

Prison Reform with Key Population



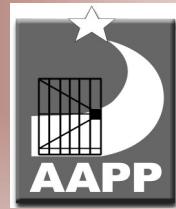
Prison Reform with Key Population Coalition



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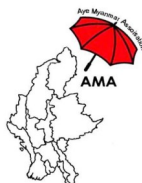
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Prison Reform with Key Population Coalition





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About AAPP

Founded in 2000 by ex-political prisoners living in exile in Thailand, the Assistance Association for Political Prisoners (AAPP) is a non-profit, human rights non-governmental organization based in Mae Sot on the Thailand-Burma border. Since 2012, AAPP relocated in Burma and continues campaigning for the release of all remaining political prisoners in Burma, in addition to providing support and aid mentally and physically to current political prisoners, ex-political prisoners and their families.

In order to alleviate some of the physical, mental and financial trauma caused by imprisonment, AAPP runs a range of assistance programs inside Burma, including mental health counselling for ex-political prisoners and their families.

Through advocacy and lobbying efforts AAPP continually stresses the importance of releasing all political prisoners in Burma as part of the transition towards democracy and national reconciliation. AAPP monitors and documents political cases, prison conditions and violations of human rights.

Likewise, AAPP works together with local, regional and international stakeholders in developing individuals' civil and political rights and transitional justice programs to foster national reconciliation.♦



Unit 1:

Introduction

After nearly half a century of oppressive regimes, the start of democratic transition there has been an endeavor to change the existing standards of institutions and systems to those compatible with basic democratic principles.

During this process, major friction seems to be found in the legislation made by and developed under the oppressive military regimes and deeply-rooted practices of the bureaucratic system enforcing such legislation. Although prisons are significant institutions of the State security sector, they have not been the interest of the general public and most of the players of the democratic transition. This has led to the exclusion of prisons as a separate institution from democratic transition and the continued ongoing human rights violations inside prisons.



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In the prisons throughout Myanmar, the number of the prisoners charged through an undemocratic judicial process has continued despite the move to democratic governance. For comprehensive and prison reform, we need to understand current conditions inside prisons, to inform and shape the process of prison reform.

This report was developed through interviews with key populations including the drug users, vulnerable and marginalized groups of people in normal social life which comprise sex workers, persons with disabilities (PWD) and LGBTI about the conditions they faced in jails as convicted or unconvinced prisoners. ♦

1.1: Introduction (Prisons)

Every country in the world has prisons and they differ only in terms of standards and specific legislation depending on the policy of each State. They stand as a complementary instrument of the rule of law and justice system of a country. However, in some countries, they are used for oppression instead and are places of cruel treatment, where physical and psychological torture routinely takes place, depriving prisoners of their basic human rights, and right to live with dignity.

A prison is considered by a civilized society as a shelter where the offenders of the existing laws, who can affect the freedom and security of other people if they are still in the society at large are held and corrected. It is essential to take into consideration the number of prisoners and general conditions of the prisons in order to judge a nation's development, education and human rights conditions. Therefore, prisons are as a ruler to assess justice of a nation's legislation and its human rights conditions.♦

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1.1.1: About the Prisons in Myanmar

"There are altogether 95 prisons, detention centers and labor camps in Myanmar and their maximum capacity is for 71,000 people, but Major General Aung Thu, the deputy minister of Home Affairs said they can hold 74,153 persons provided with 18 square feet for a prisoner. As the total number of prisoners at the closing time on January 1, 2019 was 1,039,58, there were 29805 occupants more than the maximum capacity and reached up to 140%".¹

The number of prisoners in the prisons in Myanmar has statistically increased. The increase is common in many countries impacting various problems such as health, daily living and personal hygiene. In the report of Myanmar National Human Rights Commission, it can be seen that in the prisons in Myanmar, such problems affect vulnerable key populations more and result in human rights violations including abuses and discriminations.²

In the same report, it's also identified corrupt practices, lack of healthcare services and heavy workload in labor camps.³ In addition, the practice of appointing convict officers to rule the other prisoners due to the shortage of the prison officers is widely used in the prisons all across Myanmar, yet this can enable not only the prison officers but also the convict officers to physically and sexually abuse the other prisoners. It is also noted that the existing prison law and the jail manual of Myanmar were developed during the British colonial rule and are still in use with a few amendments over all these years.♦

1.2: The Importance of the Prison System Reform

Since the structure and operational procedures of prisons are said to reflect the democratic and human rights standards of a country, a strong focus should be given in this aspect to countries which have been in transition from dictatorship to democracy. The government leading the transition has to implement new mechanisms compatible with a new system for the country's economy, rule of law, legislation and governance.

There is a common belief that harshly penalizing criminal offenders and imposing death penalty for very serious criminal offences is a right thing to do. Yet, these punishments result in an increase of arrests and penalties, human rights violation, physical and psychological torture, and discriminatory administrative practices in prisons. In addition to not having the ministry of justice and to the continual enforcement of the related laws developed during the colonial period with the deliberate intention to oppress Myanmar people, penalties applied seem to be far from creating opportunities for rehabilitation, but to oppress the prisoners within a legal framework.

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Currently, in accordance with existing criminal procedures, courts continue to pronounce sentences almost always with hard labor. The term "labor" is interpreted unfairly in prisons resulting long-term negative physical impacts on the prisoners, and the labor camps are the notorious places filled with human rights violations. These punishments lead to questions about the government's respect off human rights.

The prison system reform process can help other parallel reforms related to the justice system, criminal laws and the police manual. Moreover, the society will have greater understanding on the prisoners, and as a result, discriminatory practices and stigma will be reduced, have a better social environment and in general, the rule of law and stability of the nation will also be improved.

In developing countries undergoing democratic transition, the most important threat to the country's development and the fulfillment of human rights is lack of the rule of law.

Due to the poor standards inside prisons, prisoners are badly affected by the prisons' administrative practices, so much so that for some the prisons act as training grounds for criminal activities. Only when the prisons can be transformed into a true correctional center for the prisoners where they can improve themselves psychologically as well as intellectually and be given proper opportunities to rehabilitate into society will crime rates will be lowered.

The prison system reform is initially so costly that it is not appealing to any government. However, the prison system reform and making appropriate changes of the related laws and procedures will minimize the use of tax-payers' money for the prisons in the long run.

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According to U Min Tun Soe from the prison department, under the current budget allocation, the prisons had to spend the daily meal allowance of 600 kyat (\$ 0.43) for each prisoner until December 2016 and it has been increased up to 975 kyat (\$ 0.73) since January 2018.⁴ These statistics show the government has to spend 89.7 million kyat (\$ 67160) per day (for the meals of the prisoners) in all the prisons. If the prison population can be dropped by 26000 and kept still at maximum capacity, the government can reduce the expense of 25,350,000 kyat (\$ 18,988) per day and 9.25 billion kyat (\$ 6,930,620) in one year and can save 28% of the current expenses. The budget saved by reducing the prison population can be used to improve the living conditions of the prisoners and the prison staff and to make the prisons to be better workplaces. By doing so, human rights situations can be improved, and corruption can be eliminated at the same time.⁵ Since it can also be supportive of the rule of law and development of the country, the prison system reform is a must in Myanmar.♦

1.3: The Role of Key Population

1.3.1: Definition of Key Population

Key population is defined as very vulnerable groups of HIV positive and potentially HIV infected people who are easily influenced by the legal system or by the behaviors of the society. From now on, the term "Key Population(s)" will be described as KP for short.

According to the World Health Organization (WHO), KP includes LGBTI, prisoners, people who use drugs, sex workers and transgender. KP mentioned in this report refers to the homosexuals, drug users, sex workers and transgender in the prisons all across Myanmar.♦

1.3.2: The Status of KP

The higher infection rates of HIV/AIDS disease among KP becomes a big health burden in many countries around the world. According to UNAIDS, 40 to 50% of HIV infected people are KP and those who have relationships with them⁶ and they are generally discriminated. Discrimination and gender-based violence are negative consequences of political oppression and social and religious segregation. This situation pushes HIV positive KP further away from getting proper treatment and also weakens the preventative measures for those who are not infected. One of the Sustainable Development Goals (SDGs) to build a world of zero HIV/AIDS will never be possible without any specific prevention or treatment plan for KP. In order to address the situation, the USAID has done research, policy development, preventative measures and physical and psychological treatment programs throughout the world in a close co-operation and co-ordination with regional and national governments.

Myanmar has also taken special measures and worked together with other ASEAN countries to get to Zero HIV/AIDS. On 20 April 2018, Myanmar hosted ASEAN Cities Getting to Zero, Regional Consultation Meeting at the Royal Hinthar Hotel in Mawlamyine, Mon State. At the meeting, H.E. Dr. Myint Htwe, Minister for Health and Sports (MoHS) of the Republic of the Union of Myanmar said the objectives

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of ASEAN cities getting to zero(G2Z) project were zero new HIV infections, zero discrimination on HIV positive population and zero AIDS related deaths.⁷ The minister continued that the regional governments have worked together, and accelerated prevention and treatment plans efficiently and effectively in ASEAN cities since 2011. Besides, in June 2019 at the Melia Hotel in Yangon, the MoHS held a forum and presented the key findings of the assessment on HIV infection, prevention and national HIV/AIDS eradication project.⁸

In the prisons all across Myanmar, about 50% of the total occupants are the prisoners charged with consequences related to drug use.⁹ Moreover, there are many LGBT and sex workers facing various forms of discrimination in the society. They are further discriminated in jail, and the Myanmar National Human Rights Commission (MNHRC) highlighted in the reports on MNHRC's prison visits that proper healthcare services for HIV positive KP in the prisons are totally inadequate.¹⁰ It is now clear that special healthcare services for HIV positive KP and special measures of prevention for zero new infections should be in place in the prisons.

Myanmar has developed and implemented the National Strategic Plan for HIV/AIDS (2021-2025) and Action Plan to Getting to Zero New Infections in 2030,¹¹ but there are no special measures for highly vulnerable KP, nor the HIV/AIDS population upon release from the prisons. After release, HIV positive KP will go back into the society and they can be the carriers of the disease and worsen the situation. Therefore, it is critical to change the prison and justice systems with a serious consideration for the conditions of HIV positive KP in the prisons. ♦

1.4: Approach of the Research Report

1.4.1: Background and Rationale

Myanmar was rule for nearly five decades under various oppressive regimes. By the 2008 constitution, multi-party democracy elections were held in 2010 and in the early 2011 started to get on the way of democratic transition by transferring the power to the civilian government. Yet the military still maintain power due to the 2008 constitution. During the transition, the country has made a lot of changes to undemocratic institutions, systems and laws. In order to improve democracy and human rights situation in general, there is an urgent need to change all the administrative practices applied by the previous oppressive regimes which violated and did not respect the rights of the people. The prison system is one example of such a bad practice. The MNHRC has made a series of visits to the prisons and reported to the Pyidaungsu Hluttaw and the Ministry of Home Affairs (MoHA) about the conditions of human rights violations inside the prisons, but it's still far to see an institutional reform. The Ministry of Home Affairs (MoHA),

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administrator of the prison department, is now endeavoring to amend the prison law. In order to change the existing prison law and jail manual to reflect and respect the international human rights and prison standards, the CSOs working for human rights and prisoners' rights keep advocating all the respective stakeholders.

This report aims to serve as an advocacy tool about the conditions of the vulnerable KP prisoners to consider in the prison system reform and also to build an institution respecting the human rights during Myanmar democratic transition.♦

1.4.2: Research Methodology

This research was carried out through a series of qualitative interviews in November and December 2019 with the organizations working for KP and former KP prisoners, themselves. In 2019 November 11 and 12, AAPP organized a two-day workshop entitled "The Role of KP in the Prison System Reform" with the CSOs working for KP and organizations comprising ex-political prisoners and there, in focused group discussions, they foregrounded the conditions of KP in jail and key considerations for KP in the prison system reform. Again, on 7 December 2019 at Man Myanmar Hotel in Nay Pyi Taw, AAPP organized a workshop on the Prison System Reform and the Role of KP in Jail with parliamentarians, ex-political prisoners and the CSOs working for KP.

Researchers interviewed altogether 23 people including sex workers, drug users, LGBT and non-KP ex-prisoners released from Yangon, Bago, Mandalay and Taunggyi prisons and prison officers and psychiatrists.

Furthermore, researchers studied briefing papers for the prison system reform, reports from the CSOs working for KP, reports published by the MNHRC, the prison law and Burma jail manual, the Suppression of Prostitution Act, the Narcotic Drugs and Psychotropic Substances Law, the Police Act, reports on KP by USAID and WHO and information released by the MoHS and the prison department of MoHA.♦

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1.4.3: Limitations

Similar to the other research, this report also has limitations including time and budget constraints, infeasibility to visit officially to any of 95 prisons and labor camps around Myanmar, impracticality of interviewing all the prisoners released and inadequacy of the information publicly released by the prison department. Such limitations make this report less descriptive and representative of the conditions in all the prisons and labor camps. Follow-up studies may be needed to have a more comprehensive picture by collecting information from as many ex-prisoners as possible. Nevertheless, the findings presented here in this report represent the conditions in some major prisons in Myanmar namely Insein and Mandalay Central Prisons, Meikhtila, Taung Lay Lone, Loikaw prisons and Mandalay(Htonebo) labor camp and a detention center alias Bago prison, and so they can closely describe the conditions of KP in all the prisons. Last but not least, as they are again reinforced by other evidence-based data and information, this report will provide strong facts to be taken into consideration in the prison system reform process. ♦

1.4.4: Structure of the Report

Section 2 of the report reflects social and economic conditions of the key focused group in this report known as KP before their imprisonment, the impacts of law enforcement bodies upon them and their views and opinions on the prisons and labor camps in Myanmar. Section 3 describes the experiences of KPs in jail. Section 4 presents the conditions faced by KP in the society upon their release and the impacts of imprisonment on their daily living. Section 5 concludes our research findings on the existing laws and how they reflect on KP and also gives key considerations for KP in the prison system reform.♦

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Section 2:

Living Condition and Emotions of KP



2.1: Living Condition of KP

2.1.1: Sex Workers

Sex industry has existed in the world since long ago and in certain countries, prostitution is legal and one of the tourist attractions.¹² when the sex workers get arrested, they can enjoy a legal system protecting them from life-long consequences, and proper rehabilitation programs, healthcare services and vocational training programs.¹³

The sex industry remains quite common throughout Myanmar at present. Myanmar tries to suppress prostitution through legislation based on religious and cultural beliefs. According to the UNAIDS statistics, there are around 66,000 sex workers in Myanmar.¹⁴

Poverty is the key factor to push women into sex trade, followed by lack of opportunity for education. It is seen that they are the breadwinners of their families. Most of the sex workers used to be married, and death or illness or inability to make earnings of their husbands push them into this line of business with a purpose of covering their family expenses. In Myanmar it's difficult for a person who is uneducated and with no capital investment to find a job or make a proper income.

As the police regard sex workers as a source of revenue, and they can arrest them anytime and anyplace, the latter are so afraid of the police and do not even want to face with them.♦

" I entered this business due to my family's financial difficulties and I am the only breadwinner. Although I wanted to change another job, as I didn't get enough income for my family, I continued this job".

(A 37-year-old woman who received one-year imprisonment under Section 3(A) of the Suppression of Prostitution Act, 1949 in Bago prison in 2017)

"My husband got injured at work and could no longer work and I started to wash clothes in households. I confided to one of the house owners about my financial hardship without knowing it was a brothel. Then, I joined the business with them".

(A 32-year-old woman who was charged under the Section 3(A) of the Suppression of Prostitution Act, 1949 and remanded in custody for 8 months in Obo prison)

2.1.2: LGBT

Due to religious and cultural norms in Myanmar, there is high levels of discrimination against transgender communities and they are not legally recognized. LGBT are strongly discriminated by the society. In Myanmar movies and media, there are also very biting satirical clips about them. In schools, they are discriminated by the teachers and humiliated by their peers which impedes their interest in education in the long run and leads to become dropouts and keeps them in a lowly educated sphere of the society.

"When we engage in MSM, we always bring condoms with us and it's a big crime when the police find out. Their informants occasionally check our bags when they want money at the expense of our freedom. Some are even apprehended while stopping a taxi under the lamp post, under Section 30 (D)".

(A 27-year-old LGBT who received 3-month imprisonment under Section 30(D) in 2019)

In terms of job opportunities, transgender communities are often objectified and societally stigmatizes into working as makeup artists, models, fashion designers and mediums. Whereas many other businesses are reluctant to employ LGBT populations.

Due to the criminalization of LGBT activity, these populations fear arrest and prosecution at any moment by the police under Section 30(D) and all the sub-sections of Section 35 of the police act are easily applicable to arrest them. They are also aware they will suffer discrimination inside prison.♦

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2.1.3: Drug Users

Nowadays in Myanmar, problems related to drug use is a major national problem and rates of consequences related to drug use among youth has significantly increased. This is mainly due to weakness in law enforcement, a high rate of corruption and a scarcity of job opportunities and lack of other programs for youth.

By continue arresting drug users, prisons will become even more overcrowded. Drug users are at a higher risk of being HIV positive already, and in prisons, there is a higher chance of HIV transmission. When released, the effects of prison overcrowding could generate negative impacts on wider society. The need for money to buy drugs if they have not been rehabilitated means that further crimes may also be committed and challenge the rule of law.

At the presidential inauguration of H.E. U Win Myint, President of the Union of Myanmar on 29 May 2019 at the Union Parliament, U Win Myint stated there would be zero tolerance against drugs dealing and trafficking.¹⁵ Following this declaration, a special complaint center against drugs was established and a special taskforce was formed to eliminate drugs under the direct supervision of the president's office.

Although there are methadone clinics providing the medicine for those who are trying to quit drugs, after the establishment of the special complaint center, there are incidents of arrests and interrogations upon those who come to the clinics for methadone by local police officers and no legal protection is available for them.¹⁶ This means they don't feel safe to get visit these centers to receive medicine or services from the clinics or from service providing organizations. The police stations, detention centers and prisons have no methadone clinics and so they are very challenging environments for hell for those who are trying to quit drugs and drug users view the police with fear and suspicion.♦

" The 5 days at the police station was hell for me, the situation was much better in jail. Since I didn't get methadone under custody, I felt really painful. I vomited even when I had water and if I didn't take water, I was belched all the time. I had a stomachache. Although I had 60,000 kyat with me, they called a doctor for me only after about 3 days".

(A 45-year-old drug user who was quitting drugs and received 5 year imprisonment under Section 15 and 16 in Insein jail in 2017)

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Unit 3:

Condition Faced in Prison



3.1: condition About Acquiring the Prisoners' Rights and Treatment

The existing prison administration in Myanmar is still run by the Prisons Act of 1894, also known as India Act of 1894 since the colonial time.¹⁷ It is also ruled by manual of rules for the superintendence and management of jails in Burma also known as the jail manual including detail procedures of prison management which was revised in 1950.¹⁸ According to the Prison Act and the Jail Manual, prisoners are often appointed to rule the other prisoners.¹⁹ They are called convict officers in the Burma Jail Manual and its Chapter VI from the article 275 up to the article 297 states explicitly duties, reward and eligibility of a convict officer.²⁰ Although there are still convict officers in Myanmar prisons today, they are not appointed by the eligibility stated in the Burma Jail Manual, but by their close relationships with the prison officers and by their ability to make money, and therefore, there are high rates of corruption in the prisons.

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"Due to insufficient prison staff, convict officers rule the prisoners and the highest is the chief of the convict officers which is three-bar convict officer. Some are worthy, but others get the posts by bribing the prison officers. The convicts from the military are automatically appointed to the posts."

(A 44-year-old former poisoner who use drugs sentenced to 24 year under Section 15, 16 and 19/21 in Taung Lay Lone prison in 2019)

Many KP who are under custody or imprisoned are normally poor, and their families cannot come regularly for jail visits. Moreover, they are marginalized both by the prison officers and convict officers. Their rights to healthcare, to choose the type of labor, to go to the outside labor camps and to live with dignity in jail are further deprived not only because they are poor, but also because of their cases and being LGBT, this discrimination means they are facing worse situation in every prison.

As the prisons are overcrowded and they cannot classify and keep the convicts separately depending on their cases or types of punishment as stated in the prison act and jail manual, bullying of senior inmates and criminals frequenting the jail continues until today. The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) also known as the Mandela Rules²¹ is a key international standard for a prison system which states the minimum standards for any prison to apply. Rule 1 of its principles states

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*"All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times."*²²

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment is also an important UN Resolution and its Principle 1 states

*"All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person".*²³

However, in the prisons in Burma (Myanmar), how the prison officers and convict officers treat the prisoners is dependent on the amount of bribe paid and so KP who cannot afford to pay these bribes are often subject to inhuman and degrading treatment.♦

" When new inmates arrive, they are asked about their cases, then discriminated. It is worse for those who are charged under Section 3(A). Sex workers, thieves and drug users are also discriminated as they can't pay. They have to wash the clothes of convict officers and massage them."

(Interview with a female former political prisoner)

3.2: Healthcare

It is found healthcare in the prisons are totally inadequate. While in the A-class prisons in Myanmar, there is an assistant surgeon of a staff officer level, but in B-class prisons there's a two-star medical assistant and in C-class prisons, there's one-star medical subordinate for healthcare of the prisoners. In Insein central prison, there is a 50-bedded hospital and a doctor of an assistant director level. Although a retired medical officer said all the new inmates had to undergo a medical check on the following day of their admission, many ex-KP prisoners said there was no such practices in the other prisons. Rule 24(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) states *"The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary healthcare services free of charge without discrimination on the grounds of their legal status"*.²⁴ Yet according to the interviewees, medication in the prisons in Myanmar is totally inadequate, and so prisoners have to order medicines from outside through their family visits. The participants in the Prison System Reform workshop organized by AAPP in Naypyitaw said that as the provision of healthcare in the prisons in Myanmar is really poor, prisoners suffer from heart diseases, malaria, hypertension and TB. In addition, due to lack of personal hygiene, inadequate water supply and sanitation, they have scabies, skin diseases and

asthma.²⁵ Moreover, there is a delay when asking permission from the authority to order necessary medicines or to receive necessary treatments from outside. In the jail manual, it is said "*When a prisoner (convict or under trial) requires surgical or other attention, for which the necessary facilities are not available at the jail, he may be sent to the Civil Hospital for treatment*".²⁶

It is said if any prisoner is required to be sent to the Civil Hospital, the prison superintendent has to ask permission to the prison department, and in the case of a high- security convict, the approval by the Minister of Home Affairs is required.

Rule 27(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) states "*Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals*".²⁷ But an inmate shared his opinion about the existing healthcare services in the prison:♦

"Prisoners lose their human rights because they are sent to the civil hospitals only at the last minute of their life. Before sending, permission from the different levels is required". (A minor drug offender who received 10-year imprisonment under Section 19 in 2014)

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3.2.1: Healthcare Services for HIV Positive Prisoners

In some prisons like Insein, Mandalay and Tharyarwaddy, there are separate facilities for HIV and TB infected convicts, but most of the other prisons don't have these separate facilities, and they are mixed with other prisoners. It is not because of the purpose of preventing social stigmatization or marginalization against them, but because of the overcrowding in prisons, and so due discrimination of other prisoners is a result.

A former inmate from Mandalay prison said HIV, TB and Hepatitis-C infected convicts are put together resulting cross infections and worsening health conditions.

Rule 24(2) of SMR stated: *"Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence".*²⁸ However, in the prisons and labor camps throughout Myanmar, there is an inadequate ART treatment for HIV positive convicts.

" I have seen those taking ART treatment. Some are suffering from severe headache for hard to get ART. It was not easy at all for us to get it."

(An interview with an anonymous MSM imprisoned in 2015)

Most of the prisons contact HIV Control Division and health NGOs for ART treatment, but as there's not adequate number of medical officers, getting a proper dose of ART for HIV prisoners with a doctor's recommendation becomes a challenge. Besides, some HIV positive inmates in the beginning of their imprisonment or under trial period do not get ART and as a result face worse health condition.♦

" We try to help HIV positive prisoners get ART. If they have a medical record, we contact the previous center where they used to get medicine and if they don't, we provide them cotrimoxazole at first and if in Yangon, inform to HIV Control Division and then get ART in one week."

(A retired health officer from Insein Central Prison)

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3.2.2: Drug Users

Drug users in the prisons in Myanmar constitute about 50% of the total prison population.²⁹ Although there are many drug users, there is no proper methadone clinic or rehabilitation center in prisons.

"There's no rehabilitation center for drug users in jail, nor could we provide methadone. When they suffer from withdrawal symptoms, we hospitalize, give sedatives and keep them from 3 days to a week in the hospital."

(An interview with a retired health officer from Insein Central Prison)

" When we have withdrawal symptoms, it's almost dying. We hit the head against the wall and punch the wall. The prison staff don't do anything. We help each other by providing pain killers ourselves to relieve that."

(An interview with a 44-year-old drug user who received 24-year imprisonment under Section 15, 16 and 19/21 in Taung Lay Lone Prison)

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In WHO's publication entitled "Drug Users in Prisons: Managing their health problems" states that an effective Pharmacotherapeutic treatment for drug users in prisons should include: (1). To screen the inmates for drug dependence and psychiatric disorders using, for example Addiction Severity Index (ASI) and Diagnostic Interview Scheme (DIS); (2). To provide each of them required amount of methadone due to a timetable; (3). To continue the treatment throughout their imprisonment and refer them to methadone clinics outside upon their release.³⁰

According to health standards, consequences related to drug addiction is a chronic disease and needs long-term treatment, and a methadone therapy is one of them.

"The reason why drug users can't quit drugs is their inability to overcome withdrawal symptoms, particularly those with injection practices. The main reason of methadone therapy is to prevent HIV infections caused by unsafe injection practices as it is an oral treatment. Moreover, a daily dose of methadone can remove any withdrawal symptoms, and by taking a proper treatment the addicts feel that they are no longer drug dependence. Methadone is a prescription drug known as opioids. It can remove drug dependence and related withdrawal symptoms and wipe out unsafe injection practices. Furthermore, as it is systematically manufactured, it has little, or no negative effects compared to drugs at hand. Those who undergo methadone therapy can work better, save money and do not commit related crimes".

(An interview with a psychiatrist)

Key Population

Methadone therapy can also help the drug withdrawal symptoms and reduce addiction, it can also prevent infections caused by needle-sharing and can reduce drug-related crimes, as well.

As there's no proper treatment program for drug users in prisons, they suffer from more psychological and physical health hazards.

Moreover, some inmates try to bring drugs illicitly into prisons during the court trial, and there's also drug trafficking by the prison staff. Therefore, there's a very high rate of HIV infections in prisons due to needle-sharing practices.


" There are people who use drugs. It is really frightening when they are suffering from withdrawal symptoms. A needle costs 8000 kyat in jail. They use the needle which was used by HIV positive prisoners. Even though they know they will be infected, they use drug at the expense of their life. Eight out of ten prisoners transferred from MyitKyina prison are HIV infected."

(A minor drug offender who received 10-year imprisonment under Section 19 in 2014)

Due to lack of proper therapeutic procedures in prisons for drug users, they continue to be the same upon release, and there's a higher crime rate. It can be seen easily just by looking at the existing number of drug users in prisons.

Therefore, it is very important in the prison system reform to comply with WHO's instructions for drug users in prisons.♦

3.2.3: Condition of Imprisoned Sex Workers



The prisons in Myanmar are a place of marginalization for female sex workers. As most of them are from poor families who cannot come for jail visits and even sometimes their families don't even know they were apprehended, they are one of the most challenged group of inmates. There are provisions for the treatment of women prisoners in the jail manual, but no specific provisions for sex workers.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)³¹ state the standard minimum rules for the treatment of women prisoner and due to their particular vulnerability, account shall be taken of their distinctive needs in the application of the Rules. Among the women prisoners, sex workers are a highly vulnerable group of inmates and instead of getting special attention or care, they are marginalized on the grounds of their legal status even by other women prisoners once they are in jail. When new female inmates come in, they are asked about their legal status and if it's Section 3(A), they are even more marginalized than others of theft and drug-related offenses.

It is noticed that they are discriminated not only by the prison officers, but by the other prisoners.

Key Population

"When we have to say out loud our registration number at the main gate, as I spoke in a soft voice and I was shouted that I was a sex worker who spoke generally loud and that I had nothing to be proud of and I would go back into sex industry upon release."

(A 32-year old woman who spent 8 months in custody with Section 3(A) in Obo prison in 2017)

In the women confinement, sex workers are usually placed near the toilet and assigned to clean the toilet. As their families can't come for jail visits, they have to clean the toilet against their will and provide services to other well-to-do female inmates in order to make money to have a convenient living in the prisons.

"They are usually placed near the toilet and assigned to clean the toilet. As their families can't come for jail interviews, they are assigned to toilet cleaning task for the confinement and to provide services to other inmates in order to have a convenient living in the prisons. HIV positive prisoners are provided with usual medication by a medical subordinate in the confinement."

(An interview with a retired health officer from Insein prison)

Moreover, sex workers are usually called not by their real names, but by their legal status, this is done with the purpose of degrading and shaming them. As there's no control or penalty applied by different levels of prison authority against such acts, they are a psychologically most tortured group in prisons.


Prison Reform with

In the jail manual, it states that the medical officer shall issue such general or special orders as are considered necessary for the search and examination of female prisoners admitted to jail. It also states that in cases where a female prisoner is reasonably suspected of having secreted forbidden articles on her person, she shall be required to strip in the presence of a wardress or a paid female or female convict.³²♦

"In the prison, there are discriminatory practices everywhere. We are poor so it's really hell for us. Previously meat was given only once per week and we had to find thrown-away plastic bags containing little curry because we wanted to eat with curry essence. Now it's much better that we can have meat four times per week and the situation of well-to-do inmates can buy us as slaves is now reduced. It is not like in the past, now at the main gate we are searched even inside our sex organs. I was in jail again after some time and was surprised by the changes. In the confinement, if we can pay, we will get a good place, but if we can't, we won't get a good place to sleep. Once you are there, you need to buy a space. If you can't pay, you will have to sleep here and there, but if you can pay, you will have a fixed place over day and night. If your family doesn't come and pay or if you don't have any money with you or with your legal status, you will surely have to sleep near the toilet. It's a tradition in jail. Only when you have new inmates who can't pay, either, you will have to move further away from the toilet. There's no distinct marginalization among the inmates, but by the wardresses. If we make any mistakes, we are beaten heavily. The convict officers are even worse. The wardresses are more or less the same until today. They repeatedly name us prostitutes. Previously they treated very badly upon thieves and sex workers, but now it's a little bit better. Once we are admitted to jail, we have to undergo a medical check including a viral load."

(A 38-year old woman who has been in jail two times and was in custody under Section 3(A) and (B) in Insein prison in 2019)

3.2.4: Living Condition of Imprisoned LGBT



LGBT are mainly apprehended for offences under Section 30(C) and (D) of 1899 Rangoon Police Act. They are a group of inmates who are badly marginalized in various forms throughout their imprisonment. During the so-called Operation period, the police apprehend them without any excuse, whether they commit an offence or not. When an LGBT person is together with another male at the time of apprehension, the police only arrest the LGBT person and let the man go. Besides, their sexuality is not acknowledged or respected, but always scorned and mocked. They said that they also faced with various forms of human rights violations and torture by the police. What is worse, as there's no specific custody for MSM in the police station, they are put together with male detainees and abused again by them. Since they are apprehended during the operation period, there's no proper trial in court but direct sentences. It can be seen until today that the males detained during the operation period are only liable to pay fine at the court under Section 41/14, but LGBT are charged with Section 30(D) and sentenced up to 3 months.

"They were apprehended on July 10, 2013 and altogether 28 LGBT were arrested the same night under the so-called Operation. One of them was talking with the boyfriend at the time of arrest and the police let the boyfriend go. 7 or 8 of them who were brought to the Regional Police station were asked to dance, take off the outfits and to clean the shoes of the police. They were touched with stun batons in the breasts and stripped naked and forced to tell their gender. The police jokingly said that they would free them only when they confessed, they were males. They also said if LGBT wanted to contact their families, they would have to let the male police touch their breasts and the female police shave their eyebrows.

In the police custody, they were threatened by other detainees to order money from the families. In some occasions, they were even kicked in the face. The police said nothing. There, they had no chance at all to contact their families." (An LGBT rights activist)

Article 1 of the Universal Declaration of Human Rights says: "All human beings are born free and equal in dignity and rights;" Article 2 describes non-discrimination and Article 11 states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty....."³³ However, LGBT can enjoy none of these rights in Burma (Myanmar).

Key Population

LGBTI status is not accepted in the prisons. Although there's a special confinement for LGBT in Insein central prison, it is not found in most of the other prisons. Some interviewees said LGBT are put together with HIV infected convicts in some prisons. Even though they are kept separately, it is not because in recognition of their sexuality, but because to avoid related social problems. In the prisons, LGBT have to face all forms of psychological and physical abuses of both the prison officers and other convicts. Moreover, as they are put together with male convicts, they become the victims of sexual abuse and highly vulnerable to HIV infections because no use of condoms is allowed. According to WHO's 2015 data, HIV infection rate among MSM is 4.3% in Southeast Asia and 14.9% in Africa. And due to high possibility of HIV infections in prisons, convicts are allowed to use condoms in 28 countries in the world.³⁴ But in the prisons in Myanmar any form of sexual intercourse is not allowed. However, some interviews reveal that there are illegal sexual misconducts among LGBTI in the prisons of Myanmar.

" There's no special confinement for MSM and TG, but there's a separate room for us where we are put together. Being a homosexual, I was not marginalized, but sexually abused. It's often against our will, and we were forced to. During the last three months, I was raped three times, but it was comparatively less than my friends who looked more beautiful. Once I was forced to have sex near the bathing place against my will. Sexual abuses were mostly committed by the prison staffs."

Prison Reform with

At the main gate of the prisons, the prison officers search and examine the prisoners and new detainees admitted to jail. This is based on biological sex without respecting sexual inclination. Assigning the labor is also based on it. Besides, LGBT are forced to dress as to their sex and to have a haircut like men. Such acts cause more psychological harms and are a grave violation of basic human rights.³⁵

" When I was admitted to Mandalay prison, I was searched even inside my anus. They continue to do so until today. We were then asked to sit in standard posture and to raise the hand if there were gays, so I did. When they checked, as I had no boobs, I was suspected. Then, they cut my hair and sent directly to the LGBT confinement." (A 26-year old transgender apprehended and sentenced with unknown charge)

Corruption is very common in Myanmar and it is a usual practice in the prisons and causes very negative impacts on the poor and marginalized groups of inmates. According to some victims, there's even a form of human trafficking in the prison.♦

" LGBT are not kept separately in jail, they are put together with male convicts, instead. If we want to live like a woman in jail, we have to pay one or two packs of coffee or about 10,000 kyat. The prison officers keep their eyes off it. There is a form of sex slavery and market in jail. The newly arrived LGBT are sold at 200,000 or 300,000 kyat to the buyers."

(A minor drug offender charged with Section 19 and sentenced to 10 years in prison in 2014)

3.3: Provision of Food and General Living Condition

3.3.1: Provision of Food

According to the interviewees, there's no discrimination in provision of food in the prisons. While previously meat was given only once a week, and nowadays it is given four times a week, it is still said that food provided in the prisons are not healthy.

"For breakfast, we have fried rice or congee and for lunch we sometimes have beans and vegetable soup, but mostly watery vegetable soup and sour watercress soup. Rice is sometimes very sticky or sometimes very hard. Anyway, food provided inside is less healthy than outside food. Everyone, either rich or poor, is equal and has to queue for food and no one gets extra."

(A 30-year old sex worker from Bago prison in 2018)

Prison Reform with

Rule 22(1) of the Standard Minimum Rules states: *"Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."*³⁶ Burma Jail Manual also prescribes the quality and weight of food for laboring prisoners, non-laboring prisoners and un-convicted criminal prisoners, etc. in detail.³⁷ Besides, a special meal program for Mohamadan prisoners observing the Ramzan fast and a subjoined dietary scale for patients in hospitals are also prescribed in it.³⁸

" Starting from January 1, 2018, meat is provided four times a week on Friday, Sunday, Tuesday and Wednesday. The jail superintendent has poultry farms for the welfare of the prison, and we are usually provided with chicken. Meat provided should be 7 tickles in weight, but always less than this. Provision of food is always lesser than the standard dietary scale. Often, we don't even get fish paste. Fried rice and congee are provided for breakfast in the morning, but in quota." (A minor drug offender sentenced to 10 years under Section

Although a retired medical officer from Insein prison said that there's a special diet scheme for pregnant women offenders and children, some of the former female prisoners said there's no such thing so they have to help each other. In the Bangkok Rules,³⁹ there are specific rules for provision of food and healthcare services for pregnant women offenders and children, but the prisons in Burma (Myanmar) always fail to comply with them.

Key Population

A retired officer from the prison department said that sanitary pads are adequately available in Insein prison, but some female interviewees said that they didn't get them when they needed in other prisons, so the other female prisoners helped them or bought from outside by bribing the female prison officers. All of the former female prisoners interviewed unanimously said that sanitary pads are not available at all for women offenders in custody.♦

3.3.2: General Living Condition in Prisons

Currently the prisons in Myanmar are hosting much more than their maximum capacity so the general living condition is highly overcrowded and unhealthy. Rules for accommodation of the United Nations Standard Minimum Rules for the Treatment of Prisoners prescribe all sleeping accommodation shall meet all requirement of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation⁴⁰ which the prisons in Myanmar fail to comply with. There, the convicts have to lie down in semi-prone position at sleeping time and when they go to the toilet, they have to give up their sleeping place to others. Such a situation can easily lead to infections of scabies and other skin diseases.

Prison Reform with

" At night we have to sleep in semi-prone position and when you go to the toilet, you lose your place. In Lashio prison it costs 400,000 kyat for a decent sleeping place (approximately 2 feet wide) and 300,000 in Myit Kyi Nar and 150,000 in Meikhtila. In Mandalay prison, it cost 100,000 kyat for a window space in 2013."

(A minor drug offender sentenced to 10 years under Section 19 in Mandalay and Meikhtila prisons in 2014)

Under such an overcrowded living condition, female offenders of sex workers are further marginalized because most of their families can't come for regular jail interviews or they can't afford to bribe. What is worse, being sex workers, they are usually placed near the toilet resulting poorer health compared to others, particularly for HIV positive inmates to get other viral infections more easily.

Those charged with this offence have to sleep near the toilet. I also had to sleep there."

(A 30-year old sex worker sentenced in Bago prison in 2018)

As mothers with newborn babies are not provided a specific accommodation, they have to face with physical, psychological health problems. They are particularly vulnerable to hepatitis, tuberculosis and other skin infections.

Key Population

There are wooden mattresses in the sleeping accommodations in prisons, but as there are many bugs, the convicts are usually infected with scabies. And as they are not provided with adequate medication, scabies is very common in female sex workers and LGBT who don't have regular jail interviews.

In terms of living condition in prisons, LGBT don't have equal status with other inmates. It is said they are kept in a separate confinement and usually locked and so they are further marginalized in prisons. Besides, in the prison laws of Burma (Myanmar), there's no specific provision for LGBT.♦

"Once they are admitted to Mandalay Obo jail, they have to declare their gender and LGBT are kept in a separate confinement with doubled perforated metal walls. As it is part of the prison for male convicts, males can go out and work freely due to the daily prison schedule, but LGBT cannot. They are brought to the infirmary or hospital only when they need to get medical treatment."

(An LGBT rights activist)

3.4: Rehabilitation Measures

In the prisons in developing and authoritarian countries, there is no adequate provision of healthcare, no prison laws meeting international standards or respecting human rights. Instead, there's bribery and corruption resulting physical and psychological harms for all prisoners. Besides, authoritarian regimes always consider the prisoners as criminals, and make them stigmatized so it is difficult for the prisoners to reintegrate into the outside society upon release.⁴¹ Under these circumstances, KP have to face with additional challenges, particularly discrimination against sex workers, lack of recognition of LGBT and shaming and degrading treatment on them which cause very negative psychological impacts.

" I never want to be there again. Prison is really hell."

(A 32-year old woman charged with Section 3 (A) and spent 8 months in custody in Obo prison in 2017)

Key Population

" I now hate the police. I don't wanna see or talk to them. One good thing is I know about them now and happen to study laws. One bad thing is I am afraid to see them and scared. Upon release, I have been affected more psychologically than physically."

(A 26-year old transgender apprehended and sentenced with unknown charge)

Included in the objectives of the draft prisons law submitted to the Union Parliament in 2015 is the objective that prisons are not to punish prisoners, but to change them physically and psychologically to become good citizens.⁴² Yet there's no counseling program in the prisons for convicts with infectious diseases including HIV. In Insein prison, there's a counseling program for sex workers, HIV and TB infected inmates conducted by Yangon General Hospital, but it's not on a regular basis and done only in large groups and so it may not be so effective.

The former prisoners also said that there's no vocational training program in the prisons for them to live in dignity and to secure their livelihoods in society upon release. Despite a special education program for the student convicts who want to continue their education in jail, this is not provided in all the prisons.

"I have to embroider in jail. Older inmates have to make buttons. The students are asked if they want to continue their education and the prison administration arranges for them if they want. But there's no such thing as vocational training for us to get a job after being released."

(A 37-year old woman sentenced to 1 year

Generally, most of the jobs inside the prisons are not applicable nor useful in the outside world. It may push the former prisoners back into their previous lives. Since there's no rehabilitation program in the prison system for the prisoners to reintegrate into the society, they may highly reoffend the criminal acts committed in the past.⁴³

1894 Burma Jail manual states that there shall be a library in every jail and literate prisoners shall read to illiterate prisoners,⁴⁴ but currently there's no library in every prison or even in prisons with libraries do not systematically keep all literature for the use of the prisoners.

" Meikhtila prison has a library corner called Sar Pay Yay Chan Sin, but there are only fictions, no literature."

(A minor drug offender sentenced to 10 years under Section 19 in Mandalay and Meikhtila prisons in 2014)

Reading plays an important role in behavioral change and enhancement of knowledge and learning of the prisoners. And it is considered essential for lowly educated sex workers, LGBT and drug users.♦





Unit 4:

Making a Living and Emotions Upon Release

After being released, the former prisoners may feel down among families, friends and neighbors. Some understand and support them, but some avoid them. There's discrimination depending on the charges. The society is generally reluctant to work together with ex-prisoners', or to give them a place in the public sphere or to socialize with them, either.

"An ex-prisoner has challenges in social relations. There's a lot to consider giving him/her a place among others as an ex-prisoner. For instance, it was really controversial in selecting my ex-prisoner friend on a magazine cover."

(An LGBT rights activist)

"After release, it takes about 3, 4 to 5 years to recover. The society might be afraid or suspicious of the offences we committed. For example, you committed a theft, people would think you would steal again and keep an eye on you."

(A minor drug offender sentenced to 10 years with Section 19 in Mandalay and Meikhtila prisons in 2014)

Upon release, former sex workers have thought of changing their career, but many feel that they have to restart their lives from the very beginning, and due to lack of capital, education and professional skills they have to go back to their previous job. Their former friends and bosses also lure them back into it.

Key Population

"After being released, I go back to the same place and take up again the same job. Nothing changes in particular. Although I wanted to change another job, I have challenges, so I just continue as before."

(A 37-year old woman sentenced to 1 year under Section 3(A) in Bago prison in 2017)

"When I was in prison, I had some ideas about new jobs after release, but when I am out, I have to do it again due to financial difficulties. The prison department never trains us till the end. They teach us only one step, for instance stitching, sewing and beating separately even in making a towel. As we weren't trained any vocational skill completely, we cannot live on it."

(A 38-year old woman who has been in jail two times and was in custody under Section 3(A) and (B) in Insein prison in 2019)

LGBT are scared when they are admitted to jail. They are badly traumatized as they are put in jail without committing any offence, and their families are so worried about them. After release, their families and friends welcome them warmly and provide psycho-social support. Anyway, they dare not go out freely anymore and restrict themselves in order not to be in jail again.

Prison Reform with

Some of the drug users totally avoid drugs after release as if they don't even want to hear about drug, but some continue. Although there's no physical and psychological rehabilitation scheme for drug users in the prison system, the former can quit the drugs with their own determination.

"When I was released, my family, friends and neighbors gave me a warm welcome with no negative outlook. I don't continue my previous job. Now I am selling things in the market. Often, I work in masonry. I work every legal job to make a living. I change my career not because the prison changed me, but I myself wanted to change with my own decision. The prison didn't provide any vocational skill, either."

(A 47-year old woman minor drug offender sentenced to 10 years under Section 19 in Insein prison in 1996)

As they don't have to take nutritional or healthy diet in prisons, even after release the ex- prisoners have edema and dry skin due to nutritional deficiencies, and scabies due to lacking chances to wash or dry the clothes properly. Moreover, as a result of sleeping in semi-prone position due to the overcrowding, they suffer from spondylosis and other infectious diseases like TB and hepatitis.♦

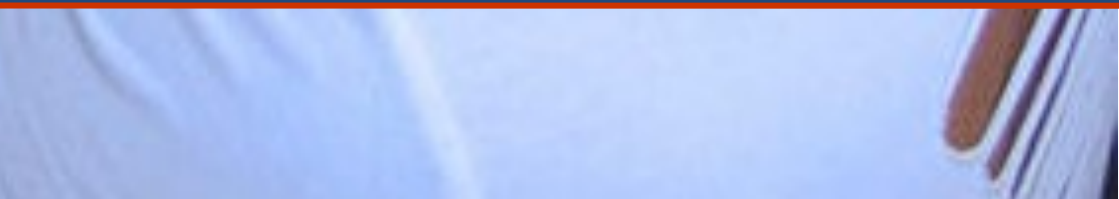
Unit 5: Conclusion

- ◆ 5.1: Review on the Legislation Directly Affecting Key Populations
 - ◆ 5.1.1: The Criminal Law (The Penal Code)
 - ◆ 5.1.2: The Rangoon Police Act (1899) and The Police Act, 1945
 - ◆ 5.1.3: The Suppression of Prostitution Act
 - ◆ 5.1.4: The Narcotic Drugs and Psychotropic Substances Law
- ◆ 5.2: Recommendations





5.1: Review on the Legislation Directly Affecting Key Populations



5.1.1: The Criminal Law (The Penal Code)

Section 377 has been part of the criminal law (the penal code) since the British colonial rule. Its objective seems to prevent carnal intercourse between man to man and it is mainly common among young male students, prisoners and homosexuals. According to Penal Code, unnatural carnal intercourse principally constitutes penetration into anal cavity of either man or woman. Penetration into mouth is sufficient also to constitute the sexual intercourse necessary to the offence. It is not necessary to consider whether it's against the will of the victim or not. It is cognizable, non-bailable or non-compoundable offence for which a magistrate of first class has judicial powers.⁴⁵ In some countries, transgender is nowadays constitutional and has the right to a legal marriage. In Myanmar, although it is not officially recognized, there's no specific legislation against it. However, Section 377 is applied to apprehend LGBT in their exercise of the right to sexuality and therefore, it is used as a tool to threaten and scare them.

This section is found to be no longer applicable in the current context and it needs amending.♦

Key Population

5.1.2: The Rangoon Police Act (1899) and The Police Act, 1945

Section 30(D) and Section 35(D) of the Rangoon Police Act and the Police Act, 1945 are found to be easily applied to arrest LGBTI populations. According to these sections, they may be taken into custody by any police-officer without a warrant and shall be punishable on conviction with imprisonment for a term which may extend to three months. The foremost objective of these sections is to preserve peace and order as precautionary measures by the Myanmar Police Force in their assigned territories, but currently they are applied to arrest LGBTI populations. Although these are necessary provisions for the preservation of law and order in the society, the current interpretations are not in line with human rights standards and therefore, need further interpretations to improve human rights.

For the time being, these acts are used as a tool to arrest and penalize LGBT.♦

5.1.3: The Suppression of Prostitution Act

On April 21, 1949, Myanmar enacted the Suppression of Prostitution Act and amended in 1956 and changed its theme from elimination into suppression of prostitution and on April 6, 1998 the State Peace and Development Council amended again the suppression of prostitution act, 1949.

As prostitution is illegal in Myanmar, this act is used as a tool of apprehension. Its section 3(A) and (B) is the main charge against sex workers and LGBT populations, and they shall be punished for a term not less than one year and not more than three years.⁴⁶ Any police officer who's not the subordinate rank of the police sub-lieutenant shall arrest the offender without warrant on site.⁴⁷

The act also states that any person who runs a brothel shall be punished with imprisonment for a term not more than three years or with fine or with both.⁴⁸

According to the existing legislation in Myanmar, prostitution is illegal either in a fixed place or not.

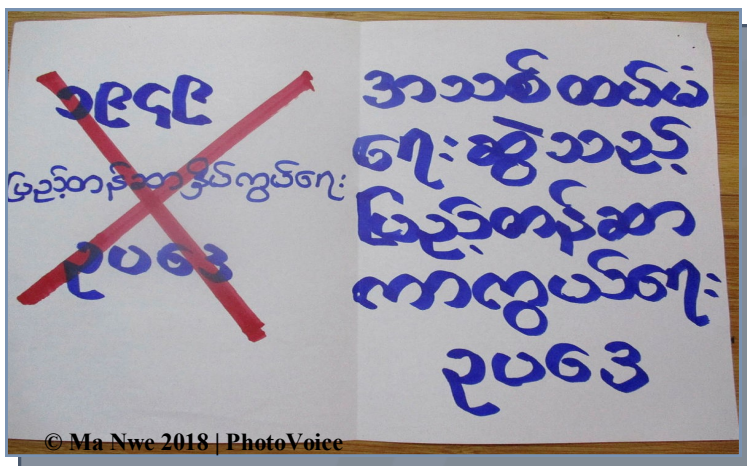
Although prostitution is illegal, it has not been eliminated. As it's an illegal business, there's no proper healthcare, increased rate of HIV infections, more sexual violence and extortion. As a result, sex workers are further marginalized with no physical or psychological protection from anywhere. In the law, it says that a woman who is charged with this act shall be punished by keeping in a designated place.⁴⁹ However, in reality it is noticeable that all the offenders of this act are always put in jail.

Key Population

In some countries, prostitution is decriminalized with regulations and needs to operate under public health and employment laws and to provide sex workers with health and social benefits and protection from sexual violence.⁵⁰

The Suppression of Prostitution Act of Burma (Myanmar) cannot outright ban the practice and turns out to be counterproductive as it is applied to marginalize sex workers.

While the Pyithu Hluttaw is amending the existing Suppression of Prostitution Act, the concept to reduce HIV infections and to eliminate discriminatory practices on sex workers are needed to include in their consideration and it's necessary in Myanmar to develop a new law for sex workers in line with international laws.♦



5.1.4: The Narcotic Drugs and Psychotropic Substances Law

The State Law and Order Restoration Council enacted with Law No. 1/93 the Narcotic Drugs and Psychotropic Substances Law and was amended by the Pyidaungsu Hluttaw Law No. 6/2018 in 2018.

In Chapter Two "Aims" of the Amendment Law, it is said to implement the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;⁵¹ and to carry out more effectively measures for imparting knowledge and education on the danger of narcotic drugs and psychotropic substances and for medical treatment and rehabilitation of drug users.⁵³

In the Amendment Law, it is also said instead of penalizing drug users, they shall be assigned to community work on their own physical effort and free of charge for two hours a day and no less than 240 hours and no more than 360 hours. But as there's no bylaw, it can't be implemented, yet. Besides, Section 16(C) of this law says whoever possesses narcotic drug shall be punished with imprisonment for a term not less than five years and not more than ten years, but the weight, volume and quantity of possession stated in the law seems so little. In addition, as whosoever in company with a possessor of drugs shall be deemed punishable the same.

National Drug Policy under "Harm Reduction" session recommends for fully decriminalization on drug use. But the Section 16(C) of the law can punish the drug users with any amount of drug, thus identifying personal procession should be identified. The law is not in line with the national drug policy.

As its negative consequences, there are the overcrowding prisons, an increase of HIV infections and corruption which can affect the image of the country, and young people can never escape from becoming drug users.♦

5.2: Recommendations

Legislation

- To review and amend the legislation targeted Key Populations such as sex workers, LGBT, TG populations and drug users which are not in line with human rights or international standards, or the current context of the country and reform them as quickly as possible. (Section 377 of the penal code, Suppression of Prostitution Act, Narcotic Drugs and Psychotropic Substances (Amendment) Law)
- To recognize the identities of LGBT and transgender populations and to ensure to include specific provisions for them in the prison law and jail manual
- To fully decriminalize drug users by amending the Law

Prisons and Custodies

LGBT

- Upon arrival in prisons, to search and examine at the main gate in appropriate manners in particular for LGBT and transgender
- To arrange separate confinement for LGBT and transgender in all the prisons and provide them equal freedom of movement as other male and female inmates
- To assign LGBT to the jobs suitable with their sexuality
- To keep LGBT from male detainees/prisoners in police van to the court for trial and in the detention centers
- To protect sexual abuses, physical and psychological abuses and asking for a bribe due to sexuality, and to ensure justice if violated.
- To have necessary arrangement to take action on disclosure of one's sexuality without consent as maintaining confidentiality on sexual orientation is important. ♦

Key Population

PLHIV

- To ensure to provide a regular ART treatment HIV positive prisoner wherever they are starting from the day of arrest and to keep them in a special facility and to protect them from discrimination
- To prevent HIV infected inmates from sending to labor camps and keeping together with inmates with other infections such as TB ♦

Female Prisoners

- To provide sanitary pads for female prisoners adequately and regularly in every custody, prison and labor camp
- To develop a special program to provide pregnant women and young children with all their needs, nutritional food and healthcare ♦

Drug Users

- To ensure the provision of methadone to drug users since arrest in the police custody and detention centers
- To open a methadone clinic in every prison to provide a systematic treatment to drug users
- To ensure free of incarceration of drug users to be in line with national drug policy and amended Narcotic Drugs and Psychotropic Substances Law

Rehabilitation

- To provide mental health and counseling programs for a vulnerable group of KP
- To provide the prisoners with tailored and localized vocational training programs in each prison. ♦

Prison Management

- To organize training programs for the prison staff on the prison law, Burma jail manual, including the Nelson Mandela Rules and human rights education
- To develop a secured complaint mechanism for the prisoners and to establish an independent committee and pay regular inspection visits to the prisons by Myanmar National Human Rights Commission and Human Rights Organizations
- To take a prompt legal action to eliminate corrupt practices in the prisons ♦

♦♦♦

Key Population

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- ⁵ <https://aappb.org/wp-content/uploads/2019/09/nee-urgent-reform-mmGraphic-3.pdf>
- ⁶ https://www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_en.pdf
- ⁷ [https://www.asean.org/wp-content/uploads/archive/documents/19th%20summit/ASEAN Declaration of Commitment.pdf](https://www.asean.org/wp-content/uploads/archive/documents/19th%20summit/ASEAN%20Declaration%20of%20Commitment.pdf) page 4, para 16
- ⁸ ဂျန်းမာရေးနှင့်အားကစားဝန်ကြီးဌာန၊ ပြည်ထောင်စုဝန်ကြီးမိန့်ခွန်း (၂၀၁၉ ၊ ဇွန် ၂၉၊ Melia Hotel ၊ ရန်ကုန်) <https://www.mohs.gov.mm/page/7816>
- ⁹ မျှတမှုကင်းသော မူးယစ်ဆေးဝါး နှိမ်နင်းရေးမူဝါဒများ၏ မလိုလားအပ်သည့် နောက်ဆက်တွဲရလဒ်များ ၂၀၁၉ ခုနှစ် နိုဝင်ဘာလ (Drug Policy Advocacy Group Myanmar)
- ¹⁰ MNHRC ၏ ၂၀၁၉ခုနှစ် ပြည်ထောင်စုအဆင့်လွှတ်တော်များသို့ပေးပို့သည့် အစီရင်ခံစာ
- ¹¹ ဂျန်းမာရေးနှင့်အားကစားဝန်ကြီးဌာန၊ ပြည်ထောင်စုဝန်ကြီးမိန့်ခွန်း (၂၀၁၉ ၊ ဇွန် ၂၉၊ Melia Hotel ၊ ရန်ကုန်)
- ¹² <https://asiancorrespondent.com/2015/07/prostitution-thailands-worst-kept-secret/>
- ¹³ PREVENTION AND SUPPRESSION OF PROSTITUTION ACT B.E. 2539(1996), dated 14 October 1996(THAILAND)
- ¹⁴ <https://www.mmtimes.com/news/could-new-law-better-protect-sex-workers.html>
- ¹⁵ နိုင်ငံတော်သမ္မတ ဦးဝင်းမြင့် ပြည်ထောင်စုလွှတ်တော်တွင် ကတိသစ္စာပြုပွဲ အခမ်းအနားတွင် ပြောကြားခဲ့သည့် မိန့်ခွန်း၊ ၂၀၁၈ခုနှစ် မတ်လ (၃၀) ရက်

- ¹⁶ မျှတမှုကင်းသော မူးယစ်ဆေးဝါး နှိမ်နင်းရေးမူဝါဒများ၏ မလိုလားအပ်သည့် နောက်ဆက်တွဲရလဒ်များ၊ ၂၀၁၉ ခုနှစ် နိုင်ငံဘာလ (Drug Policy Advocacy Group Myanmar)
- ¹⁷ The Prison Act, 1894
- ¹⁸ Government of Burma, Manual of Rules for the Superintendence and Management of Jails in Burma (revised edition) 1950
- ¹⁹ Article 23 ၊ The Prison Act, 1894
- ²⁰ Chapter VI, Government of Burma, Manual of Rules for the Superintendence and Management of Jails in Burma (revised edition) 1950
- ²¹ United Nations, Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955
- ²² Basic principle Rule 1, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ²³ **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**
General Assembly Resolution 43/173 (9 December 1988)
- ²⁴ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 24 (1)
- ²⁵ Workshop on Potential Prison Reform, Mann Myanmar Hotel, Nay Pyi Taw (7 Dec 2019), AAPPP
- ²⁶ Article 948, Jail Manual
- ²⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 27 (1)
- ²⁸ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 24 (2)
- ²⁹ မျှတမှုကင်းသော မူးယစ်ဆေးဝါး နှိမ်နင်းရေးမူဝါဒများ၏ မလိုလားအပ်သည့် နောက်ဆက်တွဲရလဒ်များ၊ ၂၀၁၉ ခုနှစ် နိုင်ငံဘာလ (Drug Policy Advocacy Group Myanmar)
- ³⁰ https://books.google.com.mm/books?id=vvTZfE_yv8C&pg=PA1 (WHO's instruction for drug user in prison)
- ³¹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) Resolution adopted by the General Assembly on 21 December 2010, A/RES/65/229
- ³² The Jail Manual, Chapter 14, Article 883
- ³³ Universal Declaration of Human Rights (UDHR) 10 December 1948
- ³⁴ <https://www.who.int/hiv/topics/msm/en/>
- ³⁵ Universal Declaration of Human Rights (UDHR) 10 December 1948
- ³⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 22 (1)

Key Population

³⁷ မြန်မာနိုင်ငံတော် အကျဉ်းထောင်လက်စွဲ (၁၈၉၄ ခုနှစ် Jail Manual) အခန်း(၁၇)

အစားအစာ ပုဒ်မ ၁၀၇၇။ The Jail Manual, 1894, Chapter (17), Article-1077

³⁸ Ibid: Article 1078, 1079 ပုဒ်မ ၁၀၇၈၊ ၁၀၇၉။

³⁹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

(the Bangkok Rules) , 65/229. General Assembly on 21 December 2010

⁴⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Rule 12, 13, 14

⁴¹ Schonteich, M (2008) " The Scale and Consequences of Pretrial Detention Among the World", Justice Initiatives, Open Society Justice Initiative, p. 32.

⁴² Preface, 2015 Draft Prison Bill <https://www.moi.gov.mm/?q=laws/id/6901>

⁴³ Page-28, Prison Overcrowding and the need for urgent reform (AAPP, Dec 2018) <https://aappb.org/2018/12/7950/>

⁴⁴ ပုဒ်မ ၁၂၄၄၊ ၁၂၄၈၊ အခန်း(၂၀)၊ အတွေ့တွေ့၊ မြန်မာနိုင်ငံတော် အကျဉ်းထောင်လက်စွဲ၊ ၁၈၉၄ ခုနှစ် (Article 1244, 1248, Chapter (20), General, The Jail Manual)

⁴⁵ သက်ဖေ(ဦး)၊ မောင်မောင်ဝင်း(ဦး)၊ ပြစ်မှုဆိုင်ရာ ဥပဒေ၏ သိကောင်းစရာများ

⁴⁶ 1949, Suppression of Prostitution Act, Article 3

⁴⁷ Ibid; Article 4

⁴⁸ Article 8, 1988, Amendment Law of Suppression of Prostitution Act

⁴⁹ Article 3, 1956, Amendment Law of Suppression of Prostitution Act

⁵⁰ <https://www.scoopwhoop.com/inothernews/countries-with-legal-prostitution/>

⁵¹ Article 3 (B), Chapter 2 (Objectives), Narcotic Drugs and Psychotropic Substances Law (Amendment Law)

⁵² Ibid; Article 3 (C)





Key population is defined as very vulnerable groups of HIV positive and potentially HIV infected people who are easily influenced by the legal system or by the behaviors of the society. KP mentioned in this report refers to the homosexuals, drug users, sex workers and transgender in the prisons all across Myanmar.



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It is essential to take into consideration the number of prisoners and general conditions of the prisons in order to judge a nation's development, education and human rights conditions. Therefore, prisons are as a ruler to assess justice of a nation's legislation and its human rights conditions.