimination and Privacy Legislation

The HIV/AIDS law prohibits discrimination on the basis of HIV in a wide range of public and private areas, such as employment, education, accommodation, finances, travel, and health care, with penalties for non-compliance. Information

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1 Letter from His Excellency Sar Kheng, Co-Minister of Interior to Director Mith Samlanh/Friends 30th December 2003.
from the public consultation revealed that discrimination occurs in some areas such as employment (people being compulsorily tested for HIV, and dismissed if they test positive), health care (being refused treatment), and in the family (being evicted from the family home). The Cambodian Constitution and the Labor Code prohibit discrimination against vulnerable groups such as women, but in practice these prohibitions are not necessarily enforced, especially in the case of gender discrimination. Future reforms that can strengthen the legislation in this area include establishing an independent agency to monitor and enforce anti-discrimination and privacy rights. Some examples of institutions that could perform this role are a human rights commission, an Ombudsperson, or local peace committees.

The HIV/AIDS law provides confidentiality protections for people living with HIV/AIDS in similar areas to that of the anti-discrimination provisions, with penalties for non-compliance. Apart from anonymous unlinked testing for surveillance purposes, test results can only be released to the individual who has requested the test. The monitoring agency is legally bound to use coded data rather than identifying information in recording HIV test results. The only exceptions to these provisions are where there is a court order for disclosure of the information, or where the information needs to be disclosed in connection with the health care of the person tested. The level of observance of confidentiality requirements appears to be good, apart from some reports of forced testing in areas such as employment. The trigger for discriminatory treatment seems to be identification of symptoms of an AIDS-related illness, and access to treatments including anti-retroviral therapy would be the most effective tool to counter this.

The partner notification provisions of the law require further detail on procedures to be adopted where partner notification is being considered, and this is an area in which the implementing guidelines currently being developed by the National AIDS Authority can play a role.

**Sexual Offences and the Sex Industry**

There are no prohibitions on adult, private and consensual sex in Cambodia. Community norms strongly value heterosexual marriage and sex between men is stigmatized, which is a barrier to the effectiveness of HIV prevention programs.

Sex work is prohibited under the Constitution, but is widely tolerated by police and the community. The sex industry is criminalized by the *Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings*, which penalizes people found to be a "pimp or head of prostitutes", and also contains vague offences such as "debauchery". There are protections against sexual exploitation of minors under the Constitution and the Trafficking Act; however there are problems with enforcement of these laws, which have resulted in a continuation of these practices.

Notwithstanding the Constitutional and legislative prohibitions on sex work, the sex industry in Cambodia has attained a quasi-legal status through the 100% Condom Use Program, which is implemented by the government and which focuses on occupational health and safety aspects of sex work. The 100% Condom Use Program is a key element of the Cambodian Government's response to HIV/AIDS. Some of the strengths of the program, from a health promotion perspective, include official recognition of the need to work with the sex industry on HIV and sexually transmitted infection prevention initiatives, the potential for the creation of normative behavior concerning condom use, the placing of responsibility for condom use with the owners of brothels and not just sex workers, the involvement of local authorities in HIV/AIDS prevention strategies, the contribution that the program has made to strengthening the STI health care infrastructure, and improving the access of brothel-based sex workers to STI clinics.

At the same time, reports from sex workers reveal the potential for, and the reality of, corruption within the program. Examples include police, brothel owners and clinic staff taking bribes. Some aspects of the program violate the human rights of sex workers, such as mandatory registration, and insensitive health examinations at government STI clinics.

**Prisons and Correctional Laws**

The UNTAC Penal Code guarantees prisoners' access to medical care, but in practice these guarantees are generally not met, with a low level of access to basic medical care except through NGO medical programs such as that run by an NGO, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). This situation is exacerbated by the shortage of other necessities of life, such as food and water. Issues such as involuntary HIV testing and the segregation of HIV positive prisoners, which were a focus of the audit tool developed for use in Australia, were found to be less relevant to Cambodian prisons, where conditions of overcrowding and a lack of medical care were of greater concern. Other issues considered relevant to the assessment of prison conditions in developed countries also seemed to lack relevance in Cambodia, such as access to the means of HIV prevention (such as condoms and sterile injecting equipment).
Cambodian prisoners with a serious medical condition such as an AIDS-related illness are entitled to apply for a royal amnesty which permits their early release, and there is also scope for a prisoner's HIV status to be a ground for exercising the general sentencing discretion under the UNTAC Penal Code. Despite the confidentiality requirements of the HIV/AIDS law, maintaining the confidentiality of a prisoner's HIV status through the course of an application for early release proves difficult, due to the range of officials such as prison authorities, prosecutors, and court officials, involved in processing such applications.

**Employment Law**

The HIV/AIDS law prohibits HIV screening and employment discrimination on the basis of HIV status, with penalties for non-compliance in the latter case. There do not appear to be any particular industries where HIV screening is common, but consultations revealed discriminatory practices in some workplaces, with few accessible avenues for redress. The HIV/AIDS Law provides for a Code of Practice to be developed for health care workers. This will be an important tool, given that experience has shown in a number of countries that health care is an area where discrimination and secret testing complaints tend to be concentrated. The HIV/AIDS Law has a general confidentiality provision that applies to workplaces, and the Labor Code contains a general protection for workers' health records. In both cases, the effectiveness of these legislative provisions would be strengthened by the creation of an independent agency to monitor compliance and handle complaints. The HIV/AIDS Law also requires workplace HIV/AIDS education campaigns to be implemented. The Cambodian office of the ILO, with the support of the Garment Manufacturers' Association of Cambodia, is developing a local version of the ILO's Code of Practice on HIV/AIDS and the World of Work, to promote HIV awareness and respect for industrial and other human rights in the context of HIV/AIDS.

**Equal Legal Status of Vulnerable Populations and Communication Rights**

Women are given formal equal legal status under the Constitution and the *Law on Marriage and the Family*, but the reality is that they are less equal than men in many respects, including property, finances, work and domestic relationships. Children are legally protected from injurious acts under the Constitution, but there are a large number of vulnerable children such as orphans and street children, largely as a result of the impact of the HIV/AIDS epidemic. The age of consent to sex appears to be sixteen years, but is not consistent across legislative provisions. The Constitution guarantees freedom of assembly, association, movement and expression. In some cases there are limits on these rights imposed by laws such as the Law on Demonstrations and the Press Law, which contain overly broad exceptions that have been used to impede community mobilization, an example of which was the denial in 2002 of a permit for a march marking International Women's Day sought by the Minister for Women's Affairs. There have also been examples of censoring of some HIV/AIDS educational materials.

**Treatment, Therapeutic Goods and Ethical Research**

The issue of access to anti-retroviral treatment in Cambodia is an important one, with a relatively high prevalence of HIV in the general population, and limited resources for the public funding of ARV access. Local production of generic drugs is currently being established by the Cambodian government, with treatments expected to become available for use some time in 2004. Consultations on the draft legislative audit report were held in July 2003, and in October 2003 Cambodia became a member of the World Trade Organization. The *Law on Patents, Utility Model Certificates and Industrial Design*, which Cambodia adopted in January 2003 takes advantage of the special conditions for least developed countries contained in the WTO’s Doha Agreement, and exempts pharmaceutical products from patent protection until 1 January 2016.

The Cambodian Constitution guarantees the right to health of all Cambodian citizens, and the HIV/AIDS Law provides that all people living with HIV/AIDS are entitled to free primary health care. In reality, the resource constraints which Cambodia faces as a Least Developed Country create barriers to the enjoyment of these rights. Following two successful applications to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the proportion of the HIV positive population to take anti-retrovirals is expected to increase significantly in coming years.

The safety of therapeutic goods is dealt with under the *Law on the Management of Pharmaceuticals* 1996; however there are problems with the enforcement of this law. Pharmaceutical products are widely available and largely unregulated, there being no requirement that they be prescribed by medical practitioners (they are freely available at pharmacies). This lack of regulation has the potential to lead to the development of drug-resistant strains of HIV through inadequate monitoring of anti-retroviral drug prescription and adherence to treatment regimes. This is an issue not just for ARVs, but also for drugs used for opportunistic infections, such as antibiotics.
The HIV/AIDS Law bans misleading advertisements, such as false AIDS cures, and has penalties for non-compliance. The implementing guidelines currently being developed by the National AIDS Authority will address the development of standards and enforcement mechanisms for these provisions of the law. The HIV/AIDS Law requires that all HIV testing centers comply with standards established by the Ministry of Health, and this is another area in which the Code of Conduct will play a role in establishing standards and enforcement mechanisms, although the legislation does not provide penalties for failure to comply with these provisions.

There were no barriers identified to accessing condoms, and the quality and safety of condoms is regulated under the Law on the Management of Quality and Safety of Products and Services 2000. This law has requirements such as expiry dates, and provides for inspections of manufacturers, importers and service providers.

A functional national ethical review committee was established in 2001 in the Cambodian National Institute of Public Health using the International Ethical Guidelines for Biomedical Research Involving Human Subjects of the Council for International Organizations of Medical Sciences (CIOMS). The committee meets regularly to assess research protocols.
This paper sets out a methodology for auditing laws impacting on HIV/AIDS issues, which is a new model of human rights monitoring that attempts to bridge international obligations to national practice. The audit is designed as a quality assurance device to bring national legislative practice up to international standards, using the benchmarks contained in the *International Guidelines on HIV/AIDS and Human Rights*.

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correctional laws; employment law; equal legal status and communication rights; and therapeutic goods and ethical research. The full set of indicators appears in Appendix 1 to this report.

The consultation in Phnom Penh focused more on information gathering about implementation practices, and capacity-building of participants to understand the technical features of Cambodian legislation. This was in contrast to the Australian consultations, which focused on achieving consensus among stakeholders (government, community, and an independent expert) on assessment of the degree of compliance with international standards.

The audit was developed to open up public debate, understanding and human rights consciousness, rather than merely being a verification process. It can be used as a tool in three senses - diagnosis, intervention and advocacy. The exact content of laws is not prescribed by the audit, as there is a range of good legislative practices that can satisfy the human rights criteria in the Guidelines. The value and limitation of the audit methodology is that it uses specific standards and makes concrete findings, rather than being vague and intangible. Ideally the application of the audit should be conducted as a tripartite process involving an independent expert, community and government representatives.

The audit is based on justiciable rights contained in the International Guidelines, covering a wide range of substantive and procedural issues. The Guidelines are based on international human rights obligations contained in treaties to which Cambodia has ratified (mainly in 1992), including the Universal Declaration of Human Rights (UDHR) \(^2\), the International Covenant on Economic, Social and Cultural Rights (ICESCR) \(^3\), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), \(^4\) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), \(^5\) the Convention on the Rights of the Child (CRC), \(^6\) the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), \(^7\) and various International Labor Organization (ILO) conventions and recommendations. \(^9\) The obligations in the major Conventions are referred to in Article 31 of the Constitution, which states that rights under these instruments shall be recognized and respected. A Handbook for Legislators on the International Guidelines has been developed by the UNAIDS and the Inter-Parliamentary Union, which sets out in detail how to implement them. \(^10\)

The UN Development Program's Report on Human Rights and Development in 2000 recognized the need for review of national legislation against core international human rights standards to identify where action is needed to deal with gaps and contradictions. The Report highlighted the value of this form of accountability:

The emerging framework of international human rights law provides a strong foundation for deriving indicators on the legal obligations of the state. Bringing quantitative assessment to this legal framework is empowering governments to understand their obligations and the actions needed to meet them. \(^11\)

The audit methodology takes action on this recommendation by selecting a discrete area of human rights, HIV/AIDS, and measuring implementation in the dimension of law. The audit is an intervention or stimulus for changing laws at country level. It attempts to promote the implementation of international human rights obligations by objectively monitoring and reporting on the extent of their implementation at country level. The main purpose of the audit is to highlight best legislative practices in the area of HIV/AIDS that could be emulated by other jurisdictions, and to identify legal gaps that require reform.

The process of applying the audit is voluntary, as there is no enforcement power attached to international human rights treaty obligations (just a requirement to report to the UN treaty bodies). \(^12\) A further anticipated use of the audit is to tighten the dialogue in the under-resourced UN human rights treaty monitoring system. Providing comparative data on whether formal laws comply with the International Guidelines enables tracking over time to see whether the country situation has improved or deteriorated, and possibly an external comparison with other jurisdictions, although each

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2. General Assembly Resolution 217A (III), UN GAOR, Res. 71, UN Doc. A/810, 10 December 1948.
country will probably tailor the audit questions to suit local needs and issues. A longer-term objective of the audit methodology is to link its results with other health disciplines, such as epidemiology to test the nature of the link between human rights protection and health promotion.

The tripartite consultations involved in applying the audit at country level are central to the methodology. This process attempts to balance the views of representatives from both the external (community groups) and internal (government) sectors. The audit process is mediated by independent human rights and/or legal experts who perform the main evidence gathering and analytical work, that is, locating and explaining the relevant legislative provisions. Because the dimension being measured is law there is a need for legal expertise, and there may be a need for capacity building of participants to ensure that the process and findings are accessible to non-lawyers, and participation in the application of the audit process may itself assist in serving this purpose. The roles of NGOs and government representatives are critical to the process and findings, because of their local experiences as makers and administrators of laws and as organizations who have an understanding of communities most affected by those laws.

It is essential to involve citizens in the process to ensure that research and findings accurately reflect not only the formal legal situation, but also the practical operation of the legal system, and the experience of affected communities. Thus the input of government, NGOs, and expert representatives is important to the process. Local engagement ultimately affects the meaningfulness of the results to the government and users of the audit results. The audit report is primarily a self-help tool to empower local communities to assess human rights implementation, and determine what action to take in respect of inadequacies. The audit is designed as a democratic tool that decentralizes accountability by involving the whole of government, and can assist in energizing and equalizing NGO participation in the process.

The following report sets out the eight indicators of the audit and narrative findings about their application in Cambodia, based on documentary research and participative consultations with stakeholders in Phnom Penh (listed in Appendix 1). The audit is not designed to be inflexible, but can be modified by the tripartite group applying it at country level to make it more responsive to local concerns. The standard-setting process is inbuilt in the audit, as the indicators are based on the pre-existing International Guidelines. However, it is possible to improve on the standards using more exacting local and regional benchmarks and incorporate these in a different version of the audit. It is essential that consultations involving all relevant stakeholders are undertaken, so that they have a direct role in ensuring the relevance, appropriateness and importance of data collected and analyzed. The findings made during the consultation process should balance both the formal substance of the law, as well as the effectiveness of its practical application.
BACKGROUND

HIV, Law and Human Rights Context in Cambodia

With an HIV prevalence rate of 2.6 percent among adults aged 15-49 years, Cambodia is the country most affected by the HIV/AIDS epidemic in Southeast Asia. It is estimated that out of a population of 13 million, Cambodia now has 157,000 people living with HIV/AIDS. This rate has decreased from 1997 when the estimated prevalence rate was 3.9%. HIV prevalence in Cambodia is thought to have stabilized, although monitoring is based on a low rate of 8% reporting according to UNAIDS in 2002, while the National Center for HIV/AIDS, Dermatology and Sexually Transmitted Diseases estimates reporting as being currently around 11 percent. The predominant route of transmission is heterosexual, with the prevalence of sexually transmitted diseases contributing to HIV vulnerability and infection. Tuberculosis is common, principally due to HIV co-infection. Mother-to-child transmission is increasing, with 12,000 children currently infected - only 19% of women give birth outside the home, which presents a challenge for mother-to-child prevention programs involving anti-retroviral treatment. HIV prevalence among sex workers has declined from 42% in 1998 to 29% in 2002, and is particularly marked among younger workers (under the age of 20 years). HIV sentinel surveillance indicates that the prevalence among men who have sex with men is around 14%. There has not been the strong link between sharing needles to inject illegal drugs and HIV transmission in Cambodia as there has been in neighboring countries, such as Vietnam, where 65% of HIV infections are through this route. However there are indications that the level of drug injecting is increasing (See indicator 2).

The drivers of the epidemic appear to include widespread social deprivation, which creates pockets of vulnerability, particularly gender inequality. In 2001 12,000 people died of AIDS in

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13 UNAIDS, Epidemiological Fact Sheet on HIV/AIDS and STIs (2002).
Cambodia. 17 The fertility rate is high at 5.2% per annum, but so also is the child mortality rate (under five years of age) - 125 per 1,000 births. 18 There are a large number of street children and the government and NGOs provide services for some of these children. 19 There are an estimated 60,000 children orphaned by HIV/AIDS in Cambodia. 20

The Special Representative for Cambodia of the UN Secretary-General for Human Rights has regularly reported on a culture of impunity, violence and general rule of law problems, including low public and expert knowledge of laws, and lack of enforcement through police and the courts. 21 The salaries of judges and prosecutors were significantly increased in November 2002 from US$25 to $300 per month, which should assist in addressing a main cause of corruption. The new Royal School for Training Judges and Prosecutors should also assist in alleviating the problem that many judges and prosecutors lack formal legal qualifications. 22 Judicial independence would be strengthened by a Law on the Status of Judges and Prosecutors, and the doctrine of the separation of powers and the independence of the judiciary would be more of a reality in Cambodia if practices such as judges asking the executive branch of government for legal interpretations were to cease. 23 The Council for Legal and Judicial Reform was created in June 2002 to monitor the implementation of reforms that aim to strengthen the rule of law in Cambodia. 24

The 2001 Cambodian Human Development Report on HIV/AIDS documents the impressive level of HIV/AIDS awareness in Cambodia, and the increasingly successful partnership between national structures, the UN system, and the network of local and international NGOs. 25 Cambodia has made two successful applications to the Global Fund to Fights AIDS, Tuberculosis and Malaria (rounds one and two), and as a result will receive over US$57,000,000 from the fund, a significant proportion of which will go towards funding access to ARVs for people living with HIV/AIDS. 26 The National AIDS Authority and the Cambodian Network of People Living with HIV/AIDS developed a Charter for Persons with HIV/AIDS in Cambodia, which sets out individual rights and responsibilities, and was designed to encourage public discussion and mobilize communities. 27 It covers issues such as liberty, confidentiality, testing, education, employment, health, media, insurance, gender, prisons and discrimination. The Charter was influential in raising awareness of the various legal and human rights issues associated with the impact of and response to the epidemic in Cambodia, including the enactment of the Law on the Prevention and Control of HIV/AIDS 2002, which was modeled on the Philippines AIDS Prevention and Control Act 1998, and is a central element of the following human rights audit.

17 UNAIDS, Epidemiological Fact Sheet on HIV/AIDS and STIs (2002).
19 For example, Mith-Samlanh/Friends assist 1,800 street children in Phnom Penh daily.
21 P. Leuprecht, Situation of Human Rights in Cambodia: Note by the Secretary-General, A/57/230, 27 September 2002.
26 Cambodia’s application for funding from the third round of Global Fund grants was unsuccessful.
27 CPN+ was formed in 2000.
HIV/AIDS
AND HUMAN RIGHTS AUDIT
INDICATOR
PUBLIC HEALTH

Question 1 - Prohibition of mandatory and compulsory HIV testing

*Does the law prohibit mandatory or compulsory HIV testing of any person, including the military, migrants or visitors (except blood and other human tissue donors)?*

Article 20 of the *Law on the Prevention and Control of HIV/AIDS* (known as 'the HIV/AIDS Law') specifically prohibits HIV testing for purposes of employment, education, travel, health care and 'freedom of abode' (the right to choose where to live). This clear prohibition of compulsory HIV testing except in limited defined circumstances represents best practice, and sends a clear message to employers, health care workers, and others, regarding the importance of voluntary testing. Future reforms to strengthen this section of the law should include penalties for failure to comply with the prohibition against mandatory testing, as at present the law does not provide penalties for breaches.

Article 21 of the HIV/AIDS Law specifies that compulsory testing is only permissible where it is authorized by a court. A complementary provision is contained in sub-article 34(c) that enables sealed medical records relating to HIV status to be provided to courts. This provision would be relevant in cases such as prosecutions for the offence of intentional transmission of HIV (see below). It may be implied from the Law that mandatory testing for blood, tissue and organ donation purposes is authorized, as there is a requirement under Article 14 to perform these tests and a penalty for non-compliance under Article 49 (see below).

Neither the grounds on which a court may order a compulsory HIV test, nor the circumstances in which sealed medical records may be provided to a court are specified by the legislation. These are important areas that may be dealt with in the implementing guidelines currently being developed by the National AIDS Authority.

Question 2 - Informed consent and counseling

*Does the law require that specific informed consent and pre- and post-test counseling is given to individuals tested for HIV in circumstances where they will be given the results of the test (that is, not unlinked, sentinel surveillance)?*

Article 19 of the HIV/AIDS Law provides that all HIV tests shall be performed with voluntary and informed consent, with guardians providing consent in the case of minors, and the State in the case of people without mental capacity. Article 24 requires that all accredited testing centers shall provide pre- and post- test counseling to individuals undergoing a test. As there are no penalties for failing to comply with Articles 19 and 24 of the legislation, this is an area where future reforms to provide for penalties for breaches can strengthen the effectiveness of the legislation in contributing to an enabling environment for the response to HIV/AIDS in Cambodia.

Information from consultations on the draft audit report indicated that HIV testing in Cambodia tends to occur voluntarily when people identify symptoms they associate with AIDS-related illness, and therefore early diagnosis with treatment is not common.
Question 3 - Universal infection controls

*Does the law require medical and other health practitioners to follow universal infection control precautions?*

Article 13 of the HIV/AIDS Law provides that the National AIDS Authority shall issue guidelines on universal precautions during risky procedures (surgery, cosmetic surgery, dental, embalming and tattooing or similar procedures). The penalty for non-compliance with the NAA guidelines is set out in Article 49 of the HIV/AIDS Law - a fine of 500,000 to 1,000,000 Riels, and one month to one year's imprisonment (4,000 Riels are equivalent to US$1).

Question 4 - Screening of blood products

*Does the law require screening against HIV contamination of blood and blood products, tissue and organs?*

According to UNAIDS, all 24,600 blood units transfused in 2001 through the National Blood Transfusion Center (the Cambodian Red Cross is not involved in blood collection), mostly from paid donors with significant prevalence rates, were adequately screened for HIV. 28 As stated above, HIV testing is required under Article 14 of all blood products, tissue or organs before usage. Article 15 further provides that no laboratory or institutions shall accept such blood, tissue or organs without testing, and there is an obligation under Article 17 to destroy infected body fluids or parts unless used for research. Article 16 provides relatives or recipients of donated blood, tissue or organs with the right of re-testing of all such products, except in medical emergencies. The penalty for non-compliance with Articles 14 and 15 (but not Articles 16 or 17) is set out in Article 49 of the Law - a fine of 500,000 to 1,000,000 Riels, and one month to one year's imprisonment (punishment is double for repeat offences, and civil servants shall also have administrative sanctions imposed).

Question 5 - Coded notification of test results to public health authorities

*Does the law require reporting of HIV/AIDS test results to public health authorities by a limited class of persons (medical practitioners or pathologists) for epidemiological purposes with adequate privacy protection (for example, coded rather than nominal data)?*

Article 30 of the HIV/AIDS Law requires that the State shall establish a comprehensive HIV/AIDS monitoring program focusing on the magnitude of vulnerabilities, sexual behavior patterns and trends, as well as evaluating the adequacy, efficacy and continuity of prevention and control programs. Article 31 provides that HIV testing centers shall maintain confidentiality of records, but that the monitoring program 'shall utilize a coding system that promotes anonymity'. There is no explicit, as opposed to implied duty on testing centers to provide this information to the monitoring program. The penalty for non-compliance with Article 31 is set out in Article 51 of the Law - a fine of 50,000 to 200,000 Riels, and one to six months' imprisonment (punishment is double for repeat offences, and civil servants shall also have administrative sanctions imposed). This penalty appears to focus on breaching confidentiality and failing to code records, rather than failure to establish an adequate monitoring program. Sub-article 34(a) supports this interpretation as it provides that medical confidentiality is not breached (Article 33) by complying with requirements under the coded monitoring program - this is a permissive rather than a mandatory approach to the reporting of HIV/AIDS epidemiological data, meaning that the HIV/AIDS Law enables but does not require HIV testing centers to report test results to the government's HIV/AIDS monitoring program.

Findings - Indicator 1

The HIV/AIDS Law formally complies with many of the requirements under the International Guidelines, such as: prohibiting mandatory and compulsory HIV testing in most circumstances; requiring informed consent for all HIV tests; and requiring pre and post test counseling in the case of accredited testing centers. Similarly the legal provisions ensuring universal infection control and a safe blood supply are in compliance with the International Guidelines and there do not appear to be problems with the implementation of these provisions in practice. The epidemiological monitoring program is reported to be operating satisfactorily.

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but the legal framework should be strengthened so as to create a positive duty on testing centers to provide data (in coded form) to the government monitoring program, rather than merely permitting them to do so, as the legislation currently provides.

Several provisions in the law that impact on health care workers, such as requiring informed consent to testing, do not have penalties for non-compliance, and are only voluntarily enforceable. Consultations in Phnom Penh, as well as experience in other countries, reveals that health care is an area in which human rights violations are not uncommon. Penalties for failing to comply with provisions such as the requirement for informed consent to HIV testing would strengthen the effectiveness of the legislation in contributing to an enabling environment for Cambodia's response to HIV/AIDS.
Question 1 - Availability of needles and syringes and diversion from prison

Does the law enable the distribution of clean needles and syringes in the community, and diversion from the criminal justice system of persons charged or convicted of minor drug offences and referral for care and treatment?

At the time the audit was conducted there was no formal or government endorsed program in Cambodia to distribute needles and syringes. The availability of sterile injecting equipment can play an important role in preventing the transmission of HIV where drugs are injected, although this type of intervention cannot be funded by some donors. An NGO, Mith Samlanh/Friends, operates a pilot scheme in Phnom Penh. However the legal status of the program was unclear. Under Articles 32 and 41 of the Law on the Control of Drugs 1997, operators may be liable for facilitation or incitement of narcotics offences. However in late December 2003 the Co-Minister of Interior approved a 12-month pilot of a needle and syringe program among injecting street youth. In practice syringes and needles are available without prescription at pharmacies, and there are no reported problems with distribution. Amphetamine type stimulants (such as 'yama') are commonly self-administered orally, with heroin being the main drug injected - the level of use is small but increasing in Phnom Penh and Banteay Meanchey Province, probably because Cambodia is on the route of major illegal drug trafficking routes in Southeast Asia. Surveys of street children in Phnom Penh in 2000 and 2001 found an increase of injecting behavior from 2.6% to 8.7%. In 2003, 15 out of a group of 47 street youth who injected drugs agreed to be HIV tested, and 45% were found to be HIV positive. Reportedly there is widespread use of legal medicines and vitamins bought from pharmacies being self-injected, or being injected by unqualified health care providers or family members.

29 Subsequent to the research and public consultation for this report, Cambodia's National Authority for Combating Drugs announced that it accepted harm reduction as an appropriate approach for drug users in Cambodia, and that it would ask the National Assembly to amend the Law on the Control of Drugs 1997 to legalize needle and syringe programs that receive prior authorization from the NACD.

32 UN Office on Drugs and Crime (UNODC), Summary Report on the Illicit Drug Situation in Cambodia, Regional Center for East Asia and the Pacific (2002).
The 1997 Drug Law has been characterized as ‘progressive’ because it separates drug users from traffickers when determining penalties and providing for options to imprisonment. This is in marked contrast with the more inflexible approaches to illicit drug use taken by some other countries in the region, such as Thailand and Vietnam. Chapter XXIV of the Drug Law provides for treatment measures for ‘drug addicts’, under which a person who takes part in a State treatment program shall not be prosecuted for using drugs, and if already convicted may forgo punishment under Articles 90, 91, 93 and 98. The Court may also compel treatment and issue a warning under Article 92. Under Article 98, if the amount of drug consumed by a habitual user is ‘very small’ the prosecutor may acquit charges. Article 96 provides that an addict may receive a suspended sentence for minor offences (including non-drug related offences) where a court orders treatment.

However, there is a shortage of detoxification and treatment centers in Cambodia. In Phnom Penh drug rehabilitation services are provided at the Preah Sihanouk private hospital, but the fees charged place the services beyond the reach of most of the population. Existing State-provided general rehabilitation services, for example the services provided by the Ministry of Social Affairs, Labor Vocational Training and Youth Rehabilitation, are being extended to drug rehabilitation in some provinces. The UN Office on Drugs and Crime began a three-year project in 2002 with funding from the Japanese International Cooperation Agency to build capacity for drug treatment in Phnom Penh, Battambang and Poipet. A dedicated drug rehabilitation center is due to be established in Phnom Penh in late 2003, with further centers being established in provinces as funds become available. Prime Minister Hun Sen noted at the National Workshop on Drug Issues in Cambodia in May 2003 that: ‘We are currently lacking sufficient necessary services in counseling, treatment and drug rehabilitation in Cambodia. We do not have both funds and technical expertise to develop these services.’

There is a need to give legal protection to needle and syringe distribution programs, and this will occur if the National Authority for Combating Drugs’ stated aim of amending the Law on the Control of Drugs 1997 to permit needle and syringe programs to operate is achieved. The available research data indicates that injection as a route of administration of illicit drugs is increasing in Cambodia, suggesting that the need for sterile injecting equipment is likely to expand beyond the capacity of the existing pilot scheme to supply it. At the very least, incitement offences should be clarified under the Law on the Control of Drugs 1997 so that they do not apply to the distribution of sterile injecting equipment for preventing transmission of HIV and other blood-borne pathogens. There is a need for more resources for drug rehabilitation and treatment services, so that the progressive provisions in the Drug Law in relation to diversion from the criminal justice system through drug treatment and rehabilitation can be more widely implemented in practice.

Question 2 - Protection against sexual and other violence

Does the law provide protection under the criminal law for children against sexual abuse and exploitation, and adults against sexual and other violence, including rape in marriage?

The United Nations Transitional Authority in Cambodia (UNTAC) introduced a Penal Code in 1992 that is still in operation - it is formally known as Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period. Article 33 establishes the crime of rape defined as ‘any sexual act involving penetration through violence, coercion or surprise.’ The penalty is imprisonment for 5-10 years, or 10-15 years in cases where the victim is pregnant, suffering from illness, mental or physical infirmity, or the perpetrator is in a position of authority over the victim. There is no explicit recognition of rape in marriage, but there is also no bar on prosecuting a spouse. However, the UN Human Rights Committee expressed concern that rape in marriage is not an offence. A law on domestic violence is currently being drafted, as domestic violence is unfortunately a common phenomenon. Article 42 of the UNTAC Penal Code establishes an offence of indecent assault, defined as sexual assault by touching.

35 Ibid.
36 Ibid.
37 Ibid.
38 National Authority for Combating Drugs and UN Office on Drugs and Crime, Proceedings of National Workshop on Drug Issues in Cambodia, 5-6 May 2003, Phnom Penh.
40 Ministry of Women’s Affairs and Project Against Domestic Violence, Household Survey on Domestic Violence in Cambodia (1996).
caressing or any other sexual act not involving penetration. The penalty is imprisonment for 1-3 years, or double if the victim is a minor (under the age of 16 years), or if fraud, violence or threats are involved. There is a further offence of procuring, enticing or leading away a minor for the purposes of prostitution or sexual exploitation, subject to a penalty of imprisonment for 2-6 years. The Code also has general provisions against violence, such as murder, voluntary manslaughter, and illegal confinement. Sexual harassment is prohibited in the workplace under Article 172 of the Labor Code 1997.

**Question 3 - Offence for deliberate transmission of disease**

Is there a general offence/s for deliberately transmitting a communicable disease with the following elements: foreseeability of harm; intent (i.e. not reckless or negligent); causation of harm (that is, not mere exposure); and consent and/or use of safe sex measures as defenses?

Article 18 of the HIV/AIDS Law provides an offence where a HIV-positive person intentionally transmits the virus to others. The offence is not limited to transmission by any particular mode, and hence covers transmission through, for example, unprotected sex, or the sharing of injecting equipment. Article 50 provides a penalty of 10 to 15 years’ imprisonment for non-compliance, which is the most serious level of punishment in the HIV/AIDS Law. The offence complies in many respects with the criteria set out in the International Guidelines, but some aspects of it are over-inclusive, and hence encompass behavior which the International Guidelines do not recommend be covered. Foreseeability of harm is required, as there is a causal link between the person’s HIV status and the dangerous act risking infection that would be realized by a reasonable person. Intention is expressly provided for in the offence, which does not cover reckless or negligent acts. Causation of harm is required; therefore mere exposure is not covered by the offence. There is no provision for defenses or mitigating factors, such as consent (with explicit knowledge of the risk of HIV transmission) or use of safe sex measures. However, use of safe sex measures would effectively mean that the element of intention was missing from the offence.

**Question 4 - Right to legal representation**

Is there a legal obligation to provide free legal representation to defendants?

Article 38(8) of the Constitution provides for the right to be defended in legal proceedings. Article 10 of the UNTAC Penal Code provides for the right to legal assistance. In practice these provisions are not always implemented, mainly due to resource constraints which have resulted in a shortage of trained lawyers (there are only 200 practicing lawyers servicing a population of over 12 million) as well as restrictive rules on the admission of new lawyers under the 1995 Law on the Bar. 41 There are some non-government programs that provide free legal assistance, such as the Cambodian Defenders' Project and Legal Aid Cambodia; however these NGO projects are not able to provide comprehensive coverage in their legal assistance programs, which are limited both geographically and by other criteria, such as the nature and seriousness of the legal proceedings.

**Question 5 - Restrictions on living circumstances and detention**

Does the law only authorize the restriction of living circumstances or public activities (e.g. public transport or sport) or detention of persons on grounds relating to behavior that exposes others to a real risk of transmission, as opposed to their mere HIV status (i.e. restrictions usually applicable to diseases that are casually transmitted)?

Article 38 of the HIV/AIDS Law provides that there shall be no quarantine, isolation or refusal of entry based on HIV-status of persons or their family - actual, perceived or suspected. The penalty for non-compliance with Article 38 is set out in Article 52 of the Law - a fine of 100,000 to 1,000,000 Riels and one to six months' imprisonment. Punishment is double for repeat offences and civil servants shall also have administrative sanctions imposed. There is no legal authority for restricting the living circumstances of PLWHAs, and any

such practice would be in breach of the anti-discrimination provisions discussed in Indicator 3. According to the audit consultation, there do not appear to be significant problems with cases of deliberate transmission of HIV, and there were no reported incidents of coercive detention of HIV-positive people.

**Findings - Indicator 2**

The provisions under the *Law on the Control of Drugs* are progressive in their separation of drug users and small-scale traffickers from large scale traffickers, and are in compliance with the International Guidelines in respect of diverting minor drug offenders from the criminal justice system. However more resources are needed for drug treatment and rehabilitation services. As there are signs that injecting drug use is increasing in Cambodia, the Drug Law should be amended to clarify that needle and syringe programs to prevent the spread of HIV and other blood borne pathogens are exempt from the incitement and other relevant provisions of the Drug Law.

There are some areas of the legal system where protections against sexual and other violence could be improved, for example in relation to clarifying the legal status of domestic violence and marital rape. Reforms should also include measures to improve the enforcement of laws generally.

There is a need to ensure that health authorities are involved in any prosecutions under the deliberate transmission provision in the HIV/AIDS Law, as experience in other countries has demonstrated that there is a risk of police attempting to enforce provisions such as these inappropriately. The implementing guidelines currently being developed by the National AIDS Authority will promote collaboration between police and public health authorities, to develop guidelines for use in determining whether prosecutions under Article 18 are appropriate. The provisions prohibiting quarantine or isolation on the basis of HIV-status are in compliance with the International Guidelines, and they appear to be respected in practice.
Question 1 - HIV/AIDS and vulnerable groups as grounds of discrimination

Does the legislation provide for protection against discrimination on grounds widely defined to include HIV/AIDS (e.g. disability) and membership of groups that are, or are perceived to be vulnerable to HIV/AIDS in the jurisdiction (for example, gender, homosexuality, race, indigenous populations)?

Part VIII of the HIV/AIDS Law concerns protection from discrimination on the grounds of HIV status. It specifically prohibits discrimination on the grounds of HIV-status, rather than generic terms such as disability. The penalty for non-compliance with Articles 37-41 is set out in Article 52 of the Law - a fine of 100,000 to 1,000,000 Riel and one to six months' imprisonment (punishment is double for repeat offences and civil servants shall also have administrative sanctions imposed). There is no general anti-discrimination legislation that covers vulnerable groups, such as women, but there is some protection under the 1993 Constitution (see indicator 7). Article 42 of the HIV/AIDS Law provides that persons living with HIV/AIDS shall have the same constitutional rights as 'normal citizens' - although the meaning of this provision is clear in ensuring that PLWHAs have equal constitutional rights, the language can be interpreted as stigmatizing. Also Article 12 of the Labor Code 1997 prohibits discrimination on the grounds of sex, race, color, creed, religion, political opinion, birth, social origin or union membership. Failure to comply with this provision is subject to a fine of 61-90 days of base daily wage or imprisonment for one day to one month under Article 369. There are no anti-vilification provisions on the grounds of disability, but Article 61 of the UNTAC Penal Code has an offence of inciting discrimination on the grounds of national, racial or religious hatred (but not other grounds, such as HIV/AIDS), subject to a fine of 1,000,000 - 10,000,000 Riel or one month to one year's imprisonment.

Question 2 - Wide jurisdiction and coverage

Does the legislation provide for protection against discrimination with wide jurisdiction in the public and private sectors (for example, health care, employment, education, accommodation etc) and coverage of direct and indirect, and presumed discrimination (e.g. assumed infection), as well as associates (e.g. careers, partners and family)?

The HIV/AIDS Law has appropriately broad jurisdiction, and covers both the public and private sectors (that is, no distinction is made) in the areas of employment, education, accommodation, public office, services (including financial and insurance), hospitals and health institutions. There is no definition of discrimination, so direct discrimination is covered by the law, but possibly not indirect discrimination. Presumed infection is covered by use of the terms ‘actual, perceived or suspected' HIV status, and 'family members' (rather than associates).
Under international treaty and national legislative definitions, direct discrimination in the context of HIV/AIDS, is where the discriminator treats someone less favorably because they are known or presumed to have HIV, than the discriminator would treat someone else in the same circumstances who is not known or presumed to have HIV/AIDS. It is also direct discrimination where the discriminator treats someone less favorably because a family member or associate of the person is known or presumed to have HIV/AIDS, than the discriminator treats someone where there is no knowledge or presumption that a family member or associate of the person has HIV/AIDS. Indirect discrimination in the context of HIV/AIDS, is where the discriminator requires someone with HIV/AIDS to comply with a requirement or condition, with which a substantially higher proportion of persons who do not have HIV/AIDS are able to comply, and the requirement or condition is not reasonable having regard to the circumstances of the case.

**Question 3 - Privacy protection**

*Does the law provide for general privacy or confidentiality protection (that is a prohibition on the unauthorized use and disclosure) for medical and/or personal information, widely defined to include HIV-related data?*

Article 33 of the HIV/AIDS Law provides specific confidentiality protection for people living with HIV/AIDS in a variety of sectors including health professionals, workers, employers, recruitment agencies, insurance companies, data encoders and medical record keepers. The penalty for non-compliance with Article 33 is set out in Article 51 of the Law - a fine of 50,000 to 200,000 Riels and one to six months' imprisonment (punishment is double for repeat offences, and civil servants shall also have administrative sanctions imposed). According to Article 35 test results can only be released to the person requesting the test, to the guardian of a minor, to public health authorities monitoring the epidemic, or by a court order. Article 34 provides for three exceptions to confidentiality: epidemiological monitoring; disclosure to health care professionals involved in the treatment and care of the person with HIV/AIDS; and where disclosure is in compliance with a court order, which in any case requires that the medical records are sealed by the custodian of the records, and delivered by hand to the judge who alone can unseal the record. It is unclear why an exception is needed for the coded monitoring system, unless a dual system of results is kept by authorities (one uncoded and one coded).

**Question 4 - Partner notification**

*Does the law authorize health care professionals to notify directly or indirectly (e.g. through a specified person in the Health Department, such as a contact tracer) the HIV-status of their patients to sexual or other partners at a real risk of infection in accordance with the following criteria: counseling of the HIV-positive patient has failed to achieve appropriate behavioral change; and the HIV-positive patient has refused to notify or consent to notification of the partner?*

Article 32 of the HIV/AIDS Law provides that the Ministry of Health may pursue contact tracing and other health intelligence activities that are not contrary to the general purposes of the Law. It specifies that the information gathered under this provision is confidential and 'classified'. There is no express penalty for non-compliance, although such confidential information would be covered by Article 33 (see above), which has penalties for non-compliance. There are no criteria specified for conducting contact tracing, such as the real risk of transmission, counseling or refusal to notify by the index case. According to participants at the audit consultation, partner notification by health care workers does not appear to be occurring in practice.

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42 Articles 36 (employment), 37 (education), Article 38 (accommodation and travel), Article 39 (public office), Article 40 (credit, loans, insurance - including health, accident and life) and Article 41 (hospitals and health institutions) of the Law on the Prevention and Control of HIV/AIDS 2002.
**Question 5 - Administration of anti-discrimination and privacy protections**

Does the legislation provide for an independent institution to administer the anti-discrimination and privacy legislation (e.g. human rights commission, or ombudsperson), and to have the following functions and powers: education and promotion of human rights; power to investigate and conciliate individual complaints, and make enforceable decisions to resolve individual cases?

The HIV/AIDS Law does not establish any agency to administer the legislation, such as an ombudsperson or human rights commissioner. The UN Human Rights Committee recommended in 1999 that a permanent and independent human rights commission operating under the Paris Principles be established by law, but this recommendation has not been implemented - the existing Commission on Human Rights and Receipt of Complaints within the National Assembly does not meet the specified criteria.

Enforcement of the HIV/AIDS Law is left to the ordinary courts. Article 109 of the Constitution provides that the judiciary shall be independent and ‘guarantee and uphold impartiality and protect the rights and freedoms of citizens, as well as having jurisdiction over all lawsuits, including administrative matters’. There is no separate guarantee of judicial review of administrative action. The Cambodian Human Rights and HIV/AIDS Network has begun a project to monitor and document cases of human rights violations, concentrating on the human rights guarantees contained in the HIV/AIDS Law and Cambodia’s obligations under international human rights instruments to which it is a signatory.

**Findings - Indicator 3**

The HIV/AIDS Law anti-discrimination and privacy provisions are best practice in terms of their formal legal content. Future reforms need to strengthen the effectiveness of these provisions, including the establishment of an administrative agency to handle complaints of breaches of the law, and to promote compliance, using the benchmarks of the Paris Principles for national human rights institutions. The Law can also be strengthened by clarifying that indirect as well as direct discrimination is covered, and by clarifying the exceptional circumstances where epidemiological monitoring data needs to be disclosed. It is recommended that a protocol for partner notification be included in the implementing guidelines currently being developed by the National AIDS Authority, as the general provision in the law currently provides insufficient guidance, and appears not to be implemented by health care workers. There is also a need to establish stronger equal opportunity protections for vulnerable groups, including women, and men who have sex with men.

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INDICATOR

SEXUAL OFFENCES
AND THE SEX INDUSTRY

Question 1 - Lack of prohibition on private, adult consensual sex

Does the law not prohibit the following sexual acts between consenting adults in private: homosexual acts, for example, sodomy; or heterosexual acts for example, fornication or adultery?

There are no restrictions on private, adult consensual sex under the UNTAC Penal Code or other laws. However, in practice men who have sex with men (MSM) face significant stigma. The lack of venues where men who have sex with men can meet openly is an impediment to HIV/AIDS and sexual health education, which is mainly performed by NGO outreach workers in public spaces, such as parks. HIV prevalence among MSM is estimated at over 14% \(^{45}\), which is equivalent to the HIV prevalence in indirect (i.e. not brothel-based) female sex workers. A Family Health International study found that many MSM did not identify as gay men, and there were a significant proportion of them who had unprotected sex with multiple male and female partners. \(^{46}\) ‘MSM long hair’ (that is, MSM who exhibit more feminine gender characteristics, and in some cases would be considered “transgender” in other cultures) are subjected to particular discrimination, including police harassment and violence, possibly due to their street-based sex work (many operate fruit and drink stalls to meet potential clients) and their greater visibility as MSM.

Question 2 - Lack of prohibition on adult sex work

Does the law not prohibit adult sex work (including street, single, brothel or escort work) and have reasonable controls on workers (for example, nuisance laws), applicable to other analogous personal service work?

The illegality of commercial sex work can serve as an impediment to effective HIV prevention and sexual health promotion initiatives with this vulnerable population, by driving them underground and thereby making them more difficult to reach. Prostitution is prohibited under Article 46 of the Constitution. Cambodian society does not encourage premarital sex, but tolerates use of commercial sex by men, who generally marry at higher ages than women, and many continue to frequent brothels after marriage, thus exposing their monogamous wives to HIV-infection when sex is unsafe. \(^{47}\) It is estimated that there are over 12,000 direct and indirect female sex workers in Cambodia, \(^{48}\) and the common rate of payment is 4,000 Riels per customer (equivalent to US$1). According to the most recent sentinel surveillance data, the greatest risk factor for

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HIV infection is being a married woman. Informal arrest of sex workers is reported to be fairly common, but criminal charges are rarely laid, with release by police conditional on payment of a negotiated 'fine'.

**Question 3 - Lack of prostitution-related offences**

*Does the law not have prostitution-related offences (e.g. living off the earnings of a prostitute), except as provided for in this indicator (questions 4 and 5) and have reasonable controls on business (e.g. town planning) applicable to other analogous personal services businesses?*

There are specific prostitution related offences under the Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings 1996. Article 4 defines a 'pimp or head of prostitutes' broadly - someone who supports, protects, shares benefits with, recruits, acts as an intermediary or confines people for purposes of prostitution (including attempts or accomplices). Article 5 sets out the penalties for being a pimp - 5-10 years imprisonment (and double penalties for repeat offenders) or 10-20 years' imprisonment in the case of offences against a minor or use of force (coercion, violence, threats or weapons) and the additional 'sub-punishment' of restriction of civil liberties and non-authorization of residence.

There is a further crime under section 7 of debauchery, defined as opening a place for committing debauchery or obscene acts. Punishment for the offence is a fine of between 5,000,000-30,000,000 Riels or 1-5 years' imprisonment (and double penalties for repeat offenders). In the case of acts of debauchery involving minors (below the age of 15 years and irrespective of consent), section 8 sets punishment at 10-20 years' imprisonment with the maximum term for repeat offenders, and the additional 'sub-punishment' of restriction of civil liberties and non-authorization of residence.

**Question 4 - Regulation of health and safety of workers**

*Does the law regulate occupational health and safety in the sex industry to require safer sex practices to be practiced by clients and workers, and promoted by owners/managers (including prohibiting them from requiring workers to provide unsafe sex)?*

There is no specific legal regulation of working conditions as prostitution in all forms is prohibited. However, the National AIDS Authority adopted the 100% condom use program in 1999, which is being implemented at the provincial level by Condom Use Monitoring and Evaluation Committees, following a pilot in Sihanoukville in 1998. For example in Koh Kong Province, regulations make condom use compulsory, establish a monitoring committee and provide sanctions, including closing down brothels and individually fining workers for breaches of program guidelines. There have been criticisms that such programs violate the human rights of sex workers, through mandatory individual (and identifiable through use of photos and collection of personal details) registration of direct sex workers and compulsory monthly health examinations at government STI clinics. HIV testing is not performed as part of the program. At these clinics STI diagnosis is used as an indicator of non-use of condoms, and failure to attend the clinic results in follow-up action and warnings to brothels that they will be closed down. Workers complain that government health care workers are judgmental, as well as rough and insensitive in their physical examinations, compared to NGO health care workers. At the audit consultation it was reported that some sex workers were also registered under the Labor Code with the police. The success of the 100% Condom Use Program could be maintained and even improved if sex workers were involved in its design and implementation, and coercive aspects were removed.

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48 National Center for HIV/AIDS, Dermatology and STDs (Cambodia), Behavioral Surveillance Survey (2001).
49 National Center for HIV/AIDS, Dermatology and STDs (Cambodia), HIV Sentinel Surveillance (2002).
50 National AIDS Authority, National Policy on a 100% Condom Use in the Kingdom of Cambodia (1999).
52 D. Lowe, Perceptions of the Cambodian 100% Condom Use Program: Documenting the Experiences of Sex Workers. Report to the POLICY Project (2003).
53 D. Lowe, ibid.
54 Crude prevalence rates among brothel based sex workers declined from 42.6% in 1998 to 28.8% in 2002. National Center for HIV/AIDS, Dermatology, and STDs (Cambodia) HIV Sentinel Surveillance (2002).
55 D. Lowe, ibid.
**Question 5 - Protection from trafficking**

*Does the law protect sex workers, especially children, from coercion and trafficking, focusing on those responsible (that is, owners or intermediaries)?*

Article 47 of the Constitution protects children from sexual exploitation. This provision is further implemented by the Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings 1996. Article 3 prohibits acts (inside or outside Cambodia) of luring or enticing another person, including minors, irrespective of consent, and whether by various means (promises of money, force, threats or drugs) in order to kidnap, traffic or sell them for the purposes of prostitution. The penalty for this offence (which includes accomplices and buyers) is imprisonment for between 10 and 15 years, or in the case of victims who are minors, 15-20 years’ imprisonment. As set out above, the penalties for pimping and debauchery are increased for acts involving minors. The Committee on the Rights of the Child has called for the law to be reinforced given the breadth of human trafficking, 56 as well as the small number of prosecutions, which in any case are mostly at lower levels in the trafficking chain. USAID has reported that the operation of the Center Against Trafficking, which represents victims, has improved the situation, and two traffickers were recently each sentenced to ten years imprisonment (the first time under the legislation that penalties have been imposed). 57 The UN Special Representative has stated that the trafficking law that is being drafted to replace the 1996 law needs to meet the benchmarks in the Recommended Principles and Guidelines on Human Rights and Human Trafficking. 58

**Findings - Indicator 4**

The lack of legal prohibitions on sexual acts, such as homosexuality is in compliance with the International Guidelines. However, the stigma faced by MSM is a barrier to HIV prevention, and societal stigma needs to be addressed for this vulnerable population. Models from other countries could be adapted in the form of anti-discrimination laws, as well as education campaigns, to address stigmatization of MSM. Criminal prohibitions on the sex industry in relation to workers and operators are not in compliance with the International Guidelines because they too impede HIV prevention. Instead, consideration needs to be given to regulating under public health principles both sex work itself and the sex industry (except in relation to offences against minors and trafficking where criminalization is appropriate). Occupational health and safety of sex workers is being increasingly achieved under the 100% Condom Use Program, which in practice appears to accord a quasi-legal status to the brothel-based sector of the sex industry in some places. Although the objective of the program is important in terms of HIV prevention, it could be improved by operating cooperatively with workers, and removing coercive elements, such as compulsory STI testing and registering identifiable workers. The extent of the program’s legislative implementation is unclear. Policing practices appear to be inadequate in relation to offences providing protection against minors and trafficking, and require further improvement as they are all too common practices that abuse human rights and increase the risk of HIV-infection in these vulnerable populations.

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56 Concluding Observations of the Committee on the Right of the Child: Cambodia, CRC/C/15/Add.128, 28 June 2000, paras 63-64. See also P. Leuprecht, Situation of Human Rights in Cambodia: Note by the Secretary-General, A/56/209, 26 July 2001, para 70.
Question 1 - Parity of access to prevention and care in prisons

Does the law provide for at least access equal to the outside community to the following HIV-related prevention and care services for all prisoners in prisons or correctional facilities: information and education; voluntary testing; access to the means of prevention, i.e. condoms and bleach or clean injecting equipment; and treatment?

Article 12 of the UNTAC Penal Code provides that detainees must have access to appropriate medical care. The Ministry of Interior Proclamation No.217 on Administration of Prisons (1998) detailed procedures for the administration of correctional facilities, such as prisoners' rights to food, clean water and reasonable health care (Articles 7 and 27). In practice medical officers in or visiting prisons lack medicines to treat patients, including ARVs, and the UN Special Representative stated in 2001 and 2002 that conditions of detention, including overcrowding, are gravely inadequate. This situation is exacerbated by the shortage of necessities of life, such as food and water, bought with the inadequate daily subsistence level per prisoner of 1000 Riels (US 25 cents). The Cambodian League for the Promotion and Defense of Human Rights (LICADHO) provides medical services for prisoners (and guards) in Phnom Penh and fourteen provinces. In its 2002 Medical Report LICADHO noted that 15 prisoners with AIDS died - in 2001 nearly 30 prisoners died of AIDS. It documented the 80% rise in the number of prisoners from 1998 to 2002 (2,933 to 5,303 respectively), without a commensurate increase in facilities, causing overcrowding. AUSAID has funded a Criminal Justice Project operating in five prisons that provides some prevention education and condoms for prisoners.

Apart from the temporary approval given to a pilot needle and syringe program (see Indicator 2) it is not clear that the Law on the Control of Drugs 1997 permits the distribution of needles and syringes, and operators may be liable for facilitation or incitement of narcotics offences under Articles 32 or 41, with double penalties applicable under Article 47 where the offence takes place in a prison.

Question 2 - Lack of compulsory testing and segregation

Does the law not require compulsory HIV testing of prisoners on entry and exit, and segregation of prisoners, merely on the basis of their HIV-status, as opposed to behavior?

Article 19 of the HIV/AIDS Law provides that all HIV tests shall be performed with voluntary and informed consent, and no exception is provided for prisoners (see Indicator 1). Article 38 also provides that people

cannot be isolated on the basis of HIV/AIDS. Article 12 of the UNTAC Penal Code provides that detainees must not be kept in isolation.

**Question 3 - Protection against involuntary acts**

*Does the law provide legal protection of prisoners against involuntary acts that may transmit the virus, that is, rape, sexual violence or coercion?*

Article 38 of the Constitution provides that the law guarantees there will be no physical abuse against any individual. Article 38 prohibits coercion, physical ill-treatment and other mistreatment that imposes additional punishment on prisoners and provides that perpetrators will be punished by law. Article 8 of the UNTAC Penal Code provides that prisoners must be treated in conformity with the UN Minimum Rules for the Treatment of Prisoners. Article 12 further provides that detainees shall not be subjected to cruel, inhuman or degrading treatment, punishment or torture. Provisions against sexual and other violence described in Indicator 2 above are applicable to prisoners.

**Question 4 - Confidentiality of information**

*Does the law provide for confidentiality of prisoners' medical/personal information, including HIV-status?*

There is no specific protection of prisoners' confidentiality, but the general protection given by Article 33 of the HIV/AIDS Law (see Indicator 3 above) would also cover prisoners. LICADHO has reported that the process of applying for a Royal Amnesty (see below) through prosecutors on the basis of AIDS generally causes breaches of confidentiality in the prison environment, as material documenting the prisoner's health, including HIV status, must be processed by a range of prison and court officials.

**Question 5 - Early release or diversion from prison on health grounds**

*Does the law (e.g. sentencing) provide for medical conditions, such as an AIDS defining illness, as grounds for compassionate early release or diversion to alternatives other than incarceration?*

The UNTAC Penal Code does not make specific provision for early release or diversion from prison on health backgrounds, however there is a general requirement under Article 68 of the Code that the personal background of convicted persons, including psychological state, which might reduce their responsibility, shall be considered by judges as attenuating circumstances.

Prisoners are entitled to apply through the courts for a grant of Royal Amnesty permitting their early release from prison, including prisoners with an AIDS-related illness. This provides one mechanism by which prisoners can be released early on compassionate grounds. The UN Special Representative noted in 1999 that there were delays in the granting of amnesties for seven prisoners living with AIDS. On the other hand there have also been complaints in consultations of people being released early on the grounds of HIV, when they are not yet ill.

**Findings - Indicator 5**

The guarantee of prisoners' access to medical care under the UNTAC Penal Code is generally not met in practice, with low access to basic treatment except through NGO medical programs, such as that run by LICADHO. This legal right requires substantial improvement in its practical implementation, as there is a specific obligation of care on prison authorities to secure prisoner's health, and the challenges imposed by resource constraints need to be better addressed. The law and practice in relation to non-segregation and testing of prisoners are in compliance with the International Guidelines. The audit revealed that these questions were not so relevant in conditions of overcrowding and lack of access to medical care. A more telling indicator would be compliance with the UN Minimum Rules for the Treatment of Prisoners, which is lacking in practice in Cambodian prisons in several respects. Other questions that are more appropriate

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to overseas prison conditions, such as access to means of prevention (condoms and clean needles and syringes), also seemed to lack relevance in Cambodia, because of the fact that the overwhelming concern of prisoners is to try to remain alive in the face of poor access to basic necessities. The confidentiality provisions of the HIV/AIDS Law apply equally to prisoners. Consultations revealed that maintaining confidentiality can be problematic in practice for prisoners seeking early release through royal amnesties, as their HIV status is revealed to prosecutors, court officials, and indirectly to prison authorities, in the course of applying for an amnesty. The enforcement of the legal right of confidentiality requires improvement in practice. There is also scope for clarifying that HIV status is a ground for exercising the general sentencing discretion under the UNTAC Penal Code.
Question 1 - Prohibition of screening

Does the law prohibit HIV screening for general purposes in public and private employment, that is, appointment, promotion, training, and benefits?

There is an express prohibition on HIV screening under Article 20 of the HIV/AIDS Law. It is also not authorized under Article 36 which prohibits discrimination on the basis of HIV/AIDS in employment, including pre-employment and hiring, and termination on these grounds is unlawful. The penalty for non-compliance with Article 36 is set out in Article 52 of the Law - a fine of 100,000 to 1,000,000 Riels and one to six months' imprisonment.

Article 19 of the HIV/AIDS Law provides that all HIV tests shall be performed with voluntary and informed consent, and no exception is provided for workers (see Indicator 1). There are no penalties for non-compliance with either of these provisions, so compliance is essentially voluntary.

Question 2 - Complaints against health professionals

Does the law provide for complaints to be made about breaches of health professional standards (doctors, nurses and traditional healers), for example, by a finding of professional misconduct in relation to matters such as confidentiality, informed consent and duty to treat?

Article 4 of the HIV/AIDS Law requires that health care workers shall discuss the issue of developing codes of conduct particularly concerning matters of patient rights and confidentiality. Similarly the Law on the Management of Private Medical, Paramedical and Medical Aide Practice 2000 anticipates professional codes of ethics monitored by professional committees established by Royal Decree. At the time of writing, the Ministry of Health is developing training curriculum and standards for health care workers involved in HIV testing including pre-test and post-test counseling. The Ministry will also be responsible for monitoring compliance, as at present there is no agency established by law to handle complaints against health professionals.

Question 3 - Employment security and social security

Does the law provide for employment security while HIV-positive workers are able to work (e.g. unfair dismissal rules) and require that social security benefits are available to people with HIV/AIDS who are too ill to work?

Article 36 of the HIV/AIDS Law prohibits discrimination on the basis of HIV/AIDS and termination on these grounds is unlawful. The penalty for non-compliance with Article 36 is set out in Article 52 of the Law - a fine of 100,000 to 1,000,000 Riels and one to six months' imprisonment (punishment is double for repeat offences and civil servants shall also have administrative sanctions imposed).

Article 75 of the Constitution provides for a social security system for workers and employees. Article 36 further provides for a general system of social security. In practice the resource constraints faced by this
Least Developed Country mean that there is no comprehensive social security system in place. Notwithstanding cultural norms which place the family at the center of social and community structures, the high proportion of the population which lives below the poverty threshold (approximately 36%) means that many Cambodians suffer serious material deprivation.

**Question 4 - Access to information and education, and confidentiality**

*Does the law require provision of access to general HIV/AIDS information and education, such as safe sex, for occupational health and safety reasons, (for example, counseling of workers following needle-stick injuries, and workers traveling to areas of high HIV incidence) and confidentiality of employees’ medical/personal information, including HIV-status?*

Article 9 of the HIV/AIDS Law provides that all institutions, enterprises and handicrafts shall cooperate with the National AIDS Authority to organize education programs in the workplace covering issues such as confidentiality and non-discriminatory attitudes. There is an additional obligation on these bodies to develop prevention and control plans appropriate to their mandates. Article 8 of the Law provides that the State shall provide information and education to all Cambodian workers, diplomatic officials and civil servants on the causes, modes of transmission, means of prevention and consequences of infection before departure for overseas assignments. There are no penalties for non-compliance with either of these provisions, so compliance is essentially voluntary. There are specific obligations in respect of occupational health and safety under Articles 229 and 230 of the Labor Code 1997 which require the guarantee of safe working conditions and grants power to issue detailed Ministerial regulations (Prakas).

At the time of writing, the Cambodian Office of the International Labor Organization and USDOL was developing a local version of the ILO’s Code of Practice on HIV/AIDS and the World of Work, with support from the Garment Manufacturers’ Association of Cambodia. In addition to translating the Code into Khmer, the Cambodian Office of the ILO will produce a short booklet for Cambodian workers explaining the key elements of the Code.

There is a specific protection of worker’s confidentiality under Article 33 of the HIV/AIDS Law (see Indicator 3 above) - ‘medical professionals and instructors, workers, employers, staff recruitment agencies, insurance companies, data entry personnel, custodians of medical records related to HIV/AIDS, and those who have other related duties, shall be instructed to pay attention on the maintaining of confidentiality in the work relations, especially the identity, and personal status of the persons who have HIV/AIDS.’ Also Article 239 of the Labor Code 1996, which provides that records collected by the Labor Health Service are confidential and cannot be given in an identifiable form to employers, unions or third parties. Part of this Service’s preventive and curative duties is to monitor the hygienic standards of work and ‘risks of contagion’. There is no penalty for failure to respect confidentiality under the Code.

**Question 5 - Lack of exclusion of HIV-positive workers**

*Does the law not exclude people living with HIV from working in the following industries if adequate precautions are taken to prevent transmission: health professionals; skin penetration workers, and food/pharmaceutical handlers; emergency workers, police; and sex workers?*

There is no express exclusion, or even requirement to notify HIV status in any workplace under the law. As stated above, Article 36 of the HIV/AIDS Law prohibits discrimination on the basis of HIV/AIDS in employment.

**Findings - Indicator 6**

The HIV/AIDS Law on anti-discrimination, unlawful termination, workplace HIV/AIDS education and privacy provisions are best practice in the employment area in terms of their formal legal content. Initiatives to enhance implementation of these provisions include the implementing guidelines being developed by the National AIDS Authority, and the work by the Cambodian Office of the ILO concerning the Code of Conduct on HIV/AIDS and the World of Work. Further initiatives which would enhance the enjoyment in practice of rights established by the HIV/AIDS Law include establishing an administrative agency, which would be empowered to handle complaints and promote compliance with anti-discrimination and confidentiality provisions of the HIV/AIDS
Law. The tribunals which have been established recently under the Labor Code may provide a forum for adjudication regarding these aspects of the law.

The requirement of voluntary and informed consent to HIV testing under Article 19, and the prohibition on HIV screening under Article 20 of the law are also best practice, and provide clear guidance on the rights and duties of employers and employees. These Articles of the HIV/AIDS Law would be more effective in promoting respect for human rights in the context of HIV/AIDS if there were penalties for breaching these Articles. Consultations in Phnom Penh, as well as experience in other countries, indicate that employment is a prime area for discrimination. The lack of exclusion of HIV-positive workers in any industry, which is a feature of the HIV/AIDS Law, is in compliance with the International Guidelines.

The provision in the Law to develop specific health care worker codes of practice complies with the International Guidelines, and is expected to be implemented in Cambodia though the implementing guidelines that are being developed by the National AIDS Authority. As mentioned above, the Ministry of Health will be responsible for ensuring compliance with the standards established. It is recommended that an independent administrative agency be established to handle complaints and promote compliance by health care workers with these standards, this being a system which goes beyond self-regulation by professionals.

The provision in the Law requiring workplace education complies with the International Guidelines, and the initiatives currently under way by the Cambodian Office of the ILO, with support from the Garment Manufacturers' Association of Cambodia, will help to promote respect for the workplace-related human rights guarantees contained in the HIV/AIDS Law. Future reforms which can further promote respect for human rights in this context include the addition of penalties for failing to comply with the relevant Articles of the HIV/AIDS law, as currently there are no penalties, hence compliance is essentially voluntary. In industries where there is a particular risk of infection (such as health care, the funeral industry and the sex industry) there should be an explicit duty of care, including the obligation to provide education programs, such as recommended in the ILO Code of Practice.

The Constitutional provision for a social security system is progressively realizable in Cambodia, and should be a priority, like health care and education, in the allocation of resources.
Question 1 - Equal legal status of men and women in property and finances

Does the law ensure the equal legal status of men and women in the ownership of property and inheritance, and capacity to enter into contracts, mortgages, credit and finance?

Article 31 of the 1993 Constitution provides that all Khmer citizens are equal before the law regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. Article 45 specifically abolishes all forms of discrimination against women. Substantive rights protected under the Constitution are usually phrased 'Khmer citizens of either sex' - for example the rights to vote, participate and work under Articles 34-36. There is an obligation under Article 50 on Khmer citizens of either sex to respect public and legally acquired private properties. The rights to ownership and property under Article 44 are not expressed in terms of gender, but such legal rights are to be protected by law for all Cambodian citizens. These clear statements of legal equality could be given greater practical effect if they were accompanied by implementing mechanisms. In the absence of these, there is a marked gender disparity in Cambodian society. There is a high number of single female-headed households, resulting from gender imbalances caused by wars, in which the greater proportion of those killed were men. 63

Question 2 - Equal legal status of men and women in relationships and work

Does the law ensure the equal legal status of men and women in marital relations (e.g. divorce and custody) and equal remuneration for equal work?

Article 45 of the Constitution abolishes exploitation of women in all fields, especially in marriage and matters of the family, and states that marriage is based on mutual consent. Article 36 guarantees that Khmer citizens of either sex shall receive equal pay for equal work. It further provides that work by housewives in the home

shall have the same value as work outside the home (that is, to protect against domestic slavery). In practice there is a 30-40% discrepancy between remuneration for paid work of men and women - women are concentrated in three industries which are lowly paid: agriculture, garment making and the sex industry. There is also a discrepancy between male and female literacy rates, 79% and 57% respectively.

Marriage is conducted by mutual consent between husband and wife under section 4 of the Law on Marriage and the Family 1989, with forced marriages and marriages of minors being prohibited under Article 2. Article 5 provides that the age of consent is 20 years for men and 18 years for women, but underage marriages are permitted where the parents consent and the woman is pregnant. In practice underage marriages are common in rural areas, and arranged marriages are generally the norm. Premarital HIV testing is common, and of the 30,000 tests performed in 2001-2002 it is estimated that 10% were for this reason - two-thirds of those being tested were male with an average age of 27 years.

Article 117 of the Law on Marriage and the Family provides that sons and daughter have equal rights and duties within the family. Article 29 provides that spouses are equal in every respect. Article 70 requires that upon divorce property is to be divided by consent, with each spouse entitled to half of the property acquired during marriage (except for gifts, inheritances or legacies), unless there are exceptional circumstances that require a different division in the interests of the children. This applies to custody of children upon divorce, which is to be determined by agreement or court order, and require payment of maintenance for the care of children. In practice divorce is rare, because of social pressure to be a 'good wife', as set out in the traditional poem, Chhhab Srey ('Women's Code') taught to children in school. Even in the case of domestic violence, many judges do not consider these circumstances to be 'serious' enough to warrant divorce.

Article 117 of the Law on Marriage and the Family provides that sons and daughter have equal rights and duties within the family. Article 29 provides that spouses are equal in every respect. Article 70 requires that upon divorce property is to be divided by consent, with each spouse entitled to half of the property acquired during marriage (except for gifts, inheritances or legacies), unless there are exceptional circumstances that require a different division in the interests of the children. Articles 72-78 also regulate custody of children upon divorce, which is to be determined by agreement or court order, and require payment of maintenance for the care of children. In practice divorce is rare, because of social pressure to be a 'good wife', as set out in the traditional poem, Chhhab Srey ('Women's Code') taught to children in school. Even in the case of domestic violence, many judges do not consider these circumstances to be 'serious' enough to warrant divorce.

The lack of enforcement of support payment orders is also a disincentive to divorce.

**Question 3 - Protection from harmful traditional practices and age of consent**

*Does the law provide protection for children and adults against harmful traditional practices (e.g. female genital mutilation) and equal age of consent for heterosexual and homosexual acts?*

There is no express prohibition of harmful traditional practices, but Article 47 of the Constitution guarantees that the State will protect children from acts that are injurious to their health, welfare and educational opportunities. The age of consent is only fixed for marriage, as opposed to sexual acts. The general age of majority under Article 5 of the Law on Marriage and the Family 1989 is 18 for women and 20 for men, and for the purposes of contract (Article 14 of the Contracts Code), but sixteen years for employment purposes (Article 173 of the Labor Code). The Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings 1996 defines a minor as below the age of fifteen years, and the UNTAC Penal Code 1992 sets the age at sixteen years for the offence of sexual exploitation and doubles penalties for sexual offences involving minors (see above). There is no distinction in these criminal laws between heterosexual and homosexual acts. There is no legal prohibition of homosexuality, but persons of the same sex or persons with certain untreated diseases (including venereal diseases, but not HIV/AIDS) are not allowed to marry under Article 6 of the Law on Marriage and the Family 1989.

**Question 4 - Assembly, association and movement rights**

*Does the law not place unreasonable restrictions on members of AIDS service organizations, organizations of people living with HIV/AIDS or vulnerable groups, for example gay men, sex workers or refugees in respect of rights of: assembly; association; and movement?*

66 Laws affecting individual rights enacted prior to the 1993 Constitution are still in force under Article 158 unless they are amended or repealed, and to the extent that they are not contrary to the spirit of the Constitution.
The Constitution grants Khmer citizens the freedoms of travel (Article 40), assembly (Article 41) and association (Article 42). In the case of assembly, overly wide exceptions are created on the grounds of the rights of others, good traditions of society, violation of public law and order, and security. Article 37 provides that the right to demonstrate is to be implemented in the framework of law. The Law on Demonstrations 1991 requires organizers to give three days' notice to authorities of their own details, objectives, locations, dates, and expected number of participants. Although this notice requirement is reasonable, the grounds on which approval can be denied and demonstrations banned is overly broad under sections 1 and 3 - turmoil that is detrimental to public tranquility, order or security. Authorities are given powers to prevent unauthorized demonstrations, as well as remove weapons and temporarily detain demonstrators. The Special Representative for Cambodia of the UN Secretary-General for Human Rights reported that a march to the National Assembly planned for 26 May 2003 by women demonstrating on the issue of domestic violence was refused permission by authorities. 70

In the case of association, the substance of the right is to be determined by law, but there is an express provision that Khmer citizens may take part in mass organizations 'for mutual benefit to protect national achievements and social order' which seems to be counter to critical analysis of government performance. Non-profit groups with at least five members do not require government authorization to operate, but all NGOs are invited to lodge their dossiers with the Ministry of Interior to facilitate administration. 71 There is an administrative requirement that associations must inform local authorities five days in advance if they intend to hold information courses. 72 NGOs are very active in Cambodia and there is a network of human rights NGOs known as the Human Rights Action Committee. It is estimated that 80% of foreign donor funds for HIV/AIDS are given to NGOs. 73

Question 5 - Expression rights and censorship/broadcasting

Are specific exceptions for HIV/AIDS health education and information (general and targeted audiences) contained in censorship legislation and broadcasting standards?

Article 41 of the Constitution grants Khmer citizens freedom of expression, publication and press, but the media regime is to be determined by law. As stated above, overly wide exceptions are created on the grounds of the rights of others, good traditions of society, violation of public law and order, and security. The Press Law 1995 prohibits publication of material that may affect 'national security and political stability'. The civil penalty under Article 12 is a fine of 5,000,000-15,000,000 Riels, in addition to possible criminal penalties, which are not specified by the legislation. The Ministry of Information and Interior is granted the power to confiscate the offending publication and suspend further publications for up to thirty days, and to transfer the case to court. Article 13 creates a further offence of publishing false information which 'humiliates or contempts national institutions' that has a penalty of 2,000,000-10,000,000 Riels. The Special Representative for Cambodia of the UN Secretary-General for Human Rights has highlighted the prosecution and harassment of journalists for criticizing government policies, which undermines freedom of expression.

Article 46 of the Constitution prohibits obscenity, which is not defined. Article 14 of the Press Law 1995 prohibits the publication of material that 'may effect the good customs of society' including curse words, description of explicit sexual acts and 'drawings or photographs depicting human genitalia or naked pictures, unless published for educational purposes'. The fine for this offence is 1,000,000-5,000,000 Riels. Although the authors were not able to locate any judicial interpretations of the extent of the exception for 'educational purposes', it should be sufficiently broad to exempt HIV/AIDS information and education materials from the obscenity provisions of the Press Law.

The UN Special Representative reported in 1995 that posters promoting condom use were removed from public areas (but maintained in brothel premises) because they were regarded as 'obscene'. 74 However, it appears that attitudes have changed, and that Cambodian authorities and society are more willing to confront

70 Special Representative for Cambodia of the UN Secretary-General for Human Rights, 'The 2003 National Assembly Elections', 8 July 2003.
74 Report of the Secretary-General, Recommendations made by the Special Representative of the Secretary-General for Human Rights in Cambodia on Matters Within his Mandate, A/50/681, 26 October 1995, para 16.
Cambodia HIV/AIDS and Human Rights Audit

HIV/AIDS and Human Rights Audit - Indicator 7: Equal Legal Status of Vulnerable Populations and Communication Right

and discuss the issues which from a cultural point of view have been very difficult to address. The National AIDS Authority (NAA) and the United Nations Development Program recently launched a mass media campaign to be shown on television, radio and theatres using the theme ‘Everyone must dare to be open in talking about HIV/AIDS’. It builds upon various human rights videos, such as UNICEF’s ‘With Hope and Help’, and the NAA and UNDP Leadership for Change Program of 2002, which trained over ninety leaders on HIV/AIDS issues from the government, local authorities, civil society and Buddhist religious organizations.

Findings - Indicator 7

Cambodia’s Constitutional provisions are best practice in the areas of gender equality and protection of children in terms of their formal legal content. Further mechanisms are needed to give greater effect to these provisions in practice. There is a lack of equality of status of men and women in property, finances, relationships and work, as well as widespread trafficking sometimes involving minors (see Indicator 4). The situation of vulnerable populations would be improved by establishing an administrative agency to handle human rights violations as recommended in Indicator 3. The Marriage and Family Law requires amendment to include domestic violence as a ground for divorce, and its enforceability requires improvement in the payment of spousal support following divorce. It is recommended that a consistent age of consent be set for various offences against minors, and for the age of legal capacity, such as for marriage. The ban on people with STIs marrying should be removed and it should be clarified that this provision is not applicable to HIV/AIDS. Voluntary HIV testing for the purposes of marriage is lawful, although confidentiality provisions are broadly expressed under the HIV/AIDS law and apply to information concerning HIV/AIDS in this context. The ban on same sex marriages is discriminatory and should be removed.

Restrictions on the Constitutional rights to assembly, association, movement, and expression are over-inclusive under the broad exemptions in the Law on Demonstrations and the Press Law and should be amended to enable the full mobilization of the community to respond adequately to the epidemic. The exception in the Press Law for ‘obscene’ material that is published for educational purposes should be defined by authorities to make clear that it includes HIV/AIDS prevention and information programs. In practice NGO operations in Cambodia are vital in the HIV/AIDS area and do not appear to be overly restricted However, this situation is permissive rather than being guaranteed under the law, so it is possible that this situation could change in the future.

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75 'Cambodian Prime Minister Endorses Campaign to Break HIV/AIDS Taboos, Newsfront, 22 May 2003.'
Question 1 - Access to medications

Does the law enable consumers to gain access to affordable HIV/AIDS medication (for example, through the mechanisms of parallel importing or compulsory licensing of pharmaceutical products)?

Although the Cambodian constitution guarantees the right to health of all Cambodian citizens, there is limited access to anti-retroviral (ARV) treatments which until recently have not been available in practice, except for small pilot programs, such as the Médecins Sans Frontières program that started in 2001 at Preah Norodom Sihanouk Hospital involving over 300 individuals, eleven of whom are children, which is expected to double in size in 2003. 76 The Center of Hope has a program at the Sihanouk Hospital, Médecins du Monde has a clinic at Calmette Hospital, and Maryknoll is developing a program with the National Pediatric Hospital. 77 The government goal was to increase access to ARVs to include 3,000 patients by 2003. 78 A program to produce generic drugs in a joint venture with the Chinese government is currently being established by the Cambodian government. At the time of writing, the program was still in the developmental phase, and production of ARVs for consumption had not yet started, nor had a plan for distribution been developed.

Cambodia has made two successful applications to the Global Fund to Fights AIDS, Tuberculosis and Malaria (rounds one and two), and as a result will receive over US$57,000,000 from the fund, a significant proportion of which will go towards funding access to ARVs for people living with HIV/AIDS. 79

To prepare for World Trade Organization membership in September 2003, Cambodia’s legislation is generally over-compliant with Trade-Related Aspects of Intellectual Property Agreement (TRIPS) requirements. 80 As Cambodia is a Least Developed Country, it can take advantage of flexibility under the Doha Declaration.

76 Médecins Sans Frontières (Doctors Without Borders), Antiretroviral therapy in MSF Projects (2002).
79 Cambodia’s application for funding from the third round of Global Fund grants was unsuccessful.
licensing of intellectual property. However, Article 136 of the Patent Law alleviates this situation by excluding pharmaceutical products from patent protection until 1 January 2016, explicitly pursuant to the Doha Declaration. The effect of this provision is to permit both the manufacture of generic versions of ARVs in Cambodia, and the importation from third parties of patented medicines at the most favorable price available.

The allegation by Médecins Sans Frontières that Cambodia has informally agreed to implement TRIPS in 2007, and has also agreed to link drug registration approval with patent status that grants five years of data exclusivity is a matter of concern. There is a need for the government to clarify its stance on this issue.

Question 2 - Access to health care

Does the law give consumers the right to access affordable HIV/AIDS health care (for example, a subsidized or free universal health scheme)?

Article 72 of the Constitution provides for the right to health, including the right of poor citizens to free medical consultations in public hospitals, infirmaries and maternity facilities. However, as a Least Developed Country, Cambodia has a small national health budget and one of the lowest rates of utilization of health services - 0.35 medical contacts with organized health services per annum. Article 26 of the HIV/AIDS Law provides that all persons with HIV/AIDS shall be given primary health services free of charge in all public health networks, and also encourages the participation of the private sector (to provide free care). It further provides under Article 27 that the State shall mobilize the community to give care and support to people living with HIV/AIDS. There are no penalties for non-compliance with either of these provisions, so compliance is essentially voluntary and administrative. Several NGOs have been active in providing home care for PLWHAs.

Question 3 - Safe and efficacious therapeutic goods

Does the law regulate the sale, distribution and marketing (including protection for consumers against fraudulent claims) of pharmaceuticals and vaccines to ensure that they are safe and efficacious?

There is a scheme for regulating the manufacture and trade of pharmaceutical goods under the Law on the Management of Pharmaceuticals 1996. Although the law does not specify safety or efficacy standards for the production, import, export or trade of pharmaceutical products, Article 7 delegates power by requiring compliance with technical procedures and conditions set out in Sub-Decrees. Article 10 provides penalties for unauthorized acts, including advertising or selling, by imposing a fine ranging from 1,000,000-10,000,000 Riels and suspension of activities from 1-3 months (with double penalties for repeat offenders). A recent UN Report suggested that unregulated and inappropriate use of ARVs could lead to serious patient health and drug resistance problems.

In addition there is a specific ban on misleading advertisements, for example false AIDS cures - Article 12 of the HIV/AIDS Law prohibits the communication of misinformation regarding HIV treatments and prevention measures that are contrary to the measures set out by the National AIDS Authority. The penalty for non-compliance with Article 12 is set out in Article 48 of the Law - a fine of 500,000 to 1,000,000 Riels and one month to one year's imprisonment (punishment is double for repeat offences and civil servants shall also have administrative sanctions imposed).

The Information, Education, and Communication Committee of the National AIDS Authority through its implementing guidelines proposes to collaborate with the Ministry of Education to develop and disseminate standards governing advertisements and other information regarding HIV/AIDS prevention and treatment.

Question 4 - Quality of HIV test kits and condoms

Does the law regulate the quality, accuracy and availability of HIV tests (including rapid or home testing, if approved) and the safety and quality of condoms (e.g. monitoring compliance with the International Condom Standard)?

There is a mandatory provision under Article 23 of the HIV/AIDS Law for HIV testing centers to be accredited by the Ministry of Health, which is required to set and maintain appropriate standards in collaboration with the National HIV/AIDS Authority. There is a further obligation under Article 25 to train competent personnel to enhance testing capacities of these centers. There are no penalties for non-compliance with either of these provisions, so enforcement is essentially administrative.

The National Center for HIV/AIDS, Dermatology and Sexually Transmitted Diseases (NCHADS) has issued a Policy, Strategy and Guidelines for HIV/AIDS Counseling and Testing, which is subject to regular review. NCHADS has also commissioned the development of a training curriculum, for training of health care workers responsible for providing pre-test and post-test counseling.

Through the implementing guidelines currently being developed by the National AIDS Authority, the NAA in collaboration with the Ministry of Health and NCHADS proposes to establish a licensing system for health facilities, which includes monitoring of HIV testing standards and procedures.

Articles 3, 5 and 21 of the Law on the Management of Quality and Safety of Products and Services 2000 require products to contain information on matters such as user guides and expiration dates, and prior authorization is required where products could harm the health or safety of consumers. The legislation also prohibits false or misleading advertising and provides for inspections of manufacturers, importers and service providers.

There is no specific regulation of condom quality, as there is no scheme for regulating the manufacture and trade of therapeutic goods similar to the Law on the Management of Pharmaceuticals 1996 described above. The common condom brand used is 'Number 1', distributed by Population Services International, which conforms to the International Condom Standard.

Question 5 - Ethical human research

Does the law provide for the following legal protection for subjects in ethical human research (before, during and after participation): requiring informed consent; confidentiality of personal information obtained in the process of research; and counseling, health and support services?

As in many other countries, regulation of ethical research in Cambodia is administrative rather than legal, and is the responsibility of the Ministry of Health. A functional national ethical review committee with multidisciplinary membership was established in 2001 in the Cambodian National Institute of Public Health. It uses the International Ethical Guidelines for Biomedical Research Involving Human Subjects of the Council for International Organizations of Medical Sciences (CIOMS). The Committee regularly considers protocols submitted with an application fee. The mandate of the Committee covers all types of research involving human participants. 85 The 1998 Cambodian Report to the UN Human Rights Committee notes that no person is subjected to medical or scientific experimentation without consent. 86

Findings - Indicator 8

The move to generic production of ARVs in Cambodia should make an important contribution to increasing access to ARVs for Cambodian people living with HIV/AIDS. The new Patents Law incorporates exemptions that enable Cambodia to take advantage of the flexibility granted to least developing countries in relation to the TRIPS agreement, and the special provisions in the Doha Declaration. The speculation that Cambodia may be over-compliant in practice by 2007 is an important concern that should be addressed by the government. The Constitutional and HIV/AIDS Law provisions on access to health care are best practice in terms of their...
formal legal content, but due to resource constraints in this Least Developed Country are not implemented in practice. Cambodia’s successful applications in the first and second round of grants by the Global Fund to Fight AIDS, Tuberculosis and Malaria will enable significant expansion of access to ARVs to Cambodians living with HIV/AIDS.

The free availability of pharmaceuticals from pharmacies without prescription by a medical professional is a cause for concern, as this could result in the development of drug resistance, and is an issue that requires legislative reform. The legal framework for regulating the safety and quality of therapeutic products, including drugs, condoms and testing kits, and the ban under the HIV/AIDS Law against misleading advertising appear to be consistent with the International Guidelines, although some participants at the audit consultation stated that inferior drug products are available for purchase. The obligation for testing centers to be accredited is subject to administrative rather than legal regulation, as there is a lack of penalties for non-compliance with standards under the HIV/AIDS Law.

The ethical review committee established by the NIPH appears to be adequate in practice, but a legal requirement to undergo the process would be optimal.
The audit of Cambodian law and practice in the areas of HIV/AIDS and human rights has identified many areas of best practice that assist in responding effectively to the epidemic, such as anti-discrimination, testing and privacy provisions. The audit also identified several areas in which reforms could further enhance the contribution of the legal system to the creation of an enabling environment for the response to HIV/AIDS in Cambodia. These most commonly require the establishment of enforcement agencies to monitor compliance with existing legal provisions, both under general law (such as in relation to trafficking) and the HIV/AIDS Law. The most pressing is the need to provide an avenue for redress of human rights complaints in the areas of discrimination, privacy and in the specific sectors of health care and employment, both in the specific HIV context as well as generally (for example to address gender and MSM issues). Some relatively minor amendments to the HIV/AIDS law would improve its effectiveness as a guarantor of human rights, such as including indirect as well as direct anti-discrimination protections, and providing for informed consent to sex as a defense to the transmission offence.

A number of areas have general principles that are consistent with the International Guidelines on HIV/AIDS and Human Rights, but require further elaboration to be fully compliant with the Guidelines. The implementing guidelines currently being developed under the HIV/AIDS Law by the National AIDS Authority will address a number of important issues.

Several areas require the consideration of deeper level law reform, such as the proposal in this report for the decriminalization of sex work and the sex industry, and further move towards public health regulation. Shaping the sex industry by law must be compliant with human rights standards, such as requiring informed consent by individuals to any form of STI or HIV testing, and removing stigmatizing obligations that are not applicable to analogous workers. An example is the mandatory registration of sex workers under the 100% condom use program. There are also general problems with the legal frameworks restricting constitutional rights such as assembly and speech that need to be addressed. General criminal laws that are relevant to HIV/AIDS need
to clarify issues, such as recognizing that rape occurs in marriages. Regulation of access and quality of pharmaceuticals needs to be improved to protect consumers from inferior products and prevent the development of drug resistance. Some areas require specifically targeted HIV/AIDS law reform, including clarifying that incitement to drug-using offences should not be applicable to needle and syringe distribution programs, given the possibility that the epidemic could rise in the injecting drug user population.

Other areas have adequate legal frameworks, but require the application of more resources. These areas include prisons, legal aid, social security, health rights and drug rehabilitation, which in resource-poor settings need to be progressively implemented, with priorities being decided in a manner which is sensitive to and respectful of human rights.
APPENDIX 1

LAW REFORM AUDIT/ASSESSMENT INDICATORS BASED ON THE INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS

Indicator 1: Public health

Question 1 - Prohibition of mandatory and compulsory HIV testing

Does the law prohibit mandatory or compulsory HIV testing of any person, including the military, migrants or visitors (except blood and other human tissue donors)?

Question 2 - Informed consent and counseling

Does the law require that specific informed consent and pre- and post-test counseling is given to individuals tested for HIV in circumstances where they will be given the results of the test (that is, not unlinked, sentinel surveillance)?

Question 3 - Universal infection controls

Does the law require medical and other health practitioners to follow universal infection control precautions?

Question 4 - Screening of blood products

Does the law require screening against HIV contamination of blood and blood products, tissue and organs?

Question 5 - Coded notification of test results to public health authorities

Does the law require reporting of HIV/AIDS test results to public health authorities by a limited class of persons (medical practitioners or pathologists) for epidemiological purposes with adequate privacy protection (for example, coded rather than nominal data)?

Indicator 2: Criminal laws and transmission offences

Question 1 - Availability of needles and syringes and diversion from prison

Does the law enable the distribution of clean needles and syringes in the community, and diversion from the criminal justice system of persons charged or convicted of minor drug offences and for referral for care and treatment?

Question 2 - Protection against sexual and other violence

Does the law provide protection under the criminal law for children against sexual abuse and exploitation, and adults against sexual and other violence, including rape in marriage?

Question 3 - Offence for deliberate transmission of disease

Is there a general offence/s for deliberately transmitting a communicable disease with the following elements: foreseeability of harm; intent (i.e. not reckless or negligent); causation of harm (that is, not mere exposure); and consent and/or use of safe sex measures as defenses?

Question 4 - Right to legal representation

Is there a legal obligation to provide free legal representation to defendants?
Question 5 - Restrictions on living circumstances and detention

Does the law only authorize the restriction of living circumstances or public activities (e.g. public transport or sport) or detention of persons on grounds relating to behavior that exposes others to a real risk of transmission, as opposed to their mere HIV status (i.e. restrictions usually applicable to diseases that are casually transmitted)?

**Indicator 3: Anti-discrimination and privacy legislation**

**Question 1 - HIV/AIDS and vulnerable groups as grounds of discrimination**

Does the legislation provide for protection against discrimination on grounds widely defined to include HIV/AIDS (e.g. disability) and membership of groups that are, or are perceived to be vulnerable to HIV/AIDS in the jurisdiction (for example, gender, homosexuality, race, indigenous populations)?

**Question 2 - Wide jurisdiction and coverage**

Does the legislation provide for protection against discrimination with wide jurisdiction in the public and private sectors (for example, health care, employment, education, accommodation etc) and coverage of direct and indirect, and presumed discrimination (e.g. assumed infection), as well as associates (e.g. careers, partners and family)?

**Question 3 - Privacy protection**

Does the law provide for general privacy or confidentiality protection (that is a prohibition on the unauthorized use and disclosure) for medical and/or personal information, widely defined to include HIV-related data?

**Question 4 - Partner notification**

Does the law authorize health care professionals to notify directly or indirectly (e.g. through a specified person in the Health Department, such as a contact tracer) the HIV-status of their patients to sexual or other partners at a real risk of infection in accordance with the following criteria: counseling of the HIV-positive patient has failed to achieve appropriate behavioral change; and the HIV-positive patient has refused to notify or consent to notification of the partner?

**Question 5 - Administration of anti-discrimination and privacy protections**

Does the legislation provide for an independent institution to administering the anti-discrimination and privacy legislation (e.g. human rights commission, or ombudsperson) and to have the following functions and powers: education and promotion of human rights; power to investigate and conciliate individual complaints, and make enforceable decisions to resolve individual cases?

**Indicator 4: Sexual offences and the sex industry**

**Question 1 - Lack of prohibition on private, adult consensual sex**

Does the law not prohibit the following sexual acts between consenting adults in private: homosexual acts, for example, sodomy; or heterosexual acts for example, fornication or adultery?

**Question 2 - Lack of prohibition on adult sex work**

Does the law not prohibit adult sex work (including street, single, brothel or escort work) and have reasonable controls on workers (for example, nuisance laws), applicable to other analogous personal service work?

**Question 3 - Lack of prostitution-related offences**

Does the law not have prostitution-related offences (e.g. living off the earnings of a prostitute), except as provided for in this indicator (questions 4 and 5) and have reasonable controls on business (e.g. town planning) applicable to other analogous personal services businesses?
Question 4 - Regulation of health and safety of workers

Does the law regulate occupational health and safety in the sex industry to require safer sex practices to be practiced by clients and workers, and promoted by owners/managers (including prohibiting them from requiring workers to provide unsafe sex)?

Question 5 - Protection from trafficking

Does the law protect sex workers, especially children, from coercion and trafficking, focusing on those responsible (that is, owners or intermediaries)?

Indicator 5: Prisons and Correctional Laws

Question 1 - Parity of access to prevention and care in prisons

Does the law provide for at least access equal to the outside community to the following HIV-related prevention and care services for all prisoners in prisons or correctional facilities: information and education; voluntary testing; access to the means of prevention, i.e. condoms and bleach or clean injecting equipment; and treatment?

Question 2 - Lack of compulsory testing and segregation

Does the law not require compulsory HIV testing of prisoners on entry and exit, and segregation of prisoners, merely on the basis of their HIV-status, as opposed to behavior?

Question 3 - Protection against involuntary acts

Does the law provide legal protection of prisoners against involuntary acts that may transmit the virus, that is, rape, sexual violence or coercion?

Question 4 - Confidentiality of information

Does the law provide for confidentiality of prisoners' medical/personal information, including HIV-status?

Question 5 - Early release or diversion from prison on health grounds

Does the law (e.g. sentencing) provide for medical conditions, such as an AIDS defining illness, as grounds for compassionate early release or diversion to alternatives other than incarceration?

Indicator 6: Employment law

Question 1 - Prohibition of screening

Does the law prohibit HIV screening for general purposes in public and private employment, that is, appointment, promotion, training, and benefits?

Question 2 - Complaints against health professionals

Does the law provide for complaints to be made about breaches of health professional standards (doctors, nurses and traditional healers), for example, by a finding of professional misconduct in relation to matters such as confidentiality, informed consent and duty to treat?

Question 3 - Employment security and social security

Does the law provide for employment security while HIV-positive workers are able to work (e.g. unfair dismissal rules) and require that social security benefits are available to people with HIV/AIDS who are too ill to work?
Question 4 - Access to information and education, and confidentiality

Does the law require provision of access to general HIV/AIDS information and education, such as safe sex, for occupational health and safety reasons, (for example, counseling of workers following needle-stick injuries, and workers traveling to areas of high HIV incidence) and confidentiality of employees’ medical/personal information, including HIV-status?

Question 5 - Lack of exclusion of HIV-positive workers

Does the law not exclude people living with HIV from working in the following industries if adequate precautions are taken to prevent transmission: health professionals; skin penetration workers, and food/pharmaceutical handlers; emergency workers, police; and sex workers?

Indicator 7: Equality of legal status of vulnerable populations and communications

Question 1 - Equal legal status of men and women in property and finances

Does the law ensure the equal legal status of men and women in the ownership of property and inheritance, and capacity to enter into contracts, mortgages, credit and finance?

Question 2 - Equal legal status of men and women in relationships and work

Does the law ensure the equal legal status of men and women in marital relations (e.g. divorce and custody) and equal remuneration for equal work?

Question 3 - Protection from harmful traditional practices and age of consent

Does the law provide protection for children and adults against harmful traditional practices (i.e. female genital mutilation) and equal age of consent for heterosexual and homosexual acts?

Question 4 - Assembly, association and movement rights

Does the law not place unreasonable restrictions on members of AIDS service organizations, organizations of people living with HIV/AIDS or vulnerable groups, for example gay men, sex workers or refugees in respect of rights of: assembly; association; and movement?

Question 5 - Expression rights and censorship/broadcasting

Are specific exceptions for HIV/AIDS health education and information (general and targeted audiences) contained in censorship legislation and broadcasting standards?

Indicator 8: Treatment, therapeutic goods and ethical research

Question 1 - Access to medications

Does the law enable consumers to gain access to affordable HIV/AIDS medication (for example, through the mechanisms of parallel importing or compulsory licensing of pharmaceutical products)?

Question 2 - Access to health care

Does the law give consumers the right to access affordable HIV/AIDS health care (for example, a subsidized or free universal health scheme)?

Question 3 - Safe and efficacious therapeutic goods

Does the law regulate the sale, distribution and marketing (including protection for consumers against fraudulent claims) of pharmaceuticals and vaccines to ensure that they are safe and efficacious?
Question 4 - Quality of HIV test kits and condoms

Does the law regulate the quality, accuracy and availability of HIV tests (including rapid or home testing, if approved) and the safety and quality of condoms (e.g. monitoring compliance with the International Condom Standard)?

Question 5 - Ethical human research

Does the law provide for the following legal protection for subjects in ethical human research (before, during and after participation): requiring informed consent; confidentiality of personal information obtained in the process of research; and counseling, health and support services?
## APPENDIX 2

### PARTICIPANTS AT PUBLIC CONSULTATION, SUNWAY HOTEL, PHNOM PENH, CAMBODIA, 9TH JULY 2003-12-22

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Dr Helen Watchirs</td>
<td>Australian National University</td>
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<td>H.E Prof Ly Po</td>
<td>Vice Chairman, National AIDS Authority (NAA)</td>
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<td>H.E Dr Tia Phalla</td>
<td>Secretary General, NAA</td>
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<td>Dr Ngin Lina</td>
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<td>Dr Sou Sophy</td>
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<td>Dr Kang Serei</td>
<td>Program Coordinator, Cambodian Human Rights and HIV/AIDS Network (CHRHAN)</td>
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<td>Ms Jennifer Bouguignon</td>
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<td>Ms Keo Sichan</td>
<td>Cambodian Women's Development Agency</td>
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<td>Ms Lim Moan</td>
<td>Cambodian Prostitutes Union</td>
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<td>Oxfam Hong Kong</td>
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<td>Ms Chan Sopheak</td>
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<td>Ms Keo Tha</td>
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<td>Assistant Professor Peter Hammer</td>
<td>University of Michigan Law School/Oxfam Hong Kong</td>
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<td>Mr. Seng Neang</td>
<td>Cambodian Defenders' Project</td>
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<td>Mr. Choen Sokhoeun</td>
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<td>Mr. Alex Marcelino</td>
<td>Project Coordinator, Greater Involvement of People Living with HIV/AIDS, NAA</td>
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<td>Mr. Sam Sa Mom</td>
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<td>Dr. Kou Sothea</td>
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<td>Mr. Chris Ward</td>
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<td>Ms. Misha Coleman</td>
<td>POLICY Project</td>
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Monday 7th July 2003

09:00 am : Meeting with staff of the Cambodian Human Rights and HIV/AIDS Network (CHRHAN), Dr Kang Serei, CHRHAN Program Coordinator, Mr. Ing Chivorn, Deputy Program Coordinator, and Ms Im Sophea, CHRHAN Program Officer.

11:00 am : Meeting with staff of the National AIDS Authority. Present: H.E Dr Tia Phalla, Secretary General, Dr Tep Navuth, and Dr Sou Sophy.

02:15 pm : Meeting with staff of the Cambodian Defenders' Project. Present: Mr. Suon Visal, Mr. Kong Sam Onn, and Mr. David Pred.

03:00 pm : Meeting at Oxfam Hong Kong with the Network of Sex Workers Secretariat Ms Sou Sotheavy, Ms Chan Sopheak, and Ms Keo Tha.

Tuesday 8th July

08:30 am : Meeting with Mr. Heng Sok Rithy, Coordinator, Cambodian Network of HIV Positive People (CPN+).

02:30 pm : Meeting with Ms Geeta Sethi, Country Program Advisor, UNAIDS.

Thursday 10th July

11:00 am : Meeting with Ambassador Louise Hand, Australia.

02:30 pm : Meeting with Naly Pilorge, Director of LICADHO, and staff.


Friday 18th July 2003

Meeting with Mr. Mao Kimrun, Director, Men's Health Cambodia (Phnom Penh).

Tuesday 29th July 2003

Meeting with Mr. Sok Sophal, HIV/AIDS Team Leader, Mith Samlanh/Friends.