

UNITED NATIONS IN VIET NAM



POSITION ON ADMINISTRATIVE DETENTION FOR SEX WORKERS AND PEOPLE WHO USE DRUGS

1. Vietnamese law¹ allows for the Chairman of People's Committees operating at commune, ward or district levels, to impose administrative measures on sex workers ('prostitutes') and people who use drugs ('drug addicts'), leading to their detention in 'medical treatment establishments and rehabilitation centres' for 3-18 months in the case of 'prostitutes', and 1-4 years in the case of 'drug addicts'. These establishments are often referred to as '05 Centres' (for 'prostitutes') and '06 Centres' (for 'drug addicts'). The Chairman of the People's Committee is also empowered to compel 'drug addicts' to undergo compulsory detoxification in 'community-based detoxification centres' for a period of 6-12 months.²
2. Under international law, persons subject to legally sanctioned deprivation of liberty enjoy a number of human rights including the right to a fair procedure (due process) and prompt access to a court³, and the right to health. These rights are guaranteed in UN human rights treaties to which Viet Nam is a party. Equally, a citizen's right to health and dignity is recognized, respected and protected by the 1992 Constitution of the Socialist Republic of Viet Nam.⁴
3. Furthermore, with relation to persons under the age of 18, international law stipulates that deprivation of liberty shall only be used as a matter of last resort and for the shortest appropriate period of time, based on the principle of best interests of the child. With regard to commercial sexual exploitation of minors, the Committee on the Rights of the Child stresses that while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized. States Parties are instead required to take all appropriate measures to promote physical and psychological recovery and social reintegration, and to implement "child-friendly" sensitive procedures⁵.
4. The current legal framework in Viet Nam however provides no procedural safeguards for persons subject to administrative detention. For example, persons at risk of being sent to '05/06' Centres or community-based detoxification centres have no right to a hearing or to legal advice/representation.
5. In addition to its concern about the lack of due process for all those under administrative detention, the UN Country Team (UNCT) in Viet Nam has specific concerns about the compulsory detention of sex workers and/or people who use drugs. These centres for sex workers and people who use drugs do not provide either effective treatment or rehabilitation and the UNCT does not support their use.

¹ See the Ordinance of the Standing Committee of the National Assembly, Ordinance No. 44/2002/PL-UBTVQH10 of July 2, 2002 on the handling of administrative violations.

² See articles 26a and 27 of the 2000 Law on Drug Suppression and Prevention (as amended) and Decree N. 94/2010/ND-CP dated 9 October 2010.

³ See Article 9 of the International Convention on Civil and Political Rights. Due process is one aspect of the protection against arbitrary arrest and detention.

⁴ See Articles 61 and 71 of the 1992 Constitution.

⁵ See Article 39 of the Convention of the Rights of the Child.

6. There is no evidence globally which supports the effectiveness of detention in preventing women who have been detained for selling sex, from returning to sex work after release. Nor is it an effective approach in helping to develop alternative livelihoods.
7. Similarly there is a lack of evidence globally to demonstrate the effectiveness of compulsory detention in reducing relapse rates amongst detained people who use drugs following their release. On the contrary relapse rates in Viet Nam amongst former O6 Centre detainees are repeatedly reported to be very high with a majority of detainees having been detained at least once before.
8. Large scale compulsory detention of people who use drugs and sex workers also limits the effectiveness of the national response to HIV discouraging sex workers and people who use drugs from accessing community based health services, including for drug dependence and for HIV prevention, treatment and care. Where a person is detained, the resultant denial of these prevention and care options (if the full range of services is not provided) will contribute to more HIV infections and deaths from AIDS.
9. Notwithstanding these comments, the UNCT recognizes that there are clear humanitarian grounds for UN agencies, the Red Cross, and other health development agencies to engage with local health authorities and detention centres to ensure detainees have access to basic healthcare services, including for treatment of HIV, sexually transmitted infections, tuberculosis and other opportunistic infections.
10. The UNCT urges the Government of Viet Nam to revise as a matter of urgency, the practice of compulsory detention for people who use drugs and sex workers.
11. There are viable alternatives to compulsory detention for people who use drugs which are far more cost effective in their prevention, treatment and rehabilitation goals and which also facilitate access to other relevant HIV and drug treatment services. The UNCT emphasizes that, as in the case with any other medical procedure, drug dependence treatment, be it psychosocial or pharmacological, should not be forced onto patients. Moreover, in the case of minors, therapeutic and rehabilitative services should be specifically tailored for children and young people as a child welfare and protection measure.
12. While acknowledging the inclusion of a harm reduction approach to provision of sexual and reproductive health and HIV information and services for sex workers in the Government's five year Programme of Action on Sex Work (2011-2015), the United Nations also urges the Government to shift from compulsory detention to voluntary open-learning centres. In particular, for minors under 18 years old who are involved in sex work, the UN strongly recommends to treat them as child survivors of commercial sexual exploitation and to establish adequate programmes to facilitate their recovery and reintegration in communities and families.
13. In addition the United Nations strongly supports the removal of punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV prevention and harm reduction initiatives for sex workers and people who use drugs.
14. The UNCT recommends a full review of the conditions under which people who use drugs and sex workers perform labour in the context of compulsory detention or rehabilitation. The UN stresses that persons undergoing compulsory detention or rehabilitation can only be forced to perform labour if they have been convicted by a court of law following due process (and not by administrative authorities under the control of government, security or law enforcement

bodies); are directly supervised and controlled by the public authorities (i.e. not private contractors); and are not put at the disposal of private individuals, companies or associations.

15. Persons undergoing rehabilitation can work in the context of a free employment relationship. Such a relationship necessarily requires the formal consent of the person concerned and, in the light of the circumstances of that consent, guarantees and safeguards in respect of wages, occupational health and social security that are such as to justify the labour relationship being regarded as a free one.
16. The UNCT will continue to support the Government of Viet Nam to develop and expand voluntary community-based drug dependence treatment services in line with UN principles and harm reduction approaches. The success of the pilot methadone maintenance treatment (MMT) clinics in Viet Nam is recognized globally and the UNCT applauds the Government for its commitment to scale-up MMT service provision in the community.
17. The UN reaffirms its support to assist the Government to address the sensitive issues of drug dependence and sex work.