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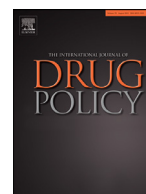
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Policy analysis

Detaining people who use drugs in Cambodia: A dual-track system

Jennifer Hasselgård-Rowe

Institute of Global Health, Faculty of Medicine, University of Geneva, 9 Chemin des Mines, CH-1202 Geneva, Switzerland



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ABSTRACT

Reports focusing on drug detention centres in Cambodia have predominantly been concerned with documenting conditions and human rights abuses in the government centres, while highlighting the failure of the Royal Government of Cambodia (RGC) to adopt a human rights and public health-based approach to substance use issues. They have not focused as extensively on the underlying institutional, legal and regulatory reasons that help explain, though not justify, the RGC's law-enforcement-based approach to illicit substance use in Cambodia. Therefore, this policy analysis examines Cambodia's legal and regulatory set-up, in particular how the criminal provisions of the laws governing substance use combined with the administrative mechanisms in place shape the country's drug-related practices. This paper is based on a wide-ranging literature review of primary legislative and interpretive material; international human rights, public health and drug control instruments; research papers and international reports from multilateral agencies, international non-governmental organisations, civil society and academic experts. Qualitative interviews were also carried out with key international agency, national and international NGO officers. By examining the *Law on the Control of Drugs* (2012), the RGC's main law covering substance use, as well as relevant administrative provisions, it becomes apparent that there are two parallel systems in place for sending people to drug detention centres in Cambodia: one based on criminal law and the other through an 'alternative' administrative avenue. This division constitutes a structural fragmentation, or two 'parallel tracks', that provide law enforcement and other relevant RGC agencies with a wide sphere of discretion for how to address drug-related issues. The result is an enhanced risk of serious human rights violations for people who use drugs in Cambodia.

Introduction

Despite international calls for the closure of 'compulsory drug detention and rehabilitation centres' because of their lack of effectiveness and human rights concerns (UNICEF, 2010; Amnesty International, 2020; International Federation of Health and Human Rights Organizations (IFHHRO) and World Medical Association (WMA), 2011; United Nations, 2012), compulsory drug detention centres are still operating in Cambodia, detaining several thousands of people who supposedly use drugs. Lunze, Lermet, Andreeva, and Hariga (2018) put the figures at 10 centres and 3249 people in 2014 and Amnesty International (2020) counted at least 7 centres in 2020. In the past decade, a number of studies ((HRW), 2010; Baldwin, 2013; Human Rights Watch, 2013; OSI, 2010; World Health Organization (WHO), 2009) have been published on health and human rights issues related to illicit substance use in Cambodia. Human Rights Watch's two reports: *Skin on the Cable* (HRW, 2010) and the 2013 follow-up report *They Treat us Like Animals* (HRW, 2013) are particularly relevant. They provide a human rights analysis of Cambodian drug law and practice, identifying a number of human rights violations in the Royal Government of Cambodia (RGC)'s approach of sending people to compulsory detention centres and

in the way people are treated while at the centres. Some research articles and reports have focused on the practices of compulsory 'drug rehabilitation centres' in various countries in the Asian region, documenting extensive human rights violations committed in the name of drug treatment. For example, Amon et al. (2014) reveal that individuals held in drug detention centers in China, Cambodia, Vietnam, and Laos are subject to torture and cruel, inhuman, and degrading treatment. In 2010, the Open Society Institute (OSI) published a report entitled *Detention As Treatment* (OSI, 2010) which concentrated primarily on non-injecting methamphetamine users in Thailand, Cambodia and Laos and highlighted the multiple human rights violations and negative individual and public health outcomes related to the compulsory detention of people who use drugs in government rehabilitation centres in those countries. Wolfe and Saucier (2010) narrowed in on the issue of degrading treatment of people who use drugs, exposing how the treatment of people who use drugs in numerous government 'treatment' centres throughout Asia blatantly violates international human rights law. They also emphasised what Manfred Nowak, the Special Rapporteur on Torture at that time, stated: 'from a human rights perspective, drug dependence should be treated like any other health care condition' (Human Rights Council, 2009). On the question of effectiveness of compulsory drug detention, Werb et al. (2016) conducted a systematic review which revealed that the evidence does not support the effectiveness of detention centres,

E-mail address: jennifer.hasselgard-rowe@unige.ch<https://doi.org/10.1016/j.drugpo.2020.102911>

leading the authors to call for non-compulsory treatment modalities to be prioritized by policymakers. [Bergstrom and Vumbaca \(2016\)](#) also examined the effectiveness of compulsory drug detention centres, this time with specific regard to opioid-dependent individuals. Their findings add to the literature establishing the ineffectiveness of these centres (see also [Vuong, Shanahan, & Nguyen, 2016](#); [Wegman et al., 2017](#)).¹ In 2018, [Lunze et al. \(2018\)](#) conducted an analysis of government data from Cambodia, China, Lao PDR, Malaysia, the Philippines, Thailand and Viet Nam, and found more than 900 facilities operating throughout the countries examined. Hence, despite the ineffectiveness of drug detention centres and the UN and other actors having called for their closure ([Amnesty International, 2020](#); [HRW, 2013](#); [OSI, 2010](#); [United Nations, 2012](#); [United Nations Country Team, 2017](#)), sending people to drug detention centres remains widely practiced.

With regard to China, Cambodia, Vietnam and Lao PDR, [Amon, Pearhouse, Cohen, and Schleifer \(2013\)](#) point out how ‘the lack of transparent governance, restrictions on free speech and prohibitions on monitoring by independent, international human rights organizations make assessing the evolving laws, policies and practices, as well as the attitudes of key governments officials, difficult’. Although a few countries have started shifting away from compulsory detention, such as Malaysia with its Cure and Care centres ([Kamarulzaman et al., 2015](#)), obstacles related to national laws and policies, persistent stigmatisation of people who use drugs and continued tension between abstinence-based models of treatment and harm reduction approaches persist ([Kamarulzaman et al., 2015](#)).

Looking more closely at Cambodia, none of the above-mentioned reports have focused on the underlying institutional, regulatory and policy reasons that help explain, though not justify, the Royal Government of Cambodia (RGC)’s law-enforcement-based approach to illicit substance use in Cambodia. Therefore, this paper examines Cambodia’s legal and regulatory set-up, focusing in particular on what the RGC legislative and regulatory powers to place people in detention stipulate. It also looks at what the administrative mechanisms (administrative and judicial police powers; and jurisdictional territorial powers) say and how they are used. Analysing these legal and policy pieces from a human rights and public health-based approach to substance use and dependence treatment ([Canadian HIV/AIDS Legal Network, 2007](#)), this paper argues that the ways in which the *Law on the Control of Drugs (LCD) (2012)* provisions can be interpreted can and does lead to serious human rights violations for people who use drugs. It also brings to light the fact that there is a second, ‘alternative to the criminal law’ avenue for sending people who use drugs to detention centres. Finally, the analysis maintains that this division constitutes a structural fragmentation entailing negative health and human rights consequences for people who use drugs.

Background

The present paper is based on a wide-ranging document-based review of primary legislative and interpretive material in the form of national laws, regulations, instructions and policy statements relevant to Cambodia’s approach to illicit substance use between 2005 and the present. International human rights, public health and drug control instruments (particularly multilateral conventions), research papers and reports from multilateral agencies, international non-governmental organisations, civil society and academic experts, published over the same period, were also reviewed. Semi-structured qualitative interviews were carried out with key international agency officers and national and international non-governmental organisations (NGOs) staff members working on illicit substance use-related issues in Cambodia in 2010 and 2011,

¹ [Tanguay P et al \(2015\)](#) found that compulsory drug detention units are generally ineffective: they do not lead to long-term abstinence; the post-release relapse rates and criminal recidivism are high; and many health risks and risk behaviours are increased.

as part of the author’s PhD. There were only a small number of agencies and people with extensive expertise working on the specific topic under consideration and therefore a small sample size was appropriate. The interviews were taped, transcribed and anonymously coded before being analysed for facts and interviewees’ perceptions of Cambodia’s institutional, legislative and policy framework.

Particular attention was given to the wording of specific RGC legal and regulatory provisions relating to sending people who use drugs to detention centres, as well as the ways in which RGC laws, regulations and policies were implemented in practice. This paper adopts a human rights and public-health based approach to drug-related questions. In accordance with this theoretical framework, substance use and drug dependent treatment are considered to be a health issue and examined against human rights protections and evidence-based drug treatment standards, rather than law enforcement-based indicators.

This paper also draws upon an assessment of the policies, procedures and practices surrounding the RGC’s social affairs, youth rehabilitation and ‘drug rehabilitation centres’ under the authority of the Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) conducted for the United Nations Children’s Fund (UNICEF) and the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) in Cambodia in 2010–2011 ([UNOHCHR, 2012](#)), for which a total of 83 interviews were carried out with government and non-government organizations, clients and management staff at government centres.²

Recent news and journal articles, which the author has incorporated where relevant, reveal no or very little change with regard to the number of detention centres, the conditions at the centres and the practice of arbitrary arrest in Cambodia ([Amnesty International, 2020](#); [Lunze et al., 2018](#); [United Nations Country Team, 2017](#); [US State Department, 2017](#)). For example, in 2019, the U.S. State Department Country Report on Human Rights Practices in Cambodia noted that ‘the majority of detainees in such facilities were there involuntarily, committed by police or family members without due process’. As for the United Nations Country Team in Cambodia, in 2017, it noted how the ‘collection practices and referral procedures of people collected in the streets have continued to violate international as well as national laws specifically relating to the freedom from arbitrary arrest, as well as several rights protected under the Criminal Procedure Code of the Kingdom of Cambodia’ ([United Nations Country Team, 2017](#)). The report also highlighted the importance of ‘avoiding the confinement of people who use drugs or people suspected of drug use in non-medical or rehabilitation facilities’.

Since the RGC’s anti-drugs campaign that began in 2017, thousands of people have been detained in prisons and sent to ‘rehabilitation centres’ ([Chakrya, 2020](#); [Dara, 2020](#); [Turton & Kong, 2020](#); [Xinhua, 2020](#)).³ Amnesty International’s May 2020 report ([Amnesty International, 2020](#)) documenting the extensive human rights violations associated with the Cambodian government’s anti-drug campaign, stresses how ‘despite the many concerns raised from international human rights mechanisms and civil society organizations, there has been little or no improvement in the monitoring and supervision of these detention facilities, and reports of human rights abuses continue to be rife’.

Circumstances in which a person can be sent to detention according to the Law on the Control of Drugs (2012)

The *Law on the Control of Drugs (LCD) (2012)* promulgated in 1996, amended in 2005 and later in 2011–2011 is the basic framework reg-

² All interviews were conducted accordance with UNOHCHR’s Code of Conduct principles and, where relevant, followed UNICEF’s Principles and Guidelines for Ethical Reporting on Children. The interviews were completely voluntary and interviewees were assured of the confidentiality of their responses. More detailed information is on file with the author.

³ At least 55,770 people have been arrested on suspicion of using or selling drugs between January 2017 and March 2020 ([Amnesty International, 2020](#)).

ulating all illicit drug activities in Cambodia. Article 3 of the Law provides that the 'law covers all activities related to drugs in the Kingdom of Cambodia'. The *Constitution of the Royal Government of Cambodia* (RGC, 1993), the *Penal Code* (or *Cambodian Criminal Code* (2009)) and the *Royal Government of Cambodia* (RGC) (2007) together with *Prakas* (proclamations which constitute the top regulatory act issued by a government agency with regular power), circulars and principles complete the regulatory picture of the RGC instruments related to illicit drugs.⁴

The LCD is an omnibus law with provisions spanning across possession of substances, consumption, addiction, trafficking, and regulation of substances. Article 45 and 53 are the main criminal provisions relating to illicit substance use. Article 45 'Act of illegal use/consumption of narcotic substances' stipulates that 'any person who illegally consumes narcotic substances as provided in Tables I and II in any forms, and has been forced to undertake treatment, shall be punished by imprisonment for a period from 1 (one) month to 6 (six) months and maybe liable to pay a fine ranging from 100,000 (one hundred thousand) to 1000,000 (one million) riels...'⁵ Article 45 goes on to provide for some discretion on the part of the Prosecutor not to prosecute a person who is in possession of drugs in Tables I and II in small quantities where the drugs are being used for personal consumption, but the law does not define what is considered a 'small quantity'.

Article 53 'Act of illicit use/consumption of narcotic substances' resembles Article 43 but deals with substances under Table III. It provides that any person who illegally consumes substances listed in Table III and has been forced to undertake treatment shall receive a punishment sentence of one to six months. A fine ranging from one hundred thousand to one million riels may also be imposed. If it is a repeat offence, the person shall be imprisoned for six months to a year and may also have to pay a fine of between one million to two million riels. Persons who attempt to commit this misdemeanour of illicit substance use face the same punishment as if they committed the misdemeanour itself.

With specific regard to drug detention centres, Article 30 of the *Law on the Control of Drugs* (2012) stipulates that a person who is caught using drugs is to be brought to trial and the court may then order him or her to spend time in a 'compulsory treatment and rehabilitation centre' as part of the sentence/punishment. There are no other provisions in other pieces of Cambodian legislation which empower government officials to place people who use drugs directly in drug detention centres for the 'crime' of illicit substance use/consumption. The different terms used to refer to places where drug users are kept in detention include: 'compulsory detention centres', 'treatment centres', 'detoxification centres', 'drug rehabilitation centres' or 'education and labour centres', 'boot camps' and 'administrative detention centres'. In recent human rights and substance use-related reports on Cambodia, the RGC centres have been referred to as 'drug detention centres' (HRW, 2010; Amnesty International, 2020; HRW, 2013) and 'compulsory drug treatment detention/rehabilitation centres' (CDTDCs) (OSI, 2010). The official name the RGC uses to refer to its drug detention centres is 'temporary centres for drug education, treatment and rehabilitation' (United Nations Office on Drugs and Crime (UNODC), 2010) with the expression 'drug rehabilitation centres' also being used. Wolfe and Saucier (2010) have pointed out that 'it is important to note that the term 'compulsory treatment' does not imply that internationally recognized drug addiction treatment occurs inside the compulsory detention centres' (see also Baldwin and Thomson, 2013). Moreover, the terminology used by RGC departments to refer to the different centres is not always consistent which leads to the difficulty of identifying precisely how many centres are used for drug detention. In this paper,

the primary term used to refer to the RGC centres is 'compulsory drug detention centres' or simply 'drug detention centres', to reflect the practices that have been evidenced in reports as well as the field work upon which this paper is based.

A person can be sent to detention in a compulsory 'drug rehabilitation centre' pre-conviction (see Articles 104, 105 of the *Law on the Control of Drugs*, 2012) as well as post-conviction (see Article 30, Article 106 and Articles 107 to 110 of the *Law on the Control of Drugs* (2012)). However, with regard to all the circumstances stipulated in the LCD for when a person may be sent to receive such 'treatment' at one of the RGC centres, the criteria used for making such a decision are not specified, leaving room for a lot of discretion, interpretation and, potentially, abuse.

Court orders

Article 30 of the *Law on the Control of Drugs* (2012) provides that the court is the government body able to order compulsory treatment, related to the circumstances described in Chapter VI 'Treatment and Rehabilitation Measures'. Indeed, UNICEF pointed to this provision in referring to the fact of a court order being required to place a child/person in RGC compulsory 'drug rehabilitation centres' (UNICEF (2010)). Article 30 is directly related to Article 109, which provides that forced treatment and rehabilitation can be made at the stages of investigation and trial by the Trial Judge if the conditions in Article 107 (that a person is 'severely affected by drug addiction and there is an explicit threat of instant and severe danger to him or herself or to others'; or when it is deemed necessary to protect the general interests of the person; or when the person is considered to lack the capacity to express whether he or she accepts voluntary treatment) and Article 108 (requiring a medical examination confirming that a person is a 'drug addict') are complied with.⁶

Prosecutor

Section III 'Conditions for the Prosecution and Execution of Penalties for Drug Addicts' presents a detailed explanation of the circumstances and procedures for when to send a person who uses drugs to detention. It contains two articles: Article 105 and Article 106. Article 105 'Conditions for Prosecuting Drug Addicts' provides that before making a decision to prosecute a person who has committed an offence under Article 45 or Article 53 (both dealing with consumption of illicit substances), the Prosecutor may 'provide guidance' to a person who has been certified by a medical doctor as being drug dependent to accept to go to a public or private centre for 'treatment and rehabilitation'. If the person refuses to undertake such treatment, the Prosecutor is to use his or her authority to decide what course of action to take in accordance with the *Code of Criminal Procedures of the Kingdom of Cambodia* (RGC, 2007). If, on the other hand, the person agrees to undertake treatment, the Prosecutor records the person's consent in writing and notifies the RGC 'drug rehabilitation centre' of the decision and the prosecution is suspended. If the person does not complete his or her time at the centre, the prosecution is resumed, whereas if the person does, the case is abandoned.

One of the obvious problems with this provision is that what is written in the *Law on the Control of Drugs* (2012) as 'voluntary' cannot be considered entirely voluntary since it is heavily influenced by the clause in Article 105 stipulating that the Prosecutor may 'direct this individual to receive treatment and rehabilitation', an expression which remains vague and does not rule out coercion or other forms of abuse. Moreover, if the person does not wish to go to a centre, the Prosecutor can send him to a centre involuntarily or to prison under the same Article

⁴ For examples of *Prakas* see (RGC, 2003a; RGC, 2003b; RGC, 2005; Instruction On Policies for Resolving the Vagabonds' Problems, National Committee for Resolving the Vagabond's Problems, *Royal Government of Cambodia*, 2008).

⁵ 'Riel' is the Cambodian currency, with 1 United States of America dollar equivalent to about 4100 riels.

⁶ Note, in the LCD, 'drug addict' refers to a 'person who consumes drugs and is in the state of drug addiction'. The term has been criticized as 'too broadly defined and being feasibly able to include anybody under the influence of drugs at any point' (Azariah, 2011).

105. Therefore, these avenues represent two less than ideal alternatives for a person whose 'crime' is consuming illicit drugs and, in practice, they render illusory any real 'voluntary' aspect of the treatment.

Article 106 'Conditions to Execute a Charge Against Drug Addicts' is applicable post-conviction. It stipulates that if a person who is convicted of illicit substance use (under Article 45 or 53 of the *Law on the Control of Drugs* (2012)) is certified to be dependent on drugs by a medical doctor and voluntarily accepts to undergo treatment and rehabilitation according to Chapter VI of the Law, the execution of the charge shall be postponed. However, according to Article 108, the Prosecutor can make an order for forced treatment and rehabilitation, subject to a number of conditions such as a medical examination confirming that the person is addicted to illicit substances. For the purposes of the *Law on the Control of Drugs* (2012), Article 4 defines 'drug addiction' as 'the state of a person under the influence or subordination of drugs due to drug abuse' and 'drug addict' as 'a person who consumes drugs and is in the state of drug addiction'. Nevertheless, the LCD does not specify what the standards for determining whether a person is addicted to illicit substances are, nor who is responsible for ensuring that provisions such as Article 108 are interpreted and applied in accordance with the rule of law. If the result of the medical examination confirms that the person is 'under severe addiction' or if there is 'any other evidence explicitly showing threats that there will be instant and severe danger to him/herself or to others, the Prosecutor may decide to go ahead with the decision of the forced treatment and rehabilitation' (Article 108). As Baldwin and Thomson (2013) have noted, the *Law on the Control of Drugs* (2012) contains broad powers for a prosecutor to compel a person into treatment. It remains of concern that there do not seem to be any clear rules for how these powers are to be used justly in practice.

Rules regulating supervision redress/appeals mechanisms?

With regard to appeals or complaints mechanisms, Article 108 of the *Law on the Control of Drugs* (2012) provides that the person who is being forced into treatment has the right to lodge a complaint with the Prosecutor-General at the Appeals Court against the decision of the Prosecutor. The Prosecutor-General at the Appeal Court must then make a decision no later than 72 hrs after the time of acknowledging the receipt of the case. Similarly, Article 109 allows for appeals in compliance with the *Royal Government of Cambodia* (RGC) (2007) to be made against the decision of the Investigating Judge or of the Trial Judge. Article 110 states that 'in addition to the provisions of the *Cambodian Criminal Code*, the Court shall take into consideration the completion of forced treatment and rehabilitation undergone by the drug addict while determining punishment'. It remains uncertain what indicators the Court uses as well as how it determines punishment by taking this 'completion of forced treatment and rehabilitation' clause into account. Nor are any accountability mechanisms to oversee such decisions provided for in the legislation, making this an area where further clarification and precision are needed.

Administrative and judicial police powers

Administrative policing consists of actions taken to prevent disturbances to public order in the absence of specific legislation granting such powers to another authority (Peng et al., 2012). In other words, administrative mechanisms are not decided by a court. 'Public order' can be defined as 'an absence of disorder in the realms of public security, tranquillity and sanitation' (Peng et al., 2012).

RGC authorities are empowered with administrative policing powers at two levels: national and sub-national. At the national level, the 'Prime Minister enjoys general administrative policing powers and ministers enjoy special administrative policing power' (Peng et al., 2012). At the sub-national level, the governor (of the capital, the provinces and the districts) and the commune chiefs are vested with the general administrative policing power (RGC, 2007). Officials possessing general

administrative policing powers can make decisions whenever they consider it opportune or whenever the situation requires it. Such authority provides extensive discretion and flexibility but also potential for substantial and extensive abuse by government officials.

In addition to the Cambodian National Police, there exists another police force: the 'gendarmerie' which is a primarily military force 'under the authority of the RGC Ministry of Defence but is placed directly under the command of the Prime Minister' (Hay, 2006). The *Code of Criminal Procedures of the Kingdom of Cambodia* (RGC, 2007) provides the *Gendarmerie* with the same powers of arrest as those held by the Judicial Police. The judicial police force deals with crimes. It includes judicial police officers, judicial police agents, and other governmental officials who are authorized by separate laws to examine offences in the scope of their territorial jurisdiction (Article 57 of the CCPC).

Judicial police officers 'may order to appear or bring any person who is suspected of committing an offence to their offices to interrogate the person' (CCPC (2007), Article 93 'Interrogation Records'). As Hay (2006) has noted, 'all provincial governors, district governors, commune chiefs and some specialised civil servants - such as customs officers, tax officers, forestry officers and fishery officers - can also be made judicial police officers'. Judicial police officers play an important supportive role in criminal proceedings: they have the duty to examine offences, identify and arrest offenders and collect evidence in the scope of their territorial jurisdiction (Articles 71 to 74 of the CCPC (2007)).

Article 76 'Qualification of Judicial Police Agents' under Chapter 3 'Judicial Police Agents' of the CCPC (2007) sets out the different people who qualify as judicial police agents: 'officers and deputy officers who do not have the status of judicial police officer; other national police agents; other officers of the Military Police Forces who are not qualified Judicial Police; and other soldiers in Military Police Forces.' These various categories mean that a number of people working in different RGC positions can be made judicial police agents and thereby possess the accompanying powers. This can be considered a cause for concern since the way these RGC officials are to exercise their powers is not clearly spelt out and can thus take many different forms in practice.

Jurisdictional territorial powers

RGC officials also have 'jurisdictional territorial powers' to take people to the RGC-run drug detention centres on the basis that the person in question is suspected of using drugs or is disrupting social order and hence needs to be 'removed' from view, from the streets, from society and sent to a so-called 'rehabilitation centre' (*Law on the Control of Drugs*, 2012; Hay, 2006).

The 'jurisdictional territorial power to maintain public order' is the power each local authority has by virtue of being responsible for a particular physical area, whether commune or district. Article 67 'Scope of Territorial Authority' of the CCPC (2007) provides that judicial police officers have authority within the territorial boundaries of the unit to which they are assigned. In Phnom Penh, for example, judicial police officers have the authority over the whole capital without consideration for the location of the unit to which they are assigned (UNOHCHR, 2012). In practice, this territorial power constitutes the main tool local authorities use to justify their actions in collecting people in the streets under the guise of 'maintaining public order' and protecting the 'dignity of the nation' (AusAID & the Asia Foundation, 2011; Broadhurst, 2009; UNOHCHR, 2012).

Rather than following any clearly defined processes, this 'jurisdictional territorial power' of the local authorities to arrest people perceived as threatening public safety, for example, is used whenever the local authorities consider the need arises. This implies that it can be used anytime without warning and may end up being used/abused to arrest persons suspected of substance use. Indeed, Phnom Penh Municipality officials confirmed that, at times, up to 300 people including homeless persons, people who use drugs and sex workers have been collected from the streets of Phnom Penh or other big cities such as Siem Reap under

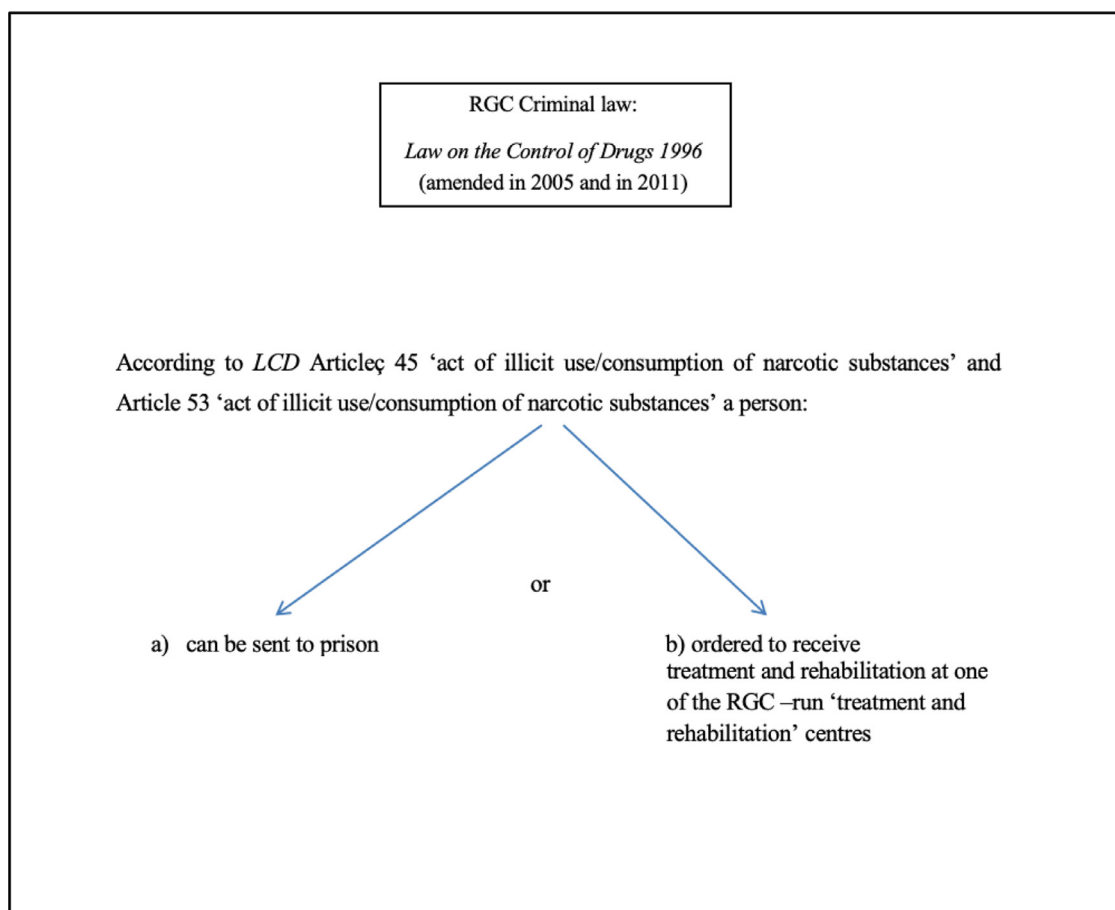


Fig. 1. 'Criminal law' track.

this power (UNOHCHR, 2012). This set up also creates an extra burden on RGC Department of Social Affairs, Veterans And Youth Rehabilitation (DoSAVY) offices and, more generally, touches upon the issue of the lack of financial and human resources capacity of government departments. It also creates difficulties for the RGC centres which are suddenly faced with having to take in many people at once (UNOHCHR, 2012).

There are numerous documented cases of people in Cambodia being stopped and 'arrested' in the streets, but not being sure exactly why they were arrested, not going to court and simply being told that they are a person who uses drugs and therefore need treatment (HRW, 2010; Amnesty International, 2020; HRW, 2013; OSI, 2010; UNOHCHR, 2012). Although the procedures resemble arrest in many ways, the full range of legal obligations which would normally accompany a formal act of 'arrest' - stipulated in the CCPC (2007) - are not complied with, in breach of the rule of law (CCPC 2007, Articles 87 and 97), and international law.⁷ The obligation to immediately inform detainees of the reasons for their arrest is embodied in Article 9(2) of the *International Covenant on Civil and Political Rights (ICCPR)*, 1966. During the 'immediate appearance' before a prosecutor (Article 47 of the CCPC) in Cambodia, the prosecutor must inform a charged person of any charge against him or her (Articles 48 and 304 of the CCPC). The

person being charged does not have to give a statement; he or she may remain silent and the prosecutor shall also inform the accused person of his or her right to have a lawyer of his or her choice (Article 304). People who are presumed to be using drugs in Cambodia very rarely seem to be informed of the reasons why they are arrested or 'collected', let alone informed of their right to the assistance of a lawyer. Finally, although the CCPC (2007) provides for special circumstances when military police are permitted to arrest civilians (CCPC Articles 60 and 70), in practice, the Military Police sometimes carry out regular 'civilian law enforcement activities under the authority and direction of provincial or local governments' (US State Department State, 2011). Hay (2006) points out how instead of limiting themselves to military offences, in reality, Military Police officers also address 'ordinary' offences, thereby creating overlap with the jurisdiction of the Cambodian National Police.

Parallel tracks for sending people who use drugs to detention

Examining how the Cambodian legal system defines and underpins powers to deal with drug dependent persons or persons suspected of using drugs reveals that there is more than one route by which people who use drugs end up in detention. Some people who use drugs are arrested for the crime of possession, cultivation or trafficking of substances, which clearly fall under the *Law on the Control of Drugs* (2012) provisions (see Fig. 1). In theory these persons are meant to be brought before a judge, tried and then receive a sentence (imprisonment or other sanction) for their criminal offence, if proven guilty.

What can be observed in practice and what has been reported by local NGOs working in this field is that RGC police officers frequently arrest people for being suspected of using drugs or for having needles

⁷ Article 3 of the *Universal Declaration of Human Rights (UDHR)* (1948) for example guarantees 'the right to life, liberty and security of person' (*Universal Declaration of Human Rights*, 1948) and the *International Covenant on Civil and Political Rights (ICCPR)* (1966) stipulates that 'everyone shall be informed, at the time of their arrest, of the reasons for his arrest and shall be promptly informed of any charges against him' (*International Covenant on Civil and Political Rights (ICCPR)*, 1966), Article 9).

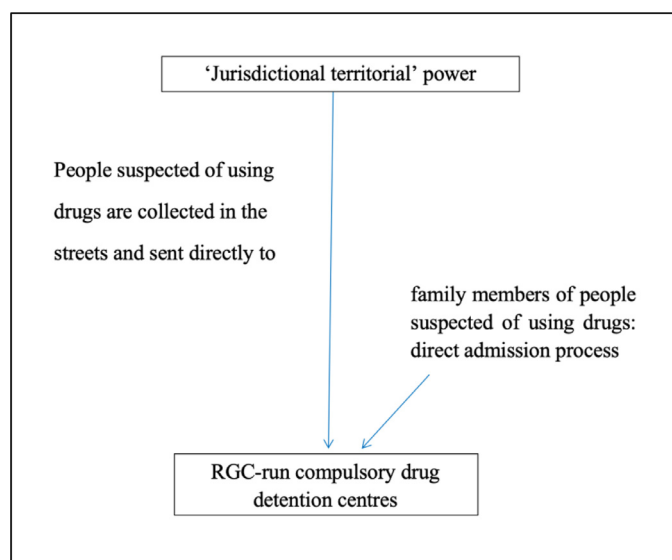


Fig. 2. An 'alternative track': a parallel system of 'detention'.

and syringes on them. The police take this as evidence of substance use, and take the persons to pre-trial detention to await a court hearing. However, often, there are no court hearings and it is at this point that the practice diverges from what the law prescribes. A few people may stay in pre-trial detention and eventually go before a judge and be tried under the *Law on the Control of Drugs* (2012). However, many other people suspected of using drugs, instead of being tried in Court, having access to a lawyer and taking part in a proper trial as should be the case according to law, are simply sent to RGC-run drug detention centres. As one international agency officer working closely on these issues commented: 'I have never heard of anyone being referred from a court and from a judge, based on an order to be sent to one of these centres'. Other officers working in this field have also echoed this statement and point to the centres as an 'easy option' for local RGC authorities to bypass the judicial process.

Alongside this criminal system, the present analysis exposes the existence of a more discretionary, parallel system for dealing with people who supposedly use drugs (see Fig. 2). This 'alternative to the criminal law track' is of particular interest because technically there is no strict 'legal basis' for this kind of detention. The 'jurisdictional territorial power' is frequently used to sweep people considered 'vulnerable' off the streets, to maintain social order and put persons suspected of using drugs in RGC-run compulsory 'drug rehabilitation centres' without reference to a particular legal provision. *Prima facie*, this kind of behaviour is not sanctioned by the Cambodian *Constitution* which protects the rights to life, liberty and security of the person, stipulating in Article 38 that persons may only be arrested in accordance with the law. However, cloaked under another veil: that of 'maintaining social order' and following the government instructions (circulars) that exist to that effect, the practices can only be justified with reference to more general administrative provisions. Social Affairs officers regularly accompany the police during street sweeps (UNOHCHR, 2012), but nowhere in the description of the responsibilities of MoSAVY officials is it stated that they have the power to arrest people. Arresting and placing people in detention falls under the mandate of the National Police or more broadly the Ministry of Interior (MoI) in situations where a person has violated a law (ex: Article 56 of the CCPC (2007)). Along similar lines, the *Human Rights Report on Cambodia* (US State Department State, 2011) also revealed that the RGC police forces are divided into those who have the authority to make arrests, those without such authority, and the judicial police. Regardless of which avenue is used for arresting people and

sending them to drug detention centres, in many cases the result is that people who use drugs' rights are violated, unconstitutionally.

Local RGC officers can also resort to the *Village Commune/Sangkat Safety Policy* (VCSSP) (also known as the *Village Commune Safety Guidelines*), which was issued in August 2010 (see RGC, Ministry of Interior, 2010). To the best of the author's knowledge, the Policy is still in place. It sets out measures which local authorities at all levels are meant to implement, including to 'take action to eliminate the production, dealing and use of illegal drugs at the village/commune/Sangkat level', with the other acts targeted being prostitution, trafficking, gambling, acts of gangsters and more. The VCSS Policy can lead to detrimental health and human rights consequences for people who use drugs because the interpretation of the policy, and specifically what is considered 'a threat to the safety of the commune,' is at the discretion not only of police and other RGC officials, but also of ordinary citizens. The VCSS Policy does not necessarily help resolve the challenges, both individual and collective to society, because the Policy does not address the root causes of drug consumption. It merely prohibits and punishes certain behaviour, including personal use of illicit substances.

Challenges in moving towards a more human rights and public health-based approach to drug use

Underlying the existence and use of the jurisdictional territorial powers and the social order policies is the predominant view within Cambodia that constructs illicit drug use as a public order problem, not a health issue. This exacerbates the inherent conflict between providing sustainable solutions which respect human rights and those which are focused on addressing perceived public order challenges arising from drug use and addiction. The widespread perception of illicit substance use as a public order issue thus remains an important element to take into consideration when trying to understand the functioning of the country's criminal law and administrative procedures and practices. Another challenge arises from the fact that some RGC law enforcement and other officers maintain that the drug detention centres are 'voluntary'. For example, the then Deputy Chief of the civilian police-run drug detention centre in Siem Reap has been quoted saying 'the vagrant people we collect from the streets volunteer to come with us. We do not force them' (Loy & Channyda, 2010). However, a number of serious questions remain with regard to how, in light of substantial evidence revealing that individuals are taken to RGC drug detention centres against their will and not free to leave when they so wish, the RGC can continue to insist that the people at the centres are staying there voluntarily. Finally, the 'dangerously simplistic understanding of drug dependence: it's considered a matter of having drugs in the body as a consequence of an individual's moral weakness' observed by Amon (2010), HRW (2013), OSI (2010) can also be considered a significant obstacle to moving towards a health-based approach to substance use.

Despite these challenges, UNAIDS, UNODC and WHO have been encouraging the RGC to establish alternatives to detention and to promote voluntary community-based drug treatment for a number of years (UNAIDS & UNODC, 2015; UNODC, 2010b). A number of countries including Cambodia, China, Indonesia, Malaysia and Thailand have been piloting, implementing and evaluating components of voluntary community-based drug dependence treatment and support services (Baldwin & Thomson, 2013; Tanguay et al., 2015; Yan et al., 2013). However, while the RGC has made certain efforts to shift its drug policy towards more public health and human rights-based policies in the past few years (Kong, 2016), in particular expanding the availability of community-based drug treatment,⁸ at the same time, it has been moving forward with its plans to establish a national drug rehabilitation centre.⁹

⁸ It has established 431 voluntary community-based drug treatment sites across the country, although it should be noted that the majority of facilities were pre-existing general health centres (see Amnesty International, 2020).

⁹ Construction reportedly began in August 2017 (Fresh News Asia, 2017).

The recent anti-drugs campaign (Amnesty International, 2020; Turton & Kong, 2020; Xinhua, 2020) in place since early 2017 confirms that the RGC's approach to drug use remains predominantly repressive.

Finally, in addition to the LCD (2012) and 'jurisdictional territorial power', this policy analysis has found that there are also additional ways in which people may arrive at the RGC centres. The first is that family members present themselves to the centres with a letter from the village chief certifying that the person has used drugs once or twice and has received some form of education or treatment for his or her drug use which has been unsuccessful, accompanied by a 'letter of promise' to the centre from the parents (or other family members). The second is that the 'client' 'volunteers' to stay at the centre.

Many local and international human rights NGOs, as well as UN agencies in Cambodia, consider the first scenario to be particularly problematic (Amnesty International, 2020; HRW, 2013; United Nations Country Team, 2017). In addition to not being in accordance with Article 108 of the LCD (2012), this way of operating violates a number of human rights: not only is it not established for certain that the person is drug dependent or even uses drugs, but the right to life, liberty and security of the person is violated.¹⁰

There does not seem to be any legal provision explicitly authorising this practice. Instead, it appears to be something that occurs in practice, based on a contract that the family member signs with a particular RGC drug detention centre (UNOHCHR, 2012). The guardian or family member of the person who supposedly uses drugs must sign a piece of paper exonerating the centre staff from any negative consequences (such as becoming seriously ill for lack of medical treatment), which may occur during the course of the person's stay at the centre. This letter or 'contract' goes against the Cambodian Civil Law Decree 38 "Referring to Contract and Other Liabilities," (2011) which gives the right to a person over 18 years old to sign his/her contracts. Commenting on the RGC's 'civil court order' provision (LCD (2012), Article 108) in its 2010 report *Skin on the Cable: The Illegal Arrest, Arbitrary Detention and Torture of People Who Use Drugs in Cambodia*, Human Rights Watch pointed out that the order may be open to abuse by family members or others who are not motivated by the best interests of the presumed drug dependent person. Other factors such as embarrassment to the family, or simply a wish to have a person who uses drugs, whom the family considers problematic, out of their lives for some time, may also lie behind a request to have a person held at a RGC drug detention centre. From a human rights and public health-based point of view, this practice can be considered a serious source of concern since it can result in the arbitrary arrest and detention of a person who is not using drugs. It can also lead to detrimental physical and mental health consequences for the person held at the centre due to the abysmal conditions at the centres, including an increased risk of various infections (Amnesty International, 2020; HRW, 2013).

Conclusion

Despite certain positive developments, such as the expansion of community-based drug treatment in recent years and the openness of certain RGC officials to treat substance use as a health issue, the RGC's drug use policy framework remains driven by public order considerations.

This paper has discussed the law as it relates to illicit substance use in Cambodia. It has argued that the country's inherent attachment to social order, combined with the RGC's lack of knowledge and understanding of substance use and dependence, and the lack of precision and clarity

in the wording of certain RGC legal and regulatory provisions relating to sending people who use drugs to detention centres, leaves the articles open to abuse and misuse. The result is that in Cambodia, people who use drugs can be sent to detention centres in violation of a number of human rights. A fundamental lack of knowledge about substance use and dependence within the RGC law enforcement community and at the senior RGC decision making levels constitutes an additional challenge to overcome in order to move towards a more human rights and evidence-based approach to substance use. The training of judges, prosecutors, defence lawyers and law enforcement officers on how to apply the law and regulations on substance use issues in accordance with international human rights norms could help reduce the gap between law and practice. Putting in place guidelines for how the *Law on the Control of Drugs* (2012) should be implemented, while simultaneously working with law enforcement officials and other relevant actors from the local communities to increase their knowledge and understanding of drug use and drug dependence and treatment, could be a further avenue to pursue.

Moreover, the discussion of jurisdictional territorial powers reveals that relatively few people who use drugs end up going through the court system in Cambodia, as the criminal law requires. Instead, RGC officials resort to an alternative, administrative avenue, through the use of territorial and judicial police powers. Because the RGC's administrative provisions do not set up any clear procedures and there is very poor legal definition of these powers, their use and interpretation can be heavily influenced by public order considerations, not to mention political agendas. The scope of the administrative powers cannot be clearly ascertained and the risk of abuse in how the powers are carried out in practice increases. Finally, the characteristics of this system also provide certain RGC officers with a degree of freedom with regard to their decisions to arrest a person suspected of using drugs and sending him or her to a drug detention centre. The existence of two parallel (criminal and administrative law) tracks makes it easier for law enforcement and other RGC officers to use the alternative avenue, rather than the one strictly provided by RGC law. Ultimately, this results in heightened risks of serious human rights violations for people who use drugs in Cambodia.

In conclusion, this paper argues that unless the structural fragmentation and way of operating by using the criminal justice system as well as the administrative avenue to detain people who use drugs in compulsory drug detention centres is given more attention; and further research is conducted into the specific workings and dynamics of the system to understand it in its full complexity, the chances of the RGC moving away from its current punitive system of compulsory drug detention towards a more humane and public health-based approach to illicit substance use will remain low.

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I declare that I have no known conflicts of interest associated with this publication. Jennifer Hasselgård-Rowe.

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¹⁰ See Article 9 of the UDHR (1948) which states that 'no one shall be subjected to arbitrary arrest, detention or exile'; and Article 9 of the ICCPR (1966) which stipulates that 'everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.

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