

SEX WORK AND THE LAW IN ASIA AND THE PACIFIC



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The information contained in this report is drawn from multiple sources including consultation responses, an extensive literature review and expert inputs. While every effort has been taken to ensure accuracy at the time of publication, errors or omissions may have occurred. Laws, policies and law enforcement practices are constantly changing. It is hoped that the report will provide a baseline of information, to inform more detailed efforts at country level to build an accurate and complete evidence base to inform efforts to address the health and human rights of sex workers.

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including UNDP, or UN Member States.

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Cover photo: Sex workers, wearing traditional costumes, attend a protest against the police crackdown on brothels in Chuncheon, about 100 km (62 miles) northeast of Seoul May 31, 2011. Reuters/Lee Jae Won.

SEX WORK AND THE LAW IN ASIA AND THE PACIFIC

Laws, HIV and human rights in the context of sex work

John Godwin
October 2012

UNDP Asia-Pacific Regional Centre and UNFPA Asia Pacific Regional Office,
in partnership with UNAIDS, Asia Pacific Network of Sex Workers (APNSW) and:

Shishuder Jonno Amra and Tree Foundation, Bangladesh; Women's Network for
Unity (WNU), Cambodia; China Sex Worker Organization Network Forum, China;
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ACRONYMS AND KEY TERMS

Term	Definition	Country
100% CUP	100 Percent Condom Use Programme	
<i>adhiya</i>	Sex worker who pays the madam a percent of income in exchange for accommodation and food	India
ACHIEVE	Action for Health Initiatives	Philippines
ACLAB	Alliance for Cooperation and Legal Aid	Bangladesh
AIDS	Acquired Immunodeficiency Syndrome	
<i>ainen matawa</i>	Women and girls who board foreign fishing vessels to sell sex to seafarers	Kiribati
APNSW	Asia Pacific Network of Sex Workers	
ART	Antiretroviral therapy	
ARV	Antiretroviral drugs	
ASEAN	Association of South East Asian Nations	
ASEP	AIDS Surveillance and Education Project	Philippines
BABSEA CLE	Bridges Across Borders Southeast Asia Community Legal Education Initiative	
<i>badis</i>	A sub-caste of people who traditionally worked as entertainers. Most <i>badi</i> women now rely on sex work for income.	Nepal
<i>bāopó</i>	Temporary mistress or 'second wife'	China
<i>barangay</i>	A <i>barangay</i> is the smallest administrative unit in the Philippines, equivalent to a village, district or ward	Philippines
<i>bariwalis</i>	The <i>bariwali</i> are owners of premises that are rented to the brothel managers (<i>sardarnis</i>)	Bangladesh
BDS	Blue Diamond Society	
<i>bhatta</i>	Protection money	Pakistan
<i>BICMA</i>	Bhutan InfoComm and Media Authority	Bhutan
CACHA	Cambodian Alliance for Combating HIV/AIDS	Cambodia
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women	
<i>chukri</i>	Bonded sex worker	Nepal
CNMWD	Cambodian Men Women Development Agency	Cambodia
COSWAS	Collective of Sex Workers and Supporters	Taiwan, Province of China
CPITC	Community Peer-Initiated Testing and Counseling	
CPU	Cambodian Prostitutes Union	Cambodia
CSDF	Community Strength Development Foundation	
CSWONF	China Sex Work Organizations Network Forum	China
<i>dalal</i>	Pimp	Bangladesh
<i>Desa</i>	Village Administrations	Indonesia
<i>devadasi</i>	Hindu tradition in which girls are dedicated to a deity	India
DMSC	Durbar Mahila Samanwaya Committee	India
<i>drayang</i>	Women and girls employed at traditional entertainment venues	Bhutan
<i>ernāi</i>	Permanent Mistress or 'second wife'	China
ESCAP	Economic and Social Commission for Asia and the Pacific	
<i>fàlángmèi</i>	Hair salon workers, massage providers, and others who perform contractual work under a proprietress or a pimp	China
FTH	Fundasaun Timor Hari'í	Timor Leste

FWLD	Forum for Women, Law and Development	Nepal
<i>germo</i>	Pimp	Indonesia
<i>goondas</i>	Local Thugs	India
<i>habilder</i>	Patrolling low rank police officers	Bangladesh
<i>hijra</i>	Transgender identity, males who have feminine gender roles	India, Pakistan, Bangladesh
HIV	Human Immunodeficiency Virus	
<i>hukou</i>	Household Registration System	China
ILO	International Labour Organization	
INGO	International Non-Governmental Organization	
ITPA	<i>Immoral Traffic (Prevention) Act 1956</i>	India
JMMS	<i>Jagriti Mahila Maha Sang</i> , Federation of Female Sex Workers in Nepal	Nepal
<i>jogins, bhavins, devadasi</i>	Hindu tradition where girls are dedicated to a deity	India
<i>karani</i>	Penile and vaginal penetration	Nepal
<i>kathoey</i>	Transgender identity	Thailand, Lao PDR
<i>Kecamatan</i>	Sub-District Administrations	Indonesia
<i>khalwat</i>	<i>Sharia</i> offence that occurs if a man and woman who are not married to each other or related are found together	Malaysia
<i>kisaeng</i>	Professional Entertainer	Korea
<i>kothi</i>	Feminine man who has sex with other men	India
KSWU	Karnataka Sex Workers Union	India
LASH	Law and Sex Worker Health	Australia
LBHM	Community Legal Aid Institute	Indonesia
LGBTI	Lesbian Gay Bisexual Transgender Intersex	
<i>lokalisasi</i>	Brothel complex	Indonesia
madam	Woman who owns or manages a brothel	Bangladesh
<i>mak nyah</i>	Transgender identity	Malaysia
<i>mamasan, mami</i>	Madam	Indonesia
MANA	Myanmar Anti-Narcotics Association	Myanmar
<i>mastans</i>	Thugs	Bangladesh
MCPI	<i>Most at Risk Population Community Partnership Initiative</i>	Cambodia
<i>meti</i>	Transgender identity, males who adopt feminine gender roles	Nepal
MOLISA	Ministry of Labor, Invalids and Social Affairs	Viet Nam
MSM	Men who have sex with men	
NACP III	<i>National AIDS Control Programme III (2007-2012)</i>	India
<i>nakamal</i>	An area where the men from a village gather to drink kava after a working day	Vanuatu
NCHADS	National Centre for HIV/AIDS, Dermatology and STIs	Cambodia
NGO	Non-government organization	
NHRC	National Human Rights Commission	Nepal
<i>nirbhan</i>	<i>Hijra</i> Sex Workers who have been castrated	Pakistan
OPSI	<i>Organisasi Pekerja Seks Indonesia</i> , Indonesian Organization of Sex Workers	Indonesia
PATH	Program for Appropriate Technology in Health	
PEPFAR	President's Emergency Plan for AIDS Relief	USA
PIACT Bangladesh	Program for the Introduction and Adaptation of Contraception Technology	Bangladesh
PLD Viet Nam	Institute for Research on Policy, Law and Development-Viet Nam	Viet Nam

PLHIV	People Living with HIV	
PLRI	Paulo Longo Research Initiative	
PNG	Papua New Guinea	
PSI TOP	Population Services International Targeted Outreach Program	Myanmar
PSP	Poros Sapot Project	Papua New Guinea
<i>puskesmas</i>	Community Health Clinics	Indonesia
PWID	People who inject drugs	
<i>Qanun</i>	Indonesian criminal regulation	Indonesia
<i>Qanun Jinayah</i>	Islamic Criminal Bylaw	Indonesia
RTI	Research Triangle Institute	Thailand
<i>saderni, apa</i>	Madam, woman who owns or manages brothel	India
SAN	Survival Advocacy Network	Fiji
SANGRAM	<i>Sampada Grameen Mahila Parishad</i>	India
<i>selami</i>	Tenancy interest based on the payment of a premium for the right to rent	India
<i>Sharia</i>	Islamic law	
SHC	Social Hygiene Clinics	Philippines
<i>shordani</i>	Female brothel managers to whom sex workers are bonded	Bangladesh
SIT	Save Incapacity Teenager	
SOP	Standard operating procedures	
STI	Sexually transmitted infection	
SWFK	Sex Workers Forum of Kerala	India
SWiM	Sex Workers in Myanmar	Myanmar
SWING	Service Workers in Group	Thailand
TCP	Targeted condom programme	
<i>thana</i>	Local police	Bangladesh
UNAIDS	Joint United Nations Programme on HIV/AIDS	
UNDP	United Nations Development Programme	
UNFPA	United Nations Population Fund	
UNGASS	United Nations General Assembly Special Session on HIV/AIDS	
UNODC	United Nations Office on Drugs and Crime	
USAID	United States Agency for International Development	
VAMP	<i>Veshya Anyay Mukti Parishad</i>	India
<i>waria</i>	Indonesian transgender identity	Indonesia
WHO	World Health Organization	
WNU	Women's Network for Unity	Cambodia
<i>wisma</i>	brothel	Indonesia
<i>xiàngōngpéng</i>	Factory workers or 'work-shack' workers, who sell sex to poor migrant workers	China
<i>Zila Parishad</i>	Local government unit	Bangladesh
<i>zina</i>	Adultery, sex between unmarried persons	Pakistan, Malaysia

GLOSSARY

Key terms

Sex worker: This report adopts a broad definition of the terms ‘sex work’ and ‘sex worker’. The term ‘sex worker’ is used to refer to all adults who sell or exchange sex for money, goods or services (e.g., transport). It is used to refer to people who sell or exchange sex even if they do not identify as sex workers, or consider the activity to be ‘work’. The term is used to refer to sex workers including consenting female, male, and transgender people who receive money or goods in exchange for sexual services, either regularly or occasionally. Sex workers include consenting young people who are eighteen years or older. In circumstances where a person has been coerced into selling sex and is selling sex involuntarily, the preference is not to refer to the person as a ‘sex worker’. This avoids unnecessary conflation of sex work and trafficking, or confusion of sex workers with people trafficked for the purpose of sexual exploitation. Sex work is usually classified as ‘direct’ (open, formal) or ‘indirect’ (hidden, clandestine, informal). Direct sex workers identify as sex workers and earn their living by selling sex. Indirect sex workers usually do not rely on selling sex as their first source of income. They may work as waitresses, hairdressers, massage girls, street vendors, or beer promotion girls and supplement their income by selling sex. They generally do not identify as sex workers.

Prostitution / prostitute: Prostitution is a term that was commonly used in legislation enacted in the nineteenth and twentieth centuries to refer to sex work. The terms ‘prostitution’ and ‘prostitute’ have negative connotations and are considered by advocates of sex workers to be stigmatizing. This report only uses the term ‘prostitution’ when quoting directly from specific legislative or treaty provisions or the works of other authors that use the term. In other cases, the term sex work is preferred.

Transactional sex: Transactional sex involves exchange of sex for goods or services. Usually, the person providing the sex has other sources of income. People engaging in transactional sex usually do not identify themselves as sex workers or define their conduct as sex work.

Transgender: Transgender is a term used to describe individuals whose gender expression or gender identity differs from conventional expectations based on the physical sex into which they were born. The term ‘transgender people’ in this report refers primarily to people who were born biologically male but who identify as female, or who have characteristics that are usually considered female. There are transgender people in all countries, and in some Asia Pacific countries there are specific transgender or ‘third gender’ groupings that have unique cultural identities. Most countries of the Asia Pacific region have their own terms to refer to culturally specific sub-populations that include feminized men, third gender and/or male-to-female transgender people.

Legal terms

Law: Laws are rules prescribed or formally recognized as binding or enforced by a controlling authority. Laws include national and sub-national legislation and provisions of constitutional law and international law. In common law countries, judgments of courts also form a part of the law of the country. Laws are interpreted and enforced through the courts.

Legislation: Legislation is a law or a body of laws enacted by a parliament or another body with law-making powers.

Policy: Public policies are statements of priorities, strategies, plans or guidelines created by government agencies. Policies are generally created, promoted, interpreted and enforced through the executive branch of government. Policy differs from law. While a law can compel or prohibit conduct, policy merely guides actions to achieve a desired outcome.

Convention / Treaty: The term 'convention' is synonymous with the term 'treaty'. These terms are used to refer to instruments that are binding according to international law, and are agreed between States and/or international organizations.

Usually the instruments negotiated under the auspices of an international organization are called 'conventions' (e.g., the *Convention on the Rights of the Child*, adopted by the United Nations).

Protocol: In international law, a protocol is an international agreement that supplements a previous convention or treaty. A protocol can amend the previous treaty or convention, or add additional provisions.

Legal systems

Legal systems of States in Asia and the Pacific include:

Common law: Common law legal systems combine laws made by or under the authority of parliament and laws defined by judges' decisions. The former British colonies and US territories still use or are strongly influenced by common law traditions that derive from English law. Common law jurisdictions include Australia, American Samoa, Bangladesh, Brunei, Cook Islands, Guam, Fiji, Hong Kong SAR, India, Kiribati, Malaysia, Marshal Islands, Nepal, New Zealand, Niue, Federated States of Micronesia, Northern Marianna Islands, Nauru, Pakistan, Palau, Pitcairn Islands, Samoa, Singapore, Solomon Islands, Tokelau, and Tonga.

Civil law: Civil law legal systems are derived from continental Europe and rely on codified collections of legislation. Countries with civil law systems include Cambodia, China, Indonesia, Lao PDR, Thailand, Timor Leste, and Viet Nam.

Customary law: Customary law refers to traditional legal systems developed in pre-colonial times. Customary law forms a part of the legal systems of most Pacific island countries and some Asian countries.

Sharia law: *Sharia* is Islamic religious law that applies to Muslim communities to varying extents in Afghanistan, Bangladesh (Muslim Personal Law), Brunei, Maldives, Malaysia, Pakistan, and parts of Indonesia (e.g., Aceh) and the Philippines (Mindanao).

Mixed legal systems: Some countries have mixed legal systems that draw on common law and/or civil law traditions, mixed with customary or religious laws and civil law traditions. For example, Islamic *sharia* law operates alongside civil law or common law in some countries. India has a common law system combined with separate personal law codes that apply to Muslims, Christians, and Hindus. Pakistan's legal system combines common law and Islamic law. Nepal's legal system combines Hindu legal concepts and common law. The Philippines has a mixed legal system of civil, common, Islamic and customary law. Sri Lanka's legal system combines civil law, common law and customary law. Most Pacific island countries recognize customary law as well as common law.



AN INDIAN HEALTH WORKER EXPLAINS VARIOUS SEXUALLY-RELATED DISEASES TO PROSTITUTES IN THE SONGACHI RED-LIGHT DISTRICT AS PART OF PREPARATIONS FOR WORLD AIDS DAY IN THE EASTERN CITY OF CALCUTTA ON NOVEMBER 28, 2001. SOURCE: REUTERS/JAYANTA SHAW



EXECUTIVE SUMMARY

Objectives

The objectives of this study are to:

- i. describe the diversity of laws that affect HIV responses in the context of sex work in the Asia Pacific region;
- ii. assess the impact of laws, legal policies and law enforcement practices on HIV responses in the context of sex work; and
- iii. provide recommendations for actions required to create enabling legal and policy environments for HIV responses in the context of sex work.

Findings

Laws, policies and practices that are harmful to HIV responses

Laws, policies and practices that are harmful to HIV responses in the context of sex work and the human rights of sex workers include:

(i) Criminalization of sex work

All countries of Asia and the Pacific criminalize sex work or certain activities associated with sex work, except New Zealand and New South Wales (Australia). In some countries, a punitive approach to sex work is entrenched by national constitutions (Bangladesh, Cambodia and Pakistan). Criminalization increases vulnerability to HIV by fuelling stigma and discrimination, limiting access to HIV and sexual health services, condoms and harm reduction services, and adversely affecting the self esteem of sex workers and their ability to make informed choices about their health.

(ii) Punitive law enforcement practices

Police abuses of sex workers, including harassment, extortion, unauthorised detention and assaults, are reported from countries across the Asia Pacific region. In some countries, peer educators and outreach workers have been harassed or arrested by police (e.g.,

India, Nepal and the Philippines). Violence against sex workers perpetrated by police or military personnel contributes to HIV vulnerability and is reported in numerous countries. Incidents involving sexual assaults by police or military have been reported from Bangladesh, Cambodia, China, Fiji, India, Kiribati, Myanmar, Nepal, Papua New Guinea and Sri Lanka. Sex workers are often targeted for harassment and violence because they are considered immoral and deserving of punishment. Criminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement authorities and health care providers). Criminalization makes sex workers reluctant to report abuses and makes authorities reluctant to offer protection or support to sex workers.

(iii) Confiscation of condoms

Confiscation of condoms by police as evidence of illegal conduct or to justify harassment and extortion is a widespread problem. Countries where sex workers report condom confiscation or police harassment for possessing condoms include China, Fiji, India, Indonesia, Malaysia, Myanmar, Nepal, Papua New Guinea, the Philippines, Sri Lanka and Viet Nam.

(iv) Criminalization of clients

Some countries have opted to criminalize clients of sex workers, rather than or in addition to sex workers. For example, Nepal criminalizes clients but not sex workers. A similar approach has been proposed in India. Laws have been enacted that criminalize clients in American Samoa, Bhutan, Cambodia, China, Fiji, Guam, Republic of Korea, Palau, and Taiwan. The UNAIDS Advisory Group on Sex Work has noted that there is no evidence that 'end demand' initiatives reduce sex work or HIV transmission, or improve the quality of life of sex workers. Efforts targeting clients sometimes encourage law enforcement officials to use condoms as evidence of involvement in sex work.

(v) Licensing or registration

Some countries have put in place systems to regulate certain segments of the sex industry, which are allowed to operate in specific areas subject to monitoring or compliance with official requirements e.g., the licensing system in Taiwan, the affidavit system in Bangladesh, the *lokalisasi*¹ system in Indonesia, registration with police in Singapore, and licensing or registration systems in states and territories of Australia. In jurisdictions such as Guam, the Philippines and Thailand, sex work is criminalized but the government recognizes the reality that sex is sold in certain premises in particular areas. In these countries, the law requires businesses such as entertainment venues or massage parlours to be registered or licensed and to comply with conditions such as the requirement that employees test regularly for STIs. The major flaw of all of these approaches is that the majority of sex workers operate outside of the licensing or registration system. For this reason, these approaches have not proven effective in preventing HIV epidemics among sex workers.

(vi) Mandatory, compulsory or coerced testing

Mandatory, compulsory or coerced HIV or STI testing of sex workers is a widespread problem throughout the region. Laws in several countries require regular testing of sex workers as a condition of on-going employment (e.g., Guam, Indonesia, Philippines, Singapore, Taiwan, Thailand, and several states of Australia). Compulsory or coerced testing practices are also reported in China, India, and Viet Nam. Such practices violate

1 *Lokalisasi* is a term used in Indonesia to describe a government registered brothel complex.

human rights to autonomy and privacy, expose sex workers to risk of discrimination and violence, compound stigma and divert resources from effective HIV prevention and care interventions.

(vii) Lack of labour rights and social security rights

Sex workers in all countries of the region except New Zealand and the state of New South Wales (Australia) lack the labour rights afforded to other workers, including the legal right to a safe and healthy workplace and to reasonable terms and conditions of employment.

(viii) Denial of identity documents and citizenship rights

Laws, policies and practices restrict the access of sex workers to identity documents, which in turn restrict property and inheritance rights, freedom of movement and access to education, health care, housing and banking. In some countries (e.g., Bangladesh and India), sex workers have reported difficulties obtaining voter identity cards that are required for access to a range of government services, and that many female sex workers cannot register the birth of their children due to inability to confirm the identity of their child's father. In China and Lao PDR, sex workers who are internal migrants report harassment from local officials or difficulties in accessing services because they are living away from the town where they are officially registered as residents. Sex workers in Malaysia and Myanmar also report restricted access to services arising from difficulties obtaining identity cards.

(ix) Compulsory detention centres

Compulsory detention of sex workers for the purpose of 'rehabilitation' or 're-education' is a highly punitive approach that continues to be implemented in some countries (e.g., China, India, Myanmar, Sri Lanka). These centres are stigmatizing and detainees are vulnerable to human rights abuses, including compulsory medical examinations and forced labour. In some countries, centres are used as a source of free or cheap labour. There is generally little or no access to psychological support or HIV prevention, treatment, care and support services in these centres.

(x) Anti-trafficking laws, policies and practices

Laws that conflate human trafficking and sex work and define sex work as 'sexual exploitation' contribute to vulnerability, generate stigma and create barriers to HIV service delivery. Trafficking laws have been used to justify crackdowns and raids that suppress adult voluntary sex work (e.g., Cambodia, India, Malaysia, the Philippines and Thailand). This has resulted in abuses of sex workers' human rights and undermining of HIV responses.

(xi) 100% Condom Use Programmes (CUPs)

100% CUPs have been implemented in different forms in Cambodia, China, Indonesia, Lao PDR, Mongolia, Myanmar, the Philippines, Thailand, and Viet Nam. The extent to which these programmes relied on compulsion varies. Some 100% CUPs have required compulsory registration of sex workers and mandatory health examinations. Condom programmes that rely on enforcement of mandatory measures by health authorities, police or managers of sex work businesses can be counterproductive to HIV responses. Health promotion programmes based on community empowerment approaches that are led by sex workers are more likely to avoid human rights violations and result in sustained HIV prevention outcomes than models that rely on mandatory provisions and coercion.

Laws, policies and practices that are helpful to HIV responses

Laws, policies and practices that are helpful to HIV responses and protection of the human rights of sex workers include:

Court judgments

Decisions of the Supreme Courts of Bangladesh, India and Nepal and the Constitutional Court of Taiwan have recognized that sex workers enjoy human rights as guaranteed by national constitutions.

Policy development

- i. The *National HIV Prevention Strategy* of Papua New Guinea recommends decriminalization of sex work to support the HIV response.
- ii. The *National Strategy on Female Sex Work in Pakistan* addresses the need for directives to prevent confiscation of condoms and to address police violence and harassment.
- iii. The *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015* commits to a needs assessment to examine stigma, discrimination and human rights violations among sex workers, giving special attention to attitudes among health care and law enforcement staff and law reform to strengthen the human rights position of sex workers.
- iv. An Order of the Government of Myanmar directs police not to confiscate condoms as evidence of sex work. Enforcement of the Order is supported by the *National HIV Strategy 2011-2015*.
- v. Rules of the Social Security Fund of Thailand enable sex workers to access state social security benefits for sickness, disability and death, and a pension, if they make financial contributions.
- vi. The Ministry of Interior of Cambodia issued a Directive in 2011 that condoms will not be used as evidence for arrest.
- vii. Police instructions in several states of India direct police not to harass or arrest sex workers.
- viii. The *HIV/AIDS Curriculum for Senior Level Police* in Nepal addresses the need to prevent police abuses against sex workers.

Legislation

- i. Legislation in Fiji and Papua New Guinea makes it unlawful to deny a person access, without reasonable excuse, to condoms or other means of protection from HIV.
- ii. Legislation in Viet Nam requires the government to implement harm reduction interventions including condom programmes with sex workers, and protects peer educators from prosecution.
- iii. Legislation in Lao PDR provides: an obligation to improve advocacy and HIV education for sex workers; a right to voluntary counselling and testing for HIV, and for test results to be kept confidential; that citizens, aliens, foreigners and people with no nationality

- have rights to information on HIV prevention; and that the health sector should report on HIV trends among sex workers to inform planning.
- iv. National HIV laws in Cambodia, Fiji, Lao PDR, Papua New Guinea, the Philippines and Viet Nam offer some protections in areas such as prohibition of compulsory testing, and rights to confidentiality and to protection from discrimination for those who are HIV-positive.
 - v. Draft laws in India and Pakistan propose to prohibit police from confiscating condoms from sex workers or obstructing their access to HIV services.
 - vi. Sex work and activities associated with sex work have been decriminalized in New South Wales (Australia) and New Zealand, and legally enforceable workplace health and safety standards have been developed for sex workers.
 - vii. Legislation in New Zealand and some jurisdictions in Australia provide sex workers with legal protections from discrimination and unfair work practices.

Initiatives of sex workers and their organizations to improve the legal environment

- i. Sex worker organizations in India have mobilized to address human rights violations, advocate for law reform and engage with the police to improve law enforcement practices (e.g., VAMP, DMSC, SWFK, KSWU, Ashodaya Samithi). Some have established self-regulatory boards.
- ii. Jagriti Mahila Maha Sangh (Federation of Female Sex Workers in Nepal) and Blue Diamond Society (BDS) are community based organizations that advocate for improved legal protections for the human rights of sex workers in Nepal.
- iii. Myanmar's national network of female sex workers (SWiM) is implementing a project that funds paralegals to give legal advice and health information to sex workers and engages in advocacy on justice issues.
- iv. The China Sex Worker Organizations Network Forum has documented the impact of the 2010 police crackdown on sex work and HIV responses in China to provide evidence for advocacy.
- v. The Collective of Sex Workers and Supporters (COSWAS) in Taiwan has advocated for non-discriminatory laws that protect health and safety of sex workers in Taiwan.
- vi. In Hong Kong, Zi Teng and the JJJ Association have formed cooperative arrangements with police to address abuses of sex workers' rights.
- vii. The Indonesian Organization of Sex Workers (OPSI) is able to influence government policies and programmes by participating in national committees convened by the National AIDS Commission.
- viii. The Poro Sapot Project in Papua New Guinea involves sex workers in community-based efforts to educate the police about HIV, and Friends Frangipani (the national sex worker organization) advocates for law reform and improved policing practices.
- ix. In Thailand, SWING implements a police cadet internship programme and cadet training curriculum to expose police cadets to peer-based HIV prevention activities. The Empower Foundation in Thailand advocates for labour protection measures to be extended to sex workers and decriminalization of sex work. In 2006, the Foundation

opened a bar in Chiang Mai that provides sex workers with working conditions that comply with standards under the *Labour Protection Act*.

Conclusions

(i) Legal empowerment of sex worker communities underpins effective HIV responses

Sex worker organizations in India and Thailand have demonstrated the effectiveness of adopting an empowerment approach, based on community mobilization, peer-based health promotion, self-regulation, active engagement on law enforcement issues and participation in dialogue about law and policy reform. Similarly, sex worker organizations in Cambodia, China, Hong Kong SAR, and Indonesia are actively engaged in advocating for law reform and improvements to law enforcement practices. Although punitive laws remain on the statute books in these countries, significant progress has been achieved through sex workers educating their peers about their rights, organizing legal representation and securing changes to law enforcement practices to reduce police abuses and facilitate HIV prevention activities. At the local level, this approach has shifted the power balance in favour of the vulnerable, and has been associated with positive HIV prevention outcomes such as increased condom use rates and reduced stigma.

(ii) Positive public health and human rights outcomes have been achieved in jurisdictions that have decriminalized sex work

Evidence from the jurisdictions in the region that have decriminalized sex work (New Zealand and New South Wales) indicates that the approach of defining sex work as legitimate labour empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates. Very low STI prevalence has been maintained among sex workers in New Zealand and New South Wales, and HIV transmission within the context of sex work is understood to be extremely low or non-existent. In decriminalized contexts, the sex industry can be subject to the same general laws regarding workplace health and safety and anti-discrimination protections as other industries. The legal recognition of sex work as an occupation enables sex workers to claim benefits, to form or join unions and to access work-related banking, insurance, transport and pension schemes.

(iii) Licensing and registration models have not been effective

Licensing or registration of the sex industry has been of limited benefit in terms of public health and human rights outcomes for sex workers. Several jurisdictions have introduced licensing or registration of brothels, businesses where sex work occurs, or individual sex workers (e.g., Indonesia, Taiwan and several states and territories of Australia). Licensing or registration systems are usually accompanied by criminal penalties for sex industry businesses and individual sex workers who operate outside of the legal framework. Licensing or registration models may provide some health benefits to the small part of the sex industry that is regulated, but do not improve health outcomes for the broader population of sex workers. Some countries operate licensing or registration systems in contexts where sex work remains technically illegal. Examples include STI and HIV testing requirements for entertainment establishments in Thailand, Guam and 'red-light' areas in the Philippines and the police supervision system in Singapore. In Bangladesh, registration by affidavit provides some security benefits and protection from police harassment for those who register, but without access to health benefits. Typically, in jurisdictions that

have introduced licensing or registration systems the vast majority of sex workers operate outside of the system. This approach compounds the marginalization of most sex workers. Human rights violations may result from licensing models that require compulsory testing and registration of sex workers with government authorities.

(iv) Action items for country-level consideration

Each country needs to define its own priorities in relation to law reform and changes to law enforcement practices, informed by an assessment of objectives that are realistically achievable and relevant to the local context. It is critically important that sex workers are centrally involved in efforts to improve legal environments. Sex workers and, where they exist, sex workers' organizations should be supported to participate in setting national priorities for an agenda for action to improve the legal environment for sex workers. The report includes a list of action items for country level consideration in the following areas:

- a. Law reform;
- b. Improvements to law enforcement practices;
- c. Leadership, community empowerment and advocacy;
- d. Education of the judiciary;
- e. Legal services;
- f. Research, evidence and monitoring;
- g. National planning of HIV responses;
- h. National human rights institutions;
- i. The role of donors and multilateral organizations.

Governments should apply the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)* to sex workers. Sex workers should enjoy legally enforceable rights to occupational health and safety. Sex workers should be supported to participate in the process of developing workplace health and safety standards. Recognizing that sex work is legitimate work provides a framework within which sex workers can benefit from the same rights and protections as other workers, including access to services and freedom from discrimination and exploitation.

Laws that criminalize sex work and the sex industry should be reviewed, taking into account the adverse impact of these laws on public health and the human rights of sex workers. To enable sex workers to fully enjoy legal rights to health and safety at work requires decriminalization. Decriminalization of sex work requires the repeal of:

- a. laws explicitly criminalizing sex work or clients of sex workers;
- b. laws that criminalize activities associated with sex work, including removal of offences relating to: soliciting; living on the earnings of sex work; procuring; pimping; the management and operation of brothels; and promoting or advertising services;
- c. laws that require mandatory HIV or STI testing or treatment of sex workers;
- d. laws that authorize the compulsory detention of sex workers for the purpose of re-education, rehabilitation or correction.



SUSPECTED SEX WORKERS HIDE THEIR FACES AFTER BEING ROUNDED UP BY POLICEMEN IN GUANGZHOU, THE CAPITAL CITY OF GUANGDONG PROVINCE, JULY 4, 2003. SOURCE: REUTERS/CHINA PHOTOS.

1 INTRODUCTION

1.1 Objectives and method

The objectives of this study are to:

- i. describe the diversity of laws that affect HIV responses among sex workers in the Asia Pacific region;
- ii. assess the impact of laws, legal policies and law enforcement practices on HIV responses for sex workers; and
- iii. provide recommendations for actions required to create enabling legal and policy environments for HIV responses among sex workers.

The report is intended to provide an evidence-base for: policy makers working in government, regional and multilateral organizations; parliamentarians; members of the judiciary; civil society organizations; donor agencies; and sex workers and their organizations engaged in advocacy to improve the legal and policy enabling environment for HIV responses.

The study focuses on 48 countries of the Asia Pacific region, with an emphasis on low and middle-income countries.

The first Asia and the Pacific Regional Consultation on HIV and Sex Work (2010) highlighted the need to document law and enforcement practices so as to inform advocacy and programming to address the human rights of sex workers.² In response, the United Nations Development Programme (UNDP) provided support for this study and a related legal mapping project implemented by the Paulo Longo Research Initiative (PLRI). PLRI has conducted mapping studies of sex work legal issues in Fiji, Malaysia and Myanmar.

The method for this study involved:

- i. a literature review of legislation, cases, published research and grey literature;³ and

² See: *Creating an Enabling Legal and Policy Environment for Increased Access to HIV & AIDS Services for Sex Workers*, Paper for the 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12-15 October 2010, Pattaya, p.5; APNSW, UNFPA, UNAIDS (2011) *Building partnerships on HIV and sex work, Report and recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work* p.7.

³ Utilizing databases of: UNAIDS HIV and AIDS data hub for Asia Pacific (www.aidsdatahub.org); AIDSlex (www.aidslex.org); Paulo Longo Research Initiative (www.plri.org); and google searches of peer review and grey literature published since 2000.

- ii. consultations with sex workers, technical experts and UN agencies; and
- iii. analysis of all inputs to define findings, conclusions and action points.

Sex worker organizations were key partners in the study. The Asia Pacific Network of Sex Workers (APNSW) was involved in developing the project methodology, and facilitated processes at the national and regional level for feedback on country chapter drafts. A survey requesting feedback on draft country chapters was disseminated to sex work organizations and other stakeholders. Expert inputs were provided from Australia, China, Fiji, India, Indonesia, Malaysia, Myanmar, Sri Lanka, and Thailand. Country-level consultation meetings occurred with sex workers in Cambodia, Nepal, Papua New Guinea, and the Philippines. In addition, representatives from sex work community organizations and sex workers from 12 countries participated in a regional consultation meeting held in Bangkok, 22-23 November 2011 (see Annex II).⁴ The consultation meeting was organized by UNDP and the United Nations Population Fund (UNFPA) in collaboration with APNSW and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The study focuses on laws and law enforcement practices affecting adults engaged in sex work. The study does not aim to describe laws relating to minors who are sexually exploited through involvement in selling sex. The study considers the relevance of anti-trafficking laws insofar as such laws are inappropriately applied against adults voluntarily engaged in sex work. However, it does not describe anti-trafficking laws in detail.⁵

This report summarizes laws and law enforcement practices that affect the human rights of sex workers and which impact on the effectiveness of HIV responses, including:

- criminal offences that specifically apply to adult sex work and the sex industry;
- public order, vagrancy and other general offences that are selectively enforced against sex workers;
- anti-trafficking laws that overreach their proper purposes and are enforced against consenting adult sex workers, rather than traffickers.

In addition, the report identifies examples of civil and administrative laws and regulations that affect HIV responses among sex workers, such as brothel and entertainment establishment registration/licensing laws, tenancy laws, censorship laws and laws affecting rights of citizenship, such as birth registration and access to identification cards.

The report also summarizes protective and enabling laws and practices that are supportive of HIV responses, including:

- community mobilization of sex workers, sex worker unions and self-regulatory initiatives;
- labour laws regulating the sex industry as an occupation;
- anti-discrimination laws; and

4 Participants included representatives of Jagriti Mahila Maha Sangh (Nepal), Blue Diamond Society (Nepal), Shishuder Jonno Amra (Bangladesh), Tree Foundation Bangladesh, WNU Sex Worker Legal Centre (Cambodia), Empower (Thailand), China Sex Worker Organizations Network Forum, Survival Advocacy Network (Fiji), Durbar Mahila Samanwya Committee (India), Indonesia Social Change Organisation (OPSI), Asia Pacific Transgender Network (APTAN), LAC/PT/MAC Legal Clinic (Malaysia) and Population Services International (Myanmar). Scarlet Alliance (Australia) provided comments in relation to chapters on Australia and the Pacific.

5 Laws relating to trafficking are detailed in other studies e.g., Thomas S. (2011) *Legal and Policy Review: Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka*, New Delhi: UNODC ROSA.

- legal recognition of the human rights of sex workers, under constitutional provisions or other human rights legislation.

Laws and law enforcement practices relating to narcotic drugs affect sex workers who are also drug users. Laws and law enforcement practices relating to homosexuality and transgender people also affect male and transgender sex workers.⁶ While this study recognizes these overlaps, analysis of laws and practices relating to drug use, men who have sex with men, and transgender people were not the central concern of this study.

The report recognizes that legal environments comprise not only written laws, but also law enforcement practices of police, public security and military personnel, legal institutions (including the judiciary and the formal, religious and informal customary courts), systems for documenting and addressing human rights violations, and delivery of legal aid and community legal education. Legal environments set the overall context for HIV responses of government and civil society and influence the social climate in which prevention, treatment, care and support programmes operate. Legal environments that are coercive and punitive can contribute significantly to stigma. Legal environments that are protective and empowering can help combat stigma and underpin health promotion efforts that rely on the voluntary cooperation of populations in changing behaviours and accessing prevention, testing, treatment and care services.

Limitations

The methodology for this study has been limited in the following ways:

- It relies largely on data available through a literature review. Legal environments of many sex worker communities have not been researched and available research findings are often dated. Existing research also tends to focus on criminal laws rather than other aspects of the legal environment that are less well documented.
- The methodology relied on English language sources.
- The timeframe for data collection was short (June –December 2011). This placed constraints on the extent of consultations that were feasible to validate the findings.
- The large number of countries covered (48) and limited timeframe meant that not all countries could be addressed in detail. Very limited data was obtained from the literature review for Afghanistan, Brunei, Democratic People's Republic of Korea and the smaller Pacific island states. The information for these countries is provided only under each region's summary table.

This study is intended to provide a foundation for supporting country efforts to advocate for reform to laws, policies and practices. This study is a first step. The mapping of issues, laws and practices will be an on-going process that will require further detailed work to thoroughly explore country-specific issues, engage stakeholders in a process of change and monitor changes in legal environments as they occur over time.

⁶ See: Godwin J. (2010), *Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: an agenda for action*, Bangkok: UNDP.

1.2 International legal and policy contexts

Two related areas of international law and policy influence legal environments of sex workers in Asia and the Pacific:

- i. international human rights laws, and policies of international bodies on the protection of the human rights of key populations affected by HIV;
- ii. international laws and regional agreements relating to prevention of human trafficking.

1.2.1 Human rights-based approach

This report applies a human rights-based approach to the analysis of the effect of laws on HIV responses and in the items proposed for an agenda for action.⁷ The premise of this study is that sex workers are entitled to legal protections of their human rights, consistent with international law and human rights norms, and that strengthening these protections will reduce HIV vulnerability.

In many countries, laws, policies and practices limit the civil, social and economic rights of sex workers in areas such as their employment conditions and access to education, health care, housing, banking facilities, inheritance, property and legal services. Sex workers may also lack evidence of citizenship or legal status, which can lead to travel restrictions and exclusion from health services and welfare entitlements.

A human rights-based approach asserts that HIV responses are more effective in contexts where the human rights of people living with HIV and those most-at-risk of HIV (including sex workers) are protected by laws, policies and law enforcement practices. HIV services can operate more effectively when sex workers can access services openly and without fear of adverse legal consequences. Respect for the human rights of sex workers is a precondition to their involvement in national HIV responses and the reduction of vulnerability, risk and harm. Supportive laws and law enforcement practices enable sex workers to openly participate in planning, managing and delivering HIV services, which helps to ensure that the services are effective, accessible and acceptable to their communities.

At the international level, there has been growing recognition of the centrality of human rights to HIV responses. The UN system affirms the universality, inalienability and interdependence of human rights, and promotes and supports their application in practice, including for sex workers, even in states where sex work is criminalized.⁸

States are required to uphold international human rights standards as reflected in the *Universal Declaration of Human Rights* and other core human rights instruments.⁹ Sex workers are entitled to recognition of fundamental human rights (regardless of domestic

7 Some sex worker advocates are critical of approaches based on international human rights law, see: Rao S., Sluggett, C. (2009), *Who Stole the Tarts? Sex Work and Human Rights*, Center for Advocacy on Stigma and Marginalisation (CASAM).

8 UNAIDS (2009), *Guidance Note on HIV and Sex Work* Geneva: UNAIDS, p.7.

9 *Universal Declaration of Human Rights* (1948); *International Covenant on Civil and Political Rights* (1966); *International Covenant on Economic, Social and Cultural Rights* (1966); *Convention on the Elimination of All Forms of Discrimination against Women* (1979); *Convention on the Rights of the Child* (1989); *Convention on the Rights of Persons with Disabilities* (2006).

laws that criminalize sex work), including rights to non-discrimination and equal treatment before the law consistent with the *International Covenant on Civil and Political Rights* (ICCPR),¹⁰ and the right to the highest attainable standard of health (including HIV prevention, treatment, care and support) consistent with the *International Covenant on Economic Social and Cultural Rights* (ICESCR).¹¹ The ICESCR also obliges States to afford individuals the right to decent work in just and favourable working conditions.¹² Every human being is also entitled to human rights relating to privacy, liberty, autonomy, security, freedom of expression and assembly, gender equality, freedom from violence and arbitrary arrest, and free choice of employment. The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) applies to sex workers who travel between States to engage in sex work.

The importance of recognition of fundamental human rights as guaranteed by international law and norms is reflected in the policy positions of the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund),¹³ and UNAIDS¹⁴ and its cosponsors.¹⁵ The UNAIDS Strategy for 2012-2015, *Getting to Zero*, commits UNAIDS and its cosponsors to empowerment of sex workers and the removal of punitive laws, policies, practices, stigma and discrimination that block effective HIV responses.

The following are other significant global developments in the human rights-based response to HIV and sex work:

- i. the UN Economic and Social Commission for Asia Pacific (ESCAP) *Resolution 66-10* (2010), which calls on Member States to ground universal access in human rights and to address legal barriers to HIV responses, and *Resolution 67-9* (2011), which requires states to initiate reviews of national laws, policies and practices to enable the full achievement of universal access targets with a view to eliminating all forms of discrimination against key affected populations;
- ii. the report of the Global Commission on HIV and the Law (2012), which recommends, *inter alia*, decriminalization of sex work and laws to ensure safe working conditions to sex workers;¹⁶

10 Article 16: Everyone shall have the right to recognition everywhere as a person before the law.

11 ICESCR, Article 12, states the human right to the highest attainable standard of physical and mental health. See: Committee on Economic, Social and Cultural Rights, *General Comment 14, The right to the highest attainable standard of health* (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000).

12 Articles 6 and 7.

13 Global Fund to Fight AIDS Tuberculosis and Malaria (2009) *Sexual Orientation and Gender Identities Strategy* Geneva: Global Fund to Fight AIDS Tuberculosis and Malaria. The Strategy outlines actions the Global Fund can take to address the vulnerabilities and needs of sex workers. The Strategy states that the Global Fund works within a human rights framework and will monitor and communicate cases where proposals are rejected due to policy environments where rights violations are impeding implementation.

14 UNAIDS (2009) *Guidance Note on HIV and Sex Work* (2009) Geneva: UNAIDS. The Guidance Note recognizes that human rights of sex workers form the cornerstone of an effective HIV response and must be recognized even in contexts where sex work is criminalized (p.7), calls for "legal barriers to participation" of sex workers to be revised, and states that "it is critical to implement needed legal and policy reforms" (p.10).

15 The ten UNAIDS cosponsors are the Office of the United Nations High Commissioner for Refugees (UNHCR); United Nations Children's Fund (UNICEF); World Food Programme (WFP); United Nations Development Programme (UNDP); United Nations Population Fund (UNFPA); United Nations Office on Drugs and Crime (UNODC); International Labour Organization (ILO); United Nations Educational, Scientific and Cultural Organization (UNESCO); World Health Organization (WHO); World Bank.

16 Global Commission on HIV and the Law (2012), *Risks, rights and health*, New York: UNDP. See Chapter 7, below.

- iii. the report of the Independent Commission on AIDS in Asia (2008),¹⁷ which calls for decriminalization of sex work, and the report of the Independent Commission on AIDS in the Pacific (2009),¹⁸ which calls for review of punitive laws affecting sex workers;
- iv. commitments made at the 2001 and 2006 United Nations General Assembly Special Sessions (UNGASS) on HIV/AIDS to removing legal barriers to HIV responses and passing laws to protect vulnerable populations,¹⁹ and the 2011 UNGASS *Political Declaration on HIV/AIDS*, which notes that HIV prevention strategies inadequately focus on populations at higher risk including sex workers, and calls for the creation of enabling legal environments for accessing HIV services;
- v. the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)*,²⁰ which is a labour standard of the International Labour Organization (ILO) that prohibits coerced or compulsory workplace HIV testing and addresses the need to provide: comprehensive occupational health and safety measures to minimize HIV risk; prevention and access to treatment; social protection; and protection from discrimination. Although sex work is not specifically mentioned in the standard, the Chairperson of the International Labour Conference that adopted *Recommendation 200 concerning HIV and AIDS and the World of Work* stated that members had made it clear that informal workers including sex workers were covered by this instrument, which made it unnecessary to include a specific reference to sex workers in the text;²¹
- vi. the Report of the UN Special Rapporteur on the Right to Health to the 14th session of the Human Rights Council, which calls for decriminalization of sex work involving consensual sexual conduct between adults (2010);²²
- vii. the *International Guidelines on HIV/AIDS and Human Rights* (2006), which recommend repeal of discriminatory laws and enactment of anti-discrimination laws and other protective laws. The commentary provided on the International Guidelines by the UN Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS state:

With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients;²³
- viii. statements by Ban Ki-moon, Secretary-General of the United Nations, calling for legal protections for the human rights of sex workers.²⁴

17 Commission on AIDS in Asia (2008), *Redefining AIDS in Asia. Crafting an Effective Response*, New Delhi: Oxford University Press.

18 Commission on AIDS in the Pacific (2009), *Report of the Commission on AIDS in the Pacific-Turning the Tide: An OPEN strategy for a response to AIDS in the Pacific*, Suva: UNAIDS Pacific Region.

19 UNGASS *Declaration of Commitment on HIV/AIDS* (2001) and UNGASS *Political Declaration on HIV/AIDS* (2006).

20 International Labour Organization (2010) *Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)*, Geneva: ILO.

21 International Labour Conference (2010), Provisional Record N^o 13, 99th Session, Geneva, at 192-210.

22 Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, A/HRC/14/20, 27 April 2010.

23 OHCHR, UNAIDS (2006) *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*, Geneva: OHCHR & UNAIDS, fn.2, pp.29, 37.

24 E.g., Ban Ki-moon (2009) *Message to mark World AIDS Day 2009*. UNAIDS.

1.2.2 Trafficking laws, policies and law enforcement practices

A series of international treaties²⁵ and regional agreements²⁶ address human trafficking. These are used as the basis for national anti-trafficking laws and regional cooperation in anti-trafficking efforts. The language of some international and regional instruments have either implied a strong link between trafficking and sex work or conflated these concepts. The definitional ambiguities of the key anti-trafficking legal instruments contribute to the over-reach of anti-trafficking measures, with problematic results. This has affected the nature of the national legislation enacted and law enforcement practices adopted to address trafficking and sex work in countries of Asia and the Pacific.

The proper purpose of anti-trafficking laws is to address conduct that involves lack of consent due to coercion or deception, or involvement of minors. However, in many instances, anti-trafficking treaties and agreements are used to justify laws and law enforcement measures that go beyond these proper purposes. Some governments use the treaties and laws on trafficking to justify suppression of all voluntary adult sex work. 'Raid and rescue' approaches of some law enforcement agencies and non-government organizations (NGOs) can result in sex workers being forcibly removed from their workplaces regardless of whether they are working voluntarily or under duress.

The UNAIDS Advisory Group on HIV and Sex Work recommends that sex work and trafficking for the purpose of sexual exploitation be understood as separate concepts:

Sex work implies *consent* of sex workers and their capacity to exercise that consent voluntarily. The exercise of *agency*—that is, people determining for themselves what they want to do and when—is central to the definition of sex work. Trafficking, on the other hand, involves coercion and deceit, resulting in *loss of agency* on the part of the trafficked person.

...The unwillingness or inability of people to recognise that people can freely decide to engage in sex work means that sex workers are often automatically labelled as victims of trafficking when they are not. Often sex workers are portrayed as passive victims who need to be saved. Assuming that all sex workers are trafficked denies the autonomy and agency of people who sell sex. Moreover, such perspectives mean that anti-trafficking efforts typically ignore the possibility of engaging sex workers as partners in identifying, preventing and resolving situations that do involve trafficked people. Sex workers themselves are often best placed to know who is being trafficked

²⁵ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention Against Trans-national Organised Crime (Trafficking Protocol)* (2000), Arts.3(a), (b), (c), 5.1; and see Article 6 *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 35 *Convention on the Rights of the Child*.

²⁶ The *South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* promotes cooperation among Member States to deal with prevention, protection and punishment of trafficking in women and children for the purposes of prostitution. The Convention also focuses on rehabilitation and repatriation of victims between Member States; *Association of Southeast Asian Nations (ASEAN) Declaration Against Trafficking in Persons Particularly Women and Children* (2004); *Memorandum Of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region* provides a framework for the six Greater Mekong Sub-region States to cooperate to address trafficking in persons. Subsequent Plans of Action outline the national, bilateral and sub-regional initiatives signatory States commit to undertake. For the Pacific see: *Nasonini Declaration on Regional Security* (2002) and the *Regional Model Law on Counter Terrorism and Transnational Organised Crime*, Suva: Pacific Islands Forum Secretariat.

into commercial sex and by whom, and are particularly motivated to work to stop such odious practices...

There is a growing body of evidence that 'raiding' sex work venues and forcibly 'rescuing' or 'rehabilitating' sex workers results in increased displacement of sex workers, mobility of sex work venues and migration among sex workers; it also has a direct impact on HIV risk. Forced rescue and rehabilitation practices lower sex workers' control over where and under what conditions they sell sexual services and to whom, exposing them to greater violence and exploitation. In turn, this leads to

social disintegration and a loss of solidarity and cohesion (social capital) among sex workers, including reducing their ability to access health care, legal and social services. Low social capital is known to increase vulnerability to sexually transmitted infections among sex workers and therefore has a detrimental impact on HIV prevention efforts.

The conflation of sex work and trafficking directly limits the ability of migrant sex workers to protect themselves from HIV, since they are often assumed to be trafficked. Migrant sex workers often live with the constant threat of being reported, arrested and deported which creates a real barrier to accessing health and welfare services. Female migrant sex workers are frequently assumed to be trafficked when 'moral panics' around migration and sex work are created for populist political gain.²⁷

"FORCED RESCUE AND REHABILITATION PRACTICES LOWER SEX WORKERS' CONTROL OVER WHERE AND UNDER WHAT CONDITIONS THEY SELL SEXUAL SERVICES AND TO WHOM, EXPOSING THEM TO GREATER VIOLENCE AND EXPLOITATION."

Some chapters of this report refer to documented evidence of the adverse effects of enforcement of trafficking laws on consenting adult sex workers (e.g., India, Malaysia and the Philippines). Self-regulatory approaches to trafficking prevention are also discussed below (2.4.3), as exemplified by initiatives led by sex worker NGOs in India that address a range of social harms including HIV, sexual exploitation of children and trafficking.²⁸

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)²⁹

The legal definition of human trafficking has evolved over the last century from a focus on sexual exploitation to a broader focus on a range of different forms of trafficking, as reflected by the definition in the *Trafficking Protocol*. Although the *Trafficking Protocol* is a central reference point for UN agencies, it is important to note that most countries in the region have not yet signed the Protocol.³⁰

The definition of trafficking in the *Trafficking Protocol* is as follows (emphasis added):

Article 3:

a. *'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring*

27 UNAIDS (2011) *The report of the UNAIDS Advisory Group on HIV and Sex Work*, Geneva: UNAIDS.

28 See: Bandyopadhyay N. (2008), *Street Walkers Show the Way: Reframing the Global Debate on Trafficking from Sex Workers Perspectives*. Working paper 306. Brighton: Institute of Development Studies.

29 *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (2000).

30 As at 2008, fourteen countries of the Asia Pacific region were signatories (Thailand, Sri Lanka, Republic of Korea, Philippines, New Zealand, Myanmar, Mongolia, Lao PDR, Kiribati, Japan, Indonesia, India, Cambodia and Australia): <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- d. *'Child' shall mean any person under eighteen years of age.*

This definition comprises three conceptual components:

- i. action (recruitment, transportation, harbouring or receipt);
- ii. means (coercion, deception, abuse of power or of position of vulnerability); and
- iii. purpose (exploitation, including the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

Some commentators reject the *Trafficking Protocol* definition as inherently problematic, in that it is broad and unclear, leaves interpretation to each State, and contributes to the over-reach of trafficking laws.³¹ The *Trafficking Protocol* does not specifically refer to 'sex work'. The failure to provide a definition of 'exploitation' allows conflicting interpretations: (i) that all forms of prostitution/sex work are exploitative; or (ii) that only prostitution/sex work that occurs involuntarily or under duress is exploitative. It is regarded as confusing that the *Trafficking Protocol* states that the consent of the trafficked person is irrelevant where any of the means described in the *Trafficking Protocol* are present (i.e. force, coercion, abuse of power or abuse of position of vulnerability). The inclusion of this provision also lends weight to the interpretation that sex work is inherently exploitative, regardless of whether it is voluntary or involuntary. The phrase 'abuse of position of vulnerability' in the *Trafficking Protocol* may be interpreted to include acts in respect of people who fully consent to working as sex workers but who are transported or harboured in circumstances where the alleged trafficker has benefited from their 'vulnerability'. The concept of 'abuse of position of vulnerability' is vague and may be interpreted as not requiring coercion to be present.

The UN Office of the High Commissioner for Human Rights has provided guidance on the *Trafficking Protocol*. The guidance emphasizes that anti-trafficking measures should not adversely affect the human rights and dignity of persons who have been trafficked.³²

³¹ See World Bank (2009) *Human trafficking: a brief overview, Social development notes: Conflict crime and violence*, no.122, p.2., and: Kirby M., 'HIV and sex work: the Ten Commandments of Pattaya', in: APNSW, UNFPA, UNAIDS (2011) *Building partnerships on HIV and sex work, Report and recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work*, p.62.

³² OHCHR (2002) *Recommended Principles and Guidelines on Human Rights and Human Trafficking E/2002/68/Add.1*.

UN Trafficking Convention

The UN *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949) ('Trafficking Convention') only addresses trafficking for the purpose of prostitution and sexual exploitation. Other forms of forced labour are not included. For UN agencies the *Trafficking Convention* is primarily of historical interest and has been supplanted by the 2000 *Trafficking Protocol*, which provides a more contemporary framework. However, the Convention remains relevant to States in the Asia Pacific region because some States that are parties to the 1949 *Trafficking Convention* have not yet signed the 2000 *Trafficking Protocol*, and the wording and interpretation of some national prostitution laws that remain in force have been influenced by the *Trafficking Convention* (e.g., Republic of Korea, India). The *Trafficking Convention* adopts an overtly anti-sex work position and requires States to punish people for procurement, enticement, and exploitation of the prostitution of a person, with or without consent. States are also required to prohibit brothel keeping and the renting of accommodation for prostitution purposes.

SAARC Trafficking Convention

The *South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* (2002) promotes cooperation among Member States to deal with prevention, protection and punishment of trafficking in women and children for the purposes of prostitution. The SAARC Convention includes the following definitions:

'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes;

'Trafficking' means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;

'Persons subjected to trafficking' means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means.

In contrast to the *Trafficking Protocol*, the *SAARC Convention* only addresses trafficking of women for the purposes of prostitution. The *SAARC Convention* effectively conflates trafficking with prostitution (by equating prostitution with sexual exploitation and by stating that the consent of a woman is irrelevant).

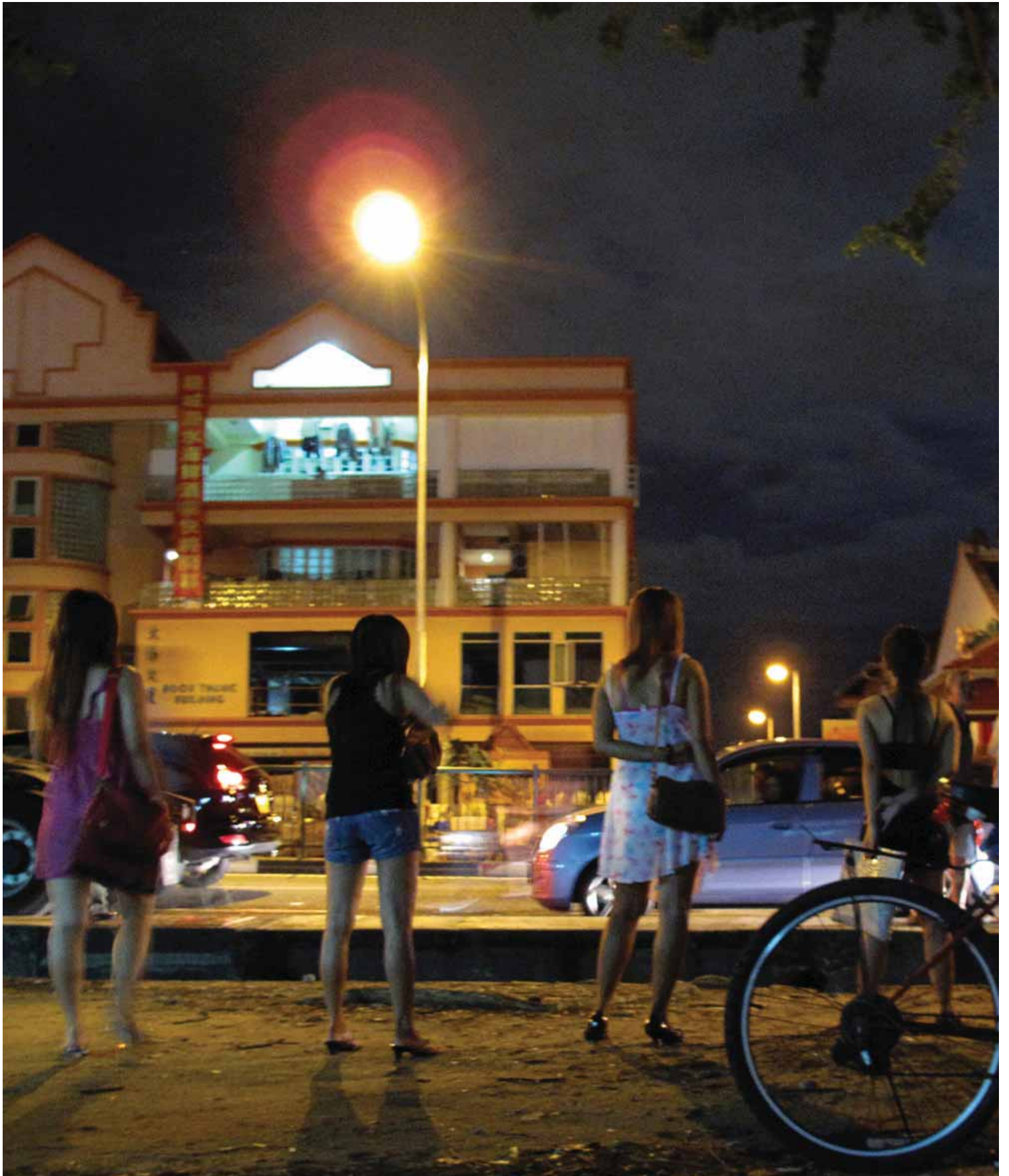
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW is an international human rights instrument that refers to suppression of trafficking. Article 6 of CEDAW provides: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". CEDAW does not define the terms 'traffic', 'exploitation' or 'prostitution'. CEDAW does not require the suppression of all forms of prostitution or sex work, but rather of the *exploitation of prostitution*. The language used in Article 6 suggests that not all instances of sex work are inherently exploitative. When the text of CEDAW was being drafted, a proposal for the amendment of Article 6 to call for the abolition of prostitution in all its forms was rejected.

Further, the CEDAW Committee recognizes that sex workers are marginalized by their unlawful status and require “equal protection of laws against rape and other forms of violence.”³³ This suggests an approach that recognizes the rights of sex workers to protection. The CEDAW Committee has recommended that special attention should be given to the health rights of women belonging to vulnerable groups, which include ‘women in prostitution’. The Committee also recommends that States should “ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country”.³⁴

33 Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993).

34 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, A/54/38/Rev.1, Chap. I.



SEX WORKERS WAIT FOR CLIENTS ON A STREET OF THE RED-LIGHT, GEYLANG DISTRICT OF SINGAPORE APRIL 9, 2009. SOURCE: REUTERS/PABLO SANCHEZ.

2 **FINDINGS AND CONCLUSIONS**

2.1 Findings

2.1.1 Laws, policies and practices that are harmful to HIV responses

Laws, policies and law enforcement practices that restrict the enjoyment of a range of human rights contribute to HIV vulnerability. This includes laws and law enforcement practices that violate the rights of sex workers to human dignity, autonomy and privacy, as well as limitations on the human right to the highest attainable standard of health, to freedom to travel, and rights to non-discrimination in employment, education, accommodation and health care.

Criminalization of sex work

All countries of Asia and the Pacific criminalize sex work or certain activities associated with sex work, except New Zealand and New South Wales (Australia). Criminalization increases the vulnerability of sex workers to HIV by:

- fuelling stigma and discrimination;
- limiting access to sexual health services, condoms and harm reduction services;
- adversely affecting the self esteem of sex workers and their ability to make informed choices about their health.

In some Asian countries, a punitive approach to sex work is entrenched by national constitutions. The constitution of Cambodia prohibits prostitution as exploitation, and the constitutions of Pakistan and Bangladesh require the state to prevent or not promote prostitution. In Pakistan and Viet Nam, prostitution is referred to in law as a 'social evil'.

Criminalization legitimizes violence and discrimination against sex workers (particularly from law enforcement officers and health care providers) and makes authorities reluctant to offer protection or support to sex workers. Criminalization reinforces stigma and discrimination, and perpetuates judgmental attitudes and myths about sex workers. Criminalization contributes to the vulnerability of sex workers to human rights violations, such as public disclosure and shaming of people for engaging in sex work. In communities where sex work is criminalized, sex workers are often reluctant to report sexual assaults

to police for fear of further abuse by the police or prosecution for sex work. This increases their vulnerability to HIV.

Punitive law enforcement practices

Police abuses of sex workers, including harassment, extortion, unauthorised detention and assaults, are reported from countries across the Asia Pacific region. In some countries, peer educators and outreach workers have been harassed or arrested by police when reaching out to sex workers (e.g., India, Nepal and the Philippines). Violence against sex workers perpetrated by police and security officials contributes to HIV vulnerability and is reported in numerous countries. Incidents involving sexual assaults by police, public security officers or military personnel have been reported from Bangladesh, Cambodia, China, Fiji, India, Kiribati, Myanmar, Nepal, Papua New Guinea and Sri Lanka. WHO has observed that laws governing sex work and law enforcement practices are a central part of the violence experienced by sex workers. Sex workers are regarded as easy targets for harassment and violence because they are considered immoral and deserving of punishment.³⁵

Sexual violence against sex workers increases their vulnerability to STIs and HIV through multiple mechanisms, including the risk of acquiring STIs or HIV when raped. Sexual assaults by police reinforce the powerlessness and marginalization of sex workers. Sex workers often have no access to legal advice and no effective way to complain about police misconduct. In such circumstances, sex workers have little confidence in government agencies and may be deterred from identifying themselves to health authorities due to fear of disclosure of identity and further violence. Mental health morbidity arising from violence can reduce the ability of sex workers to negotiate condom use and to access STI services for testing and treatment.³⁶

Punitive laws and police practices form barriers to sex workers' access to services and can result in sex work being conducted in venues and localities that are hidden, unsafe and without access to HIV services. Reports from sex worker organizations show that where sex workers are regularly targeted for arrest and prosecution, sex workers are less likely to access health services. In some countries, health service providers and outreach workers are harassed or jailed when reaching out to sex workers (e.g., India, Indonesia and Nepal).³⁷

Confiscation of condoms

Confiscation of condoms by police as evidence of illegal conduct or to justify harassment and extortion is a widespread problem. Countries where sex workers report condom confiscation or police harassment for possessing condoms include China, Fiji, India, Indonesia, Malaysia, Myanmar, Nepal, Papua New Guinea, the Philippines, Sri Lanka and Viet Nam.

35 WHO and Global Coalition on Women and AIDS (2005), *Violence Against Women and HIV/AIDS: Critical Intersections: Violence against sex workers and HIV prevention*, Geneva: WHO.

36 Beattie T., Bhattacharjee P., Ramesh B., et al. (2010) Violence against female sex workers in Karnataka state, south India: impact on health, and reductions in violence following an intervention program, *BMC Public Health* 10:476.

37 See e.g., *Creating an Enabling Legal and Policy Environment for Increased Access to HIV & AIDS Services for Sex Workers*, 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12-15 October 2010, Pattaya, p.4.

Criminalization of clients

Some countries have opted to criminalize clients of sex workers, rather than or in addition to sex workers. For example, Nepal criminalizes clients but not sex workers. A similar approach has been proposed in India. Laws have been enacted that criminalize clients in American Samoa, Bhutan, Cambodia, China, Fiji, Guam, Republic of Korea, Palau, and Taiwan. The UNAIDS Advisory Group on Sex Work has noted that there is no evidence that ‘end demand’ initiatives reduce sex work or HIV transmission, or improve the quality of life of sex workers.³⁸ Efforts targeting clients sometimes encourage law enforcement officials to use condoms as evidence of involvement in sex work.

Licensing or registration

Some countries have put in place systems to regulate certain segments of the sex industry, which are allowed to operate in specific areas subject to monitoring or compliance with official requirements, e.g., the licensing system in Taiwan, the affidavit system in Bangladesh, the *lokalisasi* system in Indonesia, registration with police in Singapore, and licensing or registration systems in states and territories of Australia. Given the stigma associated with sex work, legislation requiring licensing or registration, identification and testing of individual sex workers can drive sex workers underground. In jurisdictions such as Guam, the Philippines, and Thailand, sex work is criminalized but the government recognizes the reality that sex is sold in certain premises in particular areas. In these countries, the law requires businesses such as entertainment venues or massage parlours to be registered or licensed and to comply with conditions such as the requirement that employees test regularly for STIs. Some registration systems for sex workers, such as the affidavit system in Bangladesh, provide some security benefits and protection from police harassment for those who register, but without any access to health benefits. The major flaw of all of these approaches is that the majority of sex workers operate outside of the system. For this reason, licensing and registration systems have not proven effective in preventing HIV epidemics among sex workers.

Mandatory, compulsory or coerced testing

Mandatory, compulsory or coerced HIV or STI testing of sex workers is a widespread problem throughout the region. Laws in several countries require regular testing of sex workers as a condition of on-going employment (e.g., Guam, Indonesia, Philippines, Singapore, Taiwan, Thailand, and several states of Australia). Compulsory or coerced testing practices are also reported in China, India, and Viet Nam. Such practices violate human rights to autonomy and privacy, expose sex workers to risk of discrimination and violence, compound stigma and divert resources from effective HIV prevention and care interventions. Voluntary counselling and testing, and peer education to promote sexual health, are more effective approaches.

Lack of labour rights and social security rights

Sex workers in all countries of the region except New Zealand and the state of New South Wales (Australia) lack the labour rights afforded to other workers, including the legal right to a safe and healthy workplace and to reasonable terms and conditions of employment. In Thailand the *Labour Protection Act* applies to sex workers but is not enforced, and sex workers have some entitlements under the state social security scheme. Labour laws and

³⁸ UNAIDS (2011) *The report of the UNAIDS Advisory Group on HIV and Sex Work*, Geneva: UNAIDS, p.10.

social security laws that do not recognize sex work as legitimate work contribute to stigma and marginalization of sex workers.

Denial of identity documents and citizenship rights

Laws, policies and practices restrict the access of sex workers to identity documents. Lack of identity documents can restrict property and inheritance rights, freedom of movement and access to education, health care, housing and banking. In some countries (e.g., Bangladesh and India), sex workers have reported difficulties obtaining voter identity cards that are required for access to a range of government services, and that many female sex workers cannot register the birth of their children due to inability to confirm the identity of their child's father. In China and Lao PDR, sex workers who are internal migrants report harassment from local officials or difficulties in accessing services because they are living away from the town where they are officially registered as residents. Sex workers in Malaysia and Myanmar also report restricted access to services arising from difficulties obtaining identity cards. APNSW submitted as follows:

APNSW members continually raise issues around lack of citizenship rights such as the right to vote, open bank accounts, register births, buy SIM cards, receive humanitarian aid, become employed, visit public hospitals, or migrate. This is manifested in practice by lack of documentation such as [identity] cards and certificates. It creates and sustains vulnerability, forms potent barriers to economic opportunity and is a barrier to access health services of all kinds for a large number of male, female, and transgender sex workers in the region.³⁹

Compulsory detention centres

Compulsory detention of sex workers for the purpose of 'rehabilitation' or 're-education' is a highly punitive approach that continues to be implemented in some countries (e.g., China, India, Myanmar and Sri Lanka). These centres are stigmatizing and detainees are vulnerable to human rights abuses, including compulsory medical examinations and forced labour. In some countries, centres are used as a source of free or cheap labour, ostensibly to provide skills in alternative livelihoods. Detention is compulsory because sex workers are viewed to have committed 'immoral acts' or a 'social evil', and deprivation of liberty or compulsory labour are considered to assist with 'rehabilitation'. There is generally little or no access to psychological support or HIV prevention, treatment, care and support services in these detention centres. Community-based empowerment, health promotion and harm reduction programmes for sex workers offer more cost effective and humane alternatives than compulsory detention.

Anti-trafficking laws, policies and practices

Legislation, treaties and regional agreements that conflate human trafficking and sex work and define sex work as 'sexual exploitation' contribute to vulnerability, generate stigma and create barriers to HIV service delivery. Trafficking laws have been used to suppress voluntary sex work (e.g., Cambodia, India, Malaysia, the Philippines, and Thailand). This has resulted in abuses of sex workers' human rights and undermining of HIV programmes. Across the region, efforts of police and NGOs intended to 'rescue and rehabilitate' sex workers have had harmful consequences, including separating sex workers who are voluntarily participating in sex work from their livelihood and families. Police raids and 'rescue' operations in brothel areas can adversely affect outreach work to provide health

39 APNSW, Submission to UNDP and UNFPA, November 2011.

and support services to sex workers. There are documented cases of successful HIV prevention programmes among sex workers that have been undermined by ‘rescuing’ of sex workers in Cambodia, India, and Thailand.⁴⁰

100% CUPs

100% CUPs have been implemented in Cambodia, China, Indonesia, Lao PDR, Mongolia, Myanmar, the Philippines, Thailand, and Viet Nam. Implementation approaches have varied in each country. A number of sex worker organizations have expressed concerns about the coercive nature of some 100% CUPs, such as registration and testing requirements.⁴¹ The extent to which programmes rely in compulsion varies.

100% CUPs sometimes require compulsory registration of sex workers, mandatory health examinations, and usually require monitoring of sex workers by health authorities or police.⁴² Registration of sex workers is intended to ensure that sex workers attend clinics for testing. Registration can ensure that participating sex workers are not subject to police harassment (e.g., for carrying condoms) and can access free STI testing and treatment. However, this does not benefit those who work on the streets or outside participating establishments, and registration may lead to breaches of privacy rights. In some cases the registration process has involved collection of photographs of sex workers and personal information to create cards to document clinic visits and health status.

Health promotion programmes based on community empowerment approaches that are led by sex workers are more likely to avoid human rights violations and result in sustained HIV prevention outcomes than models that rely on mandatory provisions and coercion. It is important that the design of condom programmes includes human rights protections, measures to prevent corruption and police abuses, and efforts to ensure participation of sex workers in the design and evaluation of programmes. In some settings where the social and legal climate towards sex workers is hostile, it may not be feasible to design a 100% CUP model with adequate human rights protections. Although 100% CUPs have demonstrated that they can be very effective in reducing HIV and STI incidence among sex workers and their clients, the range of concerns relating to human rights violations that have been raised by community groups means that alternative condom programming models need to be considered.

A research team has developed *Sex Worker Empowerment Guidelines* that critique 100% CUP approaches and propose an alternative model based on community empowerment.⁴³

The UNAIDS Advisory Group on HIV and Sex Work has made the following observations about 100% CUPs:

Some programmes have been successful in helping to change the norms and practices around sex work by sex workers, with a subsequent effect on rates of HIV infection. The 100% condom use programme initiated in Thailand in the early 1990s, is one such

40 Canadian HIV/AIDS Legal Network (2007) *A Human Rights-based Commentary on UNAIDS Guidance Note: HIV and Sex Work (April 2007)*, p.13-14.

41 Network of Sex Workers Projects (2003) *The 100% Condom Use Policy: a Sex Workers’ Rights Perspective*; Longo P., Ditmore M. (2003) 100% Condom Use Programs: Empowerment or Abuse? *Research for Sex Work* Vol. 6: 3-5.

42 Canadian HIV/AIDS Legal Network (2007) *op cit*, p.12.

43 Mgbako C., Gabriel M., Garr L., Smith L. (2008) *Sex Worker Empowerment Guidelines: An Alternative HIV/AIDS Intervention Approach to the 100% Condom Use Programme*. Sangram.

example. However, as these programmes have evolved and been replicated in many countries, they have not necessarily adhered to best practice...

Experience has shown that asking law enforcement officers, health professionals and sex establishment managers to take the lead on safer sex programming is counterproductive and can disempower and penalise sex workers. Sex workers and their clients should be the main implementers and decision-makers in making sex work safer. Other stakeholders can be useful partners but should not be given an authority role.⁴⁴

2.1.2 Laws, policies and practices that are helpful to HIV responses

Examples of progress towards a more enabling legal environment for HIV responses to sex work include:

Court judgments

- Decisions of the Supreme Courts of Bangladesh, India and Nepal and the Constitutional Court of Taiwan recognizing the human rights of sex workers.
- In the *Karmaskar case* (2011), the Supreme Court of India directed the government to consider providing ration cards and voter identity cards to sex workers. The Court requested the government to ensure that admission of the children of sex workers to schools is not hampered.

Policy development

- The *National HIV Prevention Strategy* of Papua New Guinea specifically calls for decriminalization of sex work to support the HIV response.
- The *National Strategy on Female Sex Work in Pakistan* addresses the need for directives to prevent confiscation of condoms and to address police violence and harassment.
- The *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015* commits to a needs assessment that will examine stigma, discrimination and human rights violations among sex workers, giving special attention to attitudes among health care and law enforcement staff and law reform to strengthen the human rights position of sex workers.
- An Order of the Government of Myanmar directs police not to confiscate condoms as evidence of sex work. Enforcement of the Order is supported by the *National HIV Strategy 2011-2015*.
- The Ministry of Interior of Cambodia issued a Directive in 2011 that condoms will not be used as evidence for arrest.
- Rules of the Social Security Fund of Thailand enable sex workers to access state social security benefits for sickness, disability, death, and a pension if they make financial contributions.⁴⁵

44 UNAIDS Advisory Group on HIV and Sex Work (2011) *The report of the UNAIDS Advisory Group on HIV and Sex Work*, Geneva: UNAIDS.

45 Lowe D., (2011) *Concept note: The role of the International Labour Organization in improving the working conditions and sexual and reproductive health of sex workers in Thailand*, ILO ESEAP Regional Office, unpublished.

- Police instructions in several states of India direct police not to harass or arrest sex workers.
- The *HIV/AIDS Curriculum for Senior Level Police* in Nepal addresses the need to prevent police abuses against sex workers.⁴⁶

Legislation

- Legislation in Fiji and Papua New Guinea make it unlawful to deny a person access, without reasonable excuse, to condoms or other means of protection from HIV.
- Legislation in Viet Nam requires the government to implement harm reduction interventions including condom programmes with sex workers, and protects peer educators from prosecution.
- Legislation in Lao PDR provides:
 - an obligation to improve advocacy and HIV education for sex workers;
 - a right to voluntary counselling and testing for HIV, and for test results to be kept confidential;
 - that citizens, aliens, foreigners and people with no nationality have rights to information on HIV prevention;
 - that the health sector should report on HIV trends among sex workers to inform planning.
- National HIV laws in Cambodia, Fiji, Lao PDR, Papua New Guinea and the Philippines offer some protections in areas such as prohibition of compulsory testing, and rights to confidentiality and to protection from discrimination for those who are HIV-positive.
- Draft laws in India and Pakistan prohibit police from confiscating condoms from sex workers or obstructing their access to HIV services. (However, although the respective national HIV/AIDS authorities support these bills, governments are yet to enact the legislation).
- Sex work and activities associated with sex work have been decriminalized in New South Wales (Australia) and New Zealand, and legally enforceable workplace health and safety standards have been developed for sex workers.
- Legislation in New Zealand and some jurisdictions in Australia provide sex workers with legal protections from discrimination and unfair work practices.

Initiatives of sex workers and their organizations to improve the legal environment

- Sex worker organizations in India have mobilized to address human rights violations, advocate for law reform and engage with the police to improve law enforcement practices (e.g., VAMP, DMSC, SWFK, KSWU, Ashodaya Samithi). Some have established self-regulatory boards.

⁴⁶ Sex workers consulted in 2011 noted that despite the existence of the Curriculum, sex workers are still harassed by the police and there is a need to reach junior police as well as senior police.

- Jagriti Mahila Maha Sangh (Federation of Female Sex Workers in Nepal) and Blue Diamond Society (BDS) are community-based organizations that advocate for improved legal protections for the human rights of sex workers in Nepal.
- Myanmar's national network of female sex workers (SWiM) is implementing a project that funds paralegals' to give legal advice and health information to sex workers and engages in advocacy on justice issues.
- The China Sex Worker Organizations Network Forum has documented the impact of the 2010 police crackdown on sex work and HIV responses in China to provide evidence for advocacy.
- The Collective of Sex Workers and Supporters (COSWAS) in Taiwan has advocated for non-discriminatory laws that protect health and safety of sex workers in Taiwan.
- In Hong Kong, Zi Teng and the JJJ Association have formed cooperative arrangements with police to address abuses of sex workers' rights.
- In Indonesia, the Indonesian sex workers organization (OPSI) is able to influence government policies and programmes by participating in national committees convened by the National AIDS Commission.
- The Poro Sapot Project in Papua New Guinea involves sex workers in community-based efforts to educate the police about HIV, and Friends Frangipani (the national sex workers organization) advocates for law reform and improved policing practices.
- In Thailand, SWING implements a police cadet internship programme and cadet training curriculum to expose police cadets to peer-based HIV prevention activities. The Empower Foundation in Thailand advocates for labour protection measures to be extended to sex workers and decriminalization of sex work. In 2006, the Foundation opened a bar in Chiang Mai that provides sex workers with working conditions that comply with standards under the *Labour Protection Act*.

2.2 Conclusions

Legal empowerment of sex worker communities underpins effective HIV responses

HIV interventions with sex workers have tended to primarily focus on condom promotion and testing for HIV and STIs, and too often have failed to address the power relationships that create HIV vulnerability. Legal empowerment can be understood as the process of systemic change through which vulnerable communities are protected and enabled to use the law to advance their human rights and their interests as citizens and economic actors.⁴⁷

Sex worker organizations in India and Thailand have demonstrated the effectiveness of adopting an empowerment approach, based on community mobilization, peer-based health promotion, self-regulation, active engagement on law enforcement issues and participation in dialogue about law and policy reform. Similarly, sex worker organizations in Cambodia, China, Hong Kong SAR, and Indonesia are actively engaged in advocating

⁴⁷ See: *Legal empowerment of the poor and eradication of poverty*, Report of the Secretary-General to UN General Assembly 64th Session, 13 July 2009, A/64/133.

for law reform and improvements to law enforcement practices. Although punitive laws remain on the statute books in all these countries, significant progress has been achieved through sex workers educating their peers about their rights, organizing legal representation and securing changes to law enforcement practices to reduce police abuses and facilitate HIV prevention activities. At the local level, this approach has shifted the power balance in favour of the vulnerable, and has been associated with positive HIV prevention outcomes such as increased condom use rates and reduced stigma.

Positive public health and human rights outcomes have been achieved in jurisdictions that have decriminalized sex work

There is no evidence from countries of Asia and the Pacific that criminalization of sex work has prevented HIV epidemics among sex workers and their clients. On the contrary, evidence from the jurisdictions in the region that have decriminalized sex work (New Zealand and New South Wales) indicates that the approach of defining sex work as legitimate labour empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates. Very low STI prevalence has been maintained among sex workers in New Zealand and New South Wales, and HIV transmission within the context of sex work is understood to be extremely low or non-existent.⁴⁸

Sex worker organizations argue that the most important role of the law in supporting effective HIV responses among sex workers is to provide labour rights for sex workers that recognize sex work as legitimate work.⁴⁹ As a legitimate form of work, exploitation of sex workers can be prevented and remedied through applying workplace standards and the general labour, criminal and civil laws that govern employment. To enable the sex industry to be regulated as a legitimate form of work requires removal of the range of laws that criminalize activities associated with sex work, including removal of offences relating to soliciting, living on the earnings of sex work, procuring, pimping, the management and operation of brothels, and advertising.

In decriminalized contexts, the sex industry can be subject to the same general laws related to workplace health and safety and anti-discrimination protections as other industries. Legally enforceable workplace standards developed by the sex industry can contribute to a reduction in HIV transmission and improvements in overall working conditions. Experience in Australia and New Zealand has been that universal condom use within the sex industry can be supported through occupational health and safety standards that include comprehensive measures to promote safe sex practices. Standards can require the use of condoms, sanitation and measures to ensure the personal security of sex workers. Such an approach is particularly beneficial in settings where sex work is organized on a commercial basis, and is based in brothels or other establishments that can be subject to legal standards.

Removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex workers and their clients. Decriminalization enables sex workers to

48 McAllister S., Dickson N., Sharples K., et al., (2008) Unlinked anonymous HIV prevalence among New Zealand sexual health clinic attenders: 2005–2006, *International Journal of STD & AIDS*, Volume 19 November 2008; Abel G., Fitzgerald L., Healy C., Taylor, A. (eds) (2010), *Taking the crime out of sex work: New Zealand sex workers' fight for decriminalization*, Bristol: Policy Press; Harcourt C., Egger S., Donovan B. (2005), 'Sex work and the law', *Sexual Health* 2(3): 121–8; Donovan B., Harcourt C., Egger S., Fairley C. (2010), 'Improving the health of sex workers in NSW: maintaining success', *NSW Public Health Bulletin* 21(3-4): 74–7; Jeffreys E., Matthews K., Thomas A. (2010), 'HIV criminalisation and sex work in Australia', *Reproductive Health Matters* 18(35): 129–36.

49 Submission of APNSW, UNDP/APNSW/UNFPA Regional Consultation, Bangkok, 22-23 November 2011.

organize within their communities and register their organizations, obtain identification documents so that they can fully access services and entitlements, engage in advocacy and respond to the health and safety needs of their peers. Involving sex workers directly in HIV prevention and sexual health promotion can raise their self-esteem and increase their trust and confidence in HIV and sexual health services. Sex workers can become key partners in the HIV response and governments and donors can fund sex worker organizations to implement rights-based HIV interventions and advocate for their labour rights. The legal recognition of sex work as an occupation also enables sex workers to claim benefits, to form unions and to access work-related banking, insurance, transport and pension schemes.

Licensing and registration models have not proved to be effective

Licensing or registration of the sex industry has been of limited benefit in terms of public health and human rights outcomes for sex workers. Several jurisdictions have introduced licensing or registration of brothels, businesses where sex work occurs or individual sex workers (e.g., Indonesia, Taiwan and several states and territories of Australia). Licensing or registration systems are usually accompanied by criminal penalties for sex industry businesses and individual sex workers who operate outside of the legal framework. Licensing or registration models may provide some health benefits to the small part of the sex industry that is regulated, but do not improve health outcomes for the broader population of sex workers. Some countries operate licensing or registration systems in contexts where sex work remains technically illegal. Examples include STI and HIV testing requirements under regulations that govern entertainment establishments in Thailand, Guam and 'red-light areas' in the Philippines and the police supervision system in Singapore. In Bangladesh, registration by affidavit provides some security benefits and freedom from police harassment for those who register, but without access to health benefits. Typically, in jurisdictions that have introduced licensing or registration systems the vast majority of sex workers operate outside of the system. This approach compounds the marginalization of most sex workers.

Human rights violations may result from licensing models that require compulsory testing and registration of sex workers with government authorities. Licensing models may deliver health and safety benefits to some sex workers but have proved problematic when licensing conditions are too complex and costly to comply with, or invite corruption. Human rights violations may result from licensing models that require compulsory testing and registration of sex workers with government authorities. Particularly in settings where the rule of law is weak, police or licensing authorities responsible for monitoring compliance may abuse their authority to demand bribes or sexual services.

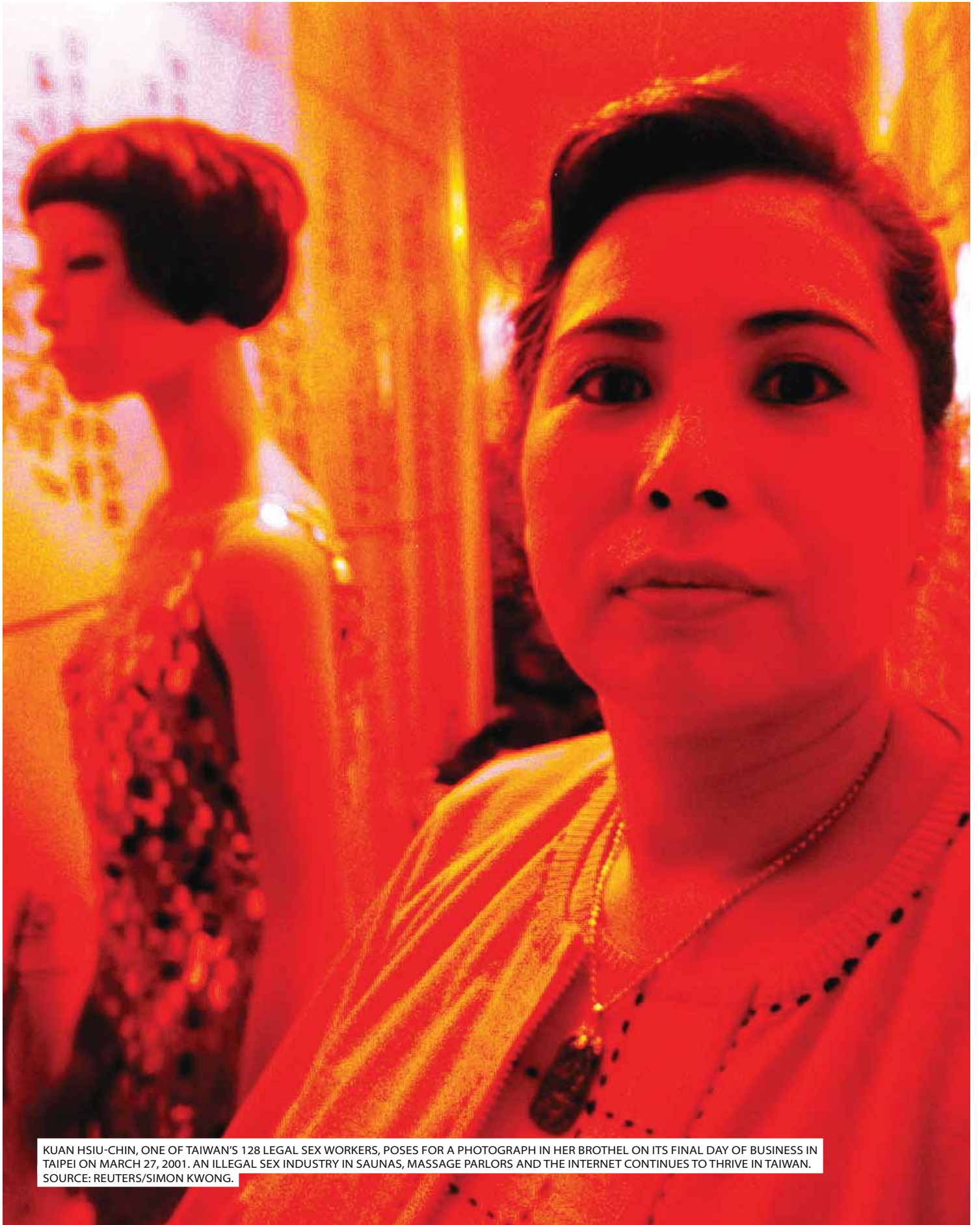
Communities need to determine their own solutions

Each country needs to define its own priorities in relation to law reform and changes to law enforcement practices, informed by an assessment of objectives that are realistically achievable and relevant to the local context. Priorities for countries in which sex work is organized on a commercial basis are likely to be different from those of countries where there is no established sex industry.

In countries where there is growing social acceptance of sex work and leaders are willing to champion the rights of sex workers, decriminalization may be achievable in a relatively short period. However, in politically conservative countries where political and social opposition to sex work is deeply entrenched, pressing immediately and publicly for decriminalization may be counter-productive and could result in a punitive backlash that

undermines HIV responses. The political context may be such that a focus on improving police practices and the attitudes of the judiciary may be assessed as a more effective strategy to advance public health objectives and the human rights of sex workers than pressing for immediate law reform.

It is critically important that sex workers are centrally involved in efforts to improve legal environments. Sex workers and, where they exist, sex workers' organizations should be supported to participate in setting national priorities for an agenda for action to improve the legal environment for sex workers. Each jurisdiction needs to determine its own legal framework for sex work that is consistent with human rights and public health objectives.



KUAN HSIU-CHIN, ONE OF TAIWAN'S 128 LEGAL SEX WORKERS, POSES FOR A PHOTOGRAPH IN HER BROTHEL ON ITS FINAL DAY OF BUSINESS IN TAIPEI ON MARCH 27, 2001. AN ILLEGAL SEX INDUSTRY IN SAUNAS, MASSAGE PARLORS AND THE INTERNET CONTINUES TO THRIVE IN TAIWAN. SOURCE: REUTERS/SIMON KWONG.

3 **DEFINING AN AGENDA FOR ACTION AT COUNTRY LEVEL**

This chapter provides a series of recommendations that can be considered by governments, sex worker organizations and UN agencies working at country level to inform an agenda for action. Recommendations are drawn from three sources: (i) the UNAIDS Advisory Group on HIV and Sex Work; (ii) the Global Commission on HIV and the Law; and (iii) recommendations developed as a result of the consultation process undertaken by UNDP and UNFPA in Asia and the Pacific in 2011 to inform this report.

(i) UNAIDS Advisory Group on HIV and Sex Work (2011)

The 2011 report of the UNAIDS Advisory Group on HIV and Sex Work made the following recommendations on the legal environment:⁵⁰

States should move away from criminalizing sex work or activities associated with it. Decriminalization of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers' rights or dignity and that ensure their enjoyment of due process of law.

Whatever the legal regime, states should ensure that sex workers have unimpeded access to all HIV prevention, treatment, care and support programmes and that they participate meaningfully in programme and policy decision-making affecting them. Prevention programmes should ensure access to lubricants as well as condoms. HIV-positive sex workers must be considered a high-priority population for uninterrupted access to treatment services.

States should take all necessary measures to enable sex workers to enjoy work-related protections like other workers, including workplace safety and protection from violence, exploitation and discrimination.

Where criminal law applies, governments and donors should support sex workers' access to legal services, mechanisms of accountability for police abuse, information for sex workers on their rights, and removal of impediments to forming sex worker organisations. Reduction of sex work-related stigma should figure in public awareness and information programmes.

⁵⁰ UNAIDS Advisory Group on HIV and Sex Work (2011), *Report of the UNAIDS Advisory Group on HIV and Sex Work: December 2011*, Geneva: UNAIDS.

Where governments have recognized the legality of sex work, health regulations related to sex work should avoid mandatory medical procedures, respect sex workers' right to meaningful participation in health services, and give priority to measures that empower sex workers to protect themselves from HIV and other sexually transmitted diseases.

In its submission to the Global Commission on HIV and the Law, the UNAIDS Advisory Group on HIV and Sex Work made the following additional points:

States must have a legal obligation to protect, respect and fulfil the human rights of everyone, including female, male and transgender sex workers, regardless of whether sex work remains criminalized. States must take steps to protect sex workers from violence and exploitation, prevent illegal police practices against them, provide them with equality before the law and due process, and implement measures to ensure that they are able to access health services including HIV prevention and treatment in a non-discriminatory, confidential and voluntary manner, including protection from mandatory testing.

In order to effectively address HIV, states must reform the laws governing sex work in a manner that is cognizant of the variety of forms that commercial sex may take, and the range of individuals who perform roles associated with the conduct of commercial sex other than the physical provision of sexual services. These include brothel owners, managers, and cleaners, drivers, cooks and other support staff.

Another option, chosen by some States, is to move further away from criminalization, prohibition and penalization, to create regulatory frameworks for commercial sex that recognize sex work as a legitimate occupation and regulate safety and health within that occupation. Such regulatory frameworks can:

- Enable sex workers to be recognized as persons before the law capable of holding and exercising all human rights, including the right to mobilize and form representative bodies to advocate for further social and legal reforms;
- Ensure that sex work can take place under healthy and safe conditions;
- Guarantee sex workers' access to health and social services; and
- Provide protection from violence, exploitation, coercion, abuse and discrimination.⁵¹

(ii) Recommendations of the Global Commission on HIV and the Law (2012)⁵²

Countries must:

1. Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against 'immoral' earnings, 'living off the earnings' of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers.
2. Take all measures to stop police harassment and violence against sex workers.

⁵¹ UNAIDS Advisory Group on HIV and Sex Work, *Submission to the Global Commission on HIV and the Law*, August 2011.

⁵² Global Commission on HIV and the Law (2012) *Risks, rights and health*, New York: UNDP, p.43. The Global Commission on HIV and the Law was an independent body, supported by UNDP.

3. Prohibit mandatory HIV and STI testing of sex workers.
4. Ensure that the enforcement of anti-human-trafficking laws is carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence or by deprivation of liberty. Anti-human-trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults involved in consensual sex work.
5. Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
6. Ensure that existing civil and administrative offences such as 'loitering without purpose', 'public nuisance', and 'public morality' are not used to penalise sex workers and administrative laws such as 'move on' powers are not used to harass sex workers.
7. Shut down all compulsory detention or 'rehabilitation' centres for people involved in sex work or for children who have been sexually exploited. Instead, provide sex workers with evidence-based, voluntary, community empowerment services. Provide sexually exploited children with protection in safe and empowering family settings, selected based on the best interests of the child.
8. Repeal punitive conditions in official development assistance—such as the United States government's PEPFAR anti-prostitution pledge and its current anti-trafficking regulations—that inhibit sex workers' access to HIV services or their ability to form organizations in their own interests.
9. Take decisive action to review and reform relevant international law in line with the principles outlined above, including the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000).

(iii) Action items for country-level consideration

The following action items were developed by this project, informed by the regional and country consultations conducted by UNDP and partners in 2011. The recommendations are not intended to apply equally to all countries. Priority should be given to in-country work to further map the issues, identify priorities and develop country-specific advocacy plans with active participation of sex workers.

Some communities are already making good progress in the areas outlined below. The items are intended to be a reference for actors at the country-level that helps to define a national agenda for action, tailored to local conditions. Country-specific cultural, religious, economic and political factors need to be taken into account in determining which action items should be accorded a priority in each country.

1. Law reform

- 1.1. Governments should apply the *ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)* to sex work. Sex workers should enjoy legally enforceable rights to occupational health and safety. Sex workers should be supported to participate in the process of developing workplace health and safety standards. Recognizing that sex work is legitimate work provides a framework within which sex workers can benefit from the same rights and protections as other workers, including access to services and freedom from discrimination and exploitation.

- 1.2 Laws that criminalize sex work and the sex industry should be reviewed, taking into account the adverse impacts of punitive laws on HIV responses and the human rights of sex workers. To enable sex workers to fully enjoy rights to health and safety in the workplace requires decriminalization. Decriminalization of sex work requires the repeal of:
 - a. laws explicitly criminalizing sex work or clients of sex workers;
 - b. laws that criminalize activities associated with sex work, including removal of offences relating to: soliciting; living on the earnings of sex work; procuring; pimping; the management and operation of brothels; and promoting or advertising services;
 - c. laws that require mandatory HIV or STI testing or treatment of sex workers;
 - d. laws that authorize the compulsory detention of sex workers for the purposes of re-education, rehabilitation or correction.
- 1.3 Human trafficking laws should be reviewed to ensure that they do not criminalize consenting adults voluntarily engaged in sex work.
- 1.4 Laws should support the right of sex workers, including those living with HIV, to access health and welfare services without discrimination. Legislation should provide sex workers with the right to comprehensive sexual and reproductive health services, including for migrant sex workers.
- 1.5 Laws and policies (such as the requirement to possess an identity card to access essential health services or accommodation) should be reviewed to ensure that they do not prevent sex workers from traveling, inheriting property, accessing benefits or exercising full citizenship rights.
- 1.6 Governments should prohibit discrimination on the grounds of a person's occupation as a sex worker particularly in areas of: employment; access to services including health care; education; accommodation; travel; provision of identity documents; and access to welfare services.

2. Support to leadership, community empowerment and advocacy

- 2.1 Governments and donors should support sex workers and their organizations to participate in law and policy reform processes and to engage in advocacy on legal and human rights issues. Sex workers' organizations should be resourced to implement community empowerment programmes and to provide peer-based advocacy on legal and human rights issues. Capacity building for sex workers should include training in legal literacy, human rights, policy, advocacy and leadership skills.
- 2.2 Governments, donors and UN agencies should engage with sex worker organizations, including national and regional networks of sex workers, as partners to inform policies and programmes relating to legal and human rights issues. Governments should work in partnership with sex worker organizations to develop non-judgmental, rights-based and evidence-based laws, policies and programmes.

3. Improvements to law enforcement practices and education of the judiciary

- 3.1 Governments should prohibit law enforcement agencies from participating in coercive practices including mandatory HIV and STI testing, forced rehabilitation, or health promotion programmes implemented by police or based upon detention of sex workers. Governments should ensure that public order offences are not selectively enforced against sex workers or are used as a pretext for extortion or for harassing, assaulting, detaining or punishing sex workers.
- 3.2 Governments should ensure that sex workers, outreach workers, peer educators and managers of HIV services are not prosecuted on the basis of evidence of possession of materials used in promoting sexual health, such as safe sex literature, male and female condoms and lubricant.
- 3.3 Governments should ensure that law enforcement agencies with responsibility for enforcing laws against human trafficking target traffickers, rather than consenting adult sex workers.
- 3.4 Governments should ensure that police and public security personnel receive training on HIV, human rights and sex work, and should specifically address prevention of police abuses of sex workers, including sexual violence and extortion.
- 3.5 Governments should ensure that transparent and independent police complaint mechanisms are in place that can help prevent and remedy police abuses. Police departments should ensure disciplinary proceedings and prosecutions are brought against police involved in harassment, extortion or violence towards sex workers. Governments and national human rights institutions should ensure that all allegations of human rights violations perpetrated against sex workers are investigated thoroughly by independent bodies, and that those responsible are held accountable for their actions.
- 3.6 Condom promotion programmes for sex workers should not rely on police for enforcement and should not impose compulsory HIV or STI examinations. Condom promotion programmes should respect the rights of sex workers to non-discrimination, privacy and autonomy in medical decision-making. Sex worker participation in designing and evaluating these programmes is critical.
- 3.7 Justice Ministries and professional associations should include information on human rights-based responses to HIV and sex work in training of magistrates and judges. Judges should be supported in educating their peers about sex work, HIV and human rights.
- 3.8 Ministries of Police and Justice should work cooperatively with other Ministries involved in the HIV response (e.g., those with responsibility for health, welfare, education) to ensure that law enforcement approaches are supportive of HIV prevention, sexual health promotion and violence prevention strategies for sex workers.

4. Legal services

- 4.1 Governments should ensure provision of legal aid services for sex workers who require legal advice and representation, including in relation to police matters, violence protection, discrimination or other human rights violations, and access to identification documents.

- 4.2 Donors should support NGOs and professional associations to provide legal aid services to sex workers, and education about their legal rights and mechanisms for enforcing rights.
- 4.3 Ministries of Justice and the legal profession should ensure the creation of a trained and sensitized legal work force that has expertise in providing legal services to sex workers including to defend prosecutions, to complain against excessive police conduct or discrimination and to seek justice for sex workers subjected to violence and abuse.

5. Research, evidence and monitoring

- 5.1 Detailed mapping of the legal environments of sex workers should be used to inform an agenda for action in each country, using the rapid policy assessment and response methodology.⁵³ These mapping exercises should be led by sex worker organizations where feasible and informed by qualitative studies on the impact of laws and law enforcement practices on the health and human rights of sex workers.
- 5.2 Donors and national AIDS authorities should support social research to investigate the impact on HIV responses of sex work laws and law enforcement practices.
- 5.3 Human rights violations experienced by sex workers need to be systematically documented so that redress can be sought. Documentation should be used to inform planning of protective measures and for advocacy with policy and decision-makers to prevent future violations of rights from occurring.
- 5.4 National AIDS authorities should promote the sharing of evidence of successes and lessons learnt from programmes that support sex workers and their organizations to advocate for their human rights and improved legal environments.

6. National planning of HIV responses

- 6.1 Governments should ensure that national HIV Strategies and Plans recognize the importance of ensuring non-punitive, enabling legal environments for HIV responses among sex workers and their clients.
- 6.2 National HIV Strategies and Plans should address the legal and policy environment, including law reform priorities, participation of sex workers in legal reform and policy processes, support to the advocacy and policy role of sex worker organizations, community legal education, access to legal and advocacy services, harm reduction, social protection and empowerment programmes.
- 6.3 Governments should support participation of representatives of sex worker communities in national planning of HIV responses.

7. National human rights institutions

- 7.1 National human rights institutions should ensure that resources are applied to protecting and promoting the human rights of sex workers, and to raising awareness of the harms to HIV responses caused by violations of the human

⁵³ Rapid Policy Assessment and Response (RPAR) methodology is being implemented in Fiji and Malaysia by Paulo Longo Research Initiative and has been implemented by Project Parivartan and the Lawyers Collective to map the legal environment for sex workers in Andhra Pradesh, India.

rights of sex workers by state agencies including law enforcement agencies, custodial centres and health care providers.

7.2 National human rights institutions should hold governments accountable for protection of sex workers from discrimination, harassment, abuse and violence perpetrated by police or other government officers.

8. The role of donors and multilateral organizations in supporting country responses

8.1 Donors, UN agencies and governments should support the role of national, regional and international sex worker networks in monitoring and documenting violations of human rights, participating in policy development processes relating to sex work and advocating for law reform and legal protections for sex workers.

8.2 The ASEAN Intergovernmental Human Rights Commission should take proactive measures to promote and protect the human rights of sex workers and ensure that Member States commit to action to review discriminatory laws and policies that undermine HIV responses in the context of sex work.

8.3 The Global Fund should implement commitments of its Sexual Orientation and Gender Identities Strategy, including by promoting inclusion of sex worker-led human rights activities in funding proposals and sex worker participation in Country Coordinating Mechanisms.

8.4 UNAIDS and its Cosponsors should support country partners to include measures to improve the legal environment among sex workers in national HIV plans.

8.5 UNODC and other multilateral and regional agencies involved in the implementation of law enforcement responses to trafficking should ensure that the enforcement approaches adopted do not violate the human rights of sex workers and are consistent with the human rights-based HIV policies of UNAIDS, UNDP, UNFPA and ILO.



NEARLY 2,000 SEX WORKERS SHOUT SLOGANS DURING A TORCH-LIT PROCESSION ON THE EVE OF MAY DAY IN KOLKATA DEMANDING RIGHTS AND RECOGNITION OF THEIR PROFESSION, APRIL 30, 2008.

4 SOUTH ASIA

4.1 Overview

Nature of sex work in South Asia

Sex work in South Asia takes highly diverse forms. It is useful to make a distinction between street-based workers, brothel-based workers, and establishment-based workers who solicit clients from hotels, bars, restaurants, massage parlours and other venues. Some brothel-based workers operate as bonded labourers, some rely on the brothel manager or 'madam' for their working conditions, whereas others use pimps to organize clients or work independently. Some commentators describe the category of 'flying' or 'floating' sex workers, referring to sex workers who do not have a fixed place of business and may meet clients in hotels, in parks, at transport hubs or on the street. 'Flying' sex workers include part time sex workers such as students. Call girls or escorts comprise another category of sex workers.

There are large numbers of male and transgender sex workers in South Asia. Transgender sex workers are usually street-based. Male sex workers usually work independently or may work through escort services. Male and transgender sex workers often work in public areas such as parks or streets.

In Pakistan, it has been observed that sex work has evolved in the last two decades from a predominantly brothel-based culture to a more diverse sector in which women, men and transgender people sell sex in a variety of settings.⁵⁴

In Sri Lanka, most sex workers are street-based or operate from shanty dwellings.⁵⁵ In addition to street work, some clandestine brothels operate in Sri Lanka and many sex workers work from karaoke clubs or as escorts.

There are also culturally-specific sex work practices in South Asia, linked to traditional roles that included provision of sexual services. In Nepal, *badi* traditionally made a living by dancing and entertaining people at festivals and marriages. More recently *badi* has become a practice whereby young women are trained to become sex workers as a means of generating income.⁵⁶ Parts of India have similar traditional forms of sex work

54 UNAIDS HIV and AIDS Data Hub for Asia Pacific (2011), *Sex work and HIV: Pakistan*, p.1.

55 Government of Sri Lanka (2010), *UNGASS Country Progress Report: Sri Lanka* (Jan 2008-Dec 2009).

56 Center for Reproductive Rights (2004), *Women of the World: Laws and Policies Affecting their Reproductive Lives - South Asia*. New York: Center for Reproductive Rights.

e.g., *devadasis*, *jogins*, *bhavins*. The traditional roles of these communities have declined, with the emphasis being on sex work as income rather than as an aspect of cultural and religious practice.

Nature of the legal environment

The legal environment for sex work is punitive in all South Asian countries, although there are some important recent examples of progress towards less punitive approaches. However, no government in South Asia has proposed to decriminalize or formally regulate the sex industry at a national level.

Examples of progress towards a less punitive approach to sex work in South Asia include:

- sex worker-led self-regulatory boards and community legal empowerment approaches of sex worker organizations in India;
- police instructions in some states of India, directing police not to harass or arrest sex workers;
- decisions of the Supreme Courts in Nepal, India and Bangladesh recognizing that sex workers enjoy human rights as defined by national constitutions;
- Development of an *HIV/AIDS Curriculum for Senior Level Police* in Nepal;
- Development of a *National Strategy on Female Sex Work in Pakistan*, which addresses the need for directives to prevent confiscation of condoms and to address police violence and harassment.

The legal situation varies in each country and internally. The constitutions of Pakistan and Bangladesh include provisions requiring the state to prevent or not promote 'prostitution'. Pakistan and Afghanistan have highly punitive laws and police practices. Afghanistan, the Maldives and Pakistan incorporate *sharia*⁵⁷ principles into criminal law, which can result in corporal punishment for sex outside of marriage, which in effect criminalizes sex work.

Law enforcement practices are influenced by municipal regulations and local police cultures. In Bangladesh, Pakistan and India, police and local government acknowledge the existence of very large red-light districts. Police and other government authorities have complex relationships with the organized sex industry. In many settings, some police and other local officials reportedly have a financial interest in the organized sex industry.

In India, Bangladesh, Nepal and Sri Lanka, adult sex work is not illegal if it is conducted privately, by single workers and voluntarily. However, soliciting for sex, operating brothels and pimping or profiting from others who engage in sex work are illegal. In India the Supreme Court has acknowledged that sex workers have the right to choose to work in the sex trade and it is legal to engage in sex work in private. However, soliciting in public is illegal, and trafficking and public order offences are enforced against sex workers. In Sri Lanka there is no specific offence for sex work, but the *Vagrants Ordinance* criminalizes soliciting in public and brothels are illegal. In Pakistan all extra-marital sex is illegal. In all South Asian countries, sex workers are more frequently prosecuted than clients of sex workers or others involved in the sex industry.

Sex workers are often targeted by police for harassment and arrest under public order

⁵⁷ *Sharia* refers to traditional Islamic law derived from the Koran. In Pakistan, *sharia* law applies to Muslim citizens.

offences and offences relating to beggars or vagrants. This may lead to arrest and to detention in special 'rehabilitation' facilities (e.g., Sri Lanka and India).

Birth registration for children of sex workers in South Asia is often problematic, due to inability to identify the father. Lack of birth registration can mean the child of a sex worker is unable to attend school, as has been reported in Bangladesh and India.

The laws enacted with regard to trafficking in India and Sri Lanka conflate trafficking and voluntary sex work. People who voluntarily enter and remain in sex work are sometimes incorrectly regarded as trafficked, as are those who entered sex work under duress at a young age but who as adults choose to remain employed as sex workers. This is partly due to the influence of the United Nations 1949 *Trafficking Convention*⁵⁸ and the SAARC *Convention on Preventing and Combating Trafficking in Women and Children, 2002*.

Particular problems arise due to police action against adult voluntary sex workers justified on the basis of trafficking crackdowns. Many sex workers report that they are subjected to police abuses during street clean-up operations, police-led brothel closures or 'rescue operations'.⁵⁹ Sex workers report police roundups, sometimes accompanied by violence and abuse from law enforcement officers and other government officials. Some report being sexually assaulted by police as a form of humiliation, and being coerced into providing sex to police. Laws in India, Sri Lanka and Bangladesh enable sex workers to be detained in corrective or protective institutions, often with few procedural safeguards or rights of appeal.

Some Indian NGOs, such as Durbar Mahila Samanwaya Committee (DMSC) and Veshya Anyay Mukti Parishad (VAMP), have developed alternative approaches to addressing trafficking and involvement of minors in selling sex, based on community mobilization and self-regulation.

58 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.*

59 International HIV/AIDS Alliance (2008) *Sex work, violence and HIV: a guide for programmes with sex workers.*

TABLE 1: LEGALITY OF ADULT SEX WORK IN SOUTH ASIA

 **Legal**  **Illegal**  **Not Illegal***

Country	Sex work in private	Soliciting	Brothels	Laws
Afghanistan				Sex workers may be charged with adultery under Article 427 of the <i>Penal Code 1976</i> , and punished with 'long imprisonment' i.e. a term ranging from 5 to 15 years. Courts may also impose punishments under Hanafi principles of <i>sharia law</i> . There are periodic police crackdowns on migrant sex workers in Kabul's brothels, ⁶⁰ and reports that hundreds of female sex workers are imprisoned every year for unlawful sexual relationships. ⁶¹
Bangladesh				<i>Suppression of Immoral Traffic Act, 1933</i> prohibits soliciting in public and brothel keeping. <i>Oppression of Women and Children (Special Enactment) Act, 1995</i> prohibits hiring of women for sex work.
Bhutan				The <i>Penal Code 2004</i> criminalizes sex workers and their clients, and promotion of prostitution including by brothel keeping and soliciting.
India				The <i>Immoral Traffic Prevention Act</i> provides offences for brothel keeping (Section 3), living on earnings of sex work (Section 4), procuring, inducing or detaining for sex work (Section 5 & 6), sex work in areas near public places and notified areas (Section 7), and soliciting (Section 8).
Maldives				<i>Sharia law</i> applies, which criminalizes all aspects of sex work. <i>Penal Code Section 88</i> provides penalties for disobeying orders issued in <i>sharia law</i> .
Nepal				People soliciting for sex work may be arrested under public order offences. There are no specific offences relating to brothels, but raids are frequent.
Pakistan				Although there is no specific offence for sex work, adultery is illegal and subject to severe punishment under the <i>Offence of Zina (Enforcement of Hudood) Ordinance, 1979</i> .
Sri Lanka				The <i>Vagrants Ordinance</i> prohibits soliciting. The <i>Brothels Ordinance</i> prohibits brothel keeping.

* Generally not prohibited but exceptions apply.

60 Woman gets 11 years for running Kabul brothel, Reuters, 29 June 2008; Huggler J. (2006) Chinese prostitutes arrested in Kabul 'restaurant' raids. *The Independent*. 10 February 2006; Police raid suspected Chinese brothels in Afghan capital, *AP Worldstream*, 2 February 2005.

61 *Afghanistan: Food prices fuelling sex work in north*, IRIN News, 16 July 2008.

4.2 Bangladesh⁶²

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.2.1 Laws

It is an offence under the *Oppression of Women and Children (Special Enactment) Act, 1995* for third parties (e.g., pimps) to import, export, sell or hire a woman for sex work.⁶³ The definition of these offences does not include a person who practices sex work, therefore sex work in private is legal.

The *Suppression of Immoral Traffic Act, 1933* prohibits soliciting in public, which is punishable by imprisonment for one month or a fine.⁶⁴ Sex workers who are soliciting in public may also be arrested for committing a public nuisance, which is an offence under Section 290 of the *Penal Code*. Sex workers can also be arrested under Section 54 of *Code of Criminal Procedure 1898*, which allows the police to arrest a person without a warrant under some 'suspicious' conditions. Many male sex workers are arrested and detained for three to four days without any legal protection under this Section.⁶⁵

The *Suppression of Immoral Traffic Act, 1933* creates offences for keeping a brothel or allowing premises to be used as a brothel, living on the earnings of sex work and procuring a female for the purpose of sex work. 'Brothel' is defined as a place in which two or more females conduct sex work.

The municipal laws of Dhaka, Rajshahi, Sylhet, Chittagong, Khulna and Bariisal also prohibit soliciting in public places.⁶⁶ For example, the *Dhaka Metropolitan Police Ordinance, 1976* provides that any person who in any street or public place or within sight of, and in such manner as to be seen or heard from, any street or public place, whether from within any house or building or not solicits any person for the purposes of prostitution is punishable with imprisonment for a term which may extend to three months, or with a fine.⁶⁷ The Ordinance is also used to prosecute sex workers for 'being found under suspicious circumstances between sunset and sunrise.'⁶⁸

62 Expert inputs to the Bangladesh chapter were provided by Dr. Smarajit Jana, DMSC.

63 See also the offence of living on the earnings of prostitution under section 8 of the *Suppression of Immoral Traffic Act, 1933*.

64 Section 7.

65 de Beyer J., (ed). (2009), *20 years of HIV in Bangladesh: Experiences and Way Forward*, Dhaka: World Bank and UNAIDS, p.100.

66 Human Rights Watch (2003), *Ravaging the Vulnerable: Abuses Against Persons at High Risk of HIV Infection in Bangladesh*, August 2003, Vol. 15, No. 6 (C).

67 Section 74.

68 Section 86.

The *Local Government (Zila Parishad) Act, 1988* empowers local government authorities (*Zila Parishads*) to make regulations for prevention of 'prostitution and other social evils'.⁶⁹

Trafficking is addressed by the *Women and Children Repression Act 2000*. The Government has drafted a *Human Trafficking (Deterrence and Protection) Bill 2011* which will consolidate laws relating to trafficking.

Male sex workers can be charged under the sodomy law of the *Bangladesh Penal Code*.

Certification of brothel-based sex workers

A system of quasi-legal brothels operates. It has been reported that there are at least 14 officially condoned brothel complexes in Bangladesh and 18 officially recognized red-light districts, which are mostly located in either the commercial centre of cities or at river junctions or seaports. Clusters of small rented rooms constitute a brothel. Brothels are monitored by the local authority.⁷⁰ However, it should be noted that only 4,000 sex workers live in brothels, a small proportion of the estimated 100,000 sex workers in Bangladesh. Most sex workers operate either through hotels or in street settings.

Certification of sex workers involves endorsement of an affidavit. The affidavit does not serve as a professional license and does not protect women's social, economic, civil or political rights. To obtain the certificate, the sex worker must swear an affidavit with her name, village, age, religion, and nationality, stating she is unable to find other sources of work, and affirming that the choice to become a sex worker is made freely and without any duress, pressure or undue influence. After paying a fee to police, the woman is issued a certificate by a magistrate and is permitted to work as a sex worker, provided she does not solicit in public. Bonded sex workers (*chukris*) are registered through their madams. According to a study conducted at a Madaripur brothel:

Often the *chukris* are under aged and the madams have to pay exorbitant amounts to the local authority to have a false registration issued by the court magistrate which claims that the girls entering the trade are at least 18 years old.⁷¹

A researcher described the status of these brothels as follows:

Technically, their status is neither legal nor illegal...registration causes many sex workers to think they have a license to sell sex, which is not true in a strictly legal sense. However, as long as they remain in the brothel, continue to pay the police as required, and do not solicit clients on the streets, they enjoy a considerable amount of protection, compared to street-based sex workers.⁷²

This system has been criticized because certificates create two categories of sex workers, those working legally and those working illegally.

Women and girls who cannot find employment in the legal brothels are forced to work underground where they are vulnerable to increased violence, abuse, and police harassment. [Sex workers] working legally in brothels are also vulnerable because

69 Section 58.

70 Islam A., Smyth R., (2010) *The Economic Returns to Good Looks and Risky Sex in the Bangladesh Commercial Sex Market* Melbourne: Monash University Department of Economics, p.5.

71 Karim R., Selim N., Rashid S (2008), *Sex workers and condom use - the political economy of HIV/AIDS in Bangladesh: RED working paper number 4*, Dhaka: BRAC, p.4.

72 Jenkins C. (1999) Resistance to condom use in a Bangladesh brothel, in Caldwell J. (ed.) *Resistances to Behavioural Change to Reduce HIV/AIDS Infection* p.212. and see: Terre des hommes (2005) op cit

brothel owners control their legal status: Women who are expelled from brothels are forced to work illegally on the street.⁷³

A study of 344 brothel-based workers found that 341 had been registered through the affidavit process. Registration does not result in access to health services or other entitlements. It provides income to the police who monitor the process:

...[R]egistering a girl with the police is usually handled by *bariwalis*⁷⁴/*shordanis*⁷⁵, with the assistance of police officers that get considerable amounts of money...Affidavit is a profitable instrument to force new girls in prostitution: other persons such as *shordanis*, *dalals*⁷⁶ and *bariwalis* usually fill out the form, sign the document and affix a photograph on behalf of a girl.⁷⁷

It has been argued that the system operating in quasi-legal brothels perpetuates a power structure in which debt-bonded women have very little power and very limited access to HIV prevention services or condoms. Bonded workers have to negotiate access to condoms with their madams, who generally do not promote condom use among the bonded workers.⁷⁸

Recognition of Constitutional rights of sex workers

The *Constitution of Bangladesh* codifies the right to the protection of the law and the right to life and personal liberty. However, Article 18(2) of the Constitution states that: 'The State shall adopt effective measures to prevent prostitution and gambling.'

In *Bangladesh Society for the Enforcement of Human Rights v. Government of Bangladesh*⁷⁹ the issues of the legal position of sex work arose in the context of eviction and detention of sex workers. The case related to police raids of several brothels, as a result of which sex workers and their children were evicted and detained in vagrant homes and government shelters.

The Bangladesh Society for Enforcement of Human Rights challenged the forcible eviction. The Supreme Court held that there is no law expressly prohibiting sex work and sex workers enjoy constitutional protection of their fundamental human rights and freedoms, including rights to respect, dignity, life and liberty guaranteed by the Constitution. The Court upheld the fundamental right to the protection of privacy of the sex workers. The Court held that the eviction of sex workers had deprived them of their livelihood, which amounts to deprivation of their right to life. The Court also held that sex workers as citizens have the constitutional right to be protected against forcible search or seizure of their home. The Court held that police confinement of sex workers as 'vagrants' was unlawful. The Court took the view that, even if sex work is not illegal in Bangladesh, it is not encouraged. It held that rehabilitation schemes must be compatible with human dignity and worth.

73 Jordan A. (2000), Commercial Sex Workers in Asia: A Blind Spot in Human Rights Law in *Women And International Human Rights Law*, Volume 2, Askin and Koenig (eds.), Ardsley: Transnational. pp.525-585.

74 *Bariwalis* are the female owners of the brothels who lease land from local brothel landowners.

75 *Shordanis* are madams or female brothel managers who own the bonded girls known as *chukris*.

76 *Dalals* are agents who are engaged in collecting and selling girls into brothels

77 Terre des hommes (2005) *Brothel-based and Floating Sex Workers in Bangladesh. Living Conditions and Socio-Economic Status*. Italy: Terre des hommes, p.17.

78 Karim R., Selim N., Rashid S (2008) *Sex Workers and Condom Use, the Political Economy of HIV/AIDS in Bangladesh: RED Working Paper Number 4*, Dhaka: BRAC, p.4.

79 *Bangladesh Society for the Enforcement of Human Rights (BSEHR) and Ors v. Government of Bangladesh and Ors* 53 DLR (2001) 1; (2000) 3 CHRLD 217.

Despite the Court's ruling, a study of street-based sex workers conducted in 2004 found that some sex workers were still being ordered by courts to be detained in Vagrants' Homes.⁸⁰

Voter identification rights

In 2010, sex workers sought to challenge a government decision to exclude 'prostitution' as a profession on new voter cards on the grounds that it prevents sex workers from accessing HIV prevention and health care.⁸¹ The Bangladesh Election Commission announced that 'prostitution' would be recognized as a profession on new voter identification cards. The Commission reversed its decision after pressure from conservative religious groups. The Election Commissioner said the term 'sex worker' was omitted due to the Bangladesh *Constitution*, which states that 'gambling and prostitution' should be discouraged. Civil society groups are seeking to challenge this decision on the basis that Article 40 of the *Constitution* gives citizens (including sex workers) the right to 'enter upon any lawful profession or occupation'. Identification cards are necessary to open a bank account, apply for a passport and to register property.

"A STUDY CONDUCTED IN 2009 FOUND 46 PERCENT OF A SAMPLE OF SEX WORKERS FACED HARASSMENT IN THE LAST MONTH."

Right to education

It has been observed that few children of sex workers attend government schools, but a significant number attend schools operated by NGOs or private schools. The main reason for ineligibility for government schooling is lack of a known father for the purpose of birth registration.⁸²

4.2.2 Law enforcement practices

Although there is no law expressly prohibiting sex work, other laws are used by the police to arrest, detain, evict and harass sex workers. Street-based sex workers are more at risk of violence, harassment and police abuses than brothel-based workers. Human Rights Watch has documented numerous cases of sex workers who have experienced police abuses, including rape and assaults. Prosecutions rarely followed the arrests of sex workers. Arrests of sex workers were often reportedly used as means of extortion. Sex workers reported being held until a bribe was paid for their release.⁸³

A study conducted in 2009 found 46 percent of a sample of sex workers faced harassment in the last month. The perpetrators were mostly police (52 percent), local thugs (38 percent) and clients (27 percent). Seventy eight percent of the hotel based female sex workers, 55 percent street based female sex workers and 33 percent residence based female sex workers mentioned police as key perpetrators of harassment. Street based female sex workers reported the highest rate of harassment (51 percent).⁸⁴

80 Terre des hommes (2005), *Brothel-based and Floating Sex Workers in Bangladesh. Living Conditions and Socio-Economic Status*. Italy: Terre des hommes, pp.77, 83.

81 Mixed messages on sex work undermine HIV prevention, *IRIN News*, 12 October 2010.

82 Terre des hommes (2005), *op cit.*; see also Jenkins C., *op. cit.* p.212.

83 Human Rights Watch (2003), *Ravaging the vulnerable*. New York: Human Rights Watch.

84 *Report of Mapping Geographical and Current Service Delivery Gaps and Estimating Size of Street, Hotel and Residence Base Female Sex Workers in 29 Selected Districts of Bangladesh*, National AIDS/STD Program, p. 7

Of a sample of 38 'floating' sex workers drawn from four cities (Jessore, Chittagong, Dhaka, Sylhet), 52.6 percent reported police beatings, 18.4 percent reported police extortion, 2.6 percent reported rape by police, and 52.6 percent reported random arrest.⁸⁵

There are reports of sexual assaults of sex workers by police, often without use of a condom.⁸⁶ According to Jenkins, the police are generally paid off with sex and money to allow sex workers to work:

Most street sex workers are independent, in the sense that they decide to work or not, as they need. A minority is bonded to a *dalal* or pimp, but many make use of local men on the streets, e.g., rickshaw pullers, hotel boys, guards, tea-shop owners, and others, to find them clients and then pay them with cash or sex for doing so. In addition, some women have men who serve as their protectors; they may find them clients and, when needed, help them avoid the police or stand as their husbands to seek their release from police custody. Some sex workers even have 'station husbands', particular policemen who look after them in exchange for sex.⁸⁷

The role of the police in relation to brothels has been described as follows:

The police play an important role in the brothel. The local *thana* police register the name and age of each sex worker and therefore authorize all the new entries. In this process, *habilders* (patrolling low rank police officers) play a pivotal role because they are also in charge of the *thana* register as well as public order inside the brothel. They are involved in trafficking and they receive protection money for each new girl. Furthermore they exploit the sex workers with a daily system of bribery payment.⁸⁸

A World Bank report described the power dynamics of the sex trade in different settings (street, hotel or residence) as follows:

Across all settings of the sex trade, clients are the first layer of the power structure. They can contact sex workers either directly through the organizers of the sex trade or through *dalals* (pimps). The *dalals* are key persons who connect the sex workers with their clients and take a percentage of their income...Although maximizing profit is the main aim of *dalal*, they also play a supportive role for the sex workers. In the residence based sex trade the madam/ *sarderni* /*apa* (generally senior females who organize and operate the sex trade, many of whom are ex-sex workers and a few also sell sex currently) generally rents a house and often introduce *dalal* as her husband.

...The most powerful group affecting the sex trade are local *mastans* (thugs) who belong to gangs or to local political groups. They threaten the sex trade in all settings if they are not paid money. The *dalal*, madam/*sarderni*/*apa* and sex workers maintain good relations with the local *mastans* by paying them regularly. Generally, they are paid by the sex workers in the street setting, hotel management in hotel settings and *dalal* or madam/*sarderni* in residence settings. Often, in street settings, it is reported that *mastans* force sex on street based sex workers without payment and mostly without condoms.

The hotel management plays a significant role in the hotel based sex trade...Owners maintain liaison with law enforcement, political leaders and local administration in

85 Terre des hommes (2005), *op cit.* p.79.

86 Terre des hommes (2005), *op cit.*, pp.78, 93.

87 Jenkins (2000), *Female sex worker HIV prevention projects: Lessons learnt from Papua New Guinea, India and Bangladesh*. Geneva: UNAIDS, p.96.

88 Terre des hommes (2005) *op cit.*, p.vi.

order to ensure smooth operation of the sex trade. Hotel managers play a crucial role as they are responsible for arranging and maintaining the overall sex trade in hotels. In the absence of the hotel owner, they maintain liaison with members of law enforcement agencies, political leaders and local administration to run the sex trade without any 'hazards'...

Local leaders, members of law enforcement agencies, and local administration, because of their powerful status, are positioned in the highest level of hierarchy of the power structure across all settings. It was reported that local leaders benefited economically by the sex trade, as money was collected and sent to them directly or indirectly. They also deputed their *mastans* to control the sex trade. In some districts, their involvement was quite open as they themselves were owners of hotels where sex trade took place.

Because of the illegal status of sex trade, law enforcement agencies can easily interfere and play a critical role in making sex trade smooth or difficult. They are direct beneficiaries as they receive money through the trade.⁸⁹

Tenancy laws are reportedly of little effect in protecting brothel-based sex workers from discrimination, arbitrary eviction or high rents.

The room rent is extortionate and must be paid on daily bases. Otherwise the brothel dweller risks the threat of eviction and violence by agents, who come to collect the money on behalf of brothel landlords.⁹⁰

4.2.3 Efforts to improve the legal environment⁹¹

Bangladesh's *3rd National Strategic Plan for HIV and AIDS Response 2011-2015* includes a strategy to "Conduct advocacy to strengthen an enabling environment". The Strategy states:

Advocacy will be provided to key gatekeepers such as police and law enforcement agencies on effective HIV prevention, and on working with and protecting the rights of members of vulnerable groups, including PWID (people who inject drugs), sex workers, *hijra*⁹²s and MSM.

The Government of Bangladesh's *2010 UNGASS Country Report* states:

The National Policy on HIV/AIDS and STD Related Issues was ratified in 1997 and provides the overarching policy framework for the programme in Bangladesh. The national policy has not been reviewed for more than a decade in the context of the changing situation in the country. As a result, the existing provisions of laws are used haphazardly, often to harass vulnerable populations leading to interference and weakening of the program...Some of the laws that hamper the program implementation are: the Code of Criminal Procedure (Section 54: provision of arrest without a warrant); b) Penal Code, (Section 377: prohibiting carnal knowledge against the order of nature); c) Dhaka Metropolitan Police Ordinance 1976 (Section 86: penalty for being found under suspicious circumstances between sunset and sunrise); d)

89 de Beyer J., (ed). (2009), *20 years of HIV in Bangladesh: Experiences and Way Forward*, Dhaka: World Bank and UNAIDS, pp.106-107.

90 Terre des hommes (2005) *op cit.*, p.6.

91 See: Karim R., Selim N., Rashid S (2008) *op cit.*, p.4.

92 *Hijra* is a South Asian term for a man who has a feminine gender identity.

Bangladesh Penal Code 290: Public Nuisances. *Suppression of Immoral Trafficking Act* refers to any promiscuous sexual act that is bought, whether for money or for kind. There is a need to review these acts and laws to ensure better policy environment and programme performance.⁹³

The Sex Workers Network of Bangladesh, Durjoy Nari Shongho and Ulka are sex worker advocacy organizations.

Durjoy Nari Shongho is a grass roots community-based organization mainly engaged in mobilizing sex workers to address community empowerment, social justice and human rights issues for sex workers in Dhaka.

A National Sex Workers Conference on Rights of Sex Workers and Legal Assistance was jointly organized by Bangladesh Women's Health Coalition (BWHC) and Durjoy Nari Shongho in 2011. Speakers called for formulation of a national policy for sex workers to ensure their social and constitutional rights and to recognize sex work as a profession.⁹⁴

A government-supported sex worker project has been implemented in collaboration with UNDP, with five partner NGOs: Nari Maitree in Mymensingh, PIACT Bangladesh in Daulatdia, Nari Unnayan Shakti (NUS) in Dhaka, ACLAB Bangladesh in Jessore, and the Development Organization of the Rural Poor (DORP) in Dhaka. Activities have included advocacy on human rights issues, as well as HIV prevention, education and livelihood interventions.⁹⁵ Other NGOs such as ActionAid, BRAC, CARE Bangladesh, Bangladesh Women's Health Coalition and Oxfam have worked with sex workers on a range of health, rights and livelihoods issues.

Legal NGOs such as Bangladesh National Lawyers Association and Ain O Salish Kendra provide sex workers with legal aid and create awareness about legal rights. Naripokkho, a women's rights NGO, has assisted in resisting unlawful evictions of sex workers and supported sex worker organizations to become members of national networks of women's organizations.⁹⁶ Human Rights Watch has conducted monitoring and published research on sex worker rights issues.

Bandhu Social Welfare Society advocates for rights of sexual minorities, including *hijra* sex workers.⁹⁷ The Society has established a network of District Level Lawyers Groups. Each Lawyers' Group is supported by a district advocacy officer, who liaises regularly with a coordinator. A Dhaka-based senior legal officer supports each Lawyers Group. The role of the Lawyers Groups includes sensitizing government officials and other stakeholders, providing legal support to *hijras* and advocacy for policy reform.

93 Government of Bangladesh (2010), *UNGASS Country Progress Report*, p.50.

94 Call to ensure sex workers' rights, *The Daily Star*, 24 November 2011.

95 Capacity Building, Poverty alleviation, and sustainable livelihood of the socially disadvantaged women (SDW) and their Children.

96 Huq S., (2005) *Sex Workers' Struggles in Bangladesh: Learnings for the Women's Movement*, Brighton: Institute of Development Studies.

97 Ministry of Health and Family Welfare (2010) *UNGASS Country Progress Report Bangladesh, Reporting period: January 2008–December 2009*, p.45.

4.3 Bhutan

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.3.1 Laws

The *Penal Code 2004* provides offences for sex work (Section 373); promotion of prostitution including by brothel keeping, procuring a person for a brothel and soliciting (Section 375); and patronizing a prostitute, if a person gives money, property, or other gratification to engage in a sexual act (Section 377).

4.3.2 Law enforcement practices

Sex work is illegal and the sex industry operates underground. Increasing number of sex workers operate in urban areas along border towns. The construction of power plants and expansion of road networks has led to a growing demand for paid sex by immigrant workers, truckers, and transport workers.

There are reports of police raids targeting sex workers working in hotels at the border town of Phuentsholing.⁹⁸ A raid on hotels in Phuentsholing in 2011 resulted in 16 arrests (11 sex workers and 5 customers). Eight sex workers were reportedly convicted for prostitution offences in Phuentsholing in 2011, an increase from one conviction in 2010 and no convictions in 2009.⁹⁹ Sex workers at the border are reportedly reluctant to visit health facilities to seek treatment, collect condoms, or use testing services.¹⁰⁰

The Centre for Bhutan Studies, Thimpu, describes the sex trade in Phuentsholing as follows:

Between 2006 and 2007, the Health Information and Services Centre (HISC) in town was in contact with over thirty sex workers. However, between 2007 and March 2010 the police were able to apprehend only six cases of prostitution.

Most girls operating in Jaigaon and Phuentsholing come from Sikkim, Darjeeling, Kalimpong and Siliguri in India, although Bhutanese women are also known to engage in the sex trade. Bhutanese men passing through Phuentsholing on business trips are the main customers.

The primary facilitators or pimps are waiters working in hotels on both sides of the border, who profit with a cut from the negotiated price ranging between 1500 to

98 Tashi, S., Unbridled flesh trade in the border town, *Bhutan Times*, 14 August 2011; Police warn hoteliers, *Bhutan Times*, 15 August 2011; Prostitution: divorce fueled, mobile greased, *Bhutan Observer*, 19 June 2009.

99 The gateway to drugs and crime still, *Bhutan Times*, 1 January 2012; Border town sees drop in hard crime, *Kuensel on-line*, 15 December 2011.

100 See: <http://aidsdatahub.org/en/country-profiles/bhutan>.

4000 Ngultrums. Locals say that prostitution occurs in most hotels in town, with three or four hotels in Jaigaon as the main contact or source points.¹⁰¹

There are also reports of Bhutanese women and girls employed as entertainers in traditional entertainment venues (*Drayang*s) who engage in transactional sex. The growth of transactional sex involving '*Drayang* girls' has been documented in Thimphu.¹⁰² *Drayang*s are licensed as entertainment businesses by Bhutan InfoComm and Media Authority (BICMA). Under the terms of the license, licensees must agree to ensure that prostitution offences are not committed on the premises.¹⁰³ BICMA conducts inspections of entertainment establishments in collaboration with the Royal Bhutan Police and the Regional Trade and Industry Office, Thimphu.¹⁰⁴

4.3.3 Efforts to improve the legal environment

The Bhutan *National Strategic Plan on HIV/AIDS (NSP II) 2012-2016* recommends responding to gender-based stigma and discrimination towards female sex workers and review of the criminalization of sex work and sodomy (unnatural sex acts).

4.4 India¹⁰⁵

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.4.1 Laws¹⁰⁶

The legal environment for sex workers in India is influenced by a range of laws including the *Immoral Traffic (Prevention) Act 1956* (ITPA), public order and narcotics offences that are used as a basis for harassment and arrest of sex workers, and tenancy laws that determine the nature and conditions of brothel-based work.

101 Choden T., Taking heed of lessons from Phuentsholing, *Kuensel on-line*, 26 December 2010.

102 Lorway R., Dorji G., Bradley J., Ramesh B., et al (2011) The Drayang Girls of Thimphu: sexual network formation, transactional sex and emerging modernities in Bhutan, *Culture, health & sexuality*, Vol. 13, No.S2, S293-308.

103 BICMA, *Application form for entertainment license*, www.bicma.gov.bt/form/Placesofentertainment.pdf

104 80% Drayang employees say they love their work, *Business Bhutan*, 23 October 2010.

105 Dr Smarjit Jana of DMSC provided expert inputs to the India chapter.

106 In the colonial era, the *Cantonments Act 1864* regulated the sex industry within military towns to reduce STIs among the military. The *Indian Contagious Diseases Act 1868* enacted provisions for registration and inspection of sex workers in major cities and ports: Levine P. (1994) Venereal disease, prostitution, and the politics of Empire: the case of British India. *J Hist Sex.* 4(4):579–602, p.581.

State laws relating to public order are also used as a basis for arrests of sex workers e.g., *Bombay Police Act 1951*¹⁰⁷ and the *Gujarat Prevention of Anti-Social Activities Act, 1985*. The *Railways Act, 1989* is enforced against sex workers who work at railway stations.¹⁰⁸

Kotiswaran has described the vast range of laws and practices that affect sex workers in India's red light districts, in addition to the criminal law e.g., laws relating to associations that directly affect prospects for sex workers' collective organization, laws relating to elections, marriage, narcotic drugs, tenancy and to service providers operating in red-light areas, such as moneylenders, insurance agents, banks, vendors, food and liquor shops, community-based dispute resolution mechanisms, social practices and market structures, of which legal rules are only small part.¹⁰⁹

Indian Penal Code 1890

Sex workers may be charged with creating a 'public nuisance' under Sections 268 and 290 *Indian Penal Code* or obscene conduct under Section 294 of the *Indian Penal Code*. Police may perceive charges under the Indian Penal Code to be an easier option than a charge under the ITPA.¹¹⁰ The *Indian Penal Code* also contains provisions dealing with the procuring of minors from within the country or importing minors for sex work and punishes the selling, buying or hiring of minors for sex work.¹¹¹

Immoral Traffic (Prevention) Act 1956

Sex work in private is not illegal, but the *Immoral Traffic (Prevention) Act 1956* ('ITPA') creates a range of offences affecting people involved in the sex industry. Offences include brothel keeping, living on the earnings of sex work, procuring, inducing or detaining persons for the purpose of sex work with or without consent. The Act provides a framework for police to conduct 'raid and rescue' operations. Records indicate that nationally police rely on ITPA to prosecute sex workers more frequently than the sex work offences of the *Indian Penal Code*, although prosecution patterns vary by state. Police in West Bengal do not follow this national pattern and more frequently rely on the *Indian Penal Code* than ITPA.¹¹²

Historically, the ITPA has often been used to arrest sex workers, regardless of whether they have been coerced or 'trafficked' by others. Instead of punishing traffickers, the majority of ITPA convictions have been of adult sex workers for soliciting. A study commissioned by the National Human Rights Commission found that many women are charged with soliciting. The report concluded: 'it is disturbing to note that out of almost 14,000 persons arrested every year under ITPA, approximately 90 percent are women.'¹¹³ A study conducted in red-light areas in 2003 found that 66 percent of cases registered against sex workers in a district in Mumbai and 56 percent in a district in Delhi were lodged under the ITPA soliciting offence.¹¹⁴ The Lawyers Collective observes:

107 See e.g., Santacruz police arrest 17 bar girls, *Daily News and Analysis*, 11 March 2007.

108 Kotiswaran P. (2011), *Dangerous Sex, Invisible Labor: Sex Work and the Law in India*, Princeton: Princeton University Press, p.125.

109 *Ibid*, pp.125, 178.

110 Biradavolu M., et al (2009), Can sex workers regulate police? Learning from an HIV prevention project for sex workers in southern India. *Social Science & Medicine* 68:1541.

111 Sections 366A, 366B, 372, 373.

112 Kotiswaran P. (2011), *op cit.*, p.176.

113 Nair P. (2004), *A report on trafficking in women and children in India, 2002-2003*, New Delhi: NHRC, UNIFEM, ISS, p.363.

114 Grover A., Kukke S., Bhardwaj K. eds. (2003), *Legislating an Epidemic*, Delhi: Lawyers Collective, p.125.

Although on paper, most provisions target activities of third parties, the ingrained criminal nexus between brothel managers and the police have enabled the former to circumvent the law.¹¹⁵

ITPA provisions

It is an offence for a sex worker to solicit in public, or near any public place or notified area.¹¹⁶ The term ‘public place’ is defined so broadly that it makes compliance difficult. Public place includes places of public religious worship, educational institutions, hostels and hospitals. A ‘notified area’ is a place that has been declared to be ‘prostitution-free’ by the state government. Women can be imprisoned for up to six months for a first offence and up to one year for second and subsequent offences. Maximum penalties for men are less than women—between seven days and three months.

It is an offence for any person over the age of eighteen years to knowingly live, wholly or in part, on the earnings of the prostitution of any other person.¹¹⁷ This provision criminalizes adult persons who are economically supported by sex workers including those living with sex workers. Police may prosecute aged parents, siblings, the sex worker’s partner and children over 18 years who are dependents.

The Act authorizes magistrates to close brothels and expel persons from premises where sex work is being carried out, including their residence.¹¹⁸ Police are given special powers to search suspected brothels.¹¹⁹ Police can remove any person found in premises where sex work is carried out, regardless of age and consent. Provisions with regard to ‘rescue’ make no distinction between adults and children.

A magistrate can direct eviction of the occupiers if it is established that premises located within two hundred meters of a public place are being used as a brothel or for the sex trade.¹²⁰

The Act mandates medical examination of persons removed from brothels for detection of sexually transmitted diseases.¹²¹ This can result in a sex worker’s HIV status being disclosed in court. Rules enacted by States under the ITPA mandate identification and segregation of women with sexually transmitted diseases who are detained in state homes.¹²² For example, in the state of Andhra Pradesh, sex workers who are placed in institutions are compulsorily required to undergo medical examination. The courts have held that sex workers under ‘protective custody’ can be subjected to compulsory HIV testing.¹²³ A human rights mapping in 1999 found that the HIV status of all the women in the Agra Protective Home was public knowledge, and there was no confidentiality attached to this information. There was segregation within the institutions of those found to be HIV positive.¹²⁴

115 Ibid., p.124

116 Section 8.

117 Section 4.

118 Sections 18 and 20.

119 Sections 13, 15.

120 Section 18(1).

121 Section 15 (5A).

122 In 2003, the Lawyers Collective identified 16 state level jurisdictions with such Rules: Grover A., Kukke S., Bhardwaj K. eds (2003) *op cit.* p.126.

123 UNDP (2004) *Law, Ethics and HIV/AIDS in South Asia. A study of the legal and social environment of the epidemic in Bangladesh, India, Nepal and Sri Lanka.* UNDP Regional HIV and Development Programme, South and North East Asia, p.20.

124 Ramanathan U. (2001) *Human Rights in India: A Mapping.* International Environmental Law Centre.

The Act provides institutional rehabilitation for 'rescued' sex workers.¹²⁵ Rehabilitation involves detention in State homes. The government is required to provide rehabilitation in a 'protective' home for any sex worker requesting assistance. The length of time for which female offenders can be deprived of their freedom can be extended in the name of rehabilitation. A sex worker can also make an application to a magistrate to seek care and protection, and the magistrate can direct that the applicant be kept in a protective home or corrective institution.¹²⁶ The Act gives courts power to: "pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years."¹²⁷ Magistrates can, in effect, extend a one-year term into a two to five-year term. The practice of detention for the purposes of rehabilitation is being reviewed as a result of the *Karmaskar case* (2011), in which the Supreme Court has stated that rehabilitation of sex workers should be voluntary rather than coerced (see case note, below).

Brothels and red-light districts

It is an offence to maintain a brothel that has two or more sex workers.¹²⁸ One-woman brothels are tolerated by police in specific red-light districts. Sex workers are prohibited from working in areas outside these red-light districts or in premises near places of worship, schools or hospitals.

Traditional sex workers

In southern India, the *devadasi* system operates, which involves the dedication of girls to a deity. The role of *devadasis* traditionally involved singing and dancing at temples and providing sexual services to local rulers and wealthy persons associated with the temple. The *Hindu Religious and Charitable Endowment Act of 1927* made the practice of dedicating girls to temples illegal in Mysore. Similar legislation was enacted in Bombay in 1934, Madras in 1947, Karnataka in 1982,¹²⁹ and Andhra Pradesh in 1988. As a result of these laws *devadasis* could no longer rely on temples and patrons for financial support. Many women were forced to leave the temples and entered the sex trade. However the practice of dedicating girls to deities reportedly continues, resulting in entry to sex work. The National Commission for Women has estimated that there are over 48,000 *devadasis* in India.¹³⁰ Analysts have concluded that the laws abolishing the *devadasi* system have led to loss of power, status and economic rights for *devadasis*.¹³¹ In *Vishal Jeet v Govt of India & Others*¹³² the Supreme Court gave directions for the protection and rehabilitation of those who had been dedicated as *devadasis* and were currently sex workers.

Identity cards, voting rights and access to benefits

Sex workers' rights groups have been campaigning for removal of legal constraints to obtaining identity cards, so that sex workers can enjoy full and equal citizenship rights. In 2009, it was estimated that only 20 percent of over 5,000 sex workers in Delhi possessed voter's identity cards. Sex workers without voter identity cards are unable to access a

125 Sections 19, 21, 23 ITPA, & ITPA State Rules.

126 Section 19.

127 Section 10A.

128 ITPA Section 3.

129 *Devadasis (Prohibition of Dedication) Act, 1982*.

130 Colundalur N., (2011) Devadasis are a cursed community *The Guardian*, 21 January 2011, G2 p.16.

131 Misra G., Mahal A., Shah R., (2000) Protecting The Rights of Sex Workers: The Indian Experience, *Health and Human Rights* 5(1), 88-114, p.101.

132 1990 3 SCC 318.

range of other benefits.¹³³ In 2011, the Supreme Court ordered a review of identity card entitlements for sex workers (see *Karmaskar* case summary, below).

Constitutional rights and the role of the judiciary

The *Constitution of India* guarantees the right of citizens to live with dignity and to carry on any trade, business or profession.¹³⁴ Although in theory sex workers enjoy human rights guarantees under the *Constitution of India*, little progress has occurred in enforcing or applying these rights to achieve improvements to the lives of sex workers or to support HIV responses in the context of sex work.

Kaushalya's Case

In *State of Uttar Pradesh v. Kaushalya*,¹³⁵ the Supreme Court upheld Section 20 of the ITPA, which empowers a magistrate to direct a sex worker to move away from an area in the interests of the general public and to prohibit the sex worker from re-entering an area without written permission from the magistrate. Section 20 was challenged on the ground of violation of guaranteed fundamental rights to equality, to move freely and to reside in any part of India. The Supreme Court observed that one of the objects of the Act is to control the 'growing evil' of sex work and the restrictions imposed by Section 20 were found to be in the public interest, taking into account 'morals and health'. The court held that the difference between a sex worker and a non-sex worker is a reasonable classification, which justifies the difference in treatment. This decision has been criticized as follows:

This ruling completely ignores several other rights of the women. For instance it denies them their social capital that they have developed in the area. This in turn could affect their right to livelihood. It further violates their right to live in any part of the country. These are fundamental rights guaranteed by the Constitution of India.¹³⁶

*Sahyog Mahila Mandal Case*¹³⁷

In 2003, a sex workers' collective in Gujarat challenged the ITPA on the grounds that its provisions violated constitutional rights to equality before law, freedom of speech, life and personal liberty, and thereby livelihood.¹³⁸

The case arose after police raided the red-light district of Surat, Gujarat. Police entered premises without search warrants, destroyed property, arrested residents and forcibly evicted women. Many women were harassed and physically abused. Approximately 1,500 women were affected by the police actions.

The court rejected the sex workers' contention that sex work ought to be recognized as a legitimate means of livelihood and that they should be permitted to carry on their work outside notified areas. The court held that the restriction of personal liberty imposed by Section 7, i.e. the deprivation of liberty to work in public places, is in the interest of the general public and is in keeping with procedures established by law as well as the

133 See: Sex workers demand voting rights, *IANS*, 30 June 2008; 250 sex workers get voter identity cards in Kolkata, *Indian Express*, 21 November 2008.

134 Article 23 of the *Constitution of India, 1950*.

135 AIR 1964 SC 416.

136 Rao S., *Slugget C.*, (2009) *op cit.*, p.24.

137 *Sahyog Mahila Mandal & Another v. State of Gujarat & Ors* [Special Civil Application No 15195 of 2003 with Special Civil Application No 4594 of 2003]

138 Articles 14, 19 and 21.

Convention for Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others. The court said that ITPA was aimed at combating trafficking, including rescuing and rehabilitating trafficked women and the special powers given to the police did not violate any fundamental rights. The court directed the state government to form a State Level Rehabilitation Committee to investigate the grievances of the women and girls. According to the Lawyers Collective, this judgment drove sex workers underground, and the government HIV programme witnessed a decline in delivery of condoms and a rise in prevalence of STIs.¹³⁹

Since 2009, the Supreme Court has taken a more supportive view of sex work, although still casting them as 'victims' requiring rehabilitation.

*Budhadev Karmaskar v. State of West Bengal*¹⁴⁰

In 2011, the Supreme Court declared that sex workers are protected by the right to live with dignity guaranteed by Article 21 of the *Constitution of India*. The Court ordered all states and union territories to inform the Court of steps taken to rehabilitate sex workers. The Court directed the Central government, states and union territories to prepare rehabilitation schemes for the welfare of sex workers in the following terms:

We direct the central and state governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical and vocational training and in what manner they can be rehabilitated and settled by offering them employment.

The Supreme Court set up a panel to provide recommendations on the rehabilitation of sex workers who wish to leave sex work, and conducive conditions for sex workers who wish to continue working as sex workers with dignity in accordance with Article 21 of the Constitution. The Court directed the state governments and union territories to carry out a survey of sex workers.¹⁴¹ The Court stated that rehabilitation of the sex workers should not be coercive in any manner and shall be voluntary. The Court also suggested that free legal services be provided to sex workers through State Legal Services Authorities.

The panel recommended an order directing the state governments, local authorities and the Election Commission to issue ration cards and voter identity cards to sex workers, relaxing the requirements to verify an address or to specify a profession on the card.¹⁴² Taking into account recommendations of the panel of experts, the Supreme Court directed the centre and state governments to consider providing ration cards and voter identity cards to sex workers as a step towards their rehabilitation. The Court requested the Centre and States to ensure that the admission of the children of sex workers in schools is not hampered.

139 Bose A., Bhardwaj K. (2008), *Marginalised populations outside the pale*, Lawyers Collective HIV/AIDS Unit, available at: <http://infochangeindia.org/hiv-aids/hiv-a-human-rights/marginalised-populations-outside-the-pale.html>.

140 *Budhadev Karmaskar v. State of West Bengal* (2011) 11 SCC 538, (2011) STPL Web 133 SC JT, (2011) 2 SC 115; the Supreme Court *suo moto* converted a criminal appeal relating to the murder of a sex worker into public interest litigation on the rehabilitation of sex workers; See: <http://www.lawyerscollective.org/news/archived-news-a-articles/170-budhadev-karmaskar-v-state-of-west-bengal-criminal-appeal-no-135-of-2010-in-the-supreme-court-of-india.html>

141 Apex Court appoints panel to rehabilitate sex workers in India, *Jagran Post*, 20 July 2011.

142 Issue ration and voter cards to sex workers: Supreme Court, *Times of India*, 16 September 2011.

The panel reported to the Supreme Court that two approaches could be defined: a rights-based approach to empowering sex workers, and a protectionist approach involving setting up homes for rescued sex workers or workers who wished to leave the profession.¹⁴³

Sangama, a Bangalore community-based organization, requested the Supreme Court to take into account the rights of transgender sex workers in this case. Sangama submitted that transgender sex workers face police harassment and abuse on a daily basis with no legal redress available, diminishing their chances of integration into mainstream society. Sangama recommended community-run shelter homes for young transgendered people, reserving government jobs for transgender people, identity cards, and livelihood skills training.¹⁴⁴

The Supreme Court proceedings are ongoing, and further orders may be made in response to the panel's reports and further evidence submitted in 2012.

Tara v. State

In *Tara v. State* (2012), the Delhi High Court overturned the forcible detention and transportation of 15 adult sex workers to Andhra Pradesh, because it was in violation of their right to live with dignity under the Constitution.¹⁴⁵

*State v. Gopal Halder and others*¹⁴⁶

In Shantipur, West Bengal a court directed the police to close a brothel where a sex worker was murdered. The closure notice forced 600 sex workers and their family members to leave the brothel. DMSC supported a sex worker to lodge a petition under the *Constitution of India* in Kolkata High Court. The Kolkata High Court quashed the order of the lower court, and ordered the state to help sex workers to return to the brothel taking into account the rights of the sex workers and their children.

Judicial views on legalization of the sex industry

In 2009 two judges of the Supreme Court of India suggested that legalizing the sex industry might be beneficial. In a hearing regarding trafficking of children, the judges observed that no legislation anywhere in the world has successfully managed to stop the sex trade: "When you say it is the world's oldest profession and when you are not able to curb it by laws, why don't you legalize it? You can then monitor the trade, rehabilitate and provide medical aid to those involved".¹⁴⁷

"WHEN YOU SAY IT IS THE WORLD'S OLDEST PROFESSION AND WHEN YOU ARE NOT ABLE TO CURB IT BY LAWS, WHY DON'T YOU LEGALIZE IT?"

143 See: <http://www.lawyerscollective.org/news/archived-news-a-articles/170-budhadev-karmaskar-v-state-of-west-bengal-criminal-appeal-no-135-of-2010-in-the-supreme-court-of-india.html>

144 Transgender approach SC for say in rehab, *Deccan Herald*, 18 February 2012.

145 W.P. (CRL) 296/2012 before the High Court of Delhi; <http://www.lawyerscollective.org/vulnerable-communities/sex-work/legal-interventions.html>

146 Misc. Case No 15 of 2011, order dated-16.05.11.

147 Judges Dalveer Bhandari and AK Patnaik, comment to the Government Solicitor. The court was hearing a claim filed by two non-governmental organizations, Bachpan Bachao Andolan (Save Childhood Movement) and Childline, seeking directives to contain child trafficking. See: Legalize prostitution if you can't curb it *Times of India* 10 December 2009.

4.4.2 Law enforcement practices

Police conduct

Nationally, the police charge sex workers more frequently using ITPA than the sex work provisions of the *Indian Penal Code*.¹⁴⁸

Police raids are frequently reported in red-light areas. Raids are ostensibly conducted to rescue minors. Incidents of police violence against sex workers have occurred in the context of raids. Large communities of sex workers were forcibly evicted from their homes in 2002 and 2004 in Nippani, Karnataka in 2002, and Baina, Goa in 2004, and police targeted the *hijra* community in Bangalore in 2008.¹⁴⁹ In Goa, efforts to introduce risk reduction practices among sex workers were interrupted after the red-light area was demolished. According to the Lawyers Collective, for several months after the raid “displaced sex workers were seen soliciting on the streets for survival, at the cost of condoms and HIV protection”.¹⁵⁰

Police use threats of prosecution under ITPA and local regulations to harass sex workers. Anecdotal evidence from Gujarat indicates that the police have used powers under ITPA and the *Gujarat Prevention of Anti-social Activities Act, 1985* to harass sex workers, raid brothels and commit violent abuses of sex workers.¹⁵¹ According to the Lawyers Collective:

Arbitrary police raids, seizure of money and material belongings, extortion, physical assault, torture and rape by police personnel, all of which are common experiences of sex workers, significantly impact HIV prevention efforts... When sex workers are forced to negotiate their livelihoods in conditions of fear, insecurity and exploitation, health and HIV/AIDS concerns become low priorities. Penal sanctions also breed corruption within the law enforcement system, making persons vulnerable to extortion and harassment from law enforcement agencies...the criminality associated with soliciting diminishes the ability of the sex worker to negotiate the terms of services, including rates and condom use.¹⁵²

According to Project Parivartan:

Upon rescue, rehabilitation, and reintegration, women are further subject to human rights abuses: some are rescued even if they do not want to leave prostitution; rehabilitation homes are more like prisons, and women are abused, denied legal rights, and not allowed to leave without a parent (or madam) to take them away, whether or not the rescued are adults; finally, women are sometimes repatriated against their will, as they find a livelihood in sex work that they would not find at home.¹⁵³

A study conducted in Tirupati and Kolkata found that sex workers complained far less about customers than police harassment.

148 Kotiswaran (2011), *op cit.*, pp.124-125.

149 Rao S., Sluggett, C. (2009), *op cit.*; and see: Human Rights Watch, *Stop ‘social cleansing’ in Bangalore*, news release, 18 November 2008.

150 Bose A., Bhardwaj K. (2008), *Marginalised populations: outside the pale*. (published on line: infochangeindia.org)

151 Grover A., Kukke S., Bhardwaj K. eds. (2003) *op cit.*, p.125.

152 Ibid. pp.125-126.

153 Project Parivartan (2006), *Sex Work and HIV in India: An Annotated Bibliography*, Durham: Duke Global Health Institute, p.6.

Although not all policemen were abusive by sex workers' own admission, and some were even their friends, most policemen engaged in some form of verbal, physical, or sexual harassment. They sometimes registered false cases against sex workers and trafficked in women.¹⁵⁴

A national meeting of sex workers and parliamentarians held in 2011 identified recent incidents of police harassment including arrest on the grounds of alleged drug offences.¹⁵⁵ For example, a transgender sex worker from Karnataka Sex Workers Union (KSWU) described police regularly engaging in extortion by filing false cases against sex workers for possession of illicit drugs, demanding sexual favours and committing assaults. It was reported:

An incident took place recently in Channapatna, a small town near the highway, where the police entered the house of a sex worker, forcibly removed her, and later had her pictures telecast on TV and in print. When the sex workers union went to inquire into the incident, the police got goondas¹⁵⁶ and had them beaten. In another incident in Anantpur district in Andhra Pradesh, the police, with the help of anti-trafficking groups, raided brothels and rounded up around 300 sex workers. The women were brought out onto the street, in full public view, and were dealt with inhumanely.

An earlier study of *hijra* sex workers commissioned by People's Union for Civil Liberties-Karnataka documents cases of violence, police entrapment and extortion:

Sexual violence is a constant, pervasive theme...Along with subjection to physical violence such as beatings and threats of disfigurement with acid bulbs, the sexuality of the *hijra* also becomes a target of prurient curiosity, at the very least and brutal violence as its most extreme manifestation. As the narratives indicate, the police constantly degrade *hijras* by asking them sexual questions, feeling up their breasts, stripping them, and in some cases raping them...such actions constitute a violation of the integrity and privacy of the very sexual being of the person. The police attitude seems to be that since *kothis*¹⁵⁷ and *hijras* engage in sex work, they are not entitled to any rights.¹⁵⁸

KSWU has reported that in 2008, police from Andhra Pradesh joined with Delhi police to conduct raids on Delhi brothels. Seventy-five women were detained for three days and ordered to be returned to Andhra Pradesh. Twenty four were classified as traffickers and 51 as 'victims'. According to KSWU, most of the so-called victims were adult women working voluntarily in sex work. The women were sent to state and NGO-run shelters. Many women complained of abuses in the shelters. Sex worker advocates who interviewed the women who had been 'rescued' confirmed that the working conditions in the brothels had been very poor. However, only two women were found to have been coerced into sex work. According to KSWU, the police operation did not improve conditions in the brothels or rehabilitate the self-identified victims.¹⁵⁹

154 Kotiswaran P. (2011), *op cit.*, p122.

155 National Network of Sex Workers and Lawyers Collective HIV/AIDS Unit (2011), *Sex Workers Meet Law Makers: Report of a dialogue held at the Constitution Club, New Delhi, 1st March 2011*, Lawyers Collective HIV/AIDS Unit.

156 Local thugs.

157 *Kothi* is a term used in India to refer to a man who assumes feminine traits. A *kothi* may or may not engage in sex work.

158 PUCL-K (2003), *Human Rights Violations against the Transgender Community: A study of kothi and hijra sex workers in Bangalore*, India Peoples' Union for Civil Liberties, Karnataka (PUCL-K).

159 KSWU (2009), *Trade union protections for sex workers*, Bangalore: KSWU, p.6.

A study of 673 female sex workers in Andhra Pradesh in 2007 made the following findings:¹⁶⁰

Police interactions occurred in terms of raids, arrests, and various negotiations between sex workers and police officers to avoid trouble...46%, reported at least one police raid where they conducted sex work in the 6 months prior to the interview, and many women reported multiple raids. About 28% of the sample had ever been arrested and about 17% of these women had been arrested three or more times in the last 6 months. While very few women who were arrested actually went to prison, about 15% of this group reported being forced to have sex while in jail or prison.

A number of women, about 21%, had ever had sex with a police officer to avoid trouble and among these women, 63.2% had sex with a police officer recently, in the 6 months prior to interview. Reported condom use with police officers was high and almost 85% of women said that the last time they had sex with a police officer he used a condom. Women do not appear to have a problem with police officers in terms of carrying condoms: only 10% said that they stopped carrying condoms because they were afraid that police would identify them as a sex worker and only 11% said that police had taken condoms away from them in the past 6 months. Women also reported giving money to the police to avoid trouble. Sex workers appear to face more problems with police than clients with most women (82%) reporting that in the last 6 months none of their clients had been fined or arrested by the police.

Children of sex workers are often refused admission in schools due to lack of identity papers. Since marriage is considered to be crucial for women, the only option left for many sex worker mothers is to secretly marry off their daughters at a very young age. However, when their identity is disclosed, these girls face violence and stigma at the hands of their in-laws.¹⁶¹

Criminalization makes it difficult for sex workers to engage in public health work. Many peer educators have reported harassment and accusations of promoting prostitution as a result of carrying and distributing condoms.¹⁶² Human Rights Watch has reported incidents of police harassing or detaining sex workers for carrying condoms and harassment of peer education and outreach workers at a variety of sites.¹⁶³ The Lawyers Collective also reports that possession of condoms makes sex workers, including those involved in peer education, easy targets for abuse and extortion by the police.¹⁶⁴

Kotiswaran summarizes factors that influence law enforcement practices as follows:

Police involvement in sex markets is rarely driven by internal demand. Rather, public pressures and political directives to address the 'prostitution problem' push the police to either expand or retract the level of enforcement of anti-sex work laws. At the very least, these include political priorities of crime control quotas for police action against crime, a sense as to the quantity of sex work that is permissible, its visibility, the public conflict involved, the legitimacy of the police in appearing to take action, the extent

160 Project Parivartan (2008) *Results of a cross-sectional survey of female sex workers in Rajahmundry, Andhra Pradesh*, Durham: Duke University.

161 Sircar O., Dutta D. (2011) Beyond Compassion: Children of Sex Workers in Kolkata's Sonagachi, *Childhood*, 18(3), pp.333-349.

162 National Network of Sex Workers and Lawyers Collective (2011), *op cit.*, p.2.

163 Human Rights Watch (2002) *Epidemic of abuse: police harassment of HIV/AIDS outreach workers in India*, Human Rights Watch Report 14(5)c. New York: Human Rights Watch.

164 Grover A., et al (2003) *op cit.*, p.127.

of sex workers' mobilization, and the police's appreciation of sex workers' bargaining power.¹⁶⁵

Laws relating to bonded labour and tenancy

In West Bengal and Bangladesh, there is a recognized hierarchy within brothels.¹⁶⁶ Women and girls who are sold by a procurer to a madam are obliged to pay off the amount the madam paid, plus interest. These women and girls are lowest in the hierarchy and are referred to as *chukris*, who are bonded labourers. Many sex workers start as *chukris*, whether they are trafficked or not. Legislation against bonded labour appears to have had little impact on changing this practice.¹⁶⁷ On the next level of the hierarchy are *adhiyas*, who pay the madam 50 percent of their income, in exchange for accommodation, food and security. It has been observed that the degree of vulnerability to HIV of *chukris* and *adhiyas* is linked to their status in the hierarchy, and *chukris* as bonded workers are the most powerless and are entirely dependent on madams for access to condoms.¹⁶⁸ Cornish described the relationship as follows:

The madams enter the sexual relation as intermediaries between the sex worker and client. A madam's economic interest is tied to the sex workers' earnings, and hence she is unlikely to encourage refusal of a client on the grounds of his refusal to use a condom. However, some madams let sex workers take most of the control over their work.¹⁶⁹

“...PROVIDING AIDS AWARENESS AND CONDOMS ISN'T GOING TO BE SUCCESSFUL BECAUSE SEX WORKERS HAVE NO POWER COMPARED TO THE CLIENTS, THE PIMPS OR THE MADAMS. WITHOUT STRENGTHENING THEM, YOU CANNOT CHANGE THIS POWER EQUATION.”

Kotiswaran describes the power dynamics of brothels in West Bengal:

A triangular set of relations form the institution of the brothel. These three relations are: (1) labor relation between the brothel owner or brothel keeper, on the one hand, and the sex worker, on the other; (2) tenancy relation between the landlord and either (a) a lessee with no functional role in the sex industry, (b) a brothel owner or brothel keeper (where a labor relation exists), or (c) a self-employed sex worker (where no labor relation exists); and (3) the service relation between sex workers and a brothel (if any), on the one hand, and customers, on the other. Internal stakeholders in the brothel setting include the landlord, lessee, brothel owner, brothel keeper, *dalal* (or tout), sex worker, and customer. External stakeholders include *goondas* (local goons), the DMSC, the police, vendors, and moneylenders.¹⁷⁰

The analysis of a clinician working with sex workers in West Bengal is instructive:

...providing AIDS awareness and condoms isn't going to be successful because sex workers have no power compared to the clients, the pimps or the madams. Without strengthening them, you cannot change this power equation.¹⁷¹

165 Kotiswaran P. (2011), *op cit.*, p.127.

166 Kotiswaran, P. (2008), 'Born unto Brothels – Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area', *Law and Social Inquiry*, 33, 579-629.

167 *Bonded Labour System (Abolition) Act, 1976* (India); *Bonded Labour Act 2006* (Bangladesh).

168 Karim R., Selim N., Rashid S (2008) *op cit.*, p.4.

169 Cornish P., Shukla A., Banerji R., (2010), Persuading, protesting and exchanging favours: strategies used by Indian sex workers to win local support for their HIV prevention programmes, *AIDS Care* 22 Suppl 2, 1670-8.

170 Kotiswaran P. (2008), *op cit.*, p.586.

171 Project Parivartan (2006), *op cit.* p.27.

Kotiswaran has conducted a detailed analysis of the effect of formal and informal tenancy rules on sex work in Sonagachi, West Bengal. Landlords and tenants of premises where sex is sold expose themselves to potential prosecution under the ITPA. According to Kotiswaran, informal tenancy rules and norms have evolved in this context:

This puts in place a default preference for resolving contentious issues and disputes informally as far as possible without invoking the state machinery. This works well under conditions of *de facto* decriminalization where the police effectively do not always enforce the ITPA in Sonagachi, thus creating an atmosphere of apparent abeyance of the criminal law in the shadow of which internal stakeholders negotiate with each other.¹⁷²

She identifies three types of tenancy arrangements in Sonagachi:

In descending order of the security of the sex worker's tenancy interest, these arrangements are where (1) the tenancy interest is based on the payment of a premium for the right to rent (*selami*); (2) the tenancy interest is based on payment of rent on a daily, weekly, or monthly basis, also referred to colloquially as renting 'on contract'; and (3) the tenancy interest is based on the payment of rent per sex work transaction, locally known as renting on 'commission'...¹⁷³

The need to pay *selami* is closely related to a sex worker's functional independence in sex work. A sex worker who escapes from being a *chhukri* quickly realizes that she cannot afford to pay *selami* for a secure tenancy and therefore works as an *adhiya* or an independent sex worker on contract until she has saved enough money for this payment. *Selami* in this sense acts as a barrier to independent sex work.¹⁷⁴

Other studies have confirmed that sex workers who lack independence and economic power due to their low status in the hierarchy within brothels are highly vulnerable to HIV.¹⁷⁵

Selami is illegal under the 1956 and 1997 *West Bengal Premises Tenancy Acts*. Nonetheless, Kotiswaran describes how sex workers are able to use the threat of legal proceedings to enforce rights under rent control laws to their advantage. She concludes that:

The elaborate interplay of formal legal rules, informal social norms, and market structures produces a constrained and complex negotiating space within which landlords make decisions about evicting sex-worker tenants.¹⁷⁶

Other issues

Sex worker groups argue that they are systematically denied basic entitlements such as ration cards,¹⁷⁷ admission to colleges, and their children face discrimination in access to schools, colleges and hostels.¹⁷⁸

A representative of DMSC has described discrimination against sex workers in access to a range of essential services as follows:

172 Kotiswaran P. (2008), *op cit*, p.599.

173 *Ibid.*, p.595.

174 *Ibid.*, p.598.

175 Karim R., Selim N., Rashid S., (2008), *op cit*.

176 Kotiswaran (2008), *op cit.*, p.602.

177 Ration Card is a document in India issued by the government to families living below the poverty line for the purchase of essential goods from designated shops. It can also be used as an identification document.

178 See e.g., Karnataka Sex Workers Union, http://sexworkersunion.in/?page_id=2

Those engaged in sex work have no welfare support from the government. They have no employer, no pension and no banking facility. Because of this, they are often cheated out of their savings. They also have to deal with the day-to-day responsibility of running a family and raising children like other women. But when authorities in school find out about the profession of the child's mother, the child faces enormous discrimination. Besides, no landlord is willing to rent homes to sex workers, as the landlord can be penalized under ITPA. But possibly the harshest consequence of this law is that if a sex worker's child, aged above 18 years, lives off the earnings of his/her mother, s/he is penalized too.¹⁷⁹

In 2011, the Indian Network of Sex Workers complained to the National AIDS Control Organisation (NACO) that government policies requiring collection of data about targeted interventions had given rise to human rights violations. The practice of 'line listing' mandates HIV programmes to maintain records of personal data about sex workers, which is shared with government agencies. Sex workers raised concerns that this practice resulted in breaches of rights to privacy and confidentiality. Requirements to track the number of sex workers tested for HIV also reportedly resulted in incidents of coercive testing.¹⁸⁰ Cuts to prevention programme budgets occurred as a result of non-compliance with HIV testing requirements. The system of reporting and recording personal data reportedly created a sense of fear and apprehension among sex workers.¹⁸¹

4.4.3 Efforts to improve the legal environment

Government responses

Indian Prime Minister Manmohan Singh stated in 2008:

Strategies for tackling [HIV] require more inclusive and less judgmental social approaches to questions of public health...We should work to remove legislative barriers that hinder access of high-risk groups to services...The fact that many of the vulnerable social groups, be they sex workers or homosexuals or drug users, face great social prejudice has made the task of identifying AIDS victims and treating them very difficult.¹⁸²

The *National AIDS Control Programme III* (NACP III) (2007-2012) states:

Effective prevention, care and support for HIV/AIDS is possible in an environment in which human rights are respected and where those infected with or affected by HIV live a life of dignity, without stigma or discrimination. This necessitates a review and reform of structural constraints, legal procedures and policies that impede interventions aimed at marginalised populations. Affirmative action is needed to reduce stigma and discrimination associated with the infected and affected persons and their access to prevention and quality treatment, care, insurance and legal services.¹⁸³

Operational Guidelines for the NACP III provide guidance on creating an enabling environment for HIV interventions with sex workers through a systematic approach

179 National Network of Sex Workers and Lawyers Collective (2011), *op cit.*, p.8.

180 See: Indian Network of Sex Workers, *DG NACO promises review of line listing*, 21 February 2011 (AIDS-India).

181 Dr S. Jana, report of Letter written by NACO Technical Resource Group to Director, NACO, July 2011.

182 Comments at the launch of the Report of the Independent Commission on AIDS in Asia.

183 NACO, *National AIDS Control Programme III*, p.26.

involving power analysis, implementing a crisis response system and engaging in police advocacy.¹⁸⁴ The Guidelines require NGOs to report incidents of rights violations, and the proportion of incidents of rights violations or violence reported within 24 hours.¹⁸⁵

In Karnataka, the Inspector-General of Police issued instructions in 2005 to address police abuses of sex workers, after representations by National Human Rights Commission, National Commission for Women, State Commission for Women and various NGOs:

Booking of a woman sex worker is tantamount to re-victimising the woman when she is already a victim of trafficking and sexual exploitation. It is, therefore instructed that henceforth no woman sex worker should be booked unless the women in question is a 'Madam' or a brothel keeper...A large number of complaints have been received from different places that sex workers are man handled, ill-treated, assaulted and abused in an inhuman manner by the police personnel. It is also alleged that the local police is in the habit of extracting money from these sex workers which itself amounts to extortion and living on their earnings. Needless to say that this pernicious practice, if true, should be stopped forthwith and strict disciplinary action should be taken against such officials.¹⁸⁶

A similar direction was issued in Tamil Nadu in 2004,¹⁸⁷ and Andhra Pradesh in 2005.¹⁸⁸ In Orissa, the state government directed police not to target sex workers for harassment or prosecutions under the ITPA in 2007.¹⁸⁹

Community mobilization and human rights advocacy

Interventions that mobilize sex workers to seek changes in law enforcement practices and to protect the rights of sex workers have proved effective in a variety of settings in India.¹⁹⁰ The Indian Network of Sex Workers acts as a forum of sex workers' organizations and advocates at the national level for law reform and increased recognition and support for local sex worker organizations. In several states, sex worker collectives or unions engage in advocacy on legal and human rights issues in addition to activities relating to health, education, livelihoods and protection from violence.

Karnataka: Karnataka Sex Workers Union, Ashodaya Samithi, Project Baduku

In Bengaluru, sex workers have formed the Karnataka Sex Workers Union (KSWU) to advocate for improved working conditions. KSWU is a trade union of female, male and transgender sex workers, and is seeking to be registered as a trade union in India. KSWU seeks to improve the access of sex workers to care in the event of sickness, unemployment, old age, accident, and death. KSWU advocates for sex work to be recognized as work with

184 NACO, (nd) *Targeted interventions for High Risk Groups: Operational Guidelines*, pp.65-67.

185 *Ibid.*, p.74.

186 Karnataka Inspector General of Police, *Circular on Action under Immoral Traffic (Prevention) Act, 1956*, 22 November 2005, available at: <http://www.altlawforum.org/gender-and-sexuality/rights-of-sex-workers>

187 Tamil Nadu DGP Guidelines on the *Immoral Traffic (Prevention) Act, 1956*.

188 Kotiswaran P. (2011), *op cit.*, p.128.

189 Government of Orissa (2007) *Mahila and Sishu Desk: Legal Compendium for Investigating Officers*. Women and Child Development Department, Government of Orissa, p.14

190 Biradavolu, M. et al. (2009), *op cit.*; Swendeman D. et al. (2009), 'Empowering sex workers in India to reduce vulnerability to HIV and sexually transmitted diseases', *Social Science and Medicine* 69(8): 1157-66; Rao S., Sluggett C. (2009). *op cit.*; Beattie T., et al., (2010) Violence against female sex workers in Karnataka State, south India: impact on health, and reductions in violence following an intervention program, *BMC Public Health* 10, 476.

full labour rights, and is affiliated to the New Trade Union Initiative, a national federation of independent trade unions in India.¹⁹¹

The People's Union for Civil Liberties of Karnataka has documented a series of incidents leading to the lodging of a complaint to the Superintendent of Police, Bangalore by Karnataka Sex Workers Union. This complaint urged the government to respond to abuses perpetrated by police in response to a peaceful protest.¹⁹² In 2007, police raided a house and arrested two men and four women for engaging in 'immoral activities' under the *Immoral Trafficking Prevention Act*. Police stated they found condoms on the premises. After one of the accused revealed they worked for an NGO that conducts HIV prevention with sex workers (Suraksha), police conducted a search of their confidential files without a warrant. Local media televised the arrest. The following day sex worker groups organized a peaceful protest against the conduct of the police, which was broken up through violent means.

Ashodaya Samithi is an organization of sex workers in Mysore that implemented a project to address stigma and discrimination with four components:

- Training sex workers in advocacy, with a focus on health care rights. The project placed trained sex workers (community guides) within health care facilities in Mysore to support sex workers and to sensitize health care workers.
- Training sex workers living with HIV as 'social champions,' to provide testimonials including outreach and advocacy with the police and government departments.
- Forming and registering a support group by and for HIV-positive sex workers.
- Establishing a restaurant owned and operated by sex workers to fight stigma and provide an additional source of income.

Ashodaya Samithi proactively engaged the police from the inception of the project and provided training to police cadets. As a result, sex workers experienced reduced violence from the police and the police commissioner made a public statement of support for the sex worker community.¹⁹³

Project Baduku is an anti-stigma advocacy campaign led by three organizations of female sex workers in Bengaluru. Campaigns were designed to highlight the positive role police and health care providers can play in improving the lives of sex workers. Police personnel and health care workers who demonstrated positive attitudes and behaviour towards sex workers were publicly acknowledged. Following the campaign, sex workers were more willing to report discrimination to police and sex workers reported less police harassment and violence. Hospital staff became more willing to refer sex workers for legal advice and significantly more sex workers living with HIV attended hospitals for antiretroviral therapy.¹⁹⁴

An intervention implemented in Karnataka in 2005-2008 sought to reduce violence against female sex workers, as a component of a state-wide HIV prevention programme. The following activities were undertaken:¹⁹⁵

191 See: <http://sexworkersunion.in>

192 PUCL-K (2007) *Policing morality in Channapatna*, Bangalore: People's Union for Civil Liberties.

193 Stangl A., Carr D., Brady L., et al (2010) *Tackling HIV-Related Stigma and Discrimination in South Asia*, Washington: World Bank, pp.177ff.

194 *Ibid*, pp.85ff.

195 Beattie T., Bhattacharjee P., Ramesh B., et al (2010) Violence against female sex workers in Karnataka state,

- HIV/AIDS coordination committees were established in each district, comprising the heads of relevant government departments and the police department, and representatives of sex workers and people living with HIV. The committees developed HIV prevention and care policies for government departments. They also provided a platform through which sex workers could raise concerns such as violence and harassment, and generate empathy towards sex workers among government officials and police.
- The programme worked in partnership with district police heads and sex workers to deliver state-wide training to 12,000 police officers, representing over half of all police personnel in the project districts. Training aimed to raise awareness of HIV, generate empathy among police officials towards sex workers, and provide clarity regarding the law and sex work.
- A group of volunteer human rights lawyers worked with the sex worker community to provide legal literacy, and bring perpetrators of violence to justice.
- To address stigma, state-wide HIV awareness and sex worker sensitization training was provided to over 2,000 journalists.
- Sex workers were brought together through a process of community mobilization. Community mobilization aimed to address powerlessness and isolation, and to advocate against discrimination, stigma, wrongful arrest, violence and harassment.
- The programme worked with human rights lawyers to deliver legal empowerment workshops to 25,000 female sex workers across the state. To support sex workers who had been subjected to violence, 24-hour crisis management teams were established, comprising peer educators, lawyers and NGO project staff.

Kerala: Sex Workers Forum Kerala (SWFK)¹⁹⁶

SWFK organizes sex workers to advocate for human rights, runs drop-in-centres for street-based sex workers and provides homes for sex workers' children. Some members of SWFK also work in state-sponsored HIV prevention programmes. SWFK's activities are aimed at fighting stigma, police violence and harassment, and include:

- participatory research on violence;
- lobbying parliamentarians and the government to change the ITPA;
- dialogue with the police on violence and harassment;
- advocacy with the media; and
- public protests and demonstrations.

Maharashtra: Veshya Anyay Mukti Parishad

Veshya Anyay Mukti Parishad (VAMP) is a collective of over 7,000 female sex workers based in Sangli.¹⁹⁷ VAMP implements peer interventions in six districts, with technical support

south India: impact on health, and reductions in violence following an intervention program, *BMC Public Health* 10:476.

196 See: Thottiparambil S., (2005) Sex workers of Kerala, India: Moving beyond HIV/STI prevention *Sexual Health Exchange* 1.

197 Pillai S., Seshu M., Shivda M., (2008) Embracing the rights of people in prostitution and sex workers, to address HIV and AIDS effectively *Gender & Development* Vol. 16, No. 2, July 2008.

from Sampada Gramin Mahila Sanstha (SANGRAM). SANGRAM is a community-based HIV organization. VAMP has succeeded in reducing police brutality and brothel raids. VAMP maintains strong relationships with power brokers in the community, including local government officials, police and brothel owners.

VAMP arbitrates community disputes, lobbies the police, helps sex workers access government programmes, advocates for decriminalization of the sex industry and develops the leadership potential of sex workers. VAMP negotiates in disputes between sex workers and owners of brothels. As a result of VAMP's negotiations with police, raids on sex worker establishments have been reduced.¹⁹⁸ A study of VAMP's approaches observed that sex workers exchange information with police about criminal activities gained from interactions with clients. This was a deliberate strategy adopted by sex workers to influence police and build rapport and support for their HIV prevention programmes.¹⁹⁹

Andhra Pradesh: sex worker mobilization in Rajahmundry

A study in Rajahmundry described a community mobilization intervention that changed policing practices:

Established brothels commonly paid for protection from raids, or participated in rituals in which a few pre-selected sex workers would be arrested in a "raid". Sex workers understood that arrest would mean several hours or a day in jail and the payment of a customary fine or bribe. Sex workers also faced rampant police extortion. Better-off sex workers paid bribes in exchange for conducting business without fear of police reprisal...In some cases, the bribe system was so well-established that it was mediated by village officials as an acknowledged aspect of communal governance...

The initial attempts to influence the police through persuasion and education did not bring desired results, setting the stage for mounting a more systematic challenge. The revised mechanisms to regulate police behavior rested upon leveraging the combined forces of community empowerment, collective action and network-based punishment...where abuse of any kind – mental or physical – was unacceptable...²⁰⁰

A Crisis Intervention Team was formed that included 'Social Change Agents', lawyers, human rights activists, politicians, government officials and members of the media. Sex workers were empowered to confront police abuses through collective action and legal education. A rapid response mechanism was instituted and sex workers were encouraged to file court cases, if arrested, fined or forced to pay bribes.

[The intervention] sought to curb the arbitrary use of police power that led to violence, abuse, and failure to uphold certain legal rights of sex workers. The situation remains fluid, but it is clear that egregious police violence has abated as a result of the intervention. Sex workers, especially those most involved with the intervention, are aware of certain legal rules and are confident of using these to deter police arrests. When arrested, sex workers are calling upon their [community-based organization] members for assistance. Sex workers have begun to manage their stigmatized identities with the police, by highlighting that they are critical to HIV prevention and are not 'vectors' of the disease.

198 Misra G., Mahal A., Shah R., (2000) *op cit.*, p.107.

199 Cornish F., Shukla A., Banerji R. (2010), Persuading, protesting and exchanging favours: strategies used by Indian sex workers to win local support for their HIV prevention programmes *AIDS Care* 22 Suppl 2:1670-8.

200 Biradavolu M. et al. (2009), *op cit.*

...The community mobilization efforts...[collectivized] previously scattered, segregated, stigmatized and marginalized sex workers...to fight a common adversary. The...model of the [Crisis Intervention Team] enabled sex workers' voices and positions to be heard, perhaps for the first time, by a diverse group of local political leaders, members of the judiciary, media representatives and senior police officials.²⁰¹

West Bengal: DMSC and the Sonagachi Project

In Kolkata the Durbar Mahila Samanwaya Committee (DMSC) represents 65,000 sex workers. DMSC's political objectives include decriminalization of adult sex work, recognition of sex work as a valid profession, and establishing sex workers' right to self-determination. In addition to peer education on HIV and related health issues, DMSC has addressed sex workers' economic rights by opening banks and credit facilities. The rationale for a focus on financial security has been described as follows:

Because of their compromised legal as well as stigmatised status, sex workers are often denied access to financial institutions, which reduces their ability to improve economic sustainability [and] their confidence and capability to enforce condom use by their clients. Though there is no legislation barring sex workers from accessing credit or insurance related facilities, in practice they do not and cannot access any sort of support from financial institutions because they often fail to produce documents of identity like rent receipt, electricity bill, etc., as a result of which they had to depend primarily on the grey market e.g., unregistered money lenders who exploit them in all possible means. To address this issue the sex workers of Sonagachi

“BECAUSE OF THEIR COMPROMISED LEGAL AS WELL AS STIGMATISED STATUS, SEX WORKERS ARE OFTEN DENIED ACCESS TO FINANCIAL INSTITUTIONS, WHICH REDUCES THEIR ABILITY TO IMPROVE ECONOMIC SUSTAINABILITY.”

under the leadership of DMSC developed their own co-operative society in 1995, overcoming initial resistance. The Co-operative Department to begin with did not allow them to register on the excuse that they did not bear good moral character, which was also a legal provision under the Co-operative Act. Subsequently the clause was revoked...[so] they could register their own co-operative society. At present there are more than 16,000 members of this co-operative who can save money and access credit whenever necessary. This has helped them to improve their economic security. They can negotiate confidently with their clients and can refuse if they do not comply with condoms as they don't have to think for tomorrow's money. This co-operative has also been recognized by the Election Commissioner of India. Now any member of the co-operative society just showing their passbook of their bank can procure a Voter Identity Card - an important document of citizenship.²⁰²

The successes of DMSC and the Sonagachi Project²⁰³ in Kolkata have been extensively documented. There have been reductions in police raids, police harassment, exploitation from local gangs and violence. Sex workers report that they are better able to negotiate

201 *Ibid.*

202 Jana, S. (2011) *The economical empowerment of sex workers in West Bengal, India with the help of Usha Multipurpose Co-operative Society Limited*, presentation, Ms. Samaita Jana, 10th International Congress on AIDS in Asia and the Pacific, Busan 2011.

203 A project known as SHIP (Sonagachi HIV/AIDS Intervention Project) operated from 1992-1995. In 1995, with the expansion of the scope of SHIP and the creation by sex workers of their own organization, the project adopted the name of Durbar Mahila Samanwaya Committee. The community based effort managed by DMSC is now commonly referred to as the Sonagachi Project.

health and work issues after participation in the Sonagachi Project.²⁰⁴ Empowerment strategies implemented by DMSC, such as community mobilization, advocacy and micro-finance have impacted a range of factors to reduce vulnerability to HIV. For example, a study found that the Sonagachi Project's interventions "motivated change based on reframing sex work as valid work, increasing disclosure of profession, and instilling a hopeful future orientation reflected in desire for more education or training and improved skills in sexual and workplace negotiations."²⁰⁵

The Sonagachi Project has been associated with lower HIV rates among sex workers as compared to other urban centres in India.²⁰⁶ Research has demonstrated a significant increase in condom use among sex workers who participated in empowerment interventions. The project's success in raising consciousness about sex work as legitimate labour has been described as a motivator for increased condom use.²⁰⁷ DMSC members report increased confidence in countering stigma when dealing with the police.²⁰⁸

DMSC has also campaigned for the repeal of punitive laws, particularly ITPA. In 2006, DMSC vigorously opposed proposed amendments to ITPA that sought to criminalize clients of sex workers and strengthen police powers. DMSC argued that these provisions would have deprived sex workers of income and driven the industry further underground. The proposed amendments were not enacted.

DMSC has supported the establishment of self-regulatory boards comprising DMSC staff, clinicians, welfare providers, local councillors, advocates and sex workers.²⁰⁹ The board also includes representatives from the local government, e.g., Councillor or Member of Parliament. Data indicate that self-regulatory boards are more effective in identifying and removing survivors of trafficking than state-driven rescue and rehabilitation programmes.²¹⁰ In 2008 there were 33 self-regulatory boards in West Bengal. Each board is responsible for patrolling the red light district, assisting underage girls and those who have been coerced into the sex trade. The boards provide temporary shelter, medical care and assistance to women to return home or begin a new life.²¹¹ The boards have helped sex workers challenge police abuses such as extortion by creating an opportunity for sex workers to negotiate with local officials. In cases of police violence, strategies include lodging a report at the police station, submitting protest letters to women's and human rights organizations, engaging lawyers, mobilizing sex workers to protest and use of media.²¹²

204 The Durbar Mahila Samanwaya Committee Theory and Action for Health Research Team (2007), *Meeting community needs for HIV prevention and more: intersectoral action for health in the Sonagachi red-light area of Kolkata*, WHO, p. 16.

205 Swendeman D., Basu I., Das S., Jana S., Rotheram-Borus M. (2009) Empowering sex workers in India to reduce vulnerability to HIV and sexually transmitted diseases. *Soc Sci Med.* 69(8):1157-66; and see: Jana S, Basu I, Rotheram-Borus MJ, Newman P. (2004) The Sonagachi Project: a sustainable community intervention program. *AIDS Educ Prev.* 2004 Oct;16(5):405-14.

206 Jana S., Basu I., Rotheram-Borus M., Newman P., (2004) The Sonagachi Project: a sustainable community intervention program. *AIDS Educ Prev* 16(5): 405-14.

207 Ghose T., Swendeman D., George S., Chowdhury D., (2008) Mobilizing collective identity to reduce HIV risk among sex workers in Sonagachi, India: The boundaries, consciousness, negotiation framework *Soc Sci Med* 67(2): 311-320.

208 Ibid.

209 Bandyopadhyaya N. (2008), *op cit*.

210 Dr S. Jana, quoting: *Self Regulatory Board ensuring participatory democracy in practice – A partnership between DMSC and Action Aid*.

211 OSI (2008) *Our Lives Matter op cit*. p35

212 APNSW, UNFPA, UNAIDS, (2011) *op cit* p.37.

The DMSC approach has reduced the number of underage sex workers (from 25% in 1992 to 2% in 2008) and incidence of police raids (from 162 in 2003 to 22 in 2009 in Sonagachi).²¹³

The DMSC model of self-regulation is regarded as highly successful internationally and has been replicated in other states of India (e.g., Andhra Pradesh). However, it is a model that may be difficult to replicate in other social settings where sex work is organized differently and there is no history of community organizing.

DMSC has proposed that a state level central self-regulatory board be formed, which can act as an ombudsman and can also advocate and lobby with the state and national bodies on policy and law reform issues.²¹⁴

DMSC provides an alternative approach to addressing trafficking that avoids problems inherent in relying on police:

[DMSC] sees as most urgent the need to establish better labour standards in sex work, and support individual sex workers tackling exploitative situations. This includes supporting unwilling and underage sex workers by helping them decide what to do, rather than handing them over to the police where they are likely to face more harassment.²¹⁵

Sex worker advocates argue that mobilization of sex worker communities through organized collectives and industry self-regulation has the potential to be more effective than relying on police and adversarial courts to protect worker's rights and address issues such as trafficking:

Given that the exercise of rights is through the courts of law, the position between parties is automatically adversarial. It is usually the State against the sex workers. Any possibility of negotiation is severely thwarted. For instance, many collectives of sex workers work with the police to prevent minor girls from doing sex work. The sex workers in fact become the watchdog in the community. By working with the communities where the sex workers work, not only is minor exploitation curbed, but also an active AIDS prevention is possible. The valuable resources of compromise and coordination are lost when adversarial positions are adopted.²¹⁶

The Lawyers Collective also recommends self-regulatory boards that oversee condom use, health checks, and the prevention of entry of minors to the sex industry. The Lawyers Collective argues that self-regulatory approaches to preventing trafficking and underage workers are more effective than arbitrary raid and rescue operations. Giving greater control to sex workers enables them to set their own working conditions and enforce their own rules.²¹⁷

*Avahan India AIDS Initiative*²¹⁸

The Avahan India AIDS Initiative has scaled up HIV interventions in six Indian states. In addition to HIV behaviour change education, condom distribution, and STI treatment,

213 *Ibid.*

214 Bandyopadhyay N. (2008) *op cit.*, p.32.

215 Bandyopadhyay N. (2008) *op cit.*, p.3.

216 Rao S., Sluggett, C. (2009), *op cit.*, p.9.

217 Grover A., *et al* (2003) *op cit* pp.131-132.

218 Avahan is funded by the Bill and Melinda Gates Foundation. See: Rau B. (2011) *The Avahan-India AIDS Initiative: Promising Approaches to Combination HIV Prevention Programming in Concentrated Epidemics*. Case Study Series. Arlington, VA: USAID AIDSTAR-One.

Avahan's NGO partners have implemented interventions to reduce police harassment and to expand community engagement efforts. Peer educators and other programme staff targeted the police to stop harassment, coercion, and violence. The resistance by sex workers to police interference and the use of rapid response teams has resulted in improved working conditions for sex workers and reduced police abuses.²¹⁹ As relations with police improved, it became easier for sex workers to practice safer sex and to seek care. As confidence grew within sex worker groups, community members advocated for rights and acquired ration cards, access to public health facilities, and health insurance.²²⁰

Lawyers Collective HIV/AIDS Unit

The Lawyers Collective provides legal services for sex workers particularly in relation to public interest litigation and engages in advocacy for law reform. For example, the Lawyers Collective represented a sex worker from Hyderabad who had been forcibly tested for HIV in the police station after being arrested. Subsequently, her organization filed a writ with the assistance of the Lawyers Collective, which prevented the practice recurring.²²¹

The Lawyers Collective drafted the *HIV/AIDS Bill 2007*, which has been submitted to government for consideration. The *HIV/AIDS Bill 2007* contains the following provision, to prevent police from confiscating condoms from sex workers:

Clause 21. Strategies for reduction of risk. –

1. Notwithstanding anything contained in any law for the time being in force,
 - a. the implementation or use of any strategy for reducing the risk of HIV transmission; or
 - b. the provision or possession of any tool or paraphernalia for reduction of risk of HIV transmission, or any act pursuant thereto, shall not, in any manner, be prohibited, impeded, restricted or prevented and shall not amount to a criminal offence or attract civil liability.

Explanation:– Strategies for reducing risk of HIV transmission means promoting actions or practices that minimize a person's risk of exposure to HIV or mitigate the adverse impacts related to HIV/AIDS including:

- i. the provision of information, education and counselling services relating to HIV prevention and safe practices;
- ii. the provision and use of safer sex tools, including condoms, lubricants, female-controlled barrier methods, and safe drug use paraphernalia, including clean needles, syringes, bleach and other appropriate sterilizing equipment accompanied by information on their use;
- iii. drug substitution, drug maintenance and needle and syringe exchange programmes in accordance with Sub-section 2; and
- iv. the provision of any strategy for reducing risk of HIV transmission including those contained in (i), (ii) and (iii) above to persons below the age of 18 years who in the opinion of the provider of strategies for reducing risk of HIV transmission have the capacity to consent to such strategy.

219 Ibid, p.9.

220 Ibid, p.13.

221 National Network of Sex Workers and Lawyers Collective HIV/AIDS Unit (2011) *op cit*.

4.5 Maldives

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.5.1 Laws²²²

Islamic *sharia* law is part of the domestic law. Sexual acts outside of marriage are criminalized. Article 88(a) of the *Maldivian Penal Code 1967* makes it an offence to disobey an order issued lawfully within the *sharia*. Article 88(a) is regarded as a catch-all provision to cover situations involving conduct considered by officials or police to be immoral. In addition, the *Rules Relating to the Conduct of Judicial Proceedings* criminalize sexual activity outside marriage. These rules are founded on Islamic law principles. Provision 173, Sub-section 13 of the rules governs the offence of fornication. The offence prohibits persons from engaging in sexual intercourse with a person to whom marriage is forbidden.

4.5.2 Law enforcement practices

There are reports of migrant sex workers from neighbouring countries being arrested in the Maldives in 2008 and 2010.²²³ Raids on guest houses and massage parlours were reported in 2009.²²⁴ A World Bank analysis in 2008 observed:

There are networks of 'middle men/women' who can arrange sex with foreign sex workers, who come to the Maldives on visa runs from their usual location of work in Sri Lanka and India. There are women from Sri Lanka, India, Southeast Asian countries, Russia, and Eastern Europe.²²⁵

In 2011, the Maldives government ordered all spas in resorts to be closed after protests by an Islamist party, which claimed they were being used as a front for prostitution.²²⁶

4.5.3 Efforts to improve the legal environment

The National AIDS Programme's *Operational Plan on HIV* (2010) states:

[T]aboos and lack of awareness of public health implications of driving underground sex work (whether opportunistic, regular street-based or escort based) and MSM make

222 See: Robinson P., (2006) *Final Report of the Maldivian Penal Law & Sentencing Codification Project*, University of Pennsylvania; Committee on the Rights of the Child (2007); *Consideration of Reports Submitted By States Parties Under Article 12, Paragraph 1, of The Optional Protocol To The Convention On The Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Maldives*; Republic of Maldives Attorney General's Office (2004) *National Criminal Justice Action Plan, 2004-2008*.

223 See: Five Sri Lankans deported from Maldives for engaging in prostitution, *Asian Tribune*, 7 November 2008; Nazeer A. (2010) Police arrest HIV positive prostitute, *Minivan News*, 4 November 2010.

224 Prostitution on the rise in the Maldives, *Minivan News*, 26 December 2009.

225 World Bank (2008) *HIV/AIDS in Maldives*, Washington: World Bank.

226 Concern over Maldives spa 'prostitution' closures, *BBC News on-line*, 30 December 2011.

the Maldives society at risk...Until today no comprehensive package for women (and men) engaging in commercial sex has been launched at the Maldives. At the end of 2009 NGOs have been able [to] identify 3-4 hotspots for street work but not much has been done to serve this vulnerable population with appropriate skills and services (condoms and treatment of STIs). One NGO has been training women involved in sex work and escort work at resorts and hotels.

The National AIDS Programme *Country Progress Report 2010-2011* states:

The Operational Plan for HIV in the Maldives 2010-11 acknowledges that the biggest gap in the current response to HIV in the country is the lack of strategic focus on the behaviors most likely to kick-start a potential epidemic: injecting drug use, male to male sex and transactional sex/sex work. Part of the reason for the absence of interventions for those most at risk is the current legal framework, which outlaws these behaviors and drives people who are involved in them underground. This contradicts with the public health need to reach out to people engaging in these behaviors (including those in prisons). The Maldives outlaws male-to-male sex, following the British colonial penal code as well as interpretations under Sharia law. The Maldives also outlaws premarital and extramarital sex (including sex work). Although married people have access to condoms via birth control services, the provision of condoms to unmarried people is not allowed, despite the fact that unmarried people, from an HIV prevention perspective, need condoms most...

Efforts on sensitization of law enforcement officers has proven to be effective; currently syringes or condoms are not used as evidence of crime, and there are no reports of people who carry a condom or a syringe are subjected to harassment and intimidation.²²⁷

4.6 Nepal²²⁸

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Not Illegal

BROTHELS

227 National AIDS Programme (2012) Maldives Country Progress Report 2010-2011, Ministry of Health and Family, pp.23, 25.

228 This Chapter was informed by a consultation process with the (male, female, transgender) sex worker community in Kathmandu on the draft Chapter. In August 2011 the national network of sex workers (Jagriti Mahila Maha Sang - JMMS), Blue Diamond Society (BDS), UNDP, UNAIDS, the International Development Law Organization (Consultation Team) met to review the chapter and consult with the sex worker community. JMMS and BDS led a consultation and survey process utilizing a short questionnaire among 75 female sex workers and 75 male and transgender sex workers (25 male sex workers and 50 transgender sex workers) in Kathmandu Valley in September-October 2011. Thanks are given to Ms. Sumi Devkota, Consultant, who prepared the report of the consultation process: Devkota S. (2011) *Validation of the Nepal Chapter from the Regional UNDP-UNFPA-UNAIDS-APNSW Draft Report on Legal Environments, Human Rights and HIV responses among Sex Workers in Asia and the Pacific* (unpub.).

4.6.1 Laws

The *Trafficking and Transportation (Control) Act 2007* provides that it is an offence to engage the services of a sex worker.²²⁹ Penalties that apply to clients of sex workers include between one month and three months imprisonment and fines.

Although the act of sex work itself is not specifically criminalized, sex workers may be prosecuted for other offences. In practice, sex workers are most often arrested for public order offences under the *Public Offences and Penalties Act, 1970*.

The courts have recognized the constitutional rights of sex workers. In 2002, the Supreme Court of Nepal ruled that provisions of the criminal law that purported to apply a lighter penalty to rapists in cases where the survivor is a sex worker were unconstitutional and invalid.²³⁰ The Court stated that: "prostitution is a profession or occupation irrespective of whether or not it is legal". The Court held that sex workers should not be discriminated against in the criminal law with respect to rape, given the constitutional rights to equality and to choose one's own profession.²³¹

In consultations to inform this report conducted in 2011, the sex worker community and the Forum for Women, Law and Development (FWLD) identified the following legal developments of relevance to sex workers, including male and transgender sex workers:

- The rape law in Chapter 14 of *Country Code 1963* includes only penile and vaginal penetration, disregards oral and anal penetration and excludes insertion of other bodily parts and objects. The emphasis on '*Karani*' (penile and vaginal penetration) compounds the discrimination and stigmatization of the rape of men and boys and the failure to recognize sexual minorities (LGBTIs);²³²
- The draft *Criminal Code* stigmatizes LGBTI populations by containing provisions that criminalize 'unnatural' sexual acts, including same sex relationships, and prescribing jail terms up to 16 years and fines.²³³

The *Trafficking and Transportation (Control) Act 2007* provides offences for trafficking and rights of legal representation, privacy and compensation for trafficked persons. The Act also establishes government-funded rehabilitation centres. The *Bonded Labour (Prohibition) Act, 2002* prohibits bonded labour, which presumably includes bonded sex work.

4.6.2 Law enforcement practices

Sex workers are arrested, detained and harassed by the police under public order laws dealing with disturbing the peace or obscenity under the *Public Offences and Penalties Act*,

229 *Trafficking and Transportation (Control) Act 2007*, s.15(d). FWLD lawyers confirmed that the penalty under this Act applies to clients of sex workers rather than sex workers themselves. A UNODC report interprets the definition to refer to "engaging a person in prostitution with or without consideration": Thomas S. (2011) *Legal and Policy Review: Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka*, New Delhi: UNODC ROSA, p.48.

230 *Muluki Ain (Country Code)*, Chapter 14 prescribes the punishment for rape.

231 Supreme Court of Nepal in *Sapana P. Malla for FWLD v. HMG/Nepal*, Publication of Judgments relating to Human Rights: Special Issue (Kathmandu: Supreme Court, 2002) at 144-151; Shreshta P., (2006) *Prostitution and Public Health: Various Forms of Regulating Methods - An Analysis of Current Legal Responses to Prostitution in Nepal*. Available at: http://www.fwld.org/administrator/uploads/free_articles/6.pdf

232 Lesbian, gay, bisexual, transgender, and intersex people.

233 *Sunil Babu Pant and others v. Nepal Government and others* [2008] 2 NJA L.J. 261-286.

1970.²³⁴ Police use this Act to raid parks and premises such as hotels and massage parlours where sex work is suspected. For example:

- Kathmandu police report conducting 24 raids in a four-month period in 2010²³⁵
- Kathmandu police arrested 12 female sex workers and 21 male clients at two hotels in 2009 for participation in 'indecent and vulgar activities.'²³⁶
- Police reportedly ask for bribes from sex workers and managers at restaurants, massage parlours, and hotels.²³⁷

According to Purna Shreshta, a Nepalese lawyer, most sex workers want decriminalization of the sex industry and protection from police abuses:

In two studies conducted by human rights groups in Kathmandu, the overwhelming majority of [female sex workers] interviewed wanted sex work to be legalized or decriminalized, unaware that prostitution is not illegal in Nepal. However, the reason behind demanding legalization was not because they saw prostitution as a desirable and enjoyable profession that a woman decides upon freely and willingly – rather, legalization was seen as a means through which sex workers would be provided with effective legal protection against police harassment, client abuse and other forms of discrimination. In the first national gathering of Nepalese sex workers held in 2005, voices were raised to legalize 'sex professionals' on the assumption that it would protect them against frequent police mistreatment and abuse.²³⁸

“...IN 2005, VOICES WERE RAISED TO LEGALIZE “SEX PROFESSIONALS” ON THE ASSUMPTION THAT IT WOULD PROTECT THEM AGAINST FREQUENT POLICE MISTREATMENT AND ABUSE.”

Transgender people (*metis*) who engage in sex work are highly vulnerable to police abuses. A study of *metis* who reported currently being sex workers or having a history of providing sex for money found that rape and abuse by law enforcement officers leads to inconsistent condom use due to fear of carrying condoms in public. The study concluded:

Low access and ability to carry condoms paired with high reported numbers of sexual partners revealed an environment ripe for the spread of HIV among *Metis* and their partners...These data suggest the imminent need for interventions to reduce law enforcement violence towards *Metis* in order to decrease the risk for HIV among *Metis* who are raped and to increase access to and the ability to safely carry condoms. Sensitivity trainings and strict enforcement of existing legal protections for *Metis* should be considered.²³⁹

Rape by police has direct implications for HIV risk. *Metis* reported being unable to require condom use by police. Known rape and violence toward *metis* also created fear of law enforcement, which had an indirect impact on HIV-related risk behaviours. *Metis* feared

234 *Some Public (Offences and Penalties) Act, 1970*, section 2.

235 Raids alone can't curb flesh trade: police, *Kathmandu Post*, 12 December 2010.

236 Sex workers, clients arrested from Thamel, *Kathmandu Post*, 19 December 2009.

237 McNeill L., (2008) *Legislating sex work: the case of Nepal*. Cornell Institute for Public Affairs.

238 Shreshta P. (2006) *op cit*.

239 Wilson E., Pant S. *Stigma and HIV risk behaviors of transgender women in Nepal: implications for HIV prevention*, Poster: 16th International Symposium on HIV and Emerging Infectious Diseases, Marseille, 24-26 March 2010 *Retrovirology* 2010, 7(Suppl 1): P.122.

false arrest for carrying condoms, which police officers used as evidence of engagement in sex work. When asked about condom use, *metis* reported that there was a high risk associated with carrying condoms due to fear of being falsely arrested and then assaulted by police.²⁴⁰

A survey conducted by Jagriti Mahila Maha Sang (JMMS) and Blue Diamond Society (BDS) to inform this report in 2011 produced the following results:

1. Approximately 79% of the 75 male and transgender sex workers surveyed, reported that they faced more than one form of violence from law enforcement officials:
 - a. 64% experienced arbitrary detention
 - b. 44% reported being raped
 - c. 64% experienced extortion
 - d. 51% experienced sexual abuse
 - e. 73% reported they had been beaten
 - f. 85% experienced verbal insults.
2. Similarly, 89% of the 75 female sex workers surveyed, reported that they faced more than one form of violence from law enforcement officials, including:
 - a. 14 % experienced arbitrary detention
 - b. 7% reported being raped
 - c. 12% experienced extortion
 - d. 19 % reported being sexually abused
 - e. 55% reported being physically abused
 - f. 88% experienced verbal insults.

Specific examples of recent rights violations reported during the consultation included:

- A few weeks ago, 'Nepti' was walking in Chabil Road when suddenly a night patrolling police van approached her. The policemen came out, called her names and started beating her. The police took away a mobile phone, which Nepti's friend was using to capture the event. The next day, Nepti sought the help of the human rights coordinator at Blue Diamond Society; together they filed a complaint with the National Human Rights Commission (NHRC). The NHRC commenced an investigation. In retaliation, the police raided Chabil again the next day, and took 20 *Metis* to Mahendra Police Club where they invited the media to take pictures and write about them. The media representatives in attendance were aware of sexual minority issues and instead reported on the ongoing human rights violations experienced by the *Metis*.
- In early November 2011, a sex worker was walking in the street in Thamel. A police van stopped next to her, the policemen got out and began dragging her into the van. As she tried to resist, the police beat her and pulled her into the van. Even though

240 Wilson E., Pant S., Comfort M., Ekstrand M. (2011) Stigma and HIV risk among *Metis* in Nepal *Cult Health Sex*. 2011 March; 13(3): 253–266.

she showed her outreach worker ID card, she was kept in custody for 5 hours. She was finally released by a police officer who knew her.

Another study involved interviews and field observations with 15 female sex workers (FSWs) from Kathmandu Valley. The study found:

Most of the FSWs claimed or perceived a threat that they could be arrested by the police and kept in jail if their identity as sex workers was discovered. A few FSWs reported that due to police raids for condoms (if they had condoms on their possession, they were 'charged' as sex workers), they no longer carry condoms with them. Most FSWs, when asked if they were carrying condoms on their possession, said no because they feared that the police would search their bags and find them. A typical answer to the question; "Do you keep condoms with you?" was:

'No I don't...if the police checks my bags searching for a bomb during war, it is sure he will take me to jail. For them both bomb and condoms are similar, both are illegal.'

Even peer-educators, who have identity cards that should protect them from police harassment, are still harassed for example:

*'The police took me into custody for a couple of months after they found condoms with me. They beat me up with a stick. I had many bruises on my body. At one point I lost my capacity to stand. They also stole all my money from my purse.'*²⁴¹

4.6.3 Efforts to improve the legal environment

Jagriti Mahila Maha Sangh (JMMS, Federation of Female Sex Workers in Nepal) and Blue Diamond Society (BDS) are community based organizations that advocate for improved legal protections for the human rights of sex workers. Jagriti Mahila Maha Sangh is a federation with 26 associate members from 23 districts. JMMS argued for the new Constitution of Nepal to include consideration of sex workers' rights to security and non-discrimination.²⁴² Initiatives that BDS have implemented to improve the social and legal environment for sex workers include: submissions to parliament proposing amendments to the Draft Criminal and Civil Code Bills; public awareness and community mobilization work (e.g., hosting transgender pageant shows; supporting Pride Parades; hosting television shows); and conducting advocacy seminars.

The Government of Nepal has published an *HIV/AIDS Curriculum for Senior-Level Police*, which promotes a human rights-based approach to policing of sex workers and discourages targeting of sex workers for arrest or harassment.²⁴³ (It is unknown how this resource has been used in practice. Sex workers consulted in 2011 noted that despite the existence of the Curriculum, sex workers are still harassed by the police and there is a need to reach junior police as well as senior police).

Sex workers consulted in 2011 proposed the following recommendations:

1. Empowerment of key affected populations through free legal aid services, legal literacy workshops, leadership, advocacy and life skills to help build self esteem and confidence.

241 Ghimire L., Smith W., van Teijlingen E., et al (2011) Reasons for non-use of condoms and self-efficacy among female sex workers: a qualitative study in Nepal, *BMC Womens Health*. 11: 42.

242 Sarkar S. (2011) Nepal: Sex Workers Demand a Place in the Constitution, *Inter Press Service*, 12 July 2011.

243 Nepal Police (2005) *HIV/AIDS Curriculum for Senior-Level Police*, Kathmandu: Home Ministry, available at: http://www.policyproject.com/pubs/countryreports/NEP_PoliceCurriculum.pdf

2. The government, donors and UN agencies should ensure meaningful participation of key affected populations in developing non-judgmental, rights based and evidence based laws, policies and programmes.
3. The Nepal police should ensure that the regular police trainings include information on HIV/AIDS, sexual orientation, gender identity and human rights to prevent police abuse of key affected populations.
4. Programmes should be organized where the police and the key affected populations sit together and discuss the issues and solutions.
5. Police should be gender sensitive during raids and should involve women police officers in these activities.
6. Government should ensure that a transparent and independent police complaint mechanism is in place that can help prevent and remedy police abuses against key affected populations.
7. The Ministry of Education should review, revise and update the curriculum of secondary and high school students to ensure the incorporation of information about the circumstances of key affected populations.
8. The Ministry of Law and Justice and the legal profession should ensure the creation of a trained and sensitized legal work force with expertise in providing legal services to key affected populations.
9. Government and donors need to recognize the importance of and allocate resources to create a legal environment that enables key affected populations access to HIV related services.

Recommendations on law reform

10. Revise the *Narcotics Act* to address sections which conflict with international best practice and negatively impact upon harm reduction initiatives.
11. Amend the draft Criminal and Civil Code to the extent it discriminates against people living with HIV, LGBTI individuals, female sex workers and people who inject drugs.
12. The Government of Nepal needs to take immediate action to enact an *HIV/AIDS Bill*, in accordance with the direction of the Supreme Court of Nepal in 2007.
13. The Government should act on direction of the Supreme Court in 2007 in relation to LGBTI rights to acquire a separate identity card recognizing the third gender.

4.7 Pakistan

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.7.1 Laws

Under the *Constitution of Pakistan*, the State is required to prevent 'prostitution' which is regarded as a 'social evil'.²⁴⁴

Under other legislation, local governments, village councils and neighbourhood councils are empowered to take measures for prevention of 'social evils' including 'prostitution'.²⁴⁵

Extra-marital sex (i.e. adultery) is an offence in Pakistan ('zina').²⁴⁶ This in effect criminalizes married sex workers or married clients of sex workers.

In tribal areas where traditional religious laws operate, sex work is prohibited and may be punishable by death (Federally Administered Tribal Areas, Khyber-Pakhtunkhwa and Balochistan regions).

The *Punjab Suppression of Prostitution Ordinance 1961*, *Sindh Suppression of Prostitution Ordinance 1961*, *Baluchistan Suppression of Prostitution Ordinance 1961* and *North West Frontier Province Suppression of Prostitution Ordinance 1961* apply at the provincial level. Offences under the Ordinances include:

- The keeping, managing or financing of a brothel or knowingly permitting premises to be used as a brothel.²⁴⁷
- Soliciting in a street or public place.²⁴⁸
- Permitting prostitution in places of public amusement.²⁴⁹
- Living on the earnings of prostitution.²⁵⁰
- Procuring or persuading any woman or girl to leave her residence, with or without her consent, for the purposes of prostitution.²⁵¹

244 Article 37.

245 E.g., *Punjab Local Government Ordinance, 2001* Section 195.

246 *The Offence of Zina (Enforcement of Hudood) Ordinance, 1979*. The Ordinance prescribes stoning to death in a public place or whipping as punishment for adultery. Under the *Hudood Ordinance* buying, selling and enticing for purpose of prostitution, remained punishable until 2006, when the prostitution offences were omitted by the *Protection of Women (Criminal Laws Amendment) Act*.

247 Section 3.

248 Section 4.

249 Section 5.

250 Section 6.

251 Sections 8, 9.

Section 371A and Section 371B of the *Penal Code* creates offences for buying or selling persons for the purposes of sex work.

Male sex workers and *hijras* mainly engage in sex work in public areas such as parks or streets. Transgender and male sex workers are particularly vulnerable to blackmail and police extortion because male-to-male sex is criminalized by Section 377 of the *Pakistan Penal Code 1860*. Penalties include fines and/or imprisonment for life.

4.7.2 Law enforcement practices

A study of female, male and transgender sex workers in the Punjab and North West Frontier Province made the following findings:

- In communities where violence and police exploitation are endemic, there are high rates of STIs. Discrimination and abuse can push people to practice higher-risk behaviours, including making them reluctant to attend condom promotion programmes for fear of being identified. The fear or threat of discrimination and humiliation deters many vulnerable people from seeking health services.
- There is endemic exploitation and abuse of sex workers by police. Police capitalize on their position of power, intimidating vulnerable people with threats of exposure, arrest or property confiscation, to secure regular bribes or sexual favours.
- The police are particularly discriminatory towards transgender sex workers. This group experiences the highest levels of verbal and physical abuse, and while female sex workers can sometimes avert police violence by offering bribes, this strategy is rarely effective for transgender sex workers.²⁵²

Many transgender persons (*hijras*) are involved in sex work. For example, a study of 409 *hijras* in Pakistan found that 84 percent had sold sex.²⁵³ Young *hijras* experience pressure to become *nirbhan*, or castrated sex workers. It has been suggested that *hijras* secure their income and higher rank of their community after this operation.²⁵⁴ *Hijra* communities are often targeted by police for harassment and extortion, and some experience sexual violence perpetrated by police.²⁵⁵

A police raid on a *hijra* community led to a landmark Supreme Court in 2009, which resulted in court orders requiring the government to register *hijras* as a third sex and recognize their entitlements to welfare and other forms of state support.²⁵⁶

252 London School of Hygiene & Tropical Medicine, Program for research and capacity building in SRH and HIV (2009) *Policy briefing: Confronting the HIV challenge in Pakistan: How human rights abuses are fuelling HIV risk*, London School of Hygiene & Tropical Medicine.

253 Khan A., Rehan N., Qayyum K., Khan A., (2008) Correlates and prevalence of HIV and sexually transmitted infections among Hijras (male transgenders) in Pakistan *Int J STD AIDS* 19:817-820.

254 Collective for Social Science Research, Karachi (2004), 'A rapid assessment of bonded labour in domestic work and begging in Pakistan', International Labour Office website, pp. 31-39, available at: http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_082030/index.htm

255 Walsh D. (2010) Harassed, intimidated, abused: but now Pakistan's hijra transgender minority finds its voice
New civil rights for Pakistan's long-oppressed 'wedding dancers' offer hope of a better life, *The Guardian* 29 January 2010.

256 Usmani B. (2009) Pakistan to register 'third sex' hijra *The Guardian* 18 July 2009. <http://www.guardian.co.uk/commentisfree/2009/jul/18/pakistan-transgender-hijra-third-sex>; *Dr Muhammad Aslam Khaki & Almas Shah (alias Boby) v. SSP (Operations) Rawalpindi & others*, Constitutional Petition 43/2009, Supreme Court of Pakistan, 4 November 2009; 23 December 2009.

IPPF, Global Network of Sex Work Projects and UNFPA have published an *HIV Prevention Report Card for Pakistan*, which made the following observations based on research carried out during 2010, including a review of published data and in-country qualitative research.²⁵⁷

Sex work in Pakistan is both a criminalized and stigmatized occupation and social acceptance is poor. Sex workers in most circumstances are scared to identify themselves as such. They usually work in disguise as 'Kothiwalis' or musicians. In almost all circumstances they are forced to share their income with those who look after them and the police.

As sex work is illegal, the operation of brothels requires the collaboration of officials and police, who must be willing to ignore or work with controllers, managers, pimps and traffickers in return for bribes. The exploiters – including traffickers, corrupt officials and even some managers and brothel owners – make money not only from the sale of sex, but by harassing sex workers as well as their clients. In addition to the clients, sex workers are surrounded by a complex web of 'gatekeepers' including the owners of sex establishments, managers and local power brokers who often have control or power over their daily lives...

Violence is very common in sex work settings in Pakistan. A section of police and members from religious outfits are the usual perpetrators of violence. Sex workers rarely report incidents of violence or seek legal redress as they believe that the result will always be against them and fear further harassment.

Laws and policies against sex work, and lack of any legislation to protect the rights of sex workers, along with the stigmatization and marginalization linked to sex work, have stopped sex workers from openly approaching any services and participating in their promotion and delivery.

There are no national programmes to build the capacity of sex workers to understand their rights... most of the organizations working with sex workers had a limited understanding of the concept of empowerment, and some level of stigma and discrimination against sex workers by the programme staff was also observed.

Due to the illegality associated with sex work in Pakistan, sex workers have always been reluctant to come together and form sex workers' forums. They have always found it risky to volunteer and speak for their peers as advocates. Recently sex workers in a couple of cities have formed groups through the help of service delivery programmes. Such groups are disguised as 'women's empowerment associations' and sex workers do not disclose their occupation to the community.

Currently there is no national group or coalition advocating for HIV prevention among sex workers or a forum to actively challenge human rights violations and the causes of sex workers' vulnerability. However a few support groups and civil society organizations of sex workers have emerged from the sex worker service delivery programmes...

"AS SEX WORK IS ILLEGAL, THE OPERATION OF BROTHELS REQUIRES THE COLLABORATION OF OFFICIALS AND POLICE, WHO MUST BE WILLING TO IGNORE OR WORK WITH CONTROLLERS, MANAGERS, PIMPS AND TRAFFICKERS IN RETURN FOR BRIBES."

257 IPPF, Global Network of Sex Work Projects and UNFPA (2011) *HIV Prevention Report Card for Pakistan*.

Sex workers are routinely harassed by law enforcement agencies. Violence against sex workers is not only widespread, but is also legitimized, and accepted by many.

In the 1950s, 'dancing-girls' were legitimized as 'artists' in a High Court order allowing them to perform for three hours every evening. This is the only legal cover sex workers have obtained to date. Other activities such as red-light districts and brothels remain in business by offering huge sums in bribes to the police.

...Only about 11.4 percent of female sex workers and 14 percent of male sex workers are reached by HIV prevention programmes, yet far fewer have ever utilized the services. The major barriers are accessibility, quality, affordability and the non-cooperative attitude of healthcare providers.

Due to the stigma and discrimination attached to sex work, sex workers do not declare their profession. However once the occupation of the sex worker is known to the community, or even to healthcare providers, a significant amount of stigma is observed. Many sex workers avoid public health providers altogether because they fear discrimination, harassment or abuse.

4.7.3 Efforts to improve the legal environment

A draft *HIV/AIDS Prevention and Treatment Act* has been presented to government by the National AIDS Control Programme, which includes a proposed provision that "no law enforcement or other public official shall arrest or detain, or in any manner harass, impede, restrict or otherwise prevent" use of condoms or other HIV prevention products or services by most-at-risk populations, including sex workers.²⁵⁸

A national consultation on HIV and sex work was held in 2009 and a *National Strategy on Female Sex Work in Pakistan* was published in 2010. The *National Strategy on Female Sex Work in Pakistan* states:²⁵⁹

FSWs (female sex workers) are routinely harassed by law enforcement agencies. Police assume various roles in the sex industry from networking, running brothels, to taking monthly/weekly *bhatta* (protection money) from brothel owners or FSWs. It is extremely difficult to nearly impossible to run a sex business without assistance from police in Pakistan, and madams and pimps keep a regular liaison with police and provide benefits in terms of pay-offs or free sex or both.

Within the legal context that is in place, it will be possible to change the current attitudes of the police to a more supportive role. This has been done elsewhere by liaising with senior police officers; by adapting existing guidelines and by conducting advocacy sessions with police and other important stakeholders on reduction of stigma and discrimination and to promote understanding of the goals and objectives of the HIV prevention interventions. One very concrete approach that involves sex workers, NGO staff and the police is the establishment of crisis response teams to reduce harassment of FSWs and to document rights violations...

258 Draft *HIV and AIDS Prevention and Treatment Act*, section 20. <http://www.nacp.gov.pk/introduction/national-HIV-AIDS-Law.pdf>

259 National AIDS Control Program (2010) *National Strategy on HIV preventative services for female sex workers in Pakistan*.

Review laws and policies

All laws and policies that regulate the female sex trade will be reviewed on their impact on public health and the rights of female sex workers and their impact on an enabling environment. An advocacy process will be developed for those aspects that hinder the prevention of HIV among female sex workers and their clients

Develop guidelines for law enforcement agencies and conduct training

Meetings will be organized with Provincial AIDS Control Programs and senior police officials operating in the intervention areas to assess current policies and guidelines for law enforcement in the sex trade and their impact on the proposed HIV interventions with female sex workers with the aim to creating directives (signing ID cards for project staff and peer educators, carrying a condom no reason for arrest, active action against perpetrators of violence against FSWs, humane and friendly attitudes and treatment for FSWs arrested, respecting human rights laws, support to crisis response teams). As a result of these activities, police higher management will write letters to local police officers for implementation of the abovementioned directives.

The Gender and Reproductive Health Forum is an NGO that advocates for sex work law reform in Pakistan and opposes the criminalization of sex work, coercive programming, mandatory testing, raids and forced rehabilitation.

4.8 Sri Lanka

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

4.8.1 Laws

There is no specific offence for sex work in private. However, street work and brothels are illegal.

The *Vagrants Ordinance* creates offences for sex workers who are found 'wandering in the public street or highway, or in any place of public resort, and behaving in a riotous or indecent manner'. The *Vagrants Ordinance* uses antiquated and stigmatizing language, in that it categorizes an offender as an 'idle and disorderly person', or 'rogue and vagabond' (for second offenders) or an 'incorrigible rogue' (for third offenders).

A person convicted of 'idle and disorderly' conduct is liable for detention not exceeding 14 days or a fine.²⁶⁰ A 'rogue and vagabond' is liable for detention for one month or a

²⁶⁰ Section 3.

fine.²⁶¹ An ‘incorrigible rogue’ may be sentenced to four months detention and to corporal punishment not exceeding 24 lashes.²⁶²

It is an offence to solicit in or near a public place for the commission of illicit sexual intercourse or indecency. The maximum penalty is six months imprisonment and a fine, and in the case of a second offence by a male, whipping can be imposed in addition to imprisonment and fine.²⁶³ If the offender is a female, the Court can send the person to a detention home instead of a prison.

The High Court in *Saibo v. Chellam et al*²⁶⁴ interpreted the offence of ‘living on the earnings’ of sex work.²⁶⁵ Two women appealed their convictions on the ground that the law should not be interpreted so as to penalize sex workers who live on their own earnings. The High Court confirmed that the *Vagrants Ordinance* has no application to sex workers who live on their own earnings.

The *Brothels Ordinance* provides offences for managing a brothel or permitting the use of premises as a brothel. The meaning of the term ‘brothel’ as used in the *Brothels Ordinance* was considered in the case *Dorothy Silva v. Inspector of Police, City Vice Squad, Pettah*.²⁶⁶ The judge defined brothel to mean a place where arrangements are made whereby women living at the premises or elsewhere are supplied for the purpose of prostitution, to commit acts of indecency or sexual intercourse either at the premises or elsewhere. Therefore, a person commits the offence of managing a brothel even though women are not kept on the premises e.g., if the person displays the photographs of women in the premises and solicits men to make their selections from the photographs, and then supplies women from a place outside the premises to be taken to a place outside the premises for the purpose of sex work.

The *Houses of Detention Ordinance* provides for the detention of vagrants in special state homes as an alternative to prison. The *Vagrants Ordinance* permits the commitment of a female offender to a house of detention until the expiration of her sentence.

The *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act, 2005* addresses trafficking, which is defined as “the moving, selling or buying of women and children for prostitution...for monetary or other considerations with or without the consent of the person”. The *Penal Code* of Sri Lanka includes offences for procuring a person (whether with or without their consent) to become a sex worker²⁶⁷ and trafficking.²⁶⁸

4.8.2 Law enforcement practices

The Government of Sri Lanka’s *UNGASS Country Progress Report* for 2008-2009²⁶⁹ made the following observations:

261 Section 4.

262 Section 5.

263 Section 7.

264 *Saibo v. Chellam et al*. [1923] LKHC 15; (1923) 25 NLR 251.

265 Section 9(1) *Vagrants Ordinance*.

266 (1977) 77 NLR 553; The case *Danny v. Sirinimal Silva, Inspector of Police, Police Station, Chilaw & Ors* (2001) 1 Sri LR 29 confirmed that having sex in a guesthouse is not an offence under the *Brothels Ordinance*.

267 Section 360A.

268 Section 360C.

269 Government of Sri Lanka (2010), *UNGASS Country Progress Report: Sri Lanka* (Jan 2008-Dec 2009).

- Although soliciting is illegal, the sex industry is flourishing – in 2009 it was estimated that there were 35,000-47,000 female sex workers in Sri Lanka.
- A shift from brothels, hotels, lodges and restaurants to indirect settings such as karaoke bars, massage parlors and private houses has been observed. This shift could be attributed to the increase in police and military vigilance to combat terrorism during 2008-2009. Due to frequent security checks, street sex workers and institution-based sex workers faced difficulties in soliciting sex.
- A behavioral surveillance survey conducted in 2006-2007 observed that during a period of 12 months, 33.2 percent were harassed by the police for carrying condoms. Police probably discover condoms during security checks where all items including handbags are checked at security check points.
- The National STD/AIDS Control Programme with support from UNFPA conducted programmes to reduce police harassment. In Colombo, ten police stations were approached. Lectures, discussions, and small group discussions were held to educate and change attitudes. The majority of participants (>90 percent) were reported to have changed their attitudes towards sex workers.
- The Community Strength Development Foundation (CSDF) conducted a mapping of sex work in Colombo and the suburb Gampaha, which found that 35.5% of sex workers were street based, 25.5% were operating in shanty dwellings, while only small numbers were associated with hotels (5.4%), brothel houses (5.3%) and lodges (5.9%). Another 11% were a mobile group that make contact with clients with the help of trishaw drivers or taxi drivers. CSDF found that reaching these groups is difficult as they operate in a clandestine manner – accessing them is difficult due to harassment of sex workers by the police.

“SEX WORKERS HAVE BECOME ENTERPRISING, THEY SOMETIMES HIDE THE CONDOMS IN A POCKET STITCHED TO THEIR UNDERSKIRTS, WHERE THEY WILL NOT BE SEARCHED.”

CSDF, which provides a variety of support services to sex workers, has reported that the police practice of arresting and harassing sex workers has prevented them from implementing an effective HIV prevention programme.²⁷⁰ According to CSDF, sex workers who spend time in prison or police custody return to sex work and try to ‘make up’ the lost time by engaging additional clients. They also tend to engage in ‘high risk’ sexual activity to make up for the lost time. The police also frequently raid ‘condom drop off points’. The CSDF uses these ‘condom drop off points’ to enable sex workers to access condoms. However, frequent police raids have made this approach difficult to implement.

According to UNFPA:

Sex work is completely underground and there are newer and more innovative ways of selling sex, for example vehicle-based sex, where movable vehicles are used as place to solicit as well as engage in sex. This makes sex workers extremely difficult to reach with health services. In reality, sex workers are arrested every day on the streets, where often the possession of a condom is seen as an indication of sex work. Sex workers have become enterprising, they sometimes hide the condoms in a pocket stitched to their undershirts, where they will not be searched.²⁷¹

²⁷⁰ CSDF, submission to Global Commission on HIV and the Law (83), 2011.

²⁷¹ Revati Chawla, Programme Officer: HIV and youth, UNFPA <http://www.hivapcop.org/e-discussion/hiv-and-law>.

The UN Committee on the Elimination of Discrimination against Women has formally expressed concerns about the use by the police of the *Vagrants Ordinance* to arbitrarily arrest sex workers. The Committee urged the Government of Sri Lanka to ensure that the police refrain from use of the *Vagrants Ordinance* to arrest sex workers on the street.²⁷²

There are press reports of police raids of venues used as brothels conducted in 2009, 2010 and 2011 in Colombo, resulting in the arrest of sex workers.²⁷³ In the 2009 case, seven sex workers were detained pending their court date and were required by court order to undergo tests for sexually transmitted infections. There are also reports of raids conducted by immigration authorities resulting in deportation of migrant sex workers.²⁷⁴

A study of the interactions of transgender sex workers with police found that they experience victimization by police targeting their feminine gender expression and sexuality. These abuses include verbal, physical, and sexual abuse as well as inequality in responses of police to complaints.²⁷⁵

There is one House of Detention for women in Sri Lanka (Methsevena) where sex workers arrested under the *Vagrants Ordinance* may be legally detained as an alternative to prison. The managers of Methsevena have been criticized by the Human Rights Commission of Sri Lanka for violating the human rights of women.²⁷⁶ In 2004, the Methsevena House of Detention included a rehabilitation centre, a vocational training school, a spice packing industry and a garment factory. The Human Rights Commission's 2004 review found that many women at Methsevena were serving time in detention that was longer than the specified sentences or in some cases without a release date. The law requires adult women detainees to be released with the permission of a guardian. Methsevena houses approximately 300 women. The Human Rights Commission review recommended that magistrates be required to specify a release date upon sentencing, and that houses of detention be prohibited from detaining adult women simply because they have no guardian. As at April 2011, these recommendations had not been implemented.²⁷⁷

4.8.3 Efforts to improve the legal environment

UNFPA is supporting the National STD and AIDS Control programme to do a series of training-of-trainer workshops with the police aimed at reducing the arbitrary arrest of street-based sex workers for condom possession. This series of workshops are for police attached to police training academies and other police personnel responsible for training. A curriculum has been developed and includes short video clips, presentations

272 Committee on the Elimination of Discrimination against Women (2011), *Concluding observations, Forty-eighth session 17 January - 4 February 2011*. CEDAW/C/LKA/CO/7.

273 Super brothel raided in Sri Lanka, *Colombo Page*, 5 December 2010; Brothel raid nets popular actress, *The Nation on Sunday*, 30 August 2010; A brothel under guise of Spa raided, *Lankapuvath* 21 May 2011.

274 E-sex bust: Sri Lanka shuts down pioneer e-commerce sex service *Lanka Business online*, 23 April 2006.

275 Nichols A., (2010) Dance Ponnaya, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka, *Feminist Criminology* 5, p.195-222. See also: Miller J. (2002) Violence and Coercion in Sri Lanka's Commercial Sex Industry: Intersections of Gender, Sexuality, Culture and the Law *Violence Against Women* 8(9): 1045-1074; Miller J., Jayasundara D., Dayawansa D., (2000) *Violence Against Sex Workers in Sri Lanka: Causes, Consequences and Remedies*. ICES Lecture Series Address. Sri Lanka: International Centre for Ethnic Studies.

276 Monitoring and Review Division, Human Rights Commission of Sri Lanka (2004) *Human Rights Report: Methsevena State House of Detention, Gangodawila*. Colombo: Human Rights Commission.

277 Thiyagarajah J. (2011), Vagrance (sic), brothels, prostitution and laws against the poor. *The Daily Mirror*. 7 April 2011; and see similarly: <http://www.dailymirror.lk/opinion/172-opinion/20145-law-and-gurus-of-sleep.html>

and case studies. HIV positive people are also involved in the delivery of the three-day programme.²⁷⁸

278 Vidanapathirana H., Sangeeth M. (2012) Capacity building of law enforcement officers to handle sex workers In Sri Lanka, THAC0505 - Oral Abstract, XIX International AIDS Conference, Washington.



SEX WORKERS, WEARING TRADITIONAL COSTUMES, ATTEND A PROTEST AGAINST THE POLICE CRACKDOWN ON BROTHELS IN CHUNCHEON, ABOUT 100 KM (62 MILES) NORTHEAST OF SEOUL MAY 31, 2011. SOURCE: REUTERS/LEE JAE WON.

5 EAST ASIA

5.1 Overview

Punitive laws and law enforcement practices are applied to sex workers throughout East Asia. Detention facilities that house sex workers are reported to exist in mainland China and Republic of Korea (South Korea).

There has been some experience in regulation of sex work in East Asia. Licensing systems that require periodic STI tests of sex workers have operated in parts of Taiwan for many years, and existed in South Korea prior to 2004. In Taiwan, a new licensing system for red-light districts commenced in 2011. During colonial times, brothels in some of China's European settlements were licensed (e.g., Shanghai). This was intended to address the spread of STIs.

Independent sex workers can operate legally as sole operators in Hong Kong. However, soliciting is illegal. Some illegal brothels are associated with organized crime syndicates.

























Examples of community-based advocacy for a less punitive approach to sex work in East Asia include the following:

- The Collective of Sex Workers and Supporters, COSWAS, which has advocated for non-discriminatory laws that protect health and safety of sex workers in Taiwan.
- The China Sex Worker Organizations Network Forum, which has documented the impact of the 2010 police crackdown on sex work and HIV responses in mainland China.
- Sex worker organizations in Hong Kong (Zi Teng and the JJJ Association), which have formed cooperative arrangements with police to address police abuses of sex workers' rights.

100% condom use programmes (CUPs) in China and Mongolia have engaged public security officials and police officers in cooperative arrangements with health officials to enable HIV prevention activities to occur among sex workers. Although these 100% CUPs have reportedly had some beneficial HIV prevention outcomes in the short term, the human rights implications of lack of provisions for informed consent to testing and voluntary participation in programmes have raised concerns.

TABLE 2: LEGALITY OF ADULT SEX WORK IN EAST ASIA

 **Legal**
 **Illegal**
 **Not Illegal***
 **Information Unavailable**

Country	Sex work in private	Soliciting	Brothels	Laws
Mainland China				<i>Law on Penalties for Administration of Public Security</i> imposes administrative penalties of up to 15 days detention or RMB5,000 fine for sex work. Repeat offenders may be detained for up to 2 years in re-education centres. Brothels are illegal under the <i>Criminal Law</i> .
Hong Kong SAR				Independent sex work is legal. The <i>Crimes Ordinance</i> creates offences of soliciting and keeping a brothel.
Macao SAR				Sections 163, 164 of the <i>Criminal Code</i> state it is an offence for a person to facilitate or assist another to sell sexual services to make a profit. Soliciting is also illegal.
Taiwan, Province of China				Sex work outside licensed premises in approved red light districts attracts a maximum fine of NT\$30,000 for both sex workers and their clients, and a maximum fine of NT\$50,000, plus five-days detention, for brothel operators.
Japan				Article 3 of the <i>Anti-Prostitution Law of 1956</i> prohibits soliciting and prostitution. The <i>Businesses Affecting Public Morals Regulation Law 1948</i> regulate sex work businesses.
Mongolia				The <i>Law on Combating Licentiousness (Prostitution and Pornography)</i> prohibits sex work, soliciting and brothels.
Democratic People's Republic of Korea (North Korea)				The <i>Criminal Code</i> imposes strict penalties on clients of sex workers of up to two years hard labour. The death penalty reportedly applies for persons organizing 'prostitution rings'. ²⁷⁹
Republic of Korea (South Korea)				The <i>Special Law on Prostitution 2004</i> prohibits the buying and selling of sex and brothels.

* Generally not prohibited but exceptions apply.

279 Hagar S., Noland M. (2009) *Repression and Punishment in North Korea: Survey Evidence of Prison Camp Experiences*, p.7, available at: http://www.e-alin.org/file/attach/upload_3366750522154813917.pdf.

5.2 Mainland China

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

5.2.1 Laws

Sex work is prohibited by the administrative law of the People's Republic of China, rather than the criminal law. Selling and buying sex is prohibited by the *Law on Penalties for Administration of Public Security* 2005. Article 66 provides a penalty for sex work or being a client of a sex worker of up to 15 days detention and a fine of up to 5,000 yuan, and a penalty for touting for sex work of detention for not more than five days or a fine of not more than 500 yuan. Article 67 provides an offence for a person who seduces, shelters or introduces another person to engage in sex work, with a penalty of detention for up to 15 days and a fine of up to 5,000 yuan.

Sex workers may be detained under administrative law for the purposes of education, or for re-education through labour. Detention for 'custody and education' (or 'shelter and education') may be for a period of between 6 months and 2 years. Detention for 're-education through labour' may be for a period of up to 3 years, and is usually imposed for repeat offenders.²⁸⁰ In 2010, there were reports of sex workers and clients detained for six month periods at re-education centres. Lawyers at the time questioned the legality of lengthy detention of sex workers and clients for re-education, on the grounds that the more recent *Law on Penalties for Administration of Public Security* 2005 should apply, rather than relying on powers to detain sex workers under older administrative laws such as the *Decision on the Strict Prohibition Against Prostitution and Whoring, 1991*.²⁸¹ The municipal law of Chongqing was changed in 2012 to remove reeducation through labour as punishment for sex workers and their clients.²⁸²

The *Criminal Law* states that it is illegal for people to be involved in organizing or profiting from sex work, but does not create specific offences for sex workers or their clients (except in the case of sex workers who have an STI). Selling or buying sex when knowingly infected with a venereal disease carries a penalty of a fine and a sentence of up to five years in prison, or detention, or surveillance.²⁸³

The *Criminal Law* provides that: "organizing, forcing, inducing, housing or introducing" sex workers is punishable by up to 10 years' imprisonment (or more under some circumstances), a fine or confiscation of proceeds. For repeat offenders, the sentence ranges from ten years imprisonment to the death penalty.²⁸⁴ A person who profits, invites

280 Tucker J., et al., (2010) Incarcerated Sex Workers and HIV Prevention in China: Social Suffering and Social Justice Countermeasures. *Social Science and Medicine* 70, 121-129.

281 Prostitutes, johns get 6 months, *Global Times*, 8 September 2010.

282 Calls strengthen for controversial punishment through labour to be scrapped, *Global Times*, 5 June 2012.

283 Article 360.

284 Article 358. The death penalty has been applicable since the 1991 *Decision on Strictly Forbidding the*

or accommodates a woman for sex work may be sentenced to up to five years in prison, or detention, or surveillance.²⁸⁵ Offences also apply to managers of hotels, restaurants, bars, show businesses, and taxi companies, whose staff are involved in organizing prostitution.²⁸⁶

The 1999 *Regulations Concerning the Management of Public Places of Entertainment* prohibit commercial practices involving sex work.²⁸⁷ These regulations are supported by local licensing measures.

AIDS Regulations

The *Regulations on AIDS Prevention and Treatment*²⁸⁸ require local governments to provide confidential HIV testing and antiretroviral drugs to residents, prohibits discrimination against people living with HIV and guarantees the right to healthcare, employment, marriage, and education. Under the Regulations, people who intentionally transmit the virus to others will be punished by civil and criminal means. Provision of condoms at establishments may be ordered by health authorities under Article 61 of the Regulations. The sanction for failure to comply with an order relating to condom availability is revocation of business permission or license. Comprehensive Regulations on prevention, testing and treatment have also been enacted at provincial level e.g., in Yunnan Province. It is unclear how the Regulations have been applied to sex workers.

Under the *Frontier Health and Quarantine Law*, persons knowingly infected with HIV who continue to practice sex work commit the offence of creating a risk of spreading disease. The penalty for this offence is detention from 6 months to 2 years.²⁸⁹

5.2.2 Law enforcement practices

Nature of sex work

Several sources refer to a recognized typology that categorizes sex work as falling within seven tiers, which informs law enforcement practices. This list should be regarded as “far from exhaustive”:²⁹⁰

- i. Ernǎi*: mistress or ‘second wife’. The *ernai* receives a monthly fee from a steady client in exchange for sex.
- ii. Bǎopó* is similar to the *ernai*, although for limited times only.

Selling and Buying of Sex.

285 Article 359.

286 Article 361.

287 Section 4(25) See: Jeffreys, E. (2004) *China, Sex and Prostitution*, London & New York: Routledge Curzon, p.146.

288 *State Council Decree No. 457 of 2006.*

289 Wu Z., Sullivan S., Wang Y., Rotheram M., Detels R., (2007) Evolution of China's response to HIV/AIDS. *Lancet* 369:679-690, at p.683.

290 Dougherty N., (2006) *Prostitution in contemporary China - the case of Shanghai Jiading* Lund University's Masters thesis; See also: Sex work in China, *Asian Labour Update* 33, December 1999-February 2000; and see: Hong, Y. & Li, X. (2008), Behavioral Studies of Female Sex Workers in China: A Literature Review and Recommendation for Future Research, *AIDS and Behaviour*, Vol. 12, No. 4, July, p.629; Huang Y., Pan, S., (2004) *Job mobility of brothel-based Female Sex Workers in current Northeast China: the process from xiagang worker (lay-offs) to sex worker*, Institute for Sexuality and Gender, Department of Sociology Renmin University of China, Beijing; c.f. Tucker J., (2011) The social context of sexual HIV prevention among female sex workers in China, *Int J of Epidemiology*, 15 February 2011.

- iii. Escort girls, usually found in karaoke bars, or in regular bars.
- iv. 'Call girls' who may operate from hotel rooms they rent themselves. University students and others advertising their private services through the internet also belong to this tier.
- v. Hair salon workers (*fàlángmèi*), massage providers, and others who perform contractual work under a proprietress or a pimp.
- vi. Street workers.
- vii. Factory workers or 'work-shack' workers (*xiàgōngpéng*), who provide services to poor migrant workers.

Police practices

Street-based workers are more likely to be arrested and detained than those who work from establishments.²⁹¹ Arrests are usually of sex workers rather than clients, although clients were also targeted during the 2010 crackdown. Unless aggravating factors are present, the usual punishment is a fine and a warning, and sometimes also informing relatives.²⁹² Repeat offenders may be held in administrative detention or at a re-education through labour centre. Offenders may also be required to register with the police.²⁹³ People subject to administrative detention for education may include both sex workers and clients.²⁹⁴

Anti-sex work campaigns and police crackdowns occur periodically, e.g., to coincide with the Beijing Olympics. In 2010, as part of a major crackdown, police arrested 1,100 suspected sex workers from entertainment establishments, saunas and hair salons in Beijing.²⁹⁵ In 2010, the basement of the Hilton Hotel in Chongqing was raided and 102 people were detained at a karaoke club of whom 22 were charged.²⁹⁶ Amnesty International has reported cases of police abuses, whereby police detain sex workers in order to extract lists of alleged 'clients' who the police target for blackmail.²⁹⁷

Research by China Sex Worker Organizations Network Forum (CSWONF) regarding police crackdowns in 2010 found that:

- police abuses of sex workers are particular evident in rural areas;
- law enforcement is stricter on females compared to male sex workers;
- female and transgender sex workers report experiencing violence more often than male sex workers; and

291 Yi H., Mantell J., *et al*, (2010) A profile of HIV risk factors in the context of sex work environments among migrant female sex workers in Beijing, China. *Psychol Health Med*.15(2):172-87.

292 Dougherty N. (2006) *op cit*.

293 Biddulph S. (2007), *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, p.156.

294 *Ibid.*, pp.167, 172.

295 1,100 arrested in Beijing crackdown on prostitution, *Bangkok Post*, 14 May 2010.

296 *Hilton hotel closed by Chinese police over prostitution charges*, The Telegraph (UK), 21 June 2010.

297 Amnesty International (2004), *It's in our hands: Stop violence against women*, London: Amnesty International, p.19.

- there are many illegal practices perpetrated by the police, such as entrapment, assault and rape.²⁹⁸

Another study was conducted in Beijing in 2008-2009 of 348 internal migrant female sex workers. Some were street-based, some were based in entertainment establishments, and some worked at personal services businesses such as hair salons, footbath, sauna, and massage parlors. 62 percent of street-based workers reported that they had been arrested compared to 30 percent of those working from entertainment establishments and 15 percent of workers operating from personal services businesses.²⁹⁹

Zheng describes an incentive-based system whereby police who arrest high numbers of hostesses and collect the most fines receive honours and cash bonuses from their municipal government.³⁰⁰ Zheng describes local corruption as a factor in exploitation of sex workers. Some police demand sexual favours and sex workers face risk of violence:

Because the state's anti-prostitution policy is manipulated and usurped by local officials and bar owners for their own ends leading to a violent working environment for the hostesses, hostesses do not disclose their real identity, which makes it more convenient for men to be violent towards them and even to murder them.³⁰¹

A Hong Kong based sex worker organization, Zi Teng, alleged patterns of abuse of sex workers by police in mainland China in a report submitted to the UN Committee Against Torture, as follows:

Abuse of sex workers is systemic within the police force. This can be explained by the near total discrimination faced by sex workers in China, and not their illegal status. Because of the position sex workers occupy in Chinese society, even the police think nothing of transgressing the law in carrying out abuses against them.

Police in Mainland China embark on periodic crackdowns: arbitrary arrest is common as is assault and sometimes the insides of raided properties are vandalized and furniture is removed. As arrests are rarely made at the time of the crime (while the sex worker is providing sexual services for the client), police officers are intent on extracting a guilty plea from the suspects. Torture is commonly manifested as physical assault, and verbal abuse is present in nearly every case. Some officers exploit their dominant position to rape suspected sex workers.³⁰²

According to Burris and Xia, the situation is often more complex than it appears and there is a significant difference between the formal written law and actual law enforcement practices:

...the commercial sex trade has not been forbidden, but just informally regulated. Police practices are, to some extent, independent of the written laws concerning prostitution. Police generally have the discretion and the dexterity to deploy a wide variety of criminal and public order laws to accomplish their street control and

298 Lingping C. (2011) *Research on the impact of 2010 crackdown on sex work and HIV interventions in China*, CSWONF.

299 Yi H., Mantell J. et al (2010) *op cit.*, p.176.

300 Zheng T. (2010) Complexity of female sex workers' collective actions in post-socialist China, In: *Demystifying sex work and sex workers: Wagadu* 8, 34-68, p.40.

301 Zheng T. (2010) *op cit.*, p.41.

302 Zi Teng (2008), Untitled document (Submission of Zi Teng), p.12, Available at Office of the High Commissioner for Human Rights website, <http://www2.ohchr.org/english/bodies/cat/docs/ngos/ZITengHongKong41.pdf>

public safety missions, ...one hears repeatedly in China of varieties of cooperation, coexistence, symbiosis and oppression among sex workers and police, often persisting along with periodic crackdowns. While crackdowns can appear harsh to the casual observer, they in fact leave much of the industry untouched...³⁰³

Effect of law enforcement practices on HIV vulnerability and risk

The frequent policing of the sex industry marginalizes sex workers and creates barriers to obtaining peer support and accessing HIV and STI prevention, treatment and care services.³⁰⁴

Research by CSWONF indicates that police crackdowns in 2010 had adversely impacted HIV prevention efforts.³⁰⁵ Interviews were conducted in 12 cities. Findings included:

- Public security authorities in all cities stepped up their crackdowns in 2010, resulting in the imposition of fines and detention more frequently than in previous years. It was reported that police had quotas to fill in relation to sex worker penalties. Crackdowns were found to have resulted in deterioration of working environments and sex workers were more likely to be more mobile and work in more obscure places. This increased personal risks. HIV prevention was made more difficult because sex workers conducted their business away from established venues. Increased police patrols resulted in workers working later hours, which increased the difficulty of organizing community interventions.
- Some sex workers reported being detained and sent to re-education through labour facilities for extended periods e.g., one year.
- 84 percent of 279 respondents stated a concern that condoms could be used as evidence of sex work after the crackdown. 92 percent of 277 respondents were concerned that clients would not use condoms after the crackdown. 20 percent of 281 sex workers stated that they used condoms less after the crackdown, and 29 percent stated that they carried condoms less after the crackdown. 32 percent of 259 sex workers stated that less condoms were distributed in their establishment since the crackdown. 23 percent of 258 sex workers stated that there were less peer education activities on HIV in their establishments since the crackdown.
- Peer educators stated that the crackdown destroyed HIV prevention communities, making it more difficult for peer educators to find sex workers. Some entertainment establishment owners required sex workers not to carry or use condoms.
- 40 percent of 437 respondents reported that they continued to engage in sex work during crackdowns, but were forced to do so in more obscure locations or to frequently change locations. Some did not keep condoms where they worked for fear of detention.
- The Ministry of Public Security issued a document prohibiting corrupt police practices (such as blackmail, abuse and sexual assault) in enforcing laws against sex workers during the crackdown of 2010. Nonetheless, the research found significant levels

303 Burris S., Xia G. (2007) The "Risk Environment" for Commercial Sex Work in China: Considering the Role of Law and Law Enforcement Practices, *Temple Law School Working Paper*, pp.7-8; and published in: Poston et al eds (2007). *Gender Policy and HIV in China* New York: Springer.

304 Tucker J., Ren X. (2008) *op cit*.

305 Lingping C. (2011) *Research on the impact of 2010 crackdown on sex work and HIV interventions in China*, CSWONF.

of police misconduct reported by sex workers. Of 299 respondents, 31 sex workers reported being subject to police beatings, 16 reported electrical shocks, 4 reported rape and 22 reported blackmail.

Pirkle *et al* note that some sex workers live under conditions of dependence: “They turn all their earnings over to the manager who provides them with daily necessities in return.”³⁰⁶ Women in these circumstances have very limited decision making power and are highly vulnerable to HIV, with condom availability and use determined primarily by clients or managers of sex workers (pimps, establishment owners, etc.).

Fear of police crackdowns and arrest may lead to increased mobility of sex workers, thereby expanding sexual networks and potentially discouraging sex workers from accessing testing and treatment services. This problem is exacerbated because many sex workers belong to floating populations of migrants from rural areas who are already susceptible to police abuses.³⁰⁷ As informal internal migrants, most are unable to register for government entitlements under China’s *hukou* system (household registration system).³⁰⁸

Choi identifies a gradual intensification of state control over sex workers.³⁰⁹ She argues that repressive measures undermine the supportive professional networks of sex workers, increase economic pressure on sex workers and increase their exposure to client-perpetrated violence. These consequences weaken the ability of sex workers to negotiate condom use with clients:

Information about effective means of STI and HIV prevention, proper ways of applying condoms, strategies to prevent condom failure (slippage and breakage during intercourse) and methods to screen out potentially violent clients or clients who refuse to use condoms is circulated through these (informal) networks (of sex workers)...The formation of these networks, however, has been hampered by frequent police raids and arrests. After release, arrested sex workers may not return to the same venue for fear of becoming the target of further police action again. The fear of police raids and arrests is part of the reasons that sex workers change work venues and locations frequently, thus greatly reducing the stability and strength of their networks...The rapid turnover of women undermines the HIV prevention work of health personnel and outreach workers. For it creates great difficulties for outreach workers to build up a more stable and trusting relationship with women...

“MANY WOMEN INCUR DEBTS FROM OWNERS AND MANAGERS OF THE ESTABLISHMENTS WHERE THEY WORK BECAUSE THEY NEED TO BORROW MONEY TO PAY FOR POLICE FINES...”

Police raids and arrests also increase the economic pressure of sex workers, in particular drug-using sex workers and streetwalkers...In a climate where competition for clients is already intense because of the continuous supply of women from rural areas, police raids scare potential clients away, seriously interrupt the livelihood of women, and put these women in an even more powerless position in negotiating safe sex with customers...

306 Pirkle C., Soundardjee R., Stella A. (2007) Female Sex Workers in China: Vectors of Disease? *Sexually Transmitted Diseases* 34 (9), 695–703, p.699.

307 *Ibid*, p.696; Tucker J., Henderson G., Wang T., et al. (2005) Surplus men, sex work, and the spread of HIV in China. *AIDS* 19, 539–547.

308 Pirkle C., Soundardjee R., Stella A., (2007), *op cit.*; Zheng T. (2010) *op cit.*, p.41

309 Choi S., (2011) State control, female prostitution and HIV prevention in China, *China Quarterly* 205: 96–114.

The fines imposed by police once sex workers are arrested directly increase their operational cost. Many women incur debts from owners and managers of the establishments where they work because they need to borrow money to pay for police fines...This indirectly increases the control that managers and owners have over sex workers, and reduces their ability to resist pressure from owners/managers to accept clients who refuse to use condoms, or clients who agree to pay for a higher price for non-condom sex. Client-perpetuated violence is an obstacle to the practice of safe sex because it may be directly used to make sex workers comply with unprotected sex, or it undermines the control sex workers have over enforcing the contract...

The illegal status of sex work in China and intensified police crackdowns increase the suspicion of sex workers towards the police and their fear of being arrested. This in turn inhibits sex workers from seeking police help in order to deal with violence, and increases the vulnerability of sex workers to violence. Sexual violence in turn exacerbates women's risk of contracting HIV/STI because most sexual violence occurs in contexts without the use of condoms.³¹⁰

Kauffman argues that the HIV efforts of NGOs is restricted by policing:

Harm reduction programs for sex workers have been hampered by the prioritization of law enforcement over AIDS prevention. For example, the April 2010 'strike-hard' campaign against prostitution in Beijing, during which bars, nightclubs, saunas, and karaoke bars were raided, created an atmosphere that critically impeded...outreach activities for sex workers. In China, criminalization has limited the growth of a coherent and cohesive set of nongovernmental organization (NGO) actors working with sex workers to prevent HIV infection...the NGO community for sex workers is fragmented and poorly coordinated with government efforts, and basic rights for sex workers are often violated.³¹¹

100% Condom Use Programmes

100% CUPs have been piloted and implemented in numerous sites since 2001 (e.g., Wuhan City in Hubei province, Jingjiang County in Jiangsu province, Danzhou City in Hainan province, Lixian County in Hunan province, Liuzhou City, Guangxi Zhuang Autonomous Region). According to WHO, these pilot projects have confirmed that 100% CUPs can be effective in increasing condom use and reducing STIs among workers in entertainment establishments.³¹² Evaluation of the pilots included the following observations regarding the role of police:

Collaborative relationships between Public Health and Public Security have been worked out at the local level although it was clear that in some aspects of the programme, the dual role of Public Security presented difficulties to the programme. This was especially evident in the methods that were practical to use in carefully monitoring condom use in entertainment establishments and 'enforcement' methods...staff in several of the pilot project sites felt that stronger policy guidance from central levels of the government was needed before there could be scale-up...

310 Choi S. (2011) *Ibid.*

311 Kauffman J. (2011), HIV, sex work, and civil society in China. *J Infect Dis* Vol. 204 Supp.5:S1218-22.

312 WHO WPRO & China CDC (2005) *100% Condom use programme: experience from China (2001-2004)* Manila: WHO WPRO; Chen Zhongdan C., Schilling R., Wei Shanbo et al. (2008) The 100% Condom Use Program: A demonstration in Wuhan, China *Evaluation and Program Planning* 31(1), 10-21.

All pilot projects recognized that the establishment of a good working relationship between Public Health and Public Security authorities was one of the most critical needs in local efforts...Where projects were designed and implemented with the Chinese Center for Diseases Control and Prevention staff having a major role in outreach to entertainment establishments, they found it useful to have identity cards that made it clear they were working with Public Security involvement in this effort. This was an especially useful device for opening doors in working with entertainment establishments, making it clear that condom promotion in entertainment establishments was taken seriously by owners and managers and for reassuring Public Health outreach workers that they would not encounter difficulties if they were in entertainment establishments at the time of Public Security crackdowns.³¹³

HIV responses in detention centres

The law requires STI and HIV prevention education at facilities established for 'shelter and education' or 're-education' of sex workers. Tucker *et al.* compared access to HIV services among sex workers in detention and those in the community. They reported that voluntary HIV testing, antiretroviral therapy and HIV prevention is less accessible for sex workers who are incarcerated. Mandatory HIV testing occurs in detention facilities and patients may not receive results. HIV prevention services are variable depending on the facility's relationship with the local STI clinic. They concluded:

Chinese sex worker detention camp practices may not only systematically increase HIV/syphilis risk among [incarcerated sex workers], but also work to narrow women's social spheres of influence...A limited empiric analysis of Guangxi Province STI clinic data shows that cities detaining sex workers have higher mean HIV prevalence compared to cities that do not detain sex workers. While incipient medical and legal movements in China have generated momentum for expanding [incarcerated sex workers'] services and resources, there is still substantial variation in the implementation of laws that ensure basic life-saving medical treatments. Post-incarceration social justice programs for sex workers linking women to essential STI/HIV resources, reconnecting broken social lives, and helping restore interpersonal relationships are urgently needed.³¹⁴

It has been argued that provision of both legal aid and health care for incarcerated sex workers is important in curbing the spread of HIV in China.³¹⁵

5.2.3 Efforts to improve the legal environment

A consultation meeting convened by UNFPA in 2011 involving government and community representatives defined the following priorities:³¹⁶

- Sex workers need to be effectively involved in policy formulation, planning and the design and delivery of programmes.

313 WHO WPRO & China CDC (2005), *op cit.*, p.24.

314 Tucker J., Ren X., Sapio F., (2010) Incarcerated sex workers and HIV prevention in China: social suffering and social justice countermeasures. *Soc Sci Med.*, 70(1) 121-9, p.121.

315 Tucker J., Ren X. (2008) Sex worker incarceration in the People's Republic of China *Sex Transm Infect* 84:34-35; and see: Goodyear M. (2008) Incarceration of female sex workers in China and STI/HIV. Programmes that are not rights-based are doomed to fail *Sex. Transm. Infect.* 84:1.

316 *Second International Workshop on HIV Prevention in Sex Work*, June 22-23 in Beijing, see: *UN-led Workshop Engages Sex Workers to Reduce HIV Transmission in China*, <http://www.un.org.cn/cms/p/news/27/1770/content.html>.

- It is essential that efforts are made to build supportive environments which ensure that HIV-prevention efforts are successful. This requires closer collaboration between public health and public security departments.
- A comprehensive package of services should be defined and promoted. Scaling-up of effective prevention among low-income street-based sex workers should be prioritized.
- Opinion leaders and the media have an important role to play in challenging social norms that perpetuate stigma and discrimination.

The China Sex Worker Organization Network Forum (CSWONF) was established in 2009, bringing together nine organizations working with female sex workers and three organizations with male sex workers in a national network. Shanghai Leyi is an NGO that advocates for the rights of male sex workers in Shanghai. In Yunnan Province, NGOs that advocate for sex worker rights include Yunnan Parallel (which works with male sex workers in Kunming) and Phoenix (which works with female sex workers in Gejiu city).

Sex workers in southern China have formed sex-worker organizations, linked to NGOs based in Hong Kong SAR such as JJJ Association, Zi Teng and Action for Reach Out.³¹⁷ These NGOs have conducted needs analyses with Chinese sex workers, and engage in advocacy for law and policy reform.

In 2010 the international NGO Asia Catalyst identified sexual violence, mandatory urine testing of people suspected of drug use and access to government services under the *hukou* registration system³¹⁸ as the most urgent legal issues for sex workers.³¹⁹ Asia Catalyst and local partners argue that laws should be revised with removal of provisions that punish sex workers and removal of criminal transmission of STIs.

Korekata AIDS Law Center has conducted legal and advocacy training of sex workers in Yunnan province.

Beijing AIZHIXING Institute is a Chinese human rights NGO that advocates for sex work law reform. In 2010, the Institute was planning to hold a Sex Worker Rights and Health Workshop. Police ordered the workshop to be cancelled and issued an order to the media that prohibited any reporting of the workshop.³²⁰

A police crackdown that involved public humiliation of sex workers prompted a public demonstration in Wuhan, Hubei Province, calling for the legalization of sex work in 2010. It is thought to have been the first of its kind in China. The protest organizer was detained briefly.³²¹

317 Zi Teng (2008) Sex work: Commentary *Sex Transm Infect* 84(1):36.

318 *Hukou* is a household registration record that officially identifies a person as a resident of an area.

319 Lawyers Collective HIV/AIDS Unit (2010) *Sex Work Legislation: Solution or Problem? Report of the Satellite Session at the XVIII International AIDS Conference Vienna*, Lawyers Collective HIV/AIDS Unit, p.3.

320 See: World Care Council (2010), *Come to the Aid of Beijing AIZHIXING Institute* 14 July 2010, available at: <http://www.worldcarecouncil.org/content/come-aid-beijing-aizhixing-institute>.

321 Branigan T. (2010) Chinese sex workers protest against crackdown *The Guardian* 3 August 2010.

5.3 Hong Kong Special Administrative Region (SAR)

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

5.3.1 Laws

Sex work in private is legal in Hong Kong. The law prohibits keeping a brothel (of more than one sex worker), or control of sex workers by brothel owners or pimps. Many sex workers operate legally as individual sex workers from apartment buildings.

Offences under the *Crimes Ordinance*³²² include:

- bringing another person into, or taking another person out of, Hong Kong for the purpose of 'prostitution'. Consent of the person being transported is not a defence (Section 129);
- harbouring another person or exercising control, direction or influence over another person for the purpose of or with a view to that person's 'prostitution' (Section 130);
- procuring another person to become a 'prostitute' (Section 131);
- living on the earnings of 'prostitution' (Section 137);
- keeping a vice establishment (brothel) (Section 139);
- soliciting for any immoral purpose in a public place (Section 147);
- advertisement of sex services (Section 147A).

5.3.2 Law enforcement practices

Most of Hong Kong's sex workers are from mainland China and are at risk of jail pending deportation due to visa violations.³²³ Some enter using a short-term travel visa. Penalties and deportation apply to migrant sex workers who overstay their travel visa or who work whilst on a travel visa. Some sex workers are prosecuted for possession of fake visas or identity cards.

Legal sex work occurs in sub-letted apartments. If two women are found working in the same apartment, it is considered to be an illegal 'vice establishment'. Sex workers are vulnerable to harassment by customers and police because the law requires them to work alone. Occasionally the police raid apartments used for sex work, with most arrests

322 *Laws of Hong Kong* Chapter 200.

323 Call for reform in HK sex industry, *RMIT News*, 11 January 2011.

being for visa violations. Illegal brothels also operate, which are associated with organized crime.³²⁴

Many sex workers operate from karaoke clubs. Individual migrant sex workers from other Asian countries operate from clubs, discos and bars.

According to a report published in 2000, the police generally leave high-class sex workers and brothel owners alone; street workers (who are usually older) are targeted by police for arrest due to soliciting (whereas clients are rarely harassed or arrested).³²⁵

5.3.3 Efforts to improve the legal environment

The NGO Zi Teng began as a service provider for sex workers and evolved as an advocacy organization. Zi Teng provides educational resources on human rights, gender-based violence, HIV and STIs. Zi Teng formed the JJJ Association, a sex worker peer support and advocacy group. JJJ Association trains sex workers to lead campaigns against police abuse and engage in public dialogue with law enforcement. JJJ Association holds meetings between sex workers and police to address reports of abuse.³²⁶ The police set up a special taskforce to help sex workers after advocacy from sex worker groups and documentation of police abuses. The police began to meet regularly with sex workers and sex workers groups and exchange crime information with them.³²⁷

Action for Reach Out is an organization that provides services and support to female sex workers and engages in advocacy for decriminalization of sex work.

“SEX WORKERS ARE VULNERABLE TO HARASSMENT BY CUSTOMERS AND POLICE BECAUSE THE LAW REQUIRES THEM TO WORK ALONE.”

5.4 Macao Special Administrative Region (SAR)

Legal

SEX WORK IN PRIVATE

Illegal

SOLICITING

—

BROTHELS

324 Hong Kong police arrest triad leaders in city-wide raids *Agence France-Presse*, 15 December 2010.

325 Jordan A. (2000), *Commercial Sex Workers in Asia: A Blind Spot in Human Rights Law* in Askin and Koenig (eds.), *Women And International Human Rights Law*, Volume 2, Ardsley: Transnational. pp.525ff.

326 Leiper D. (2010) Sex worker rights are human rights, *Global Fund for Women Newsletter*, Spring 2010.

327 JJJ Association and Zi Teng. Fighting for our rights: How sex workers in Hong Kong are negotiating for more respect and protection (2010). *Research for sex work*. Issue 12. p.13.

5.4.1 Laws

Sex work in private is legal. Soliciting and keeping a brothel are offences under the *Criminal Code*. Soliciting in a public place attracts a fine of up to 5,000 pataca. It is also an offence to administer a brothel or to 'control prostitution.' Anyone who acts as an agent encouraging the sex trade may be imprisoned for one to five years.

5.4.2 Law enforcement practices

Press reports suggest there are about 4,000 mainland Chinese women working as sex workers in clubs and casinos in Macau.³²⁸ In 2010, a police raid on a casino resulted in 110 mainland Chinese sex workers being detained.³²⁹ A survey of 491 sex workers commissioned by the AIDS Prevention and Control Commission found that sex workers feel harassed by the police and are afraid of being deported. Most respondents did not know what laws regulate the local sex industry and complained most police officers have never explained to them the reasons for raids and arrests. Most Chinese women in the sex trade enter Macao on two-week tourist visas. More than 40 percent of Chinese prostitutes surveyed said they were forced to have sex with clients. Forty six percent had experienced verbal violence and 17 percent suffered serious physical violence. Cases of assault or rape are not reported to the police because the women are aware that they are working illegally.³³⁰

5.5 Taiwan, Province of China

Not Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Legal

BROTHELS

5.5.1 Laws

The *Social Order and Maintenance Act* criminalizes sex work that occurs outside of official red-light districts. A maximum fine of \$30,000 New Taiwan dollars is provided for both the sex workers and their clients, and a maximum fine of \$50,000 New Taiwan dollars and five-day detention for brothel operators. Municipalities or counties have the power to define official red-light districts where sex work is permitted. Draft regulations indicate that the legal sex industry will be restricted to red-light districts, away from residential and religious zones, and that brothels and sex workers will be required to apply for licenses. Sex workers will have to undergo periodic health checks.³³¹

328 Neumann A., Chong D., (2005) Sex and the gambling man, *The Standard*, 26 March 2005.

329 Brieger P., (2010) Over 100 held for prostitution at Venetian in Macau. AFP, 9 December 2010.

330 Quinta V., High risk of violence, STD: study No 'easy' money for sex workers, *Macau Daily Times*, 20 January 2012.

331 Lee Seok Hwai (2011) Taiwan set to lift 20-year sex trade ban *Asia News Network*, 13 May 2011.

5.5.2 Law enforcement practices

Taiwan has regulated sex work since 1956, when a law was enacted allowing licensed brothels to operate in Taipei. Less than 10 percent of brothels received licenses. As the economy boomed in the 1990s, the location of the sex industry shifted from brothels to other venues such as hair salons and karaoke parlors.³³²

The nature of the sex industry under the licensing system was described as follows in 2000:

Licensed prostitutes are under the management of local police bureau. In Taipei for example under the Taipei Licensed Prostitutes Management Act enacted in 1973, a weekly medical health check is required for licensed prostitutes in licensed brothels. However, due to strict legal constraints over licensed brothels (e.g., death of brothel owner results in the brothels' closure as brothel ownership and location is non-transferable). In 1973, there were more than a hundred licensed brothels, with nearly a thousand licensed prostitutes. By 1997, the number of licensed brothels had fallen to 18, with only 128 licensed prostitutes...The number of licensed prostitutes in other areas is also declining as few new, younger prostitutes are granted licenses...

The decline of licensed prostitutes does not reflect a similar decline in the sex industry. The most visible sign of the sex industry is not in formal sex establishments, instead the trade is transacted in hotels, massage parlours, teahouses, barber shops, and saunas in every corner of Taipei city. The Municipal Government is aware of the large sex industry, but it believes its eradication is best through indirect attacks - cutting off electricity and water supply is the main slogan for government leadership. Yet it will not be possible as the underground industry has strong links with both the police and the triads.

Unlicensed sex workers are working under many forms of exploitation from clients, brothel owners and police. They cannot refuse clients like drunks, those who refuse to wear condoms, and those demanding additional services. They suffer physical abuse, robbery and refusal to pay from clients, abuse and sub-standard working conditions from employers, and are denied social welfare benefits.³³³

In 2001, the Taipei City government stopped issuing new brothel licenses. After the original brothel owner died, the licensed brothels were required to close down unless a member of the immediate family was willing to take over the license. In 2011, only 11 of the original licensed brothels were left.³³⁴

Sex work was an offence from 1991-2009 under Article 80 of the *Social Order and Maintenance Act 1991*, under which sex workers could be imprisoned for up to three days, detained or fined for up to \$30,000 New Taiwan dollars. In 2009, Taiwan's Constitutional Court ruled that Article 80 of the *Social Order and Maintenance Act* was unconstitutional because it undermined the right of equality of sex workers under the *Constitution of the Republic of China* (Article 7) by prescribing penalties for sex workers, but not their clients. Technically Article 80 of the Act remained in force until 2011, but was not actively enforced.

³³² The Trouble With Taiwan's New Prostitution Rules, *Wall Street Journal: China Real Time Report*, 16 November 2011.

³³³ Shouchin, and Chou J.(2000) Sex work in Taiwan, *Asian Labour Update*, Issue:33, (December 1999 - February 2000).

³³⁴ The Trouble With Taiwan's New Prostitution Rules, *Wall Street Journal: China Real Time Report*, 16 November 2011.

In 2011, the Legislature amended the *Social Order and Maintenance Act* to legalize the sex trade in red light districts. In response to the new laws introduced in 2011, the National Police Agency said it would step up its crackdown on illegal sex trade outside red light districts. There are reports of a police crackdown on unlicensed sex work in 2011.³³⁵ The 2011 law requires the government to help sex workers develop skills so that they can enter other occupations should they so desire.³³⁶

5.5.3 Efforts to improve the legal environment

The Collective of Sex Workers and Supporters (COSWAS) advocates for the rights and welfare of sex workers and seeks decriminalization of sex work. COSWAS criticized the 2011 legislation as a *de facto* ban on prostitution, given that few (if any) local governments are expected to agree to set up official red light districts. COSWAS engages in community education, public awareness-raising and lobbying and advocacy. COSWAS argues that the only effective way to empower women and men involved in sex work is to decriminalize sex work and regulate the work environment by law so as to protect sex workers from violence and exploitation. COSWAS also provides outreach services to reach street sex workers.

5.6 Mongolia³³⁷

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

5.6.1 Laws

The 1998 *Law on Combating Licentiousness (Prostitution and Pornography)* and the *Criminal Code* criminalize sex work or soliciting customers, the act of organizing sex work, luring, recruiting or forcing someone into sex work and facilitating sex work by providing space or transportation.

The *Law on Combating Licentiousness (Prostitution and Pornography)* defines pornography as including 'prostitution, the exploitation of prostitution, and organizing, mediating, and promoting prostitution' (Article 3.1.2). Under Article 13.2.1, persons engaging in sex work shall have their income confiscated and be subject to 14-30 days detention. Persons who organize, mediate, or promote sex work shall be fined 35,000-50,000 tögrög or detained for 7-15 days, and any organization involved in such activities shall be fined 100,000-250,000 tögrög. Any hotel, bar, or other location knowingly used for the purpose

335 Wu Liang-yi (2012) Medic makes 'house calls' to treat sex workers, *Taipei Times*, 10 March 2012.

336 *Ibid.*

337 See: (2004) *Combating human trafficking in Mongolia: issues and opportunities* Center for Human Rights and Development <http://asiafoundation.org/pdf/Mongolia-trafficking.pdf>; Bulgamaa B. (2009) Report: Mongolian Sex Workers Becoming Younger, Worse off, *UB Post*, 15 January 2009.

of sex work shall be closed, and any vehicle knowingly used to facilitate sex work shall be confiscated. Article 12.2 authorizes the police to inform local officials of sex workers residing in their districts and to make public information about sex workers.³³⁸

5.6.2 Law enforcement

The *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015* states:

Partly as a result of the illegal character of sex work and the associated police harassment and arrests, sex work has become more organized and clandestine. Recent trends show an increase in mobile sex workers who are contacted by cell phones, sex workers working as masseuses in saunas, and 'table girls' or waitresses in bars and karaoke bars... Negative attitudes and harassment by police officers hamper harm reduction interventions among sex workers.

The Strategic Plan also notes that negative attitudes of health care providers towards sex workers limits their access to a range of HIV and STI prevention services.

The National Human Rights Commission has raised concerns that the prohibition of sex work drives sex workers underground and exposes women to serious rights violations including breach of privacy.³³⁹

There are periodic police crackdowns. For example, in 2008, police closed 21 saunas, massage services and five small hotels. 80 girls and women were arrested for sex work and 34 owners of saunas and massage centres were being investigated.³⁴⁰ Police target street workers, and those operating in cheaper hotels and saunas.

Survey findings reported in a Country Gender Assessment conducted in 2008 included:

59.2 percent of a sample of sex workers who work on the streets had been subjected to administrative penalties for sex work. 40.8 percent stated they have a hidden status and have not been registered by the police.

72 percent of the sex workers stated they will not turn for police assistance. Policemen reportedly "frequently beat, demand money, force women to enter sexual contact, and insult the women."³⁴¹

According to the Country Gender Assessment, the 1998 law:

...(has) given police officers license to frequently raid sites of prostitution, arrest sex workers, subject them to humiliating and dehumanizing treatment, and extort sexual services and bribe money under the threat of arrests and high fees. Often such raids are accompanied

"THE NATIONAL HUMAN RIGHTS COMMISSION HAS RAISED CONCERNS THAT THE PROHIBITION OF SEX WORK DRIVES SEX WORKERS UNDERGROUND AND EXPOSES WOMEN TO SERIOUS RIGHTS VIOLATIONS INCLUDING BREACH OF PRIVACY."

338 National Human Rights Commission of Mongolia (2008) *International standards on the rights of women and comparative study of national legislation, report to CEDAW* available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NHRC_of_Mongolia_cedaw42.pdf

339 *Ibid.*

340 Bulgamaa B. (2008) Police Arrest Dozens in Prostitution Crack-Down *UB Post* 6 May 2008.

341 See: Bulgamaa B. (2009) Report: Mongolian Sex Workers Becoming Younger, Worse off, *UB Post*, 15 January 2009, which reports that the National Network of Mongolian Women's Organizations prepared the Country Gender Assessment 2008.

by a television crew, which then broadcast highly negative reports on sex workers. The stigmatization of sex workers, reinforced by their criminalization by the law and negative media reports, has created an atmosphere of impunity and lawlessness, depriving sex workers of basic human rights and any protection of their human rights by the state.³⁴²

Respondents to a 2006 rapid assessment reported that brokers do not protect sex workers from police raids and arrests, and that women pay for their release through payment of bribes to police.³⁴³

It is not an offence to buy sexual services. A study of 342 Mongolian sex workers found that the occupations of their most frequent clients included government workers (17.5 percent) and soldiers/police (3.5 percent).³⁴⁴

100% Condom Use Programme (CUP)

In 2002, a 100% CUP pilot was established in Darkhan-Uul province. The provincial Governor issued a Decree (No 316) requiring provincial organizations to participate in the implementation of the 100% CUP. The Decree included a standard agreement to be used with participating entertainment establishment owners.³⁴⁵

A WHO/Government of Mongolia report of the pilot describes initial resistance from law enforcement agencies who believed that their participation in the programme conflicted with the law:

It took time and effort to convince the police to become an important part of the programme. Many training sessions, seminars and advocacy meetings were conducted at all levels of law enforcement entity...As a result, the attitude of police officers towards sex workers has changed and they give more importance to the participation of sex workers in the programme...The principles of police involvement in the programme include the following:

- avoiding arrests of women performing sex work;
- checking 'green cards' of sex workers for their validity to ensure collaboration of sex workers with the programme;
- finding sex workers who are new or who work out of sight of the programme staff; and
- preventing sex workers from getting involved in crime, advocating for their human rights.³⁴⁶

Collaboration of the police in the use of 'green cards' was considered to be effective in involving sex workers in the programme. In some sites, cards were provided to sex workers to facilitate referral of the sex workers for STI testing and treatment services and

342 *Ibid.*

343 *Ibid.*

344 Enkhbold S., Tugsdelger S., Morita S., et al (2007) HIV/AIDS Related Knowledge and Risk Behaviors among Female Sex Workers in two Major Cities of Mongolia, *Nagoya J. Med. Sci.*69,157-165, p.160.

345 WHO (2005) *100% condom use programme: experience from Mongolia*, Manila: WHO WPRO, p.15.

346 *Ibid.*, p.14.

to protect the sex workers from police harassment (sex workers with green cards are those participating in the 100% CUP).³⁴⁷

Some sex workers have expressed opposition to the scale-up of 100% CUPs in Mongolia due to concerns about stigma and discrimination.³⁴⁸

Implementation of the 100% CUP forms part of the *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015*, which states that to increase its effectiveness, efforts will be made to ensure the empowerment of sex workers as part of the programme.³⁴⁹

5.6.3 Efforts to improve the legal environment

In 2006, the Ministry of Justice and Home Affairs established a working group with participation of the Ministry of Health, the Police Department and an NGO to review the *Law against Prostitution and Pornography* to provide options for decriminalization of sex work.

The *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015* commits to a needs assessment that will examine stigma, discrimination and human rights violations among sex workers. The Strategy states that special attention will be given to attitudes among health care and law enforcement staff, as well as the need to prepare legal amendments to strengthen the human rights position of sex workers. The results of the assessment will inform a training programme on human rights issues, and advocacy will be done among policy makers and legislators to support the creation of a more supportive legal environment. Law enforcement staff will be sensitized on the importance of HIV prevention services among sex workers.

5.7 Japan

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Not illegal

BROTHELS

5.7.1 Laws

The *Anti-Prostitution Law of 1956* prohibits sex work ('prostitution') or being a client of a sex worker ('prostitute'), but no penalty is defined.³⁵⁰ Penalties apply to soliciting, procuring a person for sex work, coercing a person into sex work, profiting from the sex work of

347 Ong G. (2009) *Review of The 100% Condom Use Programme and Sexually Transmitted Infection Services in Selected Sites in Mongolia Final Report*, Ministry of Health & WHO WPRO.

348 Working for a Living, *The Humanitarian* 7 July 2008 (Australian Red Cross). www.redcross.org.au/library_publications_humanitarian_July08_article4.htm

349 National Committee on HIV/AIDS, Mongolia (2010) *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015*, p46.

350 Article 3.

others, inducing a person to be a sex worker, furnishing a place for sex work and engaging in the business of making a person a sex worker. The definition of 'prostitution' is strictly limited to coitus. Massage parlours and premises known as 'soaploads' are regulated and provide sexual services to men without breaching the law. If convicted of soliciting, sex workers may be imprisoned or detained at rehabilitation centres.

The *Businesses Affecting Public Morals Regulation Law* of 1948 regulates businesses where legal sex work occurs, i.e. sex work that does not involve coitus. In effect, this law allows sex work to occur without attracting legal sanctions.

5.7.2 Law enforcement practices

The *Anti-Prostitution Law* is reportedly rarely enforced against sex workers, except migrant sex workers soliciting in the streets. It has been argued that the *Anti-Prostitution Law* needs to be amended in the context of HIV prevention, as police interference prevents street workers, especially foreign sex workers, from seeking STI and HIV services.³⁵¹

Many of Japan's sex workers are from poorer Asian countries and their irregular migration status means that they have few legal protections. The primary law enforcement issues relate to the manner in which police identify and deport migrant sex workers.³⁵²

5.8 Republic of Korea (South Korea)³⁵³

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

5.8.1 Laws

All forms of sex work are criminalized. Prior to 2004, the law defined sex workers as morally degenerate and imposed penalties for 'protection of sexual morality'. However, this law was rarely enforced. In 2004, more severe penalties were introduced by the *Act on the Punishment of Acts of Arranging Sexual Traffic and Enforcement Decree of the Act on the Prevention of Sexual Traffic and Protection, etc. of Victims Thereof*.³⁵⁴

351 Mondal N., Takaku H., Ohkusa Y., (2009) Impact of age at marriage and migration on HIV and AIDS epidemics in Japan *International Journal for Equity in Health* 8:23, p.9; Kimoto K., (1999) *Barriers to Safer Sex Practices among Commercial Sex Workers in Osaka, Japan: Scope for Prevention of Future HIV Epidemic* Harvard School of Public Health.

352 United States Department of State, *Trafficking in Persons Report 2010 - Japan*, Washington: State Department.

353 Informaton supplementing the original version of this chapter was provided by the sex worker NGO 'GG' (Giant Girls).

354 The Acts are available at: <http://elaw.klri.re.kr/>

The *Act on the Punishment of Acts of Arranging Sexual Traffic* defines sexual traffic to include sexual intercourse in exchange for money or goods (Article 2). Therefore, sex work is defined as a form of trafficking. The penalty for anyone who has been engaged in sexual traffic is imprisonment for not more than one year or a fine not exceeding 3 million won (Article 21). This provision criminalizes both sex workers and their clients. Persons who are coerced into providing sexual services are not liable to be punished (Article 6(1)).

Other offences include soliciting, arranging, enticing, recruiting and providing premises for the purposes of sex work (Articles 2 and 19). Advertising a sexual traffic business shall be punished by imprisonment for not more than 3 years or by a fine not exceeding 30 million won (Articles 19(1) and 20).

The penalty for operating a sexual traffic business is imprisonment for not more than 7 years or a fine of not more than 70 million won (Article 19 (2)).

In 2006 the Constitutional Court referred to prostitution as ‘a low and mean occupation’ that is harmful to public morals. The Court upheld criminal penalties relating to recruiting people to work in the sex industry.³⁵⁵

The Constitutional Court has also declared that the offence of providing a place for the purpose of trafficking in sex is constitutional, citing the *UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*,³⁵⁶ which the Korean government signed in 1962.³⁵⁷

The Constitutional Court in 2011 ruled that adults engaged in ‘sexual traffic’ are subject to punishment because they are able to earn a living by means of a variety of occupations except for sex work.³⁵⁸

“AFTER THE INTRODUCTION OF THE ANTI-TRAFFICKING LAW THAT CRIMINALIZED SEX WORK IN 2004, THIS PRACTICE ENDED AND SEX WORKERS BECAME RELUCTANT TO REGISTER FOR STI TESTING AND TREATMENT DUE TO FEAR OF PROSECUTION!”

5.8.2 Law enforcement practices

From 1984-2004, the government tolerated the sex industry provided that sex workers registered with health authorities and operated in specific red-light areas. Sex workers were required to be tested for STIs periodically and for HIV every six months.³⁵⁹ The government authorized the Korean Tourist Association to license bars or *kisaeng* (professional entertainer) houses near U.S. military bases and tourist enclaves. The government provided the workers based at these licensed entertainment establishments with STI and HIV testing.³⁶⁰ After the introduction of the anti-trafficking law that criminalized sex work in 2004, this practice ended and sex workers became reluctant to register for STI testing and treatment due to fear of prosecution.³⁶¹ Data on sex workers registered for

355 2006. 5. 25. 2005헌바4

356 Article 2: The Parties to the present Convention further agree to punish any person who: 1. Keeps or manages, or knowingly finances or takes part in the financing of a brothel; 2. Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

357 2006. 6. 9 2005 헌마1167

358 2011.10.25 2011헌가1

359 Shin S. (2006) Republic of Korea, in eds. Yamamoto T., Itoh S., *Fighting a Rising Tide: The Response to AIDS in East Asia*. Tokyo: Japan Center for International Exchange, p. 159.

360 Jordan A. (2000) *op cit*.

361 Junghwan Lee, Sungyoung Lee (2010), Impact of Anti-Prostitution Law on Sexually Transmitted Disease Control Program, *Studies on Health and Social Affairs* 30.1 Korea Institute for Health and Social Affairs. p. 227-

STI examinations show a rapid decrease from 5,922 in 2003 to 2,632 in 2004. In 2006 only 1,914 sex workers were registered, a reduction of nearly 70 percent since 2003.³⁶² There was also a reduction in the overall number people seeking testing and treatment for STIs. The number of people seeking STI treatment at health offices declined from 156,000 in 2003 to 117,000 in 2006.³⁶³

Police crackdowns from 2004-2009 resulted in arrest of approximately 28,000 sex workers, 150,000 clients, and 27,000 sex business owners. It is estimated that 4 percent of the arrested people were sentenced to imprisonment.³⁶⁴

The Ministry of Justice operates schools for convicted male clients of sex workers who may attend seminars in lieu of punishment.³⁶⁵ The Ministry of Justice reported that 99,958 men were sent to the 'john school' programme as an alternative to prosecution from 2005 to 2009. The programme aims to prevent clients from reoffending.³⁶⁶

The Korean sex workers organization, Giant Girls, describes the adverse effects of criminalization as follows:

Strict enforcement of regulations and severe punishment for the sexual traffic makes sex workers even more vulnerable in a relationship with business owners or clients. For instance, sex workers, in a legally disadvantageous position, can be forced to have sexual intercourse without using a condom by clients who would threaten to report to the police unless sex workers comply with their unfair request. Sex workers cannot easily report to the police if they become victims of assault or deception by clients or sex business owners. In other words, they are not under protection of the laws. Sex workers can be abused physically and verbally if they are taken to the police. Police sometimes take their naked photos or sex photos under the pretext of collecting and securing evidence.³⁶⁷

'Red-light districts' (where brothels are densely concentrated) are being closed down and demolished in redevelopment areas, in the process of reinforcing elimination of the sexual traffic.³⁶⁸ In 2011, 42 brothels located in Yongdeungpo, Seoul were designated for removal, which triggered sex workers' intense resistance.

5.8.3 Efforts to improve the legal environment

The Korean Sex Workers Network (Giant Girls) was established in 2009 by a group of sex workers who advocate for decriminalization of sex work. The group collaborates with human rights activists to campaign against the criminalization of sex work. The group also works to remove the social stigma associated with sex work through media interventions.

231.

362 Korea Centers for Disease Control and Prevention (2007). *The Present Status of those who take STD Examination*. Seoul: Korea Centers for Disease Control and Prevention

363 Schwartzman N. (2008) Special law on prostitution turns 4 years old, *Asian correspondent*, 10 October 2008.

364 National Assembly Research Service (2009), *NARS Report*. p.61

365 United States Department of State, *Trafficking in Persons Report 2010 - Korea, Republic of*, Washington: State Department, available at: <http://www.unhcr.org/refworld/docid/4c1883e52c.html>

366 Number of 'john school attendees' increasing, *Korea Herald*, 18 October 2010.

367 GG Submission to UNDP, 2011 and Yeoni Kim (2011), *The Impact of laws on South Korean Sex Workers*, ICAAP10 satellite meeting August 28, 2011.

368 Kyungmi Kim (2008), The Problem of Closing Prostitution Village and City Redevelopment, *Theories on Women/Gender-sexuality* 18, The Center for Women's Culture and Theory, p.82-86.



A SEX WORKER STANDS IN A DOORWAY AT SHIPHA HOUSE, A BROTHEL NEAR THE MAIN BUS TERMINAL IN THE TOWN OF PHAYAO IN NORTHERN THAILAND, 2001. SOURCE: UN PHOTO/SHEHZAD NOORANI.

6 SOUTH EAST ASIA

6.1 Overview

Sex work is illegal in Lao PDR, Myanmar, Philippines, Thailand and Viet Nam. *Sharia* law, which is applied to Muslim citizens in Brunei, Malaysia and parts of Indonesia, also criminalizes sex work. In other jurisdictions of South East Asia, although there is no specific prohibition on the act of sex work, sex workers may be arrested for other offences relating to soliciting or public disorder.

Examples of attempts to regulate the sex industry in South East Asia include:

1. Regulation of brothel complexes (*lokalisasi*) under district and municipal laws in Indonesia;
2. Legal requirements for HIV prevention education and STI health checks for entertainment workers in the Philippines;
3. Police requirements for sex workers operating in brothels in Singapore's Designated Red-light Areas to attend regular medical examinations and to carry health cards.

100% CUPs have been implemented in Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, and Viet Nam. Implementation approaches vary in each country. 100% CUPs sometimes involve registration of sex workers and compulsory health checks. The Asia Pacific Network of Sex Work Projects reports that these programmes may require compulsory registration of sex workers with authorities, mandatory health examinations, including HIV tests, and greater police power over sex workers.³⁶⁹

Cambodia, Lao PDR, the Philippines and Viet Nam have introduced national HIV laws that include prohibitions on compulsory testing, confidentiality protections and anti-discrimination provisions. However, the continued enforcement of criminal laws against sex workers and difficulties in accessing the justice system to enforce these rights means that (as yet) these general HIV laws have offered limited protections to sex workers.






















In Malaysia and Singapore, thousands of foreign sex workers are detained and deported every year. In Malaysia and Thailand, foreign sex workers who are identified as victims of trafficking may be held in state detention facilities for extended periods prior to

369 Canadian HIV/AIDS Legal Network (2007) *op cit*, p.12.

deportation, with limited access to HIV services. In Indonesia and Myanmar, sex workers may be detained in rehabilitation centres.

In Thailand, sex workers who are Thai nationals may access entitlements to pensions and benefits for disability through contributing to the social security fund.

TABLE 3: LEGALITY OF ADULT SEX WORK IN SOUTH EAST ASIA

	 Legal  Illegal  Not Illegal*			
Country	Sex work in private	Soliciting	Brothels	Laws
Brunei ³⁷⁰				<p>The <i>Penal Code 1951</i> provides offences for loitering or soliciting for purpose of prostitution.</p> <p>The <i>Women and Girls Protection Act</i> provides offences for selling or obtaining possession of any woman or girl for the purpose of prostitution; or procuring (Section 3); living on the earnings or trading in prostitution (Sections 5); and brothel-keeping (Section 6). <i>Sharia</i> law also operates, which criminalizes sex work.</p>
Cambodia				<p>The Constitution prohibits exploitation by prostitution (Article 46). The <i>Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008</i> provides offences for a person to willingly solicit another in public for the purpose of prostituting himself or herself (Article 24); procurement of prostitution (Article 26); management of an establishment of prostitution (Article 30); provision of premises for prostitution (Article 32). Article 298 of the Criminal Code also punishes soliciting.</p>
Indonesia				<p>There are no national prohibitions on sex work or brothels. Some provinces or districts have enacted local laws to regulate brothels, some provinces or districts prohibit sex work or apply <i>sharia</i> law.</p>
Lao PDR				<p>The <i>Penal Code</i> provides offences for engaging in prostitution; assisting or facilitating prostitution; generating income through procuring prostitution (Articles 122-123).</p>
Malaysia				<p>State-level <i>sharia</i> law operates to criminalize sex workers and their clients if they are Muslim citizens. The <i>Penal Code</i> provides offences for soliciting (Section 372B) and keeping a brothel (Section 373).</p>
Myanmar				<p>The <i>Suppression of Prostitution Act 1949</i> provides offences for sex work, soliciting or keeping brothels.</p>

Philippines				The <i>Revised Penal Code</i> provides offences for prostitution as a form of vagrancy (Article 202), and for engaging in the business of prostitution, profiting by prostitution or enlisting the services of another person for the purpose of prostitution (Article 341). The <i>Anti-Trafficking in Persons Act of 2003</i> provides an offence to maintain or hire a person to engage in prostitution.
Singapore				The <i>Women's Charter</i> provides offences for procuring (Section 140), living on the earnings of sex work (Section 146) and managing a brothel (Section 148). Soliciting is an offence under the <i>Miscellaneous Offences (Public Order and Nuisance) Act</i> (Section 19).
Thailand				The <i>Prostitution Prevention and Suppression Act (1996)</i> provides offences for soliciting in public (Article 5), pimping, advertising, procuring sex workers (even with their consent) (Article 9) and managing sex work businesses (Article 11).
Timor-Leste				The <i>Penal Code 2009</i> provides offences for sexual exploitation of a third party (a person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution) (Article 174)
Viet Nam				The 2003 <i>Ordinance on Prostitution Prevention and Control</i> provides that sex workers may be subject to administrative detention. The <i>Penal Code</i> provides an offence for persons who 'harbour prostitutes' (Article 254).

* Generally not prohibited but exceptions apply.

370 See: 5 nabbed for alleged prostitution Brunei Times, 15 April 2011: a raid at a boarding house led to the arrest of three female foreigners who are to be deported.

6.2 Cambodia³⁷¹

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.2.1 Laws

The Constitution of Cambodia states:

Article 46: The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.

Article 36 of the Constitution states that citizens have the right to choose any employment according to their ability and to the needs of the society; the right to obtain social security and other social benefits as determined by law; and the right to form and to be members of trade unions.

The *Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008* (the *Trafficking Law*) includes broadly defined offences that criminalize most aspects of the sex industry. The *Trafficking Law* prohibits public soliciting, procurement of prostitution, management of an establishment of prostitution and provision of premises for prostitution. The *Trafficking Law* introduced new provisions that criminalized soliciting.

The offence of procuring is very broadly defined by the Trafficking Law to include training a person with a view to practice prostitution. Concerns have been raised that this might render unlawful training in relation to safe sex practices.³⁷²

The offence of procuring also includes hindering acts of prevention, assistance or re-education undertaken either by a public agency or by a competent private organization for the benefit of persons engaging in prostitution (Article 25).

The *Trafficking Law* defines exploitation to include 'commercial sex acts' for the purpose of the following offences:

- Removal of another person for the purpose of exploitation (Article 10)
- Recruitment of a person for exploitation with the use of coercive means (Article 12)
- Selling, buying or exchanging of a person for the purpose of exploitation (Article 15)
- Transporting a person for the purpose of exploitation (Article 17)

371 A Cambodia based expert, Serey Phal Kien, facilitated inputs to this chapter through a consultative process. Comments on the original draft of this chapter were generated from consultations with 9 individuals (provincial and district governors, a health department official, members of the provincial AIDS committee, NGO staff, a lawyer and a researcher) and 4 focus group discussions with entertainment worker groups, NGO staff and activists working with entertainment workers. UNAIDS country office also provided comments.

372 Overs C. (2008) *Caught Between the Tiger and the Crocodile: The Campaign to Suppress Human Trafficking and Sexual Exploitation in Cambodia*, Asia Pacific Network of Sex Workers, p.2.

- Harboring a person who has been unlawfully transported for the purpose of exploitation (Article 19)

A 2008 *Police Guideline on the Implementation of the Law on Suppression of Human Trafficking and Sexual Exploitation* states that sex workers are not criminals.³⁷³

The *Law on the Prevention and Control of HIV and AIDS*, 2002 includes prohibitions on compulsory testing (Articles 19 and 20), breach of confidentiality (Article 33) and discrimination (Articles 36-42).

6.2.2 Law enforcement practices

Nature of sex work

Female sex workers operate primarily from massage parlours, guesthouses and entertainment establishments such as bars, beer gardens, restaurants and karaoke clubs. Some transgender people also sell sex at entertainment establishments. The number of sex workers (sometimes referred to as 'entertainment workers') is estimated to be between 42,000 to 47,000 nationwide, with approximately 21,000 in Phnom Penh.³⁷⁴ A small proportion of the sex industry (including female, male and transgender sex workers) operates from public places such as streets, parks, markets and bus terminals.

The brothel-based industry has decreased significantly in size over the last decade. UNAIDS states that this trend was primarily due to changes in male client social and sexual networking, rather than law enforcement practices, but that police crackdowns on brothels in 2007-2008 accelerated an already well-advanced change.

In interviews undertaken in support of this study, the Cambodian Prostitute Union (CPU) confirmed that brothels have decreased in number dramatically in recent years, and sex workers are based instead in venues such as karaoke bars, massage parlours, and beer gardens. A focus-group discussion with entertainment workers held in Kampong Cham in 2011 confirmed that it is now standard practice for entertainment workers to rent rooms and operate their businesses on their own. As a result, brothel-based sex work is now virtually non-existent in Kampong Cham Province and across Cambodia. It is widely understood that legal sanctions are severe for people who profit by acting as mediators between clients and entertainment workers. Similarly, a focus group discussion with staff and activists of the NGO Save Incapacity Teenagers (SIT) in Prek Leap area (Phnom Penh) confirmed that there were 67 entertainment establishments operating in Prek Leap in 2011, but brothels no longer exist in that area.

Information from focus groups and key informants in Kampong Cham confirmed that the street or park-based sex workers are estimated at only 2% of all sex services. Street and park-based work is thought to occur in Sihanouk Ville, Phnom Penh, Poipet and Siem Reap.

The Women's Network for Unity estimated that there are less than 1,000 people working in the streets and parks in Phnom Penh, while the Cambodian Prostitutes Union estimated that there are around 1,100.

373 Kingdom of Cambodia, Taskforce Against Human Trafficking and Smuggling (2008) *Labour and sexual exploitation of women and children, Guidelines on Enforcing the Law on Human Trafficking and Sexual exploitation*, No. 001sNnbCrBP, 28 October 2008.

374 Serey Phal Kien, Consultancy Report to UNDP, Jan 2012.

Prior to 2008, research documented some brothel-based sex workers who experienced debt bondage or forms of indentured labour. It was reportedly standard practice for brothel owners to retain the identity cards of sex workers who were repaying debts to owners, which restricted capacity to travel.³⁷⁵ Focus group discussions with entertainment workers held in 2011 in Kampong Cham, Prek Leap and in Phnom Penh found that debt bondage is no longer considered to be a problem:

SIT staff and activists said that some waitresses who work and sleep in some big restaurants along Prek Leap area of Phnom Penh might borrow some money from restaurant owners, however, none of them had heard about retaining of identity cards for such small money lending these days. The CPU (Cambodian Prostitutes Union) members said that money lending still exist between some EWs (entertainment workers) and karaoke or massage owners due to personal and or family needs of entertainment workers, however, there's no indentured labour involved. Two out of the seven CPU members interviewed said that they borrowed money from the karaoke owner due to their families' problem but they are free to work in that shop or in any other karaoke shops they like or where they can earn more income.³⁷⁶

Law enforcement approaches

Initiatives of the Royal Government of Cambodia and civil society (with support from UN and donor partners) have significantly improved the legal environment for HIV responses among sex workers since 2009. This section refers first to the difficulties experienced in policing of the sex industry, most of which occurred prior to 2010. It then describes the progress that has been achieved in developing a more enabling policy environment through adopting new approaches to policing and HIV risk reduction in the period 2010-2012.

Police abuses against sex workers were reported during a police crackdown in 2008. Police reportedly relied on the soliciting offence under the *Trafficking Law*, public order offences and rental laws to target entertainment workers.³⁷⁷ The *Trafficking Law* has been criticized for being drafted in an overly broad manner, with many elements lacking precise definition, enabling arbitrary enforcement against sex workers during the crackdown.³⁷⁸

Research by Human Rights Watch found that police extortion and demands for bribes were common in 2008-2009. Sex workers reported incidents of arbitrary detention, violation of due process rights, beatings, physical violence, rape, sexual harassment, forced labour, extortion, confiscation of their belongings, and other ill-treatment.³⁷⁹ During the 2008 crackdown, sex workers were held in two detention centres where human rights

375 Sandy L. (2006) *My Blood, Sweat and Tears*. 2006 Unpub. doctoral thesis submitted to the Australian National University, p.143.

376 Serey Phal Kien, Consultancy Report to UNDP, Jan 2012. Focus groups involved Women's Network for Unity, Cambodian Prostitutes Union and Save Incapacity Teenager.

377 Cambodian Alliance for Combating HIV/AIDS (CACHA) (2009), *The Policies Environments regarding Universal Access and the Right to Work of Entertainment Workers/Sex Workers*, Phnom Penh: CACHA, p.78. Low S., (2009) Summary of Key Research Findings for NAA in collaboration with CACHA, WNU, CPU, CNMWD, CCW and BC, Phnom Penh: CACHA, p.5.

378 Overs C. (2008), *op cit.*, p.3.

379 Human Rights Watch (2010) *Off the Streets: Arbitrary Detention and Other Abuses against Sex Workers in Cambodia*. New York: Human Rights Watch; A study in 2006 found one third of a sample of sex workers in Phnom Penh were gang-raped by police in the past year and one half were beaten by police: Jenkins C., Cambodian Prostitutes' Union (CPU), Women's Network for Unity (WNU), Sainsbury C. (2008) *Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia* Washington: POLICY Project USAID, pp.32-42.

violations were reported. Sex workers alleged assaults, rape, deaths in custody and lack of access to medical care.³⁸⁰

The 2008 crackdown led to significant decreases in the number of sex workers attending health services. Carrying condoms was used as evidence to justify many arrests.³⁸¹ According to Human Rights Watch:

Throughout 2008 HIV/AIDS activists, health workers, and sex worker groups voiced concerns about increased abuses by authorities, and their difficulty in accessing sex workers – many of whom were driven underground because they feared arrest.³⁸²

The Cambodian Alliance for Combating HIV/AIDS (CACHA) conducted a study on the right to work of entertainment workers. Data was collected from 1,116 sex workers in 2008. Findings included:³⁸³

- The *Trafficking Law* contributed to a shift from brothel-based transactions towards independent work and there was increased mobility among sex workers. This may be attributed to the law, which increased fear of arrests. FHI reported that in one area, 7 percent of ART patients were lost to follow up.
- Many entertainment workers were afraid to talk openly about their activities and were afraid to access HIV services. CARE reported that, as a result of the drive to close brothels, visits to STI clinics by entertainment workers in one target area “became even less frequent and for many women, totally stopped.” During the first two quarters of 2008 there was a 26 percent reduction in the number of women seeking STI diagnosis and treatment at FHI360 clinics.

A joint position statement of public health agencies, UN agencies and NGOs stated that the crackdown was raising the risk of HIV spreading further by reducing their access to sex workers, and highlighted the following developments:³⁸⁴

1. An increase in the number of women selling sex on the street – many of whom are HIV positive – which further increased their vulnerability to trafficking, exploitation and HIV/STI infection and transmission.
2. A reduction in the sale of condoms and the availability of condoms in entertainment establishments increased the risk of HIV transmission through unprotected sex.
3. A 26 percent reduction in the number of women seeking STI diagnosis and treatment at family health clinics.
4. A 10 percent reduction in contacts by NGO outreach workers, which decreased entertainment workers access to information and condoms.

380 Overs C. (2009) *op cit.*, p.8; Keo C., (2009) *op cit.*, p.8; In 2010 there were reports that Phnom Penh's municipal Social Affairs office continues to detain some sex workers at the detention centre at Prey Speu, which houses homeless people: Pearson E., (2010) *Towards a More Humane Treatment of Sex Workers, Homeless*, Human Rights Watch, available at: <http://www.hrw.org/en/news/2010/08/03/towards-more-humane-treatment-sex-workers-homeless>.

381 Keo C., (2009) *Consultancy Report to Cambodian Alliance for Combating HIV/AIDS (CACHA) Hard Life For A Legal Work: The 2008 Anti-Trafficking Law and Sex Work*. CACHA.

382 Human Rights Watch, (2010) *op cit.* p.23.

383 Low S. (2009) *op cit.*

384 *United Nations, Donor and Civil Society Position Statement, Protecting Cambodia's HIV/AIDS Gains: The Public Health Effects of the Kingdom of Cambodia's Trafficking Suppression Campaign and Law on the 'Suppression of Trafficking and Sexual Exploitation*, quoted in Overs C., (2009) *op cit.* p.17.

5. Targeting of sex workers reduced their ability to access ARV services.
6. The reduction in contacts reduced NGOs ability to identify trafficked people and report traffickers.

A study by Maher and colleagues explored the implications of the changing nature of the sex industry for HIV vulnerability after the enactment of the 2008 *Trafficking Law*.³⁸⁵ Findings drew from analysis of interviews of 33 women engaged in sex work in Phnom Penh. The study argued that strategies designed to address HIV among brothel-based sex workers have not translated well to street and entertainment-based sex work venues. Findings included:

- Most women with experience working in brothels felt that having a manager brought benefits in terms of personal safety through protection from violence and the police.
- Street-based sex workers were more likely to report being targeted by police and subjected to a range of abuses including extortion, forced sex and other violence, and that policing impacted access to HIV services, including condoms and testing.

Transacting sex in environments such as guesthouses, where there is little or no oversight in the form of peer or managerial support or protection, may increase vulnerability to HIV.

- In response to the *Trafficking Law* and crackdowns, some sex workers rented private accommodation, which was sometimes paid for by brothel owners. This adaptation, as well as the shift from transacting sex on-site to guest-houses and hotels, "represents a form of risk displacement from owners/managers to women".³⁸⁶
- Entertainment-based sex workers reported infrequent problems with the police.

Progress towards a rights-based approach to sex work

Interviews conducted in 2011 with sex workers' networks indicated that incidents involving police abuses had become rare compared to previous years. Some incidents still occur involving entertainment workers who use massage parlors as an entry point and sex workers who solicit clients from public places such as streets and parks.

Two important programme and policy developments (described in more detail at 4.2.3) have been:

- The Continuum of Prevention to Care and Treatment for Female Entertainment Workers (followed by a similar model for MSM and transgender people); and
- the Most At Risk Population Community Partnership Initiative (MCPI) which aims to provide 'safe-space' and a supportive environment through teams operating at the local level made up of community representatives (sex workers, MSM, transgender people, people who use drugs), local authorities, law enforcement officials, health and paralegal workers and local service NGOs for the delivery of HIV and related services.

Prior to 2008, the Government's 100% condom use policy and associated programme contributed to an increase in condom use in the organized sex industry and a sharp decrease in STI and HIV prevalence among sex workers and their clients. The Government recognized that the 2008 police crackdown interfered with the operation of 100% CUP.

³⁸⁵ Maher L., Mooney-Somers J., Phlong P. et al (2011) Selling sex in unsafe spaces: Sex work risk environments in Phnom Penh, Cambodia, *Harm Reduction Journal* 2011, 8:30.

³⁸⁶ *Ibid.*

Given that the nature of the sex industry was changing, a new policy response was formulated.

The *National HIV/AIDS Strategic Plan 2011-2015*³⁸⁷ committed to revision of the national regulation on the 100% condom use policy known as *Prakas 066* to expand condom programming to non-brothel entertainment establishments, and development of a guideline outlining the role of police, local authorities, health workers and communities to support implementation. In 2011, the Ministry of Interior issued a Letter of Declaration clarifying that the 100% Condom Use Policy does not conflict with the *Trafficking Law*. The Declaration states that police will not use condoms as an evidence for arrest except in rape-related cases.³⁸⁸

The National AIDS Authority, Provincial AIDS Committees and a range of NGOs have supported circulation of the revised *Prakas 066* to entertainment establishments so as to reduce police raids and other problematic law enforcement interventions.

In 2006, *Prakas 086* was issued by the Ministry of Labour and Vocational Training, which promulgated the establishment of AIDS Committees in the workplace to facilitate access to HIV services in large-scale enterprises such as garment factories. In 2011, the Ministry agreed to expand efforts to entertainment facilities, including to casinos in border areas. AIDS Committees have the potential to play an active role in facilitating a supportive environment and access to HIV and other services for entertainment workers.

“IN 2011, THE MINISTRY OF INTERIOR ISSUED A LETTER OF DECLARATION CLARIFYING THAT ... POLICE WILL NOT USE CONDOMS AS AN EVIDENCE FOR ARREST EXCEPT IN RAPE-RELATED CASES.”

Although the overall legal environment for sex workers improved after 2010 and official policy prohibits confiscation of condoms and police abuses that interfere with HIV prevention, inappropriate police conduct is occasionally reported. Implementation of laws and policies by local law enforcement agencies continue to elicit exceptional cases where condoms are used as evidence of sex work in entertainment establishments and where round-ups have occurred, especially of street-based sex workers. According to press reports, 440 street-based sex workers were detained in Phnom Penh in preparation for the 2012 ASEAN Summit.³⁸⁹ APNSW reported that the Women’s Network for Unity and the sex workers’ Community Legal Service continued to see sex workers in 2012 who had been released from rehabilitation centres.

In 2011 the Ministry of Interior enacted the Sanghat Commune Safety Policy, which has complicated the situation of the HIV response. The National AIDS Authority confirmed that inconsistent implementation of the Commune Safety Policy interrupted access and utilization of HIV services for entertainment workers who sell sex and their clients in 2011.³⁹⁰ NGOs have reported that sex workers, transgender people, men who have sex with men and especially people who use drugs have been targeted as a result of implementation of the Commune Safety Policy. Since a proportion of sex workers are also

387 National AIDS Authority (2011) *National Strategic Plan for Comprehensive and Multisectoral response to HIV/AIDS III (2011-2015)*, p.10.

388 HIV/AIDS Coordinating Committee (2011), *National AIDS Authority continues to work to strengthen the implementation of Prakas 66*, available at: http://haccambodia.org/view_news.php?id=151

389 Sen., D. *Beggars, prostitutes rounded up ahead of ASEAN summit*, 5 January 2012, www.phnompenhpost.com.

390 National AIDS Authority (2012) *Cambodia Country Progress Report*, Phnom Penh: NAA, p.40

involved in drug use, special interventions such as needle and syringe programmes have proven to be difficult because local police arrest people if there is evidence of drug use. The Ministry of Health has agreed to provide various services for people who use drugs including needle and syringe programmes and methadone programmes. With these new developments it is hoped that services for people who use drugs will be more smoothly implemented.

6.2.3 Efforts to improve the legal environment

Government agencies (National AIDS Authority, Provincial AIDS Committees, Ministry of Interior, Local Authorities, and National Centre for HIV/AIDS, Dermatology and STDs) now actively support and promote the policy that police must not obstruct HIV prevention or treatment interventions and must not confiscate condoms as evidence of sex work.

The *National HIV/AIDS Strategic Plan 2011-2015* includes the strategy of ensuring a supportive legal and public policy environment for the national HIV response. The Strategy requires the alignment of the Law on Suppression of Human Trafficking and Sexual Exploitation with the provisions of the *HIV Law* and the establishment of an enabling environment for prevention in the area of entertainment work, including protection of human rights and access to prevention, care and treatment services without fear of harassment, arrest or punishment.

A High Level UN Mission on Sex Work secured agreement from the Royal Government of Cambodia to accord a priority to addressing HIV prevention with sex workers. This resulted in high-level support for a range of initiatives (several in their early stages of implementation) outlined below.

Continuum of Prevention to Care and Treatment for Entertainment Workers

The National Centre for HIV/AIDS, Dermatology and STIs (NCHADS) developed a *Standard Operating Procedures (SOP) for a Continuum of Prevention to Care and Treatment for Female Entertainment Workers* in 2009 which replaced the 100% CUP. The Continuum of Prevention to Care and Treatment for Entertainment Workers is explicitly rights-based and prohibits mandatory testing for STIs.

The revised approach responds to the increase in the number of women selling sex in non-brothel establishments and changes in the nature of transactional sex. The approach recognizes improved understanding of the importance of early HIV diagnosis and treatment to prevention. A complementary initiative is Community Peer-Initiated Testing and Counselling (CPITC) programme of NCHADS, which recruits peers to promote early voluntary HIV testing among entertainment workers and men who have sex with men.

The SOP promotes peer-based interventions among entertainment workers. The SOP recognizes the importance to effective HIV responses of a multi-sectoral approach engaging non-health services (such as legal aid and rape crisis services) as well as health services. Programme strategies include: strengthened policy frameworks, coordination, outreach and service linkages; improved service provision for entertainment workers; and a reproductive and sexual health approach in 'transactional sex service environments'.

Under the SOP, committees at the District and Provincial levels (Continuum of Prevention to Care and Treatment Coordinating Committees, chaired by the relevant Governor or Vice-Governor) are responsible for monitoring compliance with administrative orders (e.g., relating to condom availability in entertainment establishments) and ensure that law enforcement is not negatively affecting implementation of the programme.

Representatives of entertainment workers sit on the committees overseeing the programme.

Most at Risk Population Community Partnership Initiative

The Most at Risk Population Community Partnership Initiative (MCPI) is intended to strengthen community-level action on HIV and related issues. The MCPI was formally recognized by the *Administrative Order on the Management of Entertainment Workers* issued in 2010.³⁹¹

The management framework for the MCPI engages representatives of local authorities, police, health care workers, civil society organizations and representatives of most-at-risk populations. The aim is to ensure an enabling environment for coordinated implementation of HIV prevention and treatment services and non-health-related services for entertainment workers, men who have sex with men, transgender people and drug users.

MCPI supports a rights-based approach. MCPI recognizes that the State, through its agents, is the principal duty-bearer responsible for fulfilling the right to health and social services to all Cambodians including entertainment workers. HIV mechanisms at commune, district, provincial and central level have the responsibility for creating the normative and institutional contexts for the enjoyment of the right to health and social services. MCPI supports dialogue between communities (rights-holders) and state agencies (duty-bearers) to achieve improved delivery of health, social and legal services. In the event of incidents the local MCPI team's prime role will be to find way to resolve issues without impacting on HIV and other service delivery with communities.

Phnom Penh, Siem Reap, Banteay Mean Chey, Battambang, Sihanoukville, Kampong Cham and Kandal have been selected as the target communities for implementation of MCPI. Sensitization has been conducted in 2011 in Siem Reap, Banteay Mean Chey, Sihanoukville, and Battambang with the participation of entertainment workers and other at-risk populations, police, the local authority, provincial health department, entertainment establishment owners and relevant NGOs. In 2012, MCPI will be expanded to the remaining hotspot provinces. Legal services as well as health and social services are included in the MCPI design.

Legal services for sex workers

UNAIDS and ILO supported the establishment of the Community Legal Service for entertainment workers in 2011. The National AIDS Authority, NCHADS and the Ministry of the Interior also support the legal service. The aim of the legal service is to raise awareness on legal rights among sex workers, create a team of paralegal workers who provide appropriate legal support (and referral) for sex workers (initially in Phnom Penh) in partnership with Monash University (Australia) and APNSW. Outreach workers provide sex workers with legal assistance, emergency care, shelter, sexual assault counseling, assistance with children, and medical support.

Community mobilization on human rights

A sex workers' organization, the Women's Network for Unity (WNU), was registered with the Ministry of Interior in 2004. The network engages the police and local authorities to

³⁹¹ Administrative Order #482, *Management of Entertainment Workers through the Most At Risk Population Community Partnership Initiative (MCPI)*, 21 October 2010.

educate about the situation of sex workers and to promote the protection of their rights. WNU outreach programmes educate sex workers about HIV, legal issues, human rights and access to health services. The WNU has issued its members with cards to help them access health services. The card acts as a 'welfare entitlement' to accessing health services from the hospitals collaborating with WNU.³⁹²

Other community-based sex worker organizations are the Cambodian Prostitutes Union (CPU) and the Cambodian Men Women Development Agency (CNMWD), which focuses on transgender sex workers.

The SMART Girl Program implemented by FHI adopts a rights-based approach to health promotion, using peer educators and outreach workers to promote sexual health among entertainment workers. Instead of exclusively focusing on condoms, SMART Girl links entertainment workers to family planning services, clinical care, savings schemes and legal services.³⁹³ Training materials include participatory exercises to educate entertainment workers that police cannot confiscate condoms.³⁹⁴

With the aim to strengthen national representation of the various sex worker and entertainment worker formal, informal and service networks, an election process was organized in December 2011 resulting in the appointment of five national representatives to support enhanced coordination and organization around common issues of concern. This informal coordination and facilitation mechanism is recognized by all stakeholders and the government. A National Coordinator represents the sex worker networks on the Country Coordinating Mechanism of the Global Fund.

6.3 Indonesia³⁹⁵

Not Illegal

SEX WORK IN
PRIVATE

Not Illegal

SOLICITING

Not Illegal

BROTHELS

6.3.1 Laws

National laws do not specifically prohibit sex work. The *Penal Code* prohibits facilitation of acts of obscenity by others as a livelihood (Article 296), trading in women (Article 297), vagrancy (Article 505) and living on the earnings of a female sex worker (Article 506).³⁹⁶

392 KIT and Oxfam (2007) Sex workers self-organizing and empowerment: The experience of Women's Network for Unity (WNU) in Cambodia, *Exchange*, Amsterdam: KIT, pp.8-10.

393 FHI (2010), *SMART girl Program Reduces Risk and Inspires Behaviour Change*, see: http://www.fhi360.org/en/CountryProfiles/Cambodia/res_SMARTgirl.htm.

394 FHI, *Assessing your Risks: SMART girl Program Facilitator's Guide*, p.7.

395 Input to this Chapter was provided by Ajeng Larasati (LBH Masyarakat) and Pardamean Napitu (Aldo) (Organisasi Pekerja Seks Indonesia).

396 See Hamim A., Rosenberg R., Review of Indonesian Legislation in: Rosenberg R. (ed) *Trafficking of Women and Children in Indonesia* Jakarta: ICMC/ACILS, 2003, pp. 195-215, pp. 196-98 and Hull T., Jones G.,

At the sub-national level a range of local laws, regulations and by-laws are applied to sex workers and the sex industry. These range from strict prohibitions on sex work to regulation of officially tolerated brothel complexes.

Examples of punitive sub-national laws are:

- the *Anti-prostitution By-Law* of a district in Yogyakarta;
- the *Anti-prostitution By-Law 2004* of Palembang;
- in Aceh, the Provincial Legislature incorporated sharia offences into the criminal law through a *qanun* (regulation) enacted in 2009. The *Qanun Jinayah* prohibits being alone with someone of the opposite sex to whom you are not married or related (*khalwat*) and adultery (*zina*);
- *Anti-prostitution By-Law* in Tangerang that enables arrest of women on the grounds that her appearance arouses suspicion that she is a sex worker;³⁹⁷
- *Bantul Regional Regulation No. 5, 2007 Regarding Prostitution*; and
- *DKI³⁹⁸ Jakarta Regional Regulation No. 8, 2007 Regarding Public Order*.

The *Pornography Law of 2008* defines pornography broadly to include any picture, photograph, conversation, body language or other messages through various forms of communication and/or public performance that contain obscenities that violate the norms of morality. Educational materials for HIV prevention and health promotion are not intended to be within the definition of pornography under this law. Nonetheless, there are concerns that this definition is so broad that the law may lead to self-censorship by prevention workers, and restrict peer education and publication of health promotion resources that relate to sex work.

6.3.2 Law enforcement practices

Common forms of sex work in Indonesia include: female brothel-based sex work in registered complexes (*lokalisasi*) or unregistered brothels; freelance sex workers; street-based work employing female, male and transgender (*waria*) sex workers; call girls; part-time sex workers who work as drink sellers; waitresses at truck stops, roadside beer-halls, food stalls and snack bars; workers at massage parlours, beauty salons and spas; women with business arrangements with expatriates who assume the role of contract wives; young urban females who engage in high-end sex work; and professional secretaries who provide sexual services to business contacts.³⁹⁹ In some provinces, e.g., Papua and West Papua, transactional sex (sex in exchange for good or services) is very common.

Police use the vagrancy offence under the *Penal Code* as the basis for targeting street-based sex workers. Vagrancy laws are reportedly used to harass sex workers or extort money under threat of prosecution or detention. Police raids of public sex work sites

and Sulistyaningsih E., 'Prostitution in Indonesia,' in Lim L. (1998) *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*, Geneva: ILO, pp. 29-66, p. 57. *The Law on the Eradication of the Criminal Act of Human Trafficking (Law No. 21/2007)* covers all forms of trafficking in persons.

397 Warburton E. (2007) No longer a choice, *Inside Indonesia*, 89, 5 January 2007; *Tangerang Regional Regulation No. 8 Series E Year 2005 Regarding Prostitution*.

398 DKI refers to the Capital City District.

399 See: Surtees R., (2004) *Traditional and Emergent Sex Work in Urban Indonesia* Intersections: Gender, History and Culture in the Asian Context, 2004. 10.

such as streets and parks are a barrier to outreach and condom promotion. Outreach workers have reportedly been arrested for carrying condoms as suspected sex workers. Police raids of stalls used for sex work in Tabanan, Bali, in 2011 have been criticized by outreach workers from the Bali Health Foundation for driving sex workers away from health services.⁴⁰⁰

An NGO in Jakarta describes how *waria* (transgender) sex workers are placed at risk by practices of police and health care workers:

Police raiding sites where Waria engage in sex work remains a barrier to the distribution and use of condoms and lubricant in Waria sex work. Waria outreach workers can also be arrested for carrying condoms and may be confused by police as sex workers rather than HIV outreach workers. Discrimination in the health sector also remains a significant barrier for minimizing the impact of HIV on Waria living with HIV in Jakarta...A specific health sector policy on non-discrimination toward Waria is needed.⁴⁰¹

There are some reports of sex workers being subject to debt bondage. Sex workers may be bound by an instrument termed a 'contract' for four-month periods and, in addition, be required to repay all expenses involved in transporting them across Indonesia to sex work sites.⁴⁰²

Some local laws that apply in conservative Islamic districts prohibit all forms of sex work. According to Ariane, these local laws are "used as legal justification by certain Islamic reactionary groups that frighten and abuse women – mostly prostitutes or women who have to work until late at night – on the street."⁴⁰³ In Aceh, a *sharia* unit, the Wilayatul Hibah, monitors non-Islamic conduct including sex work. Women who break *sharia* rules are reportedly stigmatized and harassed.⁴⁰⁴

Regulation of brothels

Many provincial, municipal and district governments have introduced regulations that enable the organized brothel-based sex industry to operate with the approval of officials in defined localities. Many sex workers work within the regulated brothel complexes (*lokalisasi*). Targeted health promotion activities occur at many *lokalisasi* and regular STI testing may be required by local regulations, municipal by-laws or rules of the *lokalisasi*. A needs analysis conducted in Jakarta in 2009 identified local regulations that force sex workers to test for HIV as an example of discrimination.⁴⁰⁵

Surtees describes the history of sex work regulation in Indonesia:

In the Dutch colonial period the sex industry both expanded and became more organised... [B]y 1852 the colonial government focused on regulation rather than abolition of the industry, with particular attention being paid to the sexual health

400 Suriyani L. (2011) Sex workers forced underground by raid, STDs increase, *The Jakarta Post*, 25 June 2011.

401 UNDP (2010) *MSM TG Multi City Scan Reference Guide*, Bangkok: UNDP, p.148.

402 International Catholic Migration Commission Indonesia (2005) *Behind Locked Gates: An Assessment Report on Trafficking of Women and Girls in Papua*; and see: Mahy P., (2009) *A Report on Sex Workers and HIV/AIDS Prevention for PT Kaltim Prima Coal, East Kalimantan, Indonesia*. ANU.

403 Ariane Z. (2011) *Indonesia Women struggle against poverty, discrimination and exploitation*, http://www.asia-pacific-solidarity.net/news/zelyariane_indonesiawomenstruggleaga_080311.htm

404 <http://turnstylenews.com/2011/05/06/who-are-you-the-morality-police/>

405 IDLO (2010) *Rapid Needs Assessment of the Legal Needs of People Living with HIV and Key Populations in Jakarta*, Rome: International Development Law Organization, p.4.

of sex workers. For example, the 1852 Act encouraged sex workers to be based in brothels and undergo weekly medical examinations for syphilis and other contagious diseases. As well, the 1852 Act devolved authority over brothels from the central to regional governments. This regulated, but somewhat ambiguous, framework endures in the present.⁴⁰⁶

Ford and Lyons describe *lokalisasi* in Riau as follows:⁴⁰⁷

Lokalisasi are usually established as gated or closed communities consisting of multiple brothels each run by a different pimp (*germo*) or madam (*mamasan* or *mami*). Each brothel houses a number of women, who live full time on the premises...*Lokalisasi* are often regulated by local police and/or army officials, and the industry is managed by financial interests that involve members of the Indonesian military, local government, and local and foreign businesses. In contrast, unofficial brothels are often subject to police harassment and official clamp-downs. In the (Riau) islands, the local authorities and the military have been active players in all parts of the industry.

“SEX WORKERS ARE ONE OF THE SOCIAL GROUPS LEAST PROTECTED BY LAW, MOST VIOLATED BY LAW ENFORCEMENT AGENCIES AND MOST SERIOUSLY DISCRIMINATED BY THE GREATER SOCIETY.”

Mahy describes a *lokalisasi* in Kalimantan where a mining company collaborates with the local government to provide STI clinics in two *lokalisasi*. These clinics are not available to sex workers operating at bars outside the *lokalisasi*. The *lokalisasi* structure is described as follows:⁴⁰⁸

Each time a sex worker receives a client, she must pay a fee to her brothel owner...

In the *lokalisasi*, the sex workers must pay weekly and monthly fees to the complex coordinators to fund the security officers. There are also periodic payments made to the Village (*Desa*) and Sub-District (*Kecamatan*) administrations. Local police also receive periodic payments from the complexes to ensure that they are willing to provide security if *lokalisasi* staff cannot handle a situation...

On arrival...[the] new sex worker must register with the complex coordinator. She is made to sign a declaration stating that she has entered into the complex of her own free will and is not being forced by anyone. The registration is then passed onto the village office where a register of current sex workers is kept...The security system in the complex is managed by the coordinator (the *Ketua RT* in Kampung Kajang). He organises the rosters for the security staff, rubbish management in the complex and the registration of new sex workers. He is also the one who mostly liaises with [the mining company] and *Puskesmas* [community health clinic] staff.

It is clear that the *lokalisasi* systems provide a reliable security system for the sex workers...The security system does, however, represent a check on the sex workers' freedom of movement. In order to leave during the day...they must first ask permission from their *Wisma* (brothel) owner, and then report to the security post and pay a fee

406 Surtees R., (2004) Traditional and Emergent Sex Work in Urban Indonesia, *Intersections: Gender, History and Culture in the Asian context*, Issue 10.

407 Ford M., Lyons L., (2007) *Making the most of what you've got: Sex Work and Class Mobility in the Riau Islands*, Wollongong: University of Wollongong, pp.4-5.

408 Mahy P., (2009) *A Report on Sex Workers and HIV/AIDS Prevention for PT Kaltim Prima Coal, East Kalimantan, Indonesia*. Canberra: ANU, pp.17-19.

of Rp 5000 before leaving....Security is also the reason that many prefer to live and work in the *lokalisasi* rather than in individual bars.

[The mining company] has set up an STI clinic that is staffed for a few hours each week with Health Clinic (*Puskesmas*) staff. The sex workers are on a rotational roster for cervical swab tests and are provided with medications and free condoms.

The rise of populist Islamic parties has resulted in the closure of some *lokalisasi* by conservative local councils. In 2010, the Governor of East Java Province called on the Surabaya city administration to close the Dolly *lokalisasi* complex, which is Indonesia's largest, on the grounds that it contributes to HIV spread.⁴⁰⁹ The National AIDS Commission has reported a concern that local government by-laws that have closed down *lokalisasi* have resulted in the spread of street-based sex work, making it more difficult for local health departments to provide services for STI control and condom promotion.⁴¹⁰

The Padang city public order agency (Satpol PP) arrested 52 women suspected of being sex workers during raids on a sports stadium and entertainment clubs in 2012. The raids were sought to enforce an anti-vice municipal regulation. Women found to be sex workers were detained in a social rehabilitation center.⁴¹¹

The Community Legal Aid Institute (LBHM) and the Indonesian national sex worker organization (OPSI) provided the following summary of legal and law enforcement issues affecting sex workers in the consultation process organized for this report:⁴¹²

The Indonesian Constitution guarantees the right of all people to the enjoyment of the highest attainable standard of health, including sexual and reproductive health, HIV prevention and access to treatment for HIV/AIDS. Human rights apply to all people, including female, male, and transgender people who sell sex and people living with HIV. Governments have a responsibility to promote, protect and fulfill these rights by putting in place relevant laws, policies and programmes. Sex workers are one of the social groups least protected by law, most violated by law enforcement agencies and most seriously discriminated by the greater society.

In Indonesia, laws, policies and practices against sex workers limit their right to basic social economic rights such as access to education, health care, housing, banking facilities, inheritance, and property. Access to legal services and protection are limited. They may also lack identification cards to establish citizenship, as a result of migration or other unfavorable regulations, which can lead to exclusion of sex workers from health and social services. Activities associated with commercial sex are claimed as 'morally' illegal. As a result, areas where sex work activities take place are surrounded by many criminal activities such as criminal gangs, gambling, and extortion. This condition negatively impacts the health, safety, and the fulfillment of human rights of sex workers.

The enactment of *Act No. 32, 2004 on Regional Government* has led to the problem associated with the making of regional regulations that conflict with national regulations. Such conflicting regional regulations are often endorsed by the Regional People's Representative Council through the Minister of Internal Affairs. The need to adjust regional regulations to ensure consistency with national regulations has been

409 Close Dolly red light district: East Java Governor, *Jakarta Post*, 22 October 2010.

410 National AIDS Commission (Indonesia) (2010) *National Composite Policy Index Survey: Indonesia*.

411 More than 50 Sex Worker Suspects Arrested in Padang, *Jakarta Globe*, 18 May 2012.

412 Submission to UNDP Regional Office, January 2012.

highlighted by the Constitutional Court's Chairman Mahfud MD, as conveyed in an online media.⁴¹³

Many regional regulations prohibit the practice of selling sex. Such prohibition occurs because government officials stigmatize sex workers and sex work activities by associating them with the issue of morality. One of the obvious examples of stigma generated by the Government is the use of the term 'immoral woman' for female sex workers by the Social Ministry.

...As stated above, sex work activities are not criminalized by the Indonesian Penal Code. However, in several areas in Indonesia, regional public order regulations penalize sex work activities. Each local government has a special public order officer unit (Satuan Polisi Pamong Praja or 'Satpol PP').⁴¹⁴ Satpol PP's main task is to enforce the regional regulation in their local area.

On a daily basis, it is officers of Satpol PP who authorize the arrest of anyone who violates the regional regulation, which includes violation of the prohibition of sex work activities. Satpol PP usually conduct raids [on] a place that is allegedly used to conduct sex work activities. When sex workers are raided, there are several schemes that will be undertaken. First, sex workers will be put in a shelter to be processed administratively. After they are processed, sex workers who have a family can be redeemed at a cost of IDR 100,000 to IDR 300,000. Second, sex workers who had been processed administratively, with no one to redeem her/him, will be returned to their hometown. Third, if their hometown is not in the surrounding area of Jakarta, they will be put in Social Rehabilitation Center.

The approach by police is different from that of Satpol PP. As the police are not responsible for enforcing the Regional Regulation, they are usually able to benefit from policing sex workers. For example, in Jakarta, almost every night police patrol... the area where sex workers work. The police patrol is meant to protect the area from crime. However, the police use their role in protection of safety to extort money from the clients of sex workers. The police also exploit sex workers due to their lack of legal awareness.

The relationships built between sex workers, their clients, and the police officers are different in each area. In East Jakarta [for example], the police receive extra payment from sex workers to keep the surrounding area safe and to protect sex workers from violence from their clients.

Sex workers are also vulnerable to violence from clients, the local community, or even their own pimp or madam. Their vulnerability leads to a problem of reluctance [to] file complaints with the police [even] if they suffer from violence. This is mostly caused by their lack of legal awareness and bad experiences of their friends when filing complaints with the police. A case of violence against a sex worker that the police did not handle properly is Ms. Shakira's case, which arose in 2011. Shakira was shot dead by an unknown man in Taman Lawang. The police did not seem to care about this case, even though the coalition of NGOs pushed them to solve [it] immediately.⁴¹⁵

413 See: <http://www.rribandaaceh.net/berita/mk-qanun-jinayat-harus-sinkron-dengan-uu/>

414 Article 6 of Government Regulation No. 6 Year 2010 Regarding Satuan Polisi Pamong Praja regulates that Satpol PP has the authority to conduct non-judicial enforcement against Regional Regulation's perpetrators.

415 See e.g.,: <http://m.tribunnews.com/2011/03/10/pria-misterius-tembak-tiga-waria-taman-lawang> ,

100% CUP

100% CUP approaches have been implemented at some sex work localities since the 1990s and the 100% CUP approach is supported by the National AIDS Strategy and Plan. In 1996, the Health Department issued a circular to provincial health departments to promote condom use in all *lokalisasi*. However, national scale-up of the programme has been limited. In 2006, it was reported that few municipalities were moving forward with local legislation to operationalize the programme.⁴¹⁶ Although 39 provinces, districts and municipalities have HIV Prevention Regulations in place, few provide any detail as to how 100% CUP will be implemented or monitored in practice.⁴¹⁷ Indonesia's Global Fund Round 9 proposal included a programme of condom promotion among sex workers backed by local regulations, with the aim that regular condom use becomes the norm at sex work sites in forty-six districts.⁴¹⁸

A study conducted by the USAID Health Policy Initiative examined factors that determined willingness to implement the 100% CUP in Jakarta.⁴¹⁹ Reasons for not implementing the CUP were stigma affecting the views of local policy makers and the differing beliefs and values of legislators and programme staff on the meaning of 'condom promotion'. The researchers found that opponents to the CUP felt that the policy would encourage extra-marital sex, which is considered immoral. The study also identified that some local officials who profit from the licensing of entertainment establishments may fear loss of income if the 100% CUP in effect legitimizes sex work.⁴²⁰

6.3.3 Efforts to improve the legal environment

The Indonesian national sex worker organization (Organisasi Pekerja Seks Indonesia (OPSI)) represents the interests of sex workers to advocate for law reform and input to policy development through the National AIDS Commission and other forums at the national level. The President of Indonesia has acknowledged the importance sex workers as partners in the national HIV response, and a sex worker was included in the national delegation to the UN General Assembly Special Session on HIV/AIDS in 2011.

Indonesia's National AIDS Commission has provided training for police on human rights, and on HIV and sex work.

<http://www.republika.co.id/berita/breaking-news/metropolitan/11/03/10/168402-shakira-venus-dan-astrid-ditembak-di-taman-lawang>, <http://suaramerdeka.com/v1/index.php/read/news/2011/03/10/79844>

416 Spratt K. (2007) *Implementing 100% Condom Use Policies in Indonesia: A Case Study of Two Districts in Jakarta*, USAID/Health Policy Initiative, p.1.

417 <http://edukasi.kompasiana.com/2010/11/08/'memerangi'-aids-yang-tidak-konkret-di-provinsi-maluku/>; <http://www.meraukepos.com/2010/11/perda-aids-merauke-hanya-menembak-psk.html>; <http://edukasi.kompasiana.com/2010/10/26/penanggulangan-aids-di-yogyakarta-menunggu-perda/>

418 *CCM Indonesia Global Fund Round 9 HIV/AIDS Proposal* p.25.

419 Spratt K. (2007) *op cit.*

420 *Ibid.*, p.12.

6.4 Lao PDR

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.4.1 Laws

The penalty under the *Penal Code* for engaging in sex work, or assisting a person to engage in sex work, is three months to one year of imprisonment or re-education with deprivation of liberty and a fine.⁴²¹ Adultery is also illegal and carries the same penalty as engaging in sex work.⁴²²

The *HIV/AIDS Law 2010*:

- states the obligation to “improve advocacy and education on HIV” among most-at-risk populations (including sex workers);⁴²³
- provides legal protections from discrimination and stigmatization to people living with HIV and “affected people”;⁴²⁴
- encourages monogamy, the use of condoms or “other protective measures” to avoid sexual transmission of HIV;⁴²⁵
- provides that everyone has the right to voluntary counselling and testing for HIV, and test results should be kept confidential, unless otherwise required by law;⁴²⁶
- provides that citizens, aliens, foreigners and people with no nationality residing in Lao PDR have rights to information on HIV prevention;⁴²⁷
- provides that the health sector’s role includes to carry out surveys, monitoring, data collection and analysis in order to report on HIV trends among sex workers and other most-at-risk populations, and that findings should inform planning.⁴²⁸

6.4.2 Law enforcement practices

Rapid economic development has spurred growth of beer shops where sex is sold to civil servants, police, businessmen, teachers, coalmine workers, foreigners and local villagers. Research has documented the impact of the growth of a cash economy on traditionally isolated farming communities of Luang Namtha Province, where the sex trade involves

421 Article 122.

422 Article 117.

423 Article 14.

424 Article 34.

425 Article 15.

426 Article 18.

427 Article 32.

428 Article 28.

young, poorly educated Khmou women providing sexual services in entertainment places.⁴²⁹

Thatsaphone conducted a survey of 16 female workers at beer shops in Vientiane. The sex workers reported that police sometimes asked for sex without payment, threatened and verbally abused them.⁴³⁰

In addition to women and girls providing sexual services in entertainment establishments, there is also a subpopulation of transgender (*kathoey*) sex workers.⁴³¹

Doussantousse and colleagues conducted a study of sexual service providers in 2007-2008. This study involved 101 women from 12 different ethnicities and 16 provinces who worked in beer shops that provided sexual services to men. In relation to Bokeo Province, the study found that respondents were not pressured to go with clients against their will, unless the clients were police (uniformed people).⁴³² In Sekong Province, the study found that identification papers are an issue for sex workers living away from their province of origin:

Respondents who have arrived from another province have to pay the police (local authorities) a monthly residence tax of 50,000 kip. Two respondents reported having to pay 100,000 kip because they had no papers. In the past, one respondent related, the mother could arrange the papers, but these days the papers must be issued in the district of birth. This respondent preferred to pay twice the usual rate for not having papers, as officials write 'sao bolikan' on the papers; in this way the SS's family will find out what she does for a living.⁴³³

Sene-Asa describes difficulties faced by sex workers who lack local residency permits.⁴³⁴

Certain [garment girls in prostitution] mentioned experiencing difficulties with the village authorities as they did not have the correct papers to live there. For instance, for the special events that mark the National Day—national meetings, international meetings—the village authorities check in every household and in beer shops. Some [garment girls in prostitution] in beer bars are fined or detained in the village office if they did not have the permit papers.

The Ministry of Health acknowledges that there are a growing number of sex workers. Condom promotion to sex workers and their clients is a priority of the Ministry. The Ministry piloted a 100% CUP site in 2003 and is scaling up the programme. The programme works with provincial administrative and health authorities, governors, the police, sex workers, and the owners and managers of sex establishments in each province. In a 2008 review, consultants to UNFPA found that there was a lack of clear implementing rules and regulations for condom programming. Regulations on the access to STI services of mobile population groups are in place but these did not apply to sex workers.

429 Doussantousse S. (2011) An expanding sexual economy along National Route 3 in Luang Namtha Province, Lao PDR. *Cult Health Sex*:13, S2, S279-291.

430 Thatsaphone S. (2006) *Sexual Violence Against Service Women in Vientiane Capital, Lao PDR* (Thesis), Mahidol University, p.78.

431 Doussantousse S., Keovongchith B. *Male Sexual Health: Kathoeyes in the Lao PDR, South East Asia - Exploring a gender minority*, Canberra: Australian National University Workshop paper.

432 Doussantousse S. (2008) *Why you? Qualitative survey on sexual service providers in five provinces of Lao PDR: Bokeo, Luang Namtha, Savannakhet, Sekong, Champassak*. Norwegian Church Aid, Unpublished report, p.39.

433 Ibid., p.57.

434 Sene-Asa O. (2007) *The transition of garment factory girls into prostitution in Lao*, Geneva: Graduate Institute of Development Studies.

The current condom policies are very limited in terms of policy formulation and implementation...[T]hough the 100% CUP is present, the corresponding regulations to enact such policy are absent.⁴³⁵

Migrant sex workers in Lao PDR

The following extracts from an earlier study by Doussantousse and colleagues describe the effect of law enforcement on Vietnamese women working in the border towns of Sepone and Pakse:

Sepone is near the Vietnamese border. The venues are less sophisticated than those in Pakse, and attract women who want to do sex-work. Despite a District Police campaign against sex work, the activities persist. A few maintain the pretence of massage or hair styling. But inevitably if the venue advertises karaoke they generally have lots of bedrooms nearby. Places where women live are the places where they work...After the police sweep and campaign, the numbers dropped dramatically then gradually returned to normal.⁴³⁶

There have been no campaigns like the ones in Sepone against [sex workers] in Pakse. As long as they are legally registered [as residents] and pay taxes and fees, they can carry out their trade and many have police as clients. The [sex workers] report that Lao police are polite...⁴³⁷

Sepone's districts campaign against prostitution and other 'anti-social behaviour' such as drinking; fighting focused on young illegal migrants and resulted in the capture of least 11 Vietnamese women who were sent back home because of prostitution. These women were turned over to Vietnamese officials and punished by Vietnamese law...⁴³⁸

The situation is radically different between Laos and Vietnam as far as law enforcement is concerned. Lao people and authorities turn a blind eye to the Vietnamese women as long as there is no disturbance to the social environment...Lao officials are pragmatic, believing that these women provide a service to the community and are merely feeding their families and therefore looking after the welfare and future of children. It seems that the only Lao campaign against [sex workers] was a face-saving activity which was initiated after pressure from Vietnam when a police officer found his sister had been 'forced' into [sex work]. No action was taken against a Lao [sex worker] at the time or since.⁴³⁹

The population of migrant sex workers is growing, particularly near the Thai border. Souksavanh, Duangprasert and Calabria studied the vulnerability of undocumented sex workers in Lao PDR. They describe 'beer bar girls'; some, but not all, beer bar girls provide sexual services.⁴⁴⁰ Drinking establishments are policed and may be closed if found to be providing sexual services. They found that HIV risks faced by undocumented sex workers are correlated with low education, limited access to information on HIV, STIs and condoms, illegal status and inadequate treatment of STIs.

435 Calica C., et al (2008) *Assessment of Condom Programming in Lao PDR*, Vientiane: Ministry of Health and UNFPA, p.62.

436 Doussantousse S. et al. (2006) *Accidents of Life: A study of Vietnamese women in Lao PDR*, Nordic Assistance to Lao, p.9.

437 Ibid., p.26.

438 Ibid., p.14.

439 Ibid., pp.14-15.

440 Souksavanh O., Duangprasert S., Calabria M. (2000) *Hidden sex workers in Lao PDR*, *Int Conf AIDS*. Jul 9-14, 2000; 13: abstract no. WeOrE585.

6.4.3 Efforts to improve the legal environment

Civil society was involved in development of the HIV/AIDS Law. The government is working to improve the process for registering non-government associations. The *National HIV/AIDS Strategic Plan 2011-2015* states a commitment to human rights.⁴⁴¹

The National AIDS Policy recognises the intimate link between HIV/AIDS and human rights. People who are most at risk of HIV infection are often the most difficult to reach because commercial sex work and drug use are illegal, homosexuality remains a social taboo and drives men who have sex with men underground and trafficking is problematic to track effectively. The NSP and the National AIDS Policy mirror the constitution in taking universal human rights and the dignity of all Lao people, including their sexual and reproductive rights, as guiding principles. There should be no discrimination on the basis of gender, disease status, sexual behaviour or sexual orientation. HIV testing without prior informed consent is never acceptable (unless anonymously unlinked for screening purposes) and it is essential that every HIV test result remains confidential.

6.5 Malaysia

Not Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.5.1 Laws

Although the *Penal Code* does not criminalize the act of sex work in private, state-level *sharia* law operates to criminalize Muslim citizens who engage in sex work. There are two types of *sharia* offences that can be applied against sex workers and their clients: *zina*, which applies to sex between unmarried persons, and *khalwat*, which is a less serious offence that prohibits Muslims from being alone with someone of the opposite sex other than their spouse or relative.⁴⁴²

The *Minor Offences Act 1955* provides that every prostitute behaving in a disorderly or indecent manner in or near any public road or in any place of public resort shall be deemed to be an idle and disorderly person and shall be liable to a fine not exceeding one hundred ringgit or to imprisonment for a term not exceeding one month or to both.⁴⁴³

441 National Committee for the Control of AIDS, Lao PDR (2010), *National Strategic and Action Plan on HIV/AIDS/STI 2011-2015*, p.19.

442 Lim L. (1998), *The Sex Sector: The economic and social bases of prostitution in Southeast Asia*, Geneva: International Labour Office, p.92.

443 Section 27(a).

The *Penal Code* provides offences for:

- procuring a person with the intention of employing a person for the purpose of prostitution.⁴⁴⁴
- living on the earnings of the prostitution of another person.⁴⁴⁵
- soliciting for the purpose of prostitution;⁴⁴⁶
- keeping a brothel;⁴⁴⁷
- public nuisance.⁴⁴⁸

The *Penal Code* also provides offences for a negligent act⁴⁴⁹ or a 'malignant' act,⁴⁵⁰ which is likely to spread infection of a dangerous disease. The *Prevention and Control of Infectious Diseases Act 1988* provides that it is an offence for a person who knows or has reason to believe that they have HIV to do any act which they know or have reason to believe is likely to lead to the spread of HIV.⁴⁵¹

Homosexuality is criminalized by the *Penal Code*.⁴⁵²

The Federal Territories and some states (e.g., Kelantan, Kedah and Melaka) have enacted *sharia* laws that specifically criminalize prostitution. The Muslim Law Enactments of other states provide for illicit intercourse and *khalwat*, but may not define prostitution as a separate offence. In relation to the Federal Territories, the *Syariah Criminal Offences (Federal Territories) Act 1977* provides that it is an offence for a woman to prostitute herself. Penalties are a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes.⁴⁵³ The Act also provides an offence for indecent behavior in a public place.

By-laws of the Federal Territory of Kuala Lumpur prohibit beauty and health establishments from employing sex workers or allowing entry to or employment of persons with HIV.⁴⁵⁴

6.5.2 Law enforcement practices

The PT Foundation (formerly known as Pink Triangle) has reported that health promotion efforts are frustrated by police practices:

The Ministry of Health pays for us to have peer outreach workers to distribute condoms. But if police find people with more than three condoms then they arrest the sex workers on suspicion of solicitation...when (the sex workers) come out of detention they avoid contact with the outreach workers for fear of re-arrest. It is a waste of government resources.⁴⁵⁵

444 Section 372 (1).

445 Section 372A.

446 Section 372B.

447 Section 373.

448 Section 268.

449 Section 269.

450 Section 270.

451 Section 12(2).

452 Sections 377A, 377D.

453 Section 21.

454 *Beauty and Health Establishments (Federal Territory of Kuala Lumpur) By-laws 2003*.

455 Global Commission on HIV and the Law (2011) *Report of the Asia Pacific Regional Dialogue of the Global*

There are periodic police crackdowns on brothels and other venues where sex work takes place. In 2009-2010, the police raided numerous venues as part of a national anti-prostitution campaign, which may have been partly in response to pressure from the USA to take a more proactive approach to prevention of human trafficking.⁴⁵⁶ It was reported that the police conducted 13,283 raids on sex work venues in 2010, and arrested 10,825 foreign women, 5,453 of whom were Chinese nationals, 1,597 were Thais and 1,270 were Indonesians.⁴⁵⁷

In 2011, there were press reports of police abuses of sex workers detained during a raid in Penang State. Police reportedly marked the heads and chests of the sex workers with an X, and shackled the women to each other with a long chain. The 30 detained sex workers were reportedly from Viet Nam and China, working in a 'high-end' club.⁴⁵⁸ There have also been reports of sex workers from India being arrested in police raids for visa violations.⁴⁵⁹

Transgender (*mak nyah*) sex workers are highly vulnerable to police abuses and are harassed by religious authorities due to prohibitions against cross-dressing under Islamic laws. Research conducted in 2007 based on interviews with 15 *mak nyah* made the following findings:

Harassment and raids from the police or Islamic authority were experienced by the *mak nyah* sex workers in all the five towns in this survey. *Mak nyah* carrying more than three condoms could be charged for prostitution. This had negative effects on the practice of safe sex and HIV prevention work.

In some towns, the raids were also conducted by *Ikatan Relawan Rakyat* or RELA (People's Volunteer Corps) and *Majlis Perbandaran* (Town Council). One respondent mentioned that the discrimination against *mak nyah* by the police, Islamic authority, People's Volunteer Corps and Town Council was 100%; 'Semua (All) KO, not OK-lah. 100% discrimination'. She mentioned People's Volunteer Corps and Town Council to be the worst as they frequently broke into their houses...They were caught for sex work, cross-dressing and indecent behaviour (which was up to the discretion of the police), besides offences like possession of drugs, pick-pocketing and thefts...some enforcement officers had asked for bribes and/or even sexual favours from them. In some towns, when the respondents were brought back to the police station, they were asked to strip in front of male officers and other men...Some *mak nyah* were also beaten up by the police.⁴⁶⁰

A study conducted in 2011 that mapped the impact of laws, policies and enforcement practices on sex workers drew the following conclusions:⁴⁶¹

Commission on HIV and the Law, Bangkok: UNDP, p.10. See also: Ding J. (2009) *Efforts to curb HIV spread thwarted*, 2 December 2009, <http://www.thenutgraph.com/efforts-to-curb-hiv-spread-thwarted/>

456 See: Asia Pacific Network of Sex Workers (2010), *Brothel broken: brothel raids in Kuala Lumpur*. Available at www.plri.org/resource/brothel-broken-brothel-raids-kuala-lumpur

457 Illegal gambling syndicates lose \$586 million this year thanks to police raids, *The Star / Asia News Network*, 30 December 2010; and see e.g., 'Happy ending' massage brothel raid *Malay Mail* 20 June 2010 (eight sex workers from China and Thailand arrested for visa violations);

458 Associated Press (2011) Malaysia police slammed for cattle-branding women, *Jakarta Post*, 4 June 2011.

459 Police net 17 Indian women, *Times of India*, 7 July 2003.

460 Yik Koon Teh (2008) HIV-related needs for safety among male-to-female transsexuals (*mak nyah*) in *Malaysia Journal of Social Aspects of HIV/AIDS* 5(4), 178-185, at p.182.

461 Overs C., Hawkins K., Abdullah F., Moody N., Slamah K. and Kuala Lumpur Legal Aid Centre (2011) *Sex work in Malaysia: Mapping the impact of law, policy and enforcement practices*, Paulo Longo Research Initiative. Michael Kirby Centre for Public Health and Human Rights, Monash University (Unpublished draft)

From the sex workers['] perspective, the combined effect of new anti-prostitution and anti-trafficking law and vigorous enforcement by ill disciplined, underpaid or overzealous police, forces Malaysian sex workers into less safe workplaces, creates a market for middlemen and traps the poorest sex workers into cycles of poverty, imprisonment and violence.

The sex industry has changed its way of operating in Malaysia reflecting the trends away from brothel based sex work to entertainment venue and very hidden sex work. Women and transgenders have become more dependent on 'pimps' and corrupt police as a direct result of law and enforcement that has reshaped the sex industry in Malaysia.⁴⁶²

ID cards are necessary to exercise a range of rights. Many sex workers do not have a card. This acts as a barrier to education, banking and housing so limits economic opportunities and restricts access to health services...⁴⁶³

There was some disagreement in both groups and individual interviews about the extent to which religious police take bribes but there was absolute consensus that all civil police do.

Multiple agencies consecutively enforce sex work law in Malaysia. Civil vice and general police, immigration authorities, municipal officers and religious police all enforce laws against adult sex workers and drug police also frequently play a role. This multiple agency enforcement takes place in an environment where police corruption is clearly rife.

Violence against sex workers is endemic. It is perpetuated by members of the public, police, some clients, gangsters and sex business operators...

There are few options for any sex workers to resist violence because both the structure and content of both civil criminal law and Syariah law function to discourage complaints. Some NGO workers said they had known sex workers to try to report violence to police but none knew of successful attempts...

Malaysian authorities have claimed that it is hard to prosecute offenders of violence against sex workers because of the prevalent negative attitude to sex workers in the wider community. HIV positive sex workers of all genders are also particularly likely to face additional violence...⁴⁶⁴

It is increasingly accepted that sex workers engagement in unlawful and/or immoral activities means they are far less likely to identify themselves as sex workers to facilitate HIV and STI screening. Legal persecution, stigma, drugs and poverty all appear to play roles in driving sex work underground and making it difficult for sex workers to access crucial education, consensual medical services, counselling and if infected, life prolonging and enhancing treatment that also reduces HIV transmission.

"TRANSGENDER (MAK NYAH) SEX WORKERS ARE HIGHLY VULNERABLE TO POLICE ABUSES AND ARE HARASSED BY RELIGIOUS AUTHORITIES DUE TO PROHIBITIONS AGAINST CROSS-DRESSING UNDER ISLAMIC LAWS."

462 Ibid., p.6

463 Ibid., p.7.

464 Ibid., p.25.

Several workers in all groups raised the issue of stigma health care settings, describing a lack of specialised sexual reproductive health services for female sex workers...⁴⁶⁵

Sex workers clearly believe that criminal law as well as stigmatisation by society creates an environment in which exploitation and abuse are possible and HIV prevention such as condom promotion and HIV testing are limited.

The possibility of detention and accusations of prostitution by law enforcement personnel for the possession of more than three condoms at any one time during raids clearly deters female and transgender sex workers from having them easily available.

Additionally HIV education and other prevention such as condoms and STI services are far less likely to be effective in an environment that isn't conducive to safe practices. The confiscation and use of condoms as evidence is not denied by police...⁴⁶⁶

Sex workers in this research expressed great fear, and in many cases resentment, of Shariah law and the police that enforce it. The reasons for this...included the harshness and arbitrary nature of the penalties and the moralistic lecturing and haranguing that accompanies them, which was reinforced by NGO interviewees.

Several also mentioned being particularly offended by the hypocrisy of the same enforcers using their services or sexually harassing them. Indonesian migrant sex workers and transgender in particular complained about religious police. It seems fair to say that the moral and religious dimension of the actions of Islamic police take an extra psychological toll on sex workers.⁴⁶⁷

6.5.3 Efforts to improve the legal environment

A dedicated centre for sex workers, the 'SW Centre', has been established in Chow Kit, Kuala Lumpur, providing HIV prevention education, a drop-in centre, community outreach and legal services for sex workers. The SW Centre is run by the PT Foundation (formerly known as Pink Triangle) and supported by the Ministry of Women, Family and Community Development and the Malaysian Aids Council.⁴⁶⁸ The Legal Clinic operated by the Bar Council (in cooperation with PT Foundation and the Malaysian AIDS Council) provides legal advice and representation to sex workers who have experienced legal problems such as police abuses, and conducts legal rights awareness activities for sex workers.

465 *Ibid.*, p.26.

466 *Ibid.*, p.27.

467 *Ibid.*, p.29.

468 Leong J. (2011) *Legal Awareness Week - Report on Sex Workers Dialogue in Collaboration with Pink Triangle and KL Legal Aid Centre*. Kuala Lumpur Legal Aid Centre.

6.6 Myanmar

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.6.1 Laws

The *Suppression of Prostitution Act 1949* provides offences for:

- soliciting;⁴⁶⁹
- living on the earnings of prostitution including profiting in any way from sex work, whether that is one's own prostitution or the prostitution of others;⁴⁷⁰
- procuring persons to engage in prostitution;⁴⁷¹
- owning or managing a brothel, or renting premises for use as a brothel;⁴⁷²
- aiding and abetting prostitution.

The *Suppression of Prostitution Act 1949* provides heavy penalties for soliciting. Penalties may include imprisonment for between one year and three years, and female sex workers may be detained in a "prescribed centre".⁴⁷³

The *Law Amending the Suppression of Prostitution Act 1949* was enacted in 1998 to broaden the definition of brothel to include any place used habitually for sex work. This was in response to new sex work businesses being established at massage parlours and beauty parlours.

Public order offences that may be applied to sex workers include Section 268 of the *Penal Code* (public nuisance) and Section 30 of the *Rangoon Police Act 1899* (loitering). An order may be made requiring a sex worker to stay away from specified areas and to attend the police station each day for a given period. This is authorized by the *Code of Criminal Procedure* (Chapter 11).

There is no law against buying sex. However, the loitering offence could be used against clients.

Homosexuality is criminalized by *Penal Code*, Section 377.

469 Section 3.

470 Overs C., Win K., Hawkins K., Mynt W., Shein W. (2011) *Sex work in Myanmar: the impact of law, policy and enforcement practices*, Paulo Longo Research Initiative. Michael Kirby Centre for Public Health and Human Rights, Monash University, (unpublished draft) p.14.

471 Section 12.

472 Section 8.

473 Section 3.

The government issued an Administrative Order in 2000 directing police not to use condoms as evidence in prosecutions of sex workers.⁴⁷⁴

6.6.2 Law enforcement practices

Sex work occurs in increasingly diverse settings. Law enforcement efforts have led to closure of most brothels over the last decade and continue to target street-based work. An independent team reported the following to the Ministry of Health in 2005:

The law and its enforcement greatly influence the organization of sex work. Over recent years, the number of brothels has decreased and their operations are more transient and clandestine, to avoid police action. As a result, there is an increasing shift from brothel-based to indirect sex work, and most commercial sexual services in Myanmar are now provided in informal settings such as karaoke bars, nightclubs, hotels and guest-houses. Our impression is that most sex workers have chosen this occupation, as part of their limited livelihood options. All types of sex workers are extremely mobile, moving regularly between establishments and townships, and frequently switching categories. This implies a relative freedom of movement across geographical boundaries and across different sex work settings. This also signals some ability to negotiate terms of contract with entertainment establishment owners. We have not received reports that trafficking is a major issue in Myanmar, though prostitution of under age girls is obviously practiced.⁴⁷⁵

In 2008 it was reported that numerous brothels based in guesthouses were appearing in Yangon. The police and local authorities license guesthouses. A licensed guesthouse owner generally pays neighbourhood police annual 'levies' ranging from 300,000 kyat (\$250) to 1 million kyat (\$800). The money buys advance warnings from the local police if a raid is planned by superior officers.⁴⁷⁶

A study on the impact of law, policy and enforcement practices on sex work, which drew from interviews conducted in Yangon, Mandalay and Patheingyi in 2011, made the following observations:

Female and transgender sex workers in Myanmar are subject to extortion, arrest and incarceration which is continual and systematic. Female sex workers can reduce their chances of arrest by working in a venue for a boss who provides protection from police but who may exploit or abuse them. Transgender sex workers do not have that option and are therefore even more exposed to the cycle of extortion, arrest and jail.

Sex workers['] HIV vulnerability is driven by lack of access to safe workplaces and lack of access to services. All health care other than ARVs for HIV and TB antibiotics must be paid for so poverty is a significant barrier to accessing services. It appears to have replaced stigma as the main barrier to health services, although lack of confidentiality remains an issue in government services. In this context the key legal barriers are the laws and enforcement procedures that prevent sex workers from earning, retaining and managing their money.

474 Order No.1048 (1/2000), issued by Police Brigadier Zaw Win, see: Khin Ninn Lwin (2010) *Burmese sex workers dare not carry condom, fear of arrest*. <http://moemaka.org/index.php/current/news-brief/81-news/451-burmese-sex-workers-dare-not-carry-condom-fear-of-arrest>.

475 Ministry of Health & WHO (2005), *Review of the 100% Targeted Condom Promotion Programme in Myanmar*, p.12.

476 Aung Thet Wine, (2008) Sex and the (Burmese) City, *The Irrawaddy*, 16(7), July 2008.

Violence also contributes to vulnerability. Rape and violence associated with arrest drives sex workers into various forms of employment where they are less vulnerable to police violence but in which none of the protections and rights of legal workers apply. Unprotected sex, when it happens, occurs at the behest of police, clients or sex venue bosses whose power over sex workers is entrenched by the law and by a justice system that sex workers say is indifferent to justice and human rights...⁴⁷⁷

Sex workers who do not have identification cards have difficulty accessing services, travelling, securing accommodation and changing occupation. Citizenship is a fraught issue in Myanmar where restrictions on the movement of people and state scrutiny of all citizens are famously in place...⁴⁷⁸

The law is ostensibly vigorously enforced. Police are clearly under instructions to operate a zero tolerance policy towards brothels and street work and there is some evidence that they have quotas of arrests to fill. There are times when sex workers cannot bribe their way out of arrest but can get charges reduced by informing on other sex workers or third parties leading to their arrest as well...⁴⁷⁹

This facade of vigorous enforcement makes space for widespread corruption simply because jail sentences of one to five years for sex work place a powerful trump card in the hands of poor and ill disciplined police. However, as well as the corruption and bribes being an alternative to incarceration in Myanmar[,] female and transgender sex workers are also arrested and jailed. Only the frequency of arrest and incarceration and the cost of extortion seem to vary in sex workers' stories.

Crucially, female sex workers' only way of reducing, but not eliminating, their chances of being arrested is to sell sex in a venue controlled by others who provide protection from police. This clearly creates a market for sex business operators – or 'pimps' as they are often called. Transgender sex workers do not have that option and are therefore even more exposed to the cycle of extortion, arrest and jail.

Law enforcement is linked to both lack of access to services and to lack of access to safe workplaces.

Unprotected sex, when it happens, occurs at the behest of police, clients or sex venue bosses whose power over sex workers is entrenched by the law and by a justice system that sex workers say is indifferent to justice and human rights.⁴⁸⁰

...Violence clearly emerged as routine and most sex workers experience it as a constant threat. It also contributes to vulnerability in a range of direct and indirect ways. For example rape presents a direct threat to all sex workers mental and physical health. Fear of violence motivates street sex workers to spend less time on the street.

“UNPROTECTED SEX, WHEN IT HAPPENS, OCCURS AT THE BEHEST OF POLICE, CLIENTS OR SEX VENUE BOSSES WHOSE POWER OVER SEX WORKERS IS ENTRENCHED BY THE LAW AND BY A JUSTICE SYSTEM THAT SEX WORKERS SAY IS INDIFFERENT TO JUSTICE AND HUMAN RIGHTS.”

477 Overs C., Win K., Hawkins K., Mynt W., Shein W. (2011) *op cit.*, p.6.

478 *Ibid.*, p.6.

479 *Ibid.*, p.30.

480 *Ibid.*, p.30.

Sex workers in many countries have talked about this reducing their opportunities to negotiate and Myanmar is no exception.⁴⁸¹

In 2011, the government announced a ban on massage parlours and restrictions on restaurants and karaoke lounges in the capital Naypyitaw. Restaurants and karaoke lounges were ordered to install transparent glass in their rooms and beauty parlours were required to install adequate lighting.⁴⁸²

It has been reported that compliance with the Order prohibiting use of condoms as evidence of sex work is inconsistent.⁴⁸³ There continue to be reports of police arresting sex workers who are found with condoms in their possession. A press report quoted a sex worker as follows:⁴⁸⁴

“We bribe local policemen so we can work. When other police come they call us and warn us that there will be a raid and to hide. We pay them a monthly fee between 30 – 50 US dollars, sometimes it’s 150 [US] dollars. We have to give them whatever they ask. I never carry condoms because if they see the condom they know that I am a sex worker.”

Interviews conducted at three sites in 2011 found that the practice of condom confiscation ‘has declined to different extents in each site... (but) has not been entirely eliminated.’⁴⁸⁵

A small-scale study of female sex workers conducted in Yangon in 2003 reported that one-third of the women in the study had previously been imprisoned for offences related to sex work (for a duration of 15 days to three years). Most sex workers reported having to pay money to police for protection.⁴⁸⁶ None of the sex workers were aware of the police order prohibiting use of condoms as evidence, and all were convinced that possession of condoms would result in prosecution and imprisonment.⁴⁸⁷

A behavioural surveillance survey conducted in 2008 found that 36 percent of female sex workers in Yangon and 37 percent in Mandalay gave money earned from their last client to a madam, pimp or police officer.⁴⁸⁸

According to Talikowski and Gillieatt:⁴⁸⁹

Most sex workers must pay protection money to some corrupted elements in the police force. This widespread acceptance of bribes comes as no surprise given the minimal wages of public servants. Bribes are paid in cash or goods, such as bags of rice. Interviewed women stated that they live in fear of being arrested and experience various forms of harassment from law enforcement officer. Sexual exploitation and violence perpetrated by police, often off duty, was also described by several of the women.

481 *Ibid.*, p.32.

482 Myanmar Cracks Down on Massage Parlors in Prostitution Curb Bid, *Huffington Post*, 21 March 2011.

483 Khin Ninn Lwin (2010), *op cit*.

484 Burmese Sex Workers Avoid Arrest with Bribes and not Carrying Condoms, *Asia Calling*, 29 August 2010

485 Overs C., Win K., Hawkins K., Mynt W., Shein W. (2011) *op cit.*, p.31.

486 Talikowski L., Gillieatt S. (2005), Female sex work in Yangon, Myanmar. *Sexual Health*, 2005(2), p.195.

487 *Ibid.*, p.198.

488 AIDS Data Hub (2010), *Sex work and HIV: Myanmar*, citing: Ministry of Health, Myanmar (2008) *Behavioural Surveillance Survey 2008, Injecting Drug Users and Female Sex Workers*, National AIDS Programme, July 2009.

489 Talikowski L., Gillieatt S (2005), p.196.

In 2010 there were press reports of sex workers arrested who were selling sex to the military.⁴⁹⁰ The 2006 review of the National AIDS Programme noted that in some localities the military are a major source of clients for sex workers.⁴⁹¹

A behavioural assessment is done with all new recruits in order to better understand and address risk behaviours. It was reported that young servicemen in isolated postings were especially vulnerable and at high risk to HIV, and were routinely clients of sex workers. For example, the presence of a military base near Padaung Township suggests a considerable client base for indirect and direct sex workers. It was reported that on occasion, a whole platoon of soldiers would have sex with one sex worker.

There are reports of police harassment of sex workers and police seeking payment of bribes to secure release of arrested sex workers.⁴⁹²

100% Targeted Condom Programme (TCP)

WHO's 2006 review of the National AIDS Programme described the 100% TCP as follows:⁴⁹³

The main activities include advocacy, training of township staff, formation of condom core groups, geo-social mapping, condom distribution and programme monitoring... The review teams were informed in several townships that the police force supports 100% TCP by active participation in the [condom core groups].

Sex workers undergo regular physical and serological check-ups, including [syphilis] testing. HIV testing is reported to be voluntary. They did not have to carry a card indicating whether they had complied with check-up requirements or the result of tests...

A key barrier to effective implementation of the programme is the continued disruption caused by police arrests of sex workers. INGOs reported that this happens particularly towards the end of the month when the police have to meet their monthly targets as part of the programme to control sex work. At that time, attendance by sex workers to drop-in centres declined. In one district, stakeholders and the divisional AIDS/STD officer reported that sex workers are harder to access now due to (a) the shift of sex work from brothels to other entertainment establishments and freelance work; and (b) the continual movement of sex workers due to police activity and migration. The divisional AIDS/STD officer estimated that consistent condom use in entertainment establishments was less than 50% in that state/division.

The 2005 review of the 100% TCP made the following observations:⁴⁹⁴

...the review team noted that it may be easier in the context of Myanmar to create an enabling environment for 100% condom use for indirect sex workers, such as karaoke singers and other entertainment girls, as their managers/brokers can be readily identified and reached. Reaching direct sex workers may be more difficult, especially in areas where police repression of sex work reaches high levels, as sex workers and their brokers go underground and become very hard to reach. Yet, direct sex workers often have the highest numbers of clients and should be the main focus

490 18 sex workers produced before Maungdaw Court, *Democracy for Burma*, 27 April 2010.

491 Ministry of Health & WHO (2006), Review of the Myanmar National AIDS Programme, New Delhi: WHO SEARO p.64.

492 Burma: For sex workers, a life of risks, *Inter Press Service*, 24 February 2010.

493 Ministry of Health & WHO (2006), *op cit*, pp. 50-51.

494 Ministry of Health & WHO (2006), *op cit*, p.20.

of HIV prevention efforts. In the absence of established brothels (which the team only identified in a few townships, and which are usually very transient), the only way to support direct sex workers to use condoms on all occasions may be through hotel and guest house owners/managers and their staff.

The 2010 UNGASS Country Report of the Ministry of Health stated:⁴⁹⁵

The Ministry of Health is in full support of prevention programmes for groups with high risk of HIV transmission. However, the law enforcement agencies in the areas where the services are provided are not always fully aware of prevention programmes. The 100% Targeted Condom Programme of the National AIDS Programme will continue to address this through advocacy with local authorities including law enforcement.

6.6.3 Efforts to improve the legal environment

The *Myanmar National Strategic Plan on HIV/AIDS 2011-2015*⁴⁹⁶ includes a specific commitment to the “enforcement of policy in which condom possession is not used as liability of sex work”.

The 100% TCP, UNFPA Myanmar and Myanmar Anti-Narcotics Association (MANA) have conducted police awareness training on HIV issues, including the right of sex workers to carry condoms.

Population Services International Myanmar Targeted Outreach Program (PSI TOP) conducts HIV programmes with sex workers in 19 cities. TOP includes interventions led by sex workers to address stigma and discrimination, community mobilization and the legal environment e.g., by discouraging police harassment of people who carry condoms and participating in the 2011 mapping of the legal environment for sex workers in three cities. TOP also provides clinical services, peer outreach, community building, and peer support groups.⁴⁹⁷

In 2010 a national network of female sex workers called Sex Workers in Myanmar (SWiM) was established. Nye Hmya Gyin is a project of SWiM, the Myanmar MSM Network and the Myanmar National Drug-users Network. The project commenced in 2012 and aims to facilitate access to justice for these communities by funding peer paralegals to provide legal advice and health information in Yangon. The project’s lawyer provides supervision to paralegals. The project also engages in advocacy on justice issues.

495 National AIDS Programme (2010) *UNGASS Country Progress Report 2010: Union of Myanmar*, Ministry of Health, Myanmar, p.33.

496 *Myanmar National Strategic Plan & Operational Plan on HIV and AIDS 2011-2015, (Concise)* p.35.

497 Ditmore M. (2011) *Spotlight on Prevention: A Holistic Approach to HIV Prevention Programming for Female Sex Workers*. AIDSTAR-One.

6.7 The Philippines⁴⁹⁸

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.7.1 Laws

Sex work and profiting from sex work are illegal under the *Revised Penal Code*. Vagrancy is an offence and Article 202(5) defines prostitutes to be vagrants. Soliciting for sex is also illegal as a form of vagrancy, which is defined to include pimping and loitering without lawful or justifiable purpose.⁴⁹⁹ Penalties for sex work under the vagrancy provision are up to 30 days imprisonment or a fine for a first offence, and up to 6 months imprisonment for repeat offenders. Article 201 of the *Revised Penal Code* covers immoral doctrines, obscene publications and exhibitions and indecent shows. Article 201 may be used by police to lay charges as a result of raiding entertainment establishments.

The *Anti-Trafficking in Persons Act of 2003* provides very broad definitions of ‘trafficking’. It is an offence to recruit, transport, transfer, harbour, provide, or receive a person by any means for the purpose of prostitution, or to maintain or hire a person to engage in prostitution.⁵⁰⁰

The *Philippine Sanitation Code* requires all massage parlour workers to have a health certificate issued by the local health authority.⁵⁰¹

Local municipal and city ordinances require HIV education, condom availability and STI testing and treatment of sex workers operating in licensed entertainment establishments (see examples in 4.7.2).

The *AIDS Prevention and Control Act 1998*⁵⁰² provides that compulsory HIV testing is unlawful and it is unlawful to discriminate against people living with HIV. However, there are no specific provisions to protect sex workers from discrimination.

498 The draft Philippine chapter was discussed at a consultation workshop conducted among members of the sex work community on 6 October 2011 in Pasig City. Facilitated by UNFPA, UNAIDS and UNDP, the workshop was attended by 17 sex workers from cities of Quezon, Pasay and Manila in National Capital Region; Angeles and San Pablo in Luzon; Cebu and Iloilo in Visayas; and Davao in Mindanao. The participants were a mix of current and former freelance and establishment-based sex workers. A number have been involved in HIV or women’s groups as peer educators, outreach workers or community organizers. Of the 17, most were women, two were male and one was a transgender person.

499 Article 202.

500 Section 4.

501 Section 62.

502 Republic Act 8504 of 1998.

There are also protective laws such as the *Anti-Rape Law*.⁵⁰³ However, sex workers believe that being a sex worker decreases the likelihood that a person can successfully bring a charge of rape against an offender.⁵⁰⁴

6.7.2 Law enforcement practices

The approach to regulation of sex work in entertainment establishments is described in the AIDS Medium Term Plan as follows:

Sex work is illegal under the *Revised Penal Code* but, in actual practice, there is an unstated recognition that it exists and can pose a threat to public health. From the Spanish to the American period, the policy on sex workers has been to treat those among them who are infected with sexually transmitted disease in government facilities, giving it the character of a public health measure, even as the work itself is not officially sanctioned. The policy continues to the present with Social Hygiene Clinics [SHC] which are set up in cities and municipalities where entertainment places abound and sex work is likely to occur...Establishment-based sex workers are required under the local ordinances in the areas where they work to undergo regular testing for STIs,...HIV testing is supposed to be part of the regular package of tests but only those who give their consent are tested for HIV due to the law that prohibits mandatory HIV testing. The penalty for non-compliance with regular testing is the withholding of the Social Hygiene Clinic issued health card that gives them the license to work in the entertainment venue. Bar owners and managers are partners of the SHC in monitoring compliance because non-compliant establishments run the risk of having their license to operate revoked. Testing for STIs is conducted in the SHC as part of the mandate of local governments to provide health services. It is not openly acknowledged that the workers are offering sexual services; rather, it is presumed that sex work may occur outside of the entertainment venues.

Freelance sex workers, on the other hand, are not affiliated with licensed establishments and thus are technically breaking the law. They are not easy to reach for health interventions because they are not based in places that are under the regulation of local governments. While SHCs may try to reach out to them by offering the same services as those given to establishment-based workers, there is no compelling reason for the SHCs to do so because freelance sex work is illegal to begin with.⁵⁰⁵

The operation of local ordinances has been described as follows:

Typically a local ordinance defines an entertainment establishment as referring to “night clubs, sauna, massage clinics, discotheques, videoke/karaoke bars, cocktail lounges, beer gardens, pub houses and other establishments wherein the services of hired entertainers are employed and patrons are entertained” (Ordinance no. 09, Series 2000, General Santos City). These establishments are required to secure from the city a permit to operate. Among the requisite provisions for the issuance/renewal of a permit is the regular health checkup of workers in the establishment in the City SHC...

503 Republic Act 8353 of 1997.

504 Information provided at country consultation workshop, 6 October 2011.

505 Philippine National AIDS Council (2011) *5th AIDS Medium Term Plan (2011- 2016) The Philippine Strategic Plan on HIV and AIDS*, pp.77-78.

A major aim of all ordinances is to contain the spread of STIs without explicitly acknowledging that sex work occurs in the entertainment venues...The passage of R.A. 8504, otherwise known as the Philippine AIDS Prevention and Control Act of 1998, led to the crafting of new ordinances in many cities with an entertainment industry, partly as a response to the perceived threat of this new STI to the industry and to the local community. These city ordinances typically call for the creation of Local AIDS Councils to serve as a “central planning and policy making body for the comprehensive and integrated HIV/AIDS prevention and control program” in the city (City Ordinance No. 2003-004, City of San Fernando). They all reiterate the requirement of a regular STI screening for workers in the establishment, i.e. “entertainers, masseurs and others with similar occupation” (IRR strengthening the Quezon City STD/AIDS Council, n.d.). As a new feature, they adopt some or all of the following provisions, requiring that the entertainment establishment shall:

1. make available and affordable prophylaxis (e.g., condoms) within the establishment and provide the proper guidelines on its correct and consistent use;
2. have information materials on STI/HIV/AIDS prevention and control available in the establishment and provide such information materials when requested by customers, especially on guidance on the correct and consistent use of condoms;
3. make IEC posters visible within their premises particularly in comfort rooms⁵⁰⁶ and dressing rooms;
4. have at least one trained peer educator.

Cebu City goes a step further by including a provision on “The required use of condom of (*sic*) in compliance with the 100 percent condom use program, which has been successfully implemented in Thailand. It shall then be required of all establishments, hotels, motels, lodging houses and sauna to make condom use available, [and] to provide guidance on the correct and consistent use of the same” (City Ordinance #1952 Cebu City Multi-Sectoral STD/AIDS Council).⁵⁰⁷

The National AIDS Council has issued a template city ordinance that requires managers and operators of entertainment establishments to attend HIV and STI education seminars.⁵⁰⁸ A *Compulsory STD/HIV/AIDS Education Ordinance* of Iloilo City requires managers, owners, dancers, masseuses and entertainers at entertainment establishments to undergo HIV and STI education seminars. The enforcement of this ordinance in Iloilo City is reported to have resulted in a rapid decline in STI diagnoses in 2002.⁵⁰⁹

506 i.e., toilets.

507 Natividad J., Trinidad A., Billedo C., Templonuevo J., (2011) *Sex Work in the time of HIV: Risks and Vulnerabilities in the Philippine Setting*, Quezon City: Social Sciences and Philosophy Research Foundation, Inc, pp.9-10.

508 Philippine National AIDS Council Secretariat (2010) *Template: Ordinance on local STI, HIV and AIDS Council*.

509 Cataluna D., Gumayan M., Bambao A., Sale M. Impact of city ordinance 00-045 compulsory STD/HIV/AIDS education ordinance of Iloilo City, Philippines. *Int Conf AIDS*. 2002 Jul 7-12; 14: abstract no. MoPeD3583.

Other examples of local ordinances include:

- In Makati City, City Ordinance 92-073 requires entertainment workers to undergo check-ups every 14 days conducted by the Makati Health Department and to secure annual clearance for HIV from the Social Hygiene Clinic.⁵¹⁰
- In Angeles City, sex workers who are diagnosed with an STI are allowed to continue to work at the establishment, but are not permitted to provide sexual services until cured. The floor manager of a bar is notified of a bar worker's positive STI diagnosis.⁵¹¹
- In Iloilo City, freelance sex workers are reportedly required to register, and acquire 'green card' with regular STI screening through a local NGO (i.e., PROCESS). Police may apprehend those who fail to comply.⁵¹²
- In Quezon City, Ordinance 1053 requires entertainment/sex workers to undergo weekly STI screening/testing and a semi-annual HIV voluntary test. Managers/owners may opt to fire entertainers who refuse to undergo a test.⁵¹³
- In Olongapo City, an *Anti-Prostitution Ordinance* (No.51 Series of 2009) targets customers and pimps, as opposed to female sex workers. According to Buklod (an NGO for sex workers), this Ordinance was patterned after a similar local policy in Quezon City. There is a challenge in enforcing the local *Anti-Prostitution Ordinance* because of the very minimal penalty (Php 5,000). Consequently, the local government issued another policy, the *Anti-Indecency Ordinance*, to discourage sex work activities in entertainment establishments by prohibiting entertainment workers from dancing nude or in underwear. Additionally, a multi-sectoral task force composed of members of the Local AIDS Council, Social Hygiene Clinic, National Bureau of Investigation, Philippine National Police and an NGO (Buklod) was formed to monitor the implementation of the ordinance. Establishments found to be in violation of the policy are closed, while sex workers are referred to Buklod for HIV and STI orientation education seminars.⁵¹⁴

Access to condoms

Police confiscation of condoms for use as evidence remains a controversial issue. Although the government has supported efforts to promote condom use among sex workers over the last decade, a study conducted in 2010 found that the presence of condoms in establishments when raided by the police is still used as evidence for sex work.⁵¹⁵

The 100% CUP was introduced initially in three sites in the Philippines in 1999 by Program for Appropriate Technology in Health (PATH) through the AIDS Surveillance and Education Project of USAID. The programme was expanded to five other sites. In 2003, the programme was implemented with WHO support in San Fernando, La Union, Dagupan and Urdaneta, Pangasinan, and Laoag City.⁵¹⁶ Since 2003, the 100% CUP has been implemented in few cities and has never had national coverage. Strategies of the 100% CUP include:

510 Makati City, *Makati Citizen's Guidebook*, p.149.

511 *In the City of Angels, they use condoms*, Newsbreak, 21 January 2011.

512 Information provided at country consultation workshop, 6 October 2011.

513 Ibid.

514 Ibid.

515 Natividad J., Trinidad A., Billedo C., Templonuevo J., (2011) *op cit.*, p.80.

516 See: Guide to 100% Condom Use Programme in the Philippines, *HAIN News*, 16 December 2007.

- to address stigma and discrimination by promoting local government-initiated and community-based programmes;
- to strengthen collaboration of the Department of Health with Local Government Units and NGOs to reach out and provide acceptable, accessible and affordable medical and social services to hidden marginalized groups.⁵¹⁷

Reportedly, the 100% CUP in Quezon City is not widely implemented among entertainment establishments and the possession of condoms is still being used as evidence for prostitution and to justify arrests by law enforcers. However, in Cebu City entertainment establishments with no condoms are penalized.⁵¹⁸

Some local ordinances require condom availability and 100% condom use in registered establishments.⁵¹⁹ Local Government Units are encouraged to develop regulations to monitor the entertainment industry's compliance with 100% CUP policies established under local ordinances.

Police raids

Street-based sex workers are commonly charged with vagrancy offences. There are periodic police crackdowns on sites where street sex work takes place.⁵²⁰ Establishment-based sex workers are at risk of arrest as a result of police raids conducted under the anti-trafficking law.⁵²¹

The 2011 consultation reported raids among cybersex dens in Davao and Cebu. Reportedly, law enforcers use the anti-trafficking law and the non-registration of the on-line/internet establishments as justifications for arrests. In Angeles City, it was noted that raids are commonly conducted in the last quarter of the year and are justified by the need to enforce the anti-trafficking law.⁵²²

In 2010 there were press reports of arrests of sex workers based at karaoke bars ('videoke bars') in Pototan, Iloilo.⁵²³

In 2009, there were police raids in Angeles City, purportedly targeting pimps and managers involved in engagement of underage girls in sexual exploitation in violation of the anti-trafficking law. Over 100 women and girls were detained and the raids resulted in the arrest of many female sex workers.⁵²⁴

The US Government has reported concerns about police corruption associated with raids:

Allegations continued [in 2010] that police officers at times conducted indiscriminate raids on commercial sex establishments to extort bribes from managers, clients, and women in the sex industry, sometimes threatening women with imprisonment for solicitation.⁵²⁵

517 UNFPA/WHO (2006) *Report of the joint UNFPA/WHO Meeting on 100% Condom Use Programme*, Manila: WHO WPRO, p.60.

518 Information provided at country consultation workshop, 6 October 2011.

519 Aquino C., D'Agnes L., Castro, J., Borromeo M., Gill K. and Schmidt K. (2003) *Best Practices in HIV/AIDS Prevention Education: The AIDS Surveillance and Education Project in the Philippines*. Makati City: PATH, pp.17-18.

520 See e.g: Caloocan cops conduct raids vs prostitution *Philippine Daily Inquirer*, 14 May 2009.

521 Yap D., (2011) Hookers rescued 'against their will' in Angeles City *Philippine Daily Inquirer*, 29 June 2011.

522 Information provided at country consultation workshop, 6 October 2011.

523 Ponsaran-Rendon J. (2010) Police, LGU raid 3 'prostitution dens' in Pototan, *The News Today* 20 July 2010.

524 See: Caloocan cops conduct raids vs prostitution *Philippine Daily Inquirer* 14 May 2009.

525 Government of USA (2011) *Trafficking in Persons Report 2011*, Washington: State Department, p.297.

Sex workers working independently are more vulnerable to arrest and police abuses than workers at licensed establishments. A 2003 study conducted in Pasay City found that street-based sex workers often refused to accept free condoms from outreach workers because they feared police would use them as evidence of illegal conduct. Police impeded their access to HIV prevention services by confiscating condoms, using possession of condoms as evidence of sex work, or arresting them for vagrancy.⁵²⁶

In 2011 police detained 57 freelance sex workers in Bacolod City for the purpose of health examinations by the Bacolod City Health Office.⁵²⁷ Those who were diagnosed with STIs were provided with treatment. The freelance sex workers were targeted because, unlike those working at entertainment establishments, they are not required to have regular STI tests as a condition of employment. The City Police Director ordered a city-wide crackdown on sex workers due to concerns about STIs. As part of the crackdown, police also inspected entertainment establishments to check that female employees had 'pink cards', which provide proof that an employee has attended for STI check-ups.⁵²⁸

Health insurance

Most establishment-based sex workers are not provided with health insurance. Employers take advantage of a loophole in relevant employment laws by claiming that sex workers are not regular employees because they are commission-based.⁵²⁹

6.7.3 Efforts to improve the legal environment

The consultation convened in 2011 by UNDP, UNFPA and UNAIDS to discuss the Philippines draft chapter identified the following efforts to improve the legal environment:

- There is a current provision in a proposed amendment to the AIDS Law (Republic Act 8504), which prohibits the use of condoms as evidence for prostitution.
- In Davao City, the association of entertainers negotiated with establishments to provide sex workers with health and social benefits.
- In Angeles City, some establishments provided some benefits to sex workers through the Leagues of Angeles City of Establishment Managers, including health insurance and social security.
- In the cities of Angeles, Cebu and Iloilo, some NGOs and *barangay*⁵³⁰ councils provided educational opportunities for sex workers such as literacy and livelihood alternatives.
- In Marikina and Cebu cities, faith-based groups provide sex workers with alternative livelihoods.
- In the cities of Olongapo and Angeles, sex workers have regular meetings with the bar owners' association and local government authorities.
- The Cebu City Health Office reportedly initiates meetings between sex workers/entertainers and bar owners.

526 Human Rights Watch, *Philippines: Unprotected: Sex, Condoms and the Human Right to Health*, 5 May 2004, C1606.

527 Nemes A. (2011) CHO helps sex workers with STD, *Visayan Daily Star* (electronic edition), 18 July 2011.

528 Dangcalan D. (2011) 45 Commercial sex workers nabbed in Bacolod, *The Freeman* 19 July 2011.

529 Information provided at country consultation workshop, 6 October 2011.

530 A *barangay* is the smallest administrative unit in the Philippines, equivalent to a village, district or ward.

- The local governments of Marikina City and Quezon City are supporting peer education among sex workers.

The consultation recommended the following actions:

- Involvement of establishment/bar owners and managers in developing appropriate responses. In some sites, the bar owners and managers have the authority to impose rules and regulations on HIV prevention and to ensure protection of sex workers against abuses.
- There should be continuous orientation and re-orientation on HIV prevention among entertainers/ sex workers.
- Ensure protection of sex workers against abuses from establishment/bar owners, managers and clients.
- Ensure access of sex workers to redress mechanisms.

In 2010, a bill was filed seeking the decriminalization of vagrancy/sex work. House Bill 1706 sought to provide sex workers with entitlements to medical services, counselling, and legal protection services.⁵³¹

In 2011, a research project on *Making our Strategy Right for Sex Workers in the Philippines*, conducted by the Social Science and Philosophy Research Foundation with funding from UNFPA, made recommendations on legal and health issues, based on extensive consultations with sex workers and other stakeholders. The project recommended decriminalization of vagrancy, and work with law enforcement agencies as follows:

...dialogues must be conducted with local law enforcers on how to develop intervention programs for freelance sex workers that will not be jeopardized by police operations. This is a sensitive issue and will need to be also threshed out thoroughly with local government officials. More importantly, the police should be apprised of the new ordinances on HIV prevention in cities where such ordinances have been passed...The experience of cities that have started this type of dialogue can be documented and serve as a model, e.g., Quezon City.⁵³²

The NGO Action for Health Initiatives (ACHIEVE) provides legal support to people living with HIV and sex workers, and advocates for sex workers rights.⁵³³ ACHIEVE conducted an assessment of the application of anti-trafficking and anti-vagrancy laws as a hindrance to HIV responses among sex workers, and have worked with sex worker communities in Quezon City and Pasay City in addressing these issues with the police.

The AIDS Surveillance and Education Project (ASEP) sponsored a study that identified local laws and practices that hindered HIV prevention efforts, including:⁵³⁴

- local ordinances that limited Social Hygiene Clinic services to registered female 'entertainers,' excluding freelance and underage sex workers; and

531 Romero P. (2010) Lawmaker wants to decriminalize prostitution, *Philippine Star*, 16 December 2010.

532 Natividad J., Trinidad A., Billedo C., Templonuevo J., (2011) *op cit.*, p.80.

533 ACHIEVE (2011) Positive Justice Utilization of People Living with HIV in the Philippines AIDS Prevention and Control Act of 1998 (RA8504), ACHIEVE.

534 ASEP was implemented by Program for Appropriate Technology in Health (PATH), WHO and the Philippines Department of Health, See: Aquino C., D'Agnes L., Castro, J., et al. (2003) *op cit*, p.26.

- standard operating procedures of law enforcement agencies that provide for the closure of entertainment establishments found with condoms, which were considered evidence of unlawful sex work.

ASEP worked with local government units and NGOs to advocate for ordinances mandating the implementation of HIV prevention programmes with sex workers.⁵³⁵

A controversial action research project funded by the Canadian International Development Agency in Angeles City involved Canadian academics working with police and the courts to address the legal environment for bar-based sex workers. Educational interventions involved sensitizing police and judges to the needs of sex workers.⁵³⁶ The project was designed with the Philippine National Police and Supreme Court, the Angeles University Foundation, and two women's organizations. The project has been criticized for failing to engage sex workers in the design and implementation of the research, or in the reporting of the outcomes of the interventions.⁵³⁷

6.8 Singapore

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.8.1 Laws

Sex work is legal but the *Women's Charter* criminalizes procuring (Section 140), living on the earnings of sex work (Section 146) and managing a brothel (Section 148). Soliciting in public for the purpose of sex work is an offence under the *Miscellaneous Offences (Public Order and Nuisance) Act* (Section 19).

6.8.2 Law enforcement practices

In practice, police allow a limited number of brothels to operate in well-defined red-light districts (Designated Red-light Areas, or 'DRAs').⁵³⁸ There are no officially 'licensed' brothels; however police have an approval process for brothels in the six Designated Red-light Areas. Sex workers in these premises are issued a yellow health card for recording regular medical examinations. All clients are required to use condoms.⁵³⁹

535 Linsangan R, Garcia D, Gallo E, Aquino C, D'Agnes L. (2002) Two models of advocacy to legislate HIV prevention policies, *Int Conf AIDS*. 2002: abstract no. G12495.

536 Ralston M., Keeble E. (2009) *Reluctant Bedfellows: Feminism, Activism, and Prostitution in the Philippines*. Washington: Kumarian Press.

537 See e.g., Delfeld H., (2010) *Review of Ralston M, Keeble E, Reluctant Bedfellows: Feminism, Activism and Prostitution in the Philippines*. H-Human-Rights, H-Net Reviews. February 2010.

538 See e.g.: <http://geylangredlightdistrict.com/>.

539 Sex business is booming in Singapore, *Taipei Times*, 5 March 2011; Singapore Clients Will Face Charges if Prostitutes the Under Age of 18, *Jakarta Globe*, 13 February 2012.

Outside of the red-light districts, immigration laws are heavily enforced against sex workers. In 2007, police conducted more than 900 vice-related raids. Licensing checks are conducted on entertainment outlets and massage establishments. In 2007 alone, 5,400 foreign sex workers were arrested. Police take biometric data of sex workers, deport them to their country of origin and blacklist them from entering Singapore. Police also prosecuted 15 pimps in 2007. Investigations were conducted to establish if any of the sex workers involved with these pimps were coerced or deceived into sex work. The government reported that none had been coerced or deceived.⁵⁴⁰

‘Forest brothels’ located on public lands near migrant worker dormitories employ female sex workers from other Asian countries. Policing of forest brothels is reportedly rare because they are hidden operations that do not interfere with other communities.⁵⁴¹ However a raid on a forest brothel in 2010 resulted in arrest of a pimp and seven Thai female sex workers.⁵⁴²

6.9 Thailand⁵⁴³

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.9.1 Laws

Prevention and Suppression of Prostitution Act BE 2539 (1996)

Sex work has been regulated by the State in Thailand since 1908 and illegal since 1960. Under the *Prostitution Prevention and Suppression Act of 1996*, prostitution is defined as:

...sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not.⁵⁴⁴

Section 5 of the Act prohibits sex work in public places and brothels. Section 5 sets the penalty for ‘openly and shamelessly’ offering or soliciting sexual services as a fine of 1,000 baht.⁵⁴⁵ Sex workers are fined under this section if sex work is conducted openly or occurs in the street or another public place.

540 Extract of official report on Parliament sitting on 15 Sept 2008, *Vice-related activities*, available at: <http://www.pap.org.sg/articleview.php?id=3750&cid=23>.

541 Fry E. (2008), Singapore’s Forest Brothels. *Bangkok Post* 21 October 2008.

542 *Thai pimp in forest brothel gets fined, jail*, Asiaone, 27 May 2010.

543 The Empower Foundation, Dr. Taweasap Siraprasiri (HIV/AIDS Programme Officer, UNFPA), and Nuttawut Teachatanawat (RTI International) provided data to supplement the literature review for this chapter.

544 Section 4.

545 Section 5.

If sex work is conducted in a 'prostitution establishment', sex workers may be fined or jailed under Section 6. Section 6 provides that whoever associates with another person in a prostitution establishment for the benefit of prostitution of that person or of another person shall be punished with imprisonment not exceeding one month, or a fine not exceeding one thousand baht, or both.

Section 7 provides an offence for advertising oneself or another person as a sex worker.

Technically it may be legal for an individual to sell sex in a private place and in a private manner (e.g., a customer's hotel room),⁵⁴⁶ but the provisions of the Act relating to soliciting and prostitution establishments are so broad that virtually all forms of sex work are in effect illegal. During consultations, some informants submitted that police could consider any private place to be a prostitution establishment.

Under the Act, courts have the power to order rehabilitation at a Protection and Occupational Development Centre as an alternative to punishment.⁵⁴⁷ When the offender is not over eighteen years of age, and the Court, having considered his or her former life, conduct, psychological state, education and training, health, mental condition, occupation and environment, is of the opinion that punishment is inappropriate and should be replaced by commission of the offender to protection and occupational development, the Department of Public Welfare shall admit the offender to care. If the offender is over eighteen years of age and wishes to receive protection and occupational development and the Court deems it appropriate, the Department of Public Welfare shall admit the offender for the purpose of committing such person to care.

The Act also prohibits procuring sex workers (even with their consent),⁵⁴⁸ pimping and managing sex work businesses or establishments.⁵⁴⁹ The Act criminalizes the acts of recruiting or arranging the prostitution of others for profit and imposes harsh penalties for any employers, entertainment places and/or customers who profit from, or engage in, the sexual abuse of minors.⁵⁵⁰

Entertainment Places Act B.E. 2509 (1966)

The *Entertainment Places Act* regulates massage parlours, karaoke bars, bathhouses and similar establishments. The Act does not permit sex work. The Act provides the owners of entertainment places with an opportunity to legitimize their business through registration or licensing. Under the Act owners are required to register their premises and employees with the police. This requires workers to provide their history of employment. The Empower Foundation stated that this involves workers providing the police with a detailed family history, fingerprints and photos. There are no provisions for working conditions, labour rights or health and safety standards under the Act. In 2006 it was estimated that only about 30 percent of entertainment places were licensed.⁵⁵¹

The *Entertainment Places Act B.E. 2509 (1966)* was amended in 2003.⁵⁵² The Amendment extended the definition of a 'Place of Entertainment' to cover more types of places,

546 Finch J., Tangprasit N., Sex crimes – prostitutes and the clients, *Bangkok Post*, 1 May 2011, p.21.

547 Sections 34-37.

548 Section 9.

549 Section 11.

550 Section 8.

551 Cameron L. (2006) *Sexual Health and Rights: Sex Workers, Transgender People & Men Who have Sex with Men – Thailand*, New York: OSI, p.40.

552 See: Mayer Brown Practices, *Amendments to the Places of Entertainment Act*, 19 April 2004.

including any place which arranges for dancing or selling food, liquor or tea or other beverages or any place for baths or massage which has people in charge of pleasing or taking care of customers or having operating hours after midnight. In order to obtain a licence, the operator of the Place of Entertainment must be at least twenty years old, have good health and not have been penalized for any sexual offence or trading of obscene objects.

The Act requires entertainment places not to be adjacent to any places related to religion, education, clinic, youth club, dormitory, or living areas. The operator's duties include: to prepare a biography of every employee prior to the commencement of work; not to employ any person under eighteen; to inspect the age of its patrons through official documents and not to allow any person under twenty other than its employees to enter; not to permit any person other than the one who is responsible for taking care of the Place of Entertainment to stay overnight.

Other Acts, regulations and policies

National, provincial and local regulations and policies also impact on sex workers. These regulations and policies include rules relating to the 100% Condom Use Policy; clauses in tourist areas that have been declared 'Special Administrative Zones', e.g., regulations and penalties for 'bothering tourists'; regulations under the 'Social Order Policy' that influence working hours, zoning, etc.; and local council regulations that can control sex workers conditions, e.g., dress codes.

Other Acts that specifically mention prostitution or which may be used to punish sex workers include:

- *Alien Workers Act B.E 2551 (2008)*
- *Criminal Code BE 2429 (1956), Criminal Code Amendment Act (No. 14) BE 2540 (1997)*
- *Anti Money Laundering Act B.E. 2542 (1999)*
- *Drug Suppression Act BE 2547 (2003)*

The *Criminal Code* Section 282 provides that it is an offence to procure, seduce or take away for an indecent act, a person to gratify the sexual desire of another person. Penalties for this offence are imprisonment of one to ten years and fine of 2,000-20,000 baht. The *Criminal Code* also provides serious offences for procuring underage sex workers.

Workplace Rules (Bar Rules)

Employers in Entertainment Places impose a standardized system of work rules for all salaried employees. Infringements are penalized by salary cuts. Rules are applied for such things as lateness, weight gain, taking days off, displeasing customers, uniforms, work performance, meeting drink quotas and customer quotas. Employers commonly enforce a policy of mandatory STI and HIV testing of sex workers, and HIV-positive sex workers are usually dismissed. Three-monthly HIV testing is mandatory.⁵⁵³

⁵⁵³ Lowe D., (2011) *Concept note: The role of the International Labour Organization in improving the working conditions and sexual and reproductive health of sex workers in Thailand*, ILO Regional Office for Asia and the Pacific, (unpublished), p.8.

Suppression of Human Trafficking Act BE 2551 (2008 AD)

The Act criminalizes 'seeking benefits from the prostitution of others' in circumstances involving force, deception, threats, etc., with or without consent. Various provisions for welfare assistance of trafficked persons are stipulated under the Act. The Act provides opportunities for migrants to work during any legal proceedings, prior to return to their country of origin.⁵⁵⁴ Officials have power to place the trafficked person in the care of a shelter provided by the *Law on Prevention and Suppression of Prostitution*, or a shelter provided by the *Law on Child Protection*, or other government or private welfare centres.⁵⁵⁵

Immigration Act B.E.2522 (1979 AD)

The Act prohibits entry to Thailand of those engaging in prostitution, trading in women/girls and other immoral activities. Anyone who 'brings or takes an alien into the Kingdom' is liable to imprisonment for up to 10 years or a fine up to 100,000 baht.

6.9.2 Law enforcement practices

Nature of sex work in Thailand

A UNFPA report describes the diverse forms of sex work in Thailand and the changing nature of the sex industry, shaped by a combination of legal, economic and social factors.⁵⁵⁶ Forms of sex service establishments include tea-rooms, massage parlours, beer bars, restaurants, hotels, nightclubs, go-go bars, brothels and spas. Independent workers include call girls, and street workers. The UNFPA report argues that law enforcement has shaped the nature of the industry because freelance sex workers emerged as a result of the suppression of the brothel-based industry by police. The report describes the transformation of the sex industry from a brothel-based industry to a highly diversified industry. The report argues that the enactment of the *Entertainment Places Act 1966* "provided greater opportunity for entertaining places to be able to offer sex service without being punished (because of a loose definition and the acceptance of status of these entertainment places to be legally operated)."⁵⁵⁷ Since the 1990s, enforcement of laws against brothels has led to brothel closures and the industry has become focused instead in entertainment venues.

The turning point of direct to indirect sex establishment was brought about by many factors such as a more strict law enforcement during 1992...In addition, the HIV/AIDS prevention and control campaign...influenced the traditional brothels, tea room to transform themselves into a more indirect type such as restaurant, dancing bar, a Go-Go bar, call-girl, karaoke room.⁵⁵⁸

The transformation of the sex industry has given rise to new challenges in HIV prevention and treatment, as it can be more difficult to reach non-brothel workers, particularly those who work in streets and parks. A sex worker organization, the Empower Foundation, observes that the current legal framework for sex work in Thailand is out-dated and fails to recognize how the sex industry has evolved:

554 Section 37.

555 Section 33.

556 Bhassorn Limanonda, Pornpun Prajaknate (2007) *Situation on STI/HIV Prevention in Sex Work Settings in Thailand* Bangkok: UNFPA Country Office.

557 Ibid., p.5.

558 Ibid., p.6.

In the last fifteen to twenty years Thailand has seen wide reaching social changes such as higher levels of education, greater wealth distribution, and more access to knowledge and communication technology. In addition there has been a stronger focus on human rights and gender rights. However the legal system that attempts to control prostitution was set up decades before this when abuses such as trafficking, debt bondage, forced labour and locked brothels were common in the Thai sex industry. Current day sex workers in Thailand live and work in a totally different context. Nowadays sex work in Thailand closely resembles many other occupations, whether applying for a job, working conditions, work tools or earning power. Old style brothels have been replaced by modern entertainment venues and old style pimps replaced by managers. The laws are out-dated and irrelevant to the way sex workers work today.⁵⁵⁹

Access to ARVs is limited for sex workers because the Universal Health Coverage Scheme does not provide coverage for people living away from their province of origin.

Labour laws

Labour laws such as the *Labour Protection Act 1998* in theory offer workplace protections to sex workers, but in reality are not enforced in the sex industry. According to Lowe:

Thai labour laws, with some isolated exceptions, are ignored by employers in the sex industry. It is understood that this is not because of criminal laws which create offences in relation to some aspects of sex work, as these provisions do not override the obligations of employers, as set out in labour laws. The reasons for lack of compliance with labour laws relates to the weak regulatory environment in Thailand and the stigma faced by sex workers. This results in sex workers having no collective bargaining power or union protection in the workplace, leading to exploitation by employers.

...Sex workers are treated as freelance workers and not employees. Entertainment establishments are not seen by owners as workplaces. As a result, issues such as working conditions, occupational health and safety and workers' rights are ignored.⁵⁶⁰

“NOWADAYS SEX WORK IN THAILAND CLOSELY RESEMBLES MANY OTHER OCCUPATIONS, WHETHER APPLYING FOR A JOB, WORKING CONDITIONS, WORK TOOLS OR EARNING POWER.”

Criminal laws and police practices

Police abuses are reportedly widespread and police use fear of arrest to extort bribes or free sex. Sex workers who do not work in an entertainment place are more vulnerable to police harassment.⁵⁶¹ Research conducted in Chiang Mai and Bangkok in 2006 found that male and transgender sex workers face nightly police harassment, extortion or arrest on public nuisance charges.⁵⁶² Police use the presence of condoms as the basis for arrests, detention or extortion. Female, male and transgender sex workers report being targeted by police if they are found with condoms on their person.⁵⁶³

559 Submission to UNDP, December 2011.

560 Lowe D. (2011) *op cit.*, p.6.

561 Cameron L. (2006), *op cit.*, p.43.

562 Cameron L. (2006), *op cit.*, p.44.

563 PACT (2007), *Turning an enemy into an ally: SWING's police cadet internships on HIV prevention among sex workers*, available at: http://www.pactworld.org/cs/reach_news_and_media_swing_story

According to the Empower Foundation, punitive police practices include intimidation, entrapment, raids, rescues and crackdowns:⁵⁶⁴

Intimidation

In order to prove the crime of prostitution police must either have an admission of guilt or evidence that sexual services have been exchanged for something of value.

It is common for police to claim that simply being in an Entertainment Place or having possession of condoms is valid evidence of prostitution. They use harsh language and bullying tactics to intimidate sex workers into accepting guilt and either paying a bribe or a fine according to the agenda and honesty of the police officer.

Entertainment Place owners and workers all must make regular payments to corrupt authorities, including police. These payments do not provide protection against arrest as such but promise assistance in times of trouble. However police still must produce arrests to show they are doing their job. It's not uncommon for them to request sex workers to volunteer to be arrested and in some bars there is a roster of who will be arrested when.

Sex workers working outside Entertainment Places are frequently targeted by police using local or provincial regulations, e.g., arresting sex workers on the beach for 'bothering tourists'.

Generally around 30,000 sex workers a year are charged under the *Suppression and Prevention of Prostitution Act* in Thailand.

Entrapment

The other method authorities use to establish enough cause for arrest or extortion is entrapment. Police will meet the sex worker as a customer. Police collects verbal confirmation of the sale of sexual services and pays in advance with 'marked' money. He then arrests the worker plus/minus support staff and they either pay a bribe or a fine according to the agenda and honesty of the police officers. Sometimes entrapment is carried out to collect enough cause to raid the premises to make multiple arrests called a raid.

Raids

Raids occur whenever there is a change in the top administration officials, e.g., a new Police Director, a new Governor, etc. Raids may also occur if an Entertainment Place owner is not compliant with corrupt police. In addition a raid may occur in response to suspected human trafficking.

A raid is a violent terrifying event where fifty or more armed police often accompanied by media, arrive at an Entertainment Place around 11 pm. Police seal off the doors, rush in and proceed to apprehend all women on the premises. Support staff, managers and rarely owners may also be apprehended. If the purpose of the raid is extortion bribes will often be paid at the premises and workers released.

Otherwise the workers are taken to a local police station where they are investigated and processed under various laws and policies. Most commonly workers with Thai identity documents will be charged with associating for the purpose of prostitution,

564 Submission to UNDP, December 2011.

fined and released. Migrant sex workers who are registered to work in other occupations are charged with associating for the purpose of prostitution and working contradictory to their registered occupation. They are fined and released or sent to immigration to be charged with immigration offences, fined again and deported. Migrant sex workers without any documents, especially those who appear to be under 18 years are detained as victims of human trafficking. Owners and support staff will be charged with human trafficking plus other offences. The raid will now be called a 'rescue' even though nearly all workers deny being trafficked.

Rescues

After being identified as victims at the police station, undocumented migrant sex workers undergo a series of medical tests without informed consent. The tests include dental exam and bone X-rays in an attempt to estimate their age. They are then detained as either victims or witnesses depending on the results of the age tests. Women are not permitted to leave the shelter to work, though men are. They are held for periods of 3 months to 2 years before being deported. Compensation is available but has never been claimed on behalf of migrant sex workers.

In the *Suppression of Human Trafficking Act*, prostitution is specifically named in the definition of trafficking, as if it were, in itself a distinct type of trafficking rather than being included with other forms of forced labour. 'Exploitation' of prostitution is used without defining exploitation specifically. This leaves it open to subjective judgments of what may constitute exploitation of prostitution. For the past ten years or more there has been a conflation between migrant sex work and trafficking that has led to arbitrary arrests, long detention, deportation and other violations of the rights of hundreds of sex workers and their families.

Crackdowns

Occasionally police will raid entire areas at once known as a 'crackdown'. This may be done in response to criticism of police in the media or part of a political strategy.

Migrant sex workers

Migrant sex workers are highly vulnerable to human rights violations. Some foreign anti-trafficking NGOs target migrant sex workers for raid and rescue operations. NGOs and police wrongly identify many migrants who are working in the sex trade voluntarily as trafficking victims.⁵⁶⁵ Sex workers who lack documentation are not eligible for free access to Thai health care services. Unlike migrant domestic workers and other general labourers, migrant sex workers remain undocumented and vulnerable to labour exploitation and human rights abuses.⁵⁶⁶ In 2006, it was estimated that undocumented migrant sex workers typically pay police bribes totalling 6,000–14,400 baht per annum.⁵⁶⁷

A World Bank report found that:

Undocumented women in the Thai sex industry have clear risks and vulnerabilities for HIV infection, including illiteracy, vulnerability to trafficking, low levels of HIV

565 RATS-W Team, Empower (2012) *Hit and Run: The impact of anti- trafficking policy and practice on Sex Workers' Human Rights in Thailand*, Empower Foundation; Empower (2004) *Report by Empower Chiang Mai on the human rights violations women are subjected to when "rescued" by anti-trafficking groups who employ methods using deception, force and coercion*. Chiang Mai: Empower.

566 Cameron L. (2006), *ibid*, p.49.

567 Cameron L. (2006), *ibid*, p.44.

and STD awareness, limited access to health care, very limited ability to negotiate with clients, and a reluctance to seek services even when they are available because of fear of arrest and deportation. Since these women are breaking two sets of laws (prostitution laws and illegal entry and work in Thailand) they are highly vulnerable to arrest and detention and to abuse from male guards. As a result, HIV rates and risks are considerably higher among Burmese sex workers than among Thai women...The number of undocumented sex workers is difficult to quantify because of the illicit nature of the industry and their need to avoid detection.⁵⁶⁸

Many migrant sex workers originate from Myanmar. For example, in 2009 it was reported that 39 Burmese women were arrested in Ranong under suspicion of working as sex workers and illegal entry into the country.⁵⁶⁹ Similarly, there were reports in 2011 of the arrest of 70 Burmese women in a massage parlour and the arrest of 21 Burmese women after a raid on a karaoke bar.⁵⁷⁰ As part of the repatriation process, Thai authorities may disclose the identities of migrant sex workers to Myanmar authorities, who may then inform local village officials and family members. As a result, sex workers risk arrest after their return to Myanmar or sanctions from their village and family.

100% CUP

The 100% CUP was implemented in Thailand from the 1990s. Implementation and monitoring of condom programming for sex workers is primarily the responsibility of local health authorities rather than police. An evaluation of the 100% CUP noted that brothels found to be the source of repeated STIs could be fined or closed by the police.⁵⁷¹ Some sex workers have reported coercive approaches associated with the 100% CUP, such as compulsory testing, enforced by local health authorities.⁵⁷²

6.9.3 Efforts to improve the legal environment

The *National AIDS Strategic Plan 2012-2016* aims to address laws and policies that are barriers to access to prevention and care services among key populations living with and affected by HIV, including sex workers. The *National AIDS Strategic Plan 2007-2011* included a strategy of 'AIDS rights protection: The rights of hard-to-reach groups such as... sex workers, prisoners, etc., are protected and they have access to prevention services with proper coverage and quality assurance.'⁵⁷³

The Empower Foundation is an organization of sex workers that promotes the rights of sex workers, advocates for law reform and conducts HIV prevention activities. The Foundation's programmes are designed and implemented by sex workers. The Foundation conducts public education to address stigma and advocates to extend labour protection measures to sex workers and to decriminalize sex work. In 2006, the Foundation opened

568 Beyrer C., Stachowiak J. (2003) Health Consequences of Trafficking of Women and Girls in Southeast Asia, *The Brown Journal of World Affairs* 10(1), quoting World Bank Thailand Office (2000) *Thailand's Response to AIDS: Building on Success, Confronting the Future*, Bangkok: The World Bank.

569 Burmese prostitutes arrested in Ranong, *Andaman Times*, 1 May 2009.

570 Police rescue 70 Burmese sex workers, *Bangkok Post*, 15 November 2011; Grassroots Human Rights Education And Development (2011) *Recent arrest of 21 Burmese Ladies who were involved in sex trafficking*, see: <http://www.ghre.org/>.

571 UNAIDS and Ministry of Health (2000) *Evaluation of the 100% Condom Programme in Thailand*, Bangkok: UNAIDS, p.16.

572 Mgbako C., Gabriel M., Garr L. and Smith L. (2008) *Sex Worker Empowerment Guidelines: An Alternative HIV/AIDS Intervention Approach to the 100% Condom Use Programme*. Sangram. p.11.

573 *National Plan for Strategic and Integrated HIV and AIDS Prevention and Alleviation 2007-2011*, p.43.

a bar in Chiang Mai that provides sex workers with working conditions that comply with the minimum standards under the *Labour Protection Act*. Workers at the bar are entitled to social security benefits through enrolment with the Social Security Fund, and occupational health and safety standards are enforced. The Empower Foundation has reported on the human rights violations that adult sex workers in Chiang Mai were subjected to when 'rescued' by anti-trafficking NGOs.⁵⁷⁴ The Empower Foundation argues for protective laws to be applied to sex workers:

Several Thai laws could easily be extended to provide protection to sex workers. These include the *Labour Act*; *Occupational Health and Safety Act*; *Social Security Act*; *Cabinet Resolution on Approved Occupations for Migrant Workers*. In addition, the enforcement of basic human rights protected under international treaties and the Thai Constitution such as access to education and right to health should be implemented for all people in Thailand.⁵⁷⁵

The Empower Foundation seeks the same protections, permissions and benefits for migrant sex workers as other migrant workers, without having to be identified as sex workers.

SWING works with male and transgender sex workers at the community level. SWING involves sex workers in peer education and advocacy and seeks the cooperation of bar owners and the police in HIV prevention efforts. Since 2005, SWING has offered an internship programme for third-year police cadets. SWING hosts six to nine cadets for three-week internships every year. Cadets work with SWING staff in promoting condom use among male sex workers in hotspots, teaching at a drop-in centre, and helping to lead workshops. When the internship ends, the cadets deliver a presentation on their experience to all students in the police academy. In 2007 SWING developed a four-hour curriculum for all cadets. Since the programme began, SWING has experienced improved communication and cooperation with police and fewer arrests and incidents of harassment.⁵⁷⁶

In 2011, SWING established rights protection volunteers for sex workers in Pattaya, with UNFPA support. Through this activity, SWING documented human rights violations against sex workers in Pattaya in 2011. RTI International worked with SWING on a project to strengthen rights-based responses to HIV among sex workers in 2011. RTI provides technical assistance to SWING on human rights and laws related to sex work.

In 2003, the Justice Ministry held a public consultation on proposals to legalize the sex industry and register sex workers to raise revenue from taxes, enable sex workers to access to social services and health care, and expose police corruption. The Justice Ministry stated it had no immediate plans to decriminalize the sex trade.⁵⁷⁷

Reforms of Social Security Fund rules enable sex workers to access some state social security benefits in Thailand if they make financial contributions.⁵⁷⁸ The *Social Security Act* requires employers to register all employees with the Social Security Fund. Employees, employers and the government each contribute to the Fund, which pays benefits to workers in the formal sector in relation to sickness, injury, disability, childbirth, death, unemployment and an old age pension. Reforms have extended some coverage to informal sector workers,

574 Empower (2004) *op cit*.

575 *Ibid*.

576 PACT (2007) *op cit*.

577 Thais mull legal prostitution, *BBC News*, 27 November 2003.

578 Lowe D. (2011) *op cit*, p.5; Foreign Office, Government of Thailand (2011), *Social Security for Informal Workers: One of the Key Issues in the Thailand Reform Process*, 28 February 2011.

including sex workers, on a voluntary basis. Informal sector workers who contribute specified amounts to the Fund can be covered for sickness, disability, death and an old age pension. However, few workers have opted to join the scheme.

In 2012, ILO is planning to work with sex worker organizations (Empower Foundation and SWING) and ILO's tripartite partners (government, employers and workers organizations) to define options for applying the labour standards contained in the ILO *Recommendation Concerning HIV and AIDS and the World of Work, 2010* (No.200) to improve the working conditions and sexual and reproductive health of sex workers in Thailand.

6.10 Timor Leste

Legal

SEX WORK IN
PRIVATE

Legal

SOLICITING

Illegal

BROTHELS

6.10.1 Laws

Sex work is not illegal. Criminal laws target third parties engaged in sex work. The *Penal Code 2009* provides an offence for "sexual exploitation" of a third party. Sex work is in effect defined as exploitation. The offence states:

Article 174. Sexual exploitation of a third party

1. Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.
2. The perpetrator is punishable with 4 to 12 years imprisonment, if any of the following circumstances arises:
 - c. Exploitation of the situation of abandonment or economic necessity of the victim;
 - d. Use of violence, serious threat or coercion over the victim;
 - e. Displacing the victim to a country different from where the victim was born or was resident;
 - f. Withholding any identification document belonging to the victim.

Trafficking is punishable with 8 to 20 years imprisonment. Consent of the victim to trafficking is irrelevant if use of threats, force or other forms of coercion, kidnapping, fraud, trickery, abuse of power or situation of vulnerability, or delivery or acceptance of payments or benefits, were employed to obtain consent. (Article 163)

Draft legislation to regulate the sex industry was developed by a legal drafting project of the Asia Foundation in 2004.⁵⁷⁹ The draft Bill proposed that sex workers be required to work at locations stipulated by the government, pay income tax, attend training as established by the government, undergo a medical check once a week, and resign and leave a sex work locality if diagnosed with HIV.

6.10.2 Law enforcement practices

Law enforcement appears to focus on identifying foreign sex workers who are in violation of visa conditions or who may have been trafficked.

A 2004 study identified 250 female sex workers and 110 male sex workers in Dili. The women were from Timor Leste (100), Indonesia (60), China (35), Thailand (30), Philippines (20), and Australia (3). Ten of the males were Indonesian. The remainder were Timorese.⁵⁸⁰ The study reported that there had been a series of UN and national police raids:

For the most part, the women and girls uncovered in the raids have been charged with crimes and deported. In other circumstances, some women were voluntarily repatriated by international agencies. Substantial confusion exists among the law enforcement and legal communities as to the identification and rights of trafficked persons and non-coerced adult sex workers...⁵⁸¹

[In 2003] Operation Teki targeted East Timorese and Indonesian women who were independent sex workers...[U]ndercover agents solicited and engaged in sexual intercourse with the sex workers, and subsequently, uniformed officers raided the premises to execute the arrest. At least two of the raids were filmed and later aired on the local television news broadcast. None of the officers paid for the commercial sexual intercourse. Most of the Indonesian women (including two East Timorese refugees with families in West Timor) were eventually deported to West Timor. The others were released pending trial and their cases, with one exception, have since been closed.

...There is no question that these sex workers were subjected to illegal arrests... The prosecutor explained that the suspects "had violated decency norms, civility, and disrespected the community order and culture of East Timor...and conducted prostitution practices...without a license against local culture." The sex workers' activities "could easily create problems moreover on the health issue. The health of sex workers is not guaranteed, considering many people visiting East Timor from various countries, various diseases could spread from one person to another through sexual intercourse (HIV, AIDS, SARS, etc.)."⁵⁸²

There continue to be reports of periodic police raids of establishments where sex work is suspected. In 2008 national police and United Nations police arrested 10 women and seven men at two bars in Dili. Another raid in 2008 resulted in the arrest 73 men and women, 53 of whom were foreigners.⁵⁸³ Five sex workers were deported in February

579 Marcal F., da Silva N. (2004) *Civil Society Research Workshop for Policy Development Analysis in relation to the Issue of Prostitution*, University of San Francisco and Asia Foundation.

580 Caron C. (2004) *Trafficking in East Timor: A Look into the Newest Nation's Sex Industry 2004*, Dili: Alolola Foundation.

581 *Ibid.*, p.5.

582 *Ibid.*, pp.39-40.

583 Prostitution in Dili, *East Timor, Law and Justice Bulletin*, 11 July 2009.

2010.⁵⁸⁴ A raid in 2011 by police and immigration officials resulted in deportation of eight sex workers to Indonesia and the arrest of six Chinese women.⁵⁸⁵

There are reports of local police and UN police purchasing sex.⁵⁸⁶

The Australian sex workers organization, Scarlet Alliance, works in partnership with the local NGO Fundasaun Timor Hari'i (FTH) to increase the capacity of sex workers to provide effective advocacy, leadership and representation of sex worker issues in policy, law and programme development. Scarlet Alliance has assisted in the formalisation of Scarlet Timor Collective, a network of more than 70 sex workers. Through Scarlet Timor, sex workers are represented on the Global Fund Country Coordinating Mechanism and the National AIDS Council.

6.11 Viet Nam

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

6.11.1 Laws

Sex work is illegal under administrative law and has been declared to be a 'social evil'.⁵⁸⁷ In 2012, the Government of Viet Nam approved a new *Law on Administrative Sanctions* to end the administrative detention of sex workers. Under the *Ordinance on Handling of Administrative Violations 2002*,⁵⁸⁸ sex work and addiction to narcotics were administrative violations and could result in detention for up to two years in centres managed by the Ministry of Labor, Invalids and Social Affairs (MOLISA). These centres were referred to as '05 Centres' for sex workers and '06 Centres' for people who are addicted to drugs. According to Human Rights Watch, a considerable number of drug detention centres doubled as detention centres for sex workers.⁵⁸⁹ In 2010, the UN Country Team argued that the fear of administrative detention keeps sex workers from accessing HIV services, and called for the harmonization of the legal regulations on sex work and the *Law on HIV/AIDS Prevention*

584 Timorese Immigration Police: foreign prostitutes in Timor Leste, *East Timor, Law and Justice Bulletin* 22 March 2010.

585 Police deport eight prostitutes to Indonesia, *East Timor, Law and Justice Bulletin* 18 January 2011.

586 Murdoch L. (2007) UN under fire for turning a blind eye to peacekeepers' misconduct, *Sydney Morning Herald*, 7 May 2007; Sonet R., Vilanova O. (2008) Prostitution in Suai: where does it come from, and why? *East Timor, Law and Justice Bulletin*, 11 July 2009, <http://easttimorlegal.blogspot.com/2009/07/prostitution-in-suai-where-does-it-come.html>; UNPOL pretending to be serious by raiding suspected prostitution bar, *Tempo Semanal-Dili*, 3 December 2010.

587 *Ordinance on Prostitution Prevention and Control 2003*.

588 44/2002/PL-UBTVQH10 of 2 July 2002.

589 Human Rights Watch (2011), *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, New York: Human Rights Watch, p.11.

and Control.⁵⁹⁰ The UN reported that campaigns to ‘clean the streets’ of sex workers had created an atmosphere in which HIV prevention activities are difficult and sex work has been driven further underground.⁵⁹¹

The *Penal Code 2000* provides that those who ‘harbour prostitutes’ shall be sentenced to between one and seven years of imprisonment.⁵⁹² Where harbouring involves coercing others into sex work, the penalty is between five and fifteen years imprisonment. The *Penal Code* also provides that it is an offence to ‘entice or procure’ prostitutes, with penalties of between six months and five years imprisonment.⁵⁹³

The *Law on HIV/AIDS Prevention and Control 2006* states that sex workers (and other most-at-risk populations) will be given priority access to information, education and communication on HIV prevention and control.⁵⁹⁴ A Government Circular on condom use in entertainment establishments has been issued by the Ministry of Culture, Sport and Tourism, circulated to Ministry of Labour, Ministry of Culture, Sport and Tourism, and Ministry of Public Security.⁵⁹⁵

Decree 108/2007 on Implementation of Articles of the Law on HIV/AIDS Prevention and Control provides that harm reduction interventions (including provision of free or subsidized condoms and guidance on condom use) are to be provided to sex workers. The Decree provides for identity cards to be provided to outreach workers including peer communicators and volunteers, and protects peer educators from prosecution if they have notified the People’s Committee and police prior to conducting outreach and are carrying their cards. The People’s Committee and police are responsible for creating favourable conditions for programmes and projects to operate and development of the network of condom distribution points in their localities.⁵⁹⁶

The *National Programme of Action Against Prostitution, 2011-2015* was approved by the Prime Minister in 2011.⁵⁹⁷ The National Programme of Action sets a series of targets including:

- reducing the number of communes and wards that are hotspots for sex work by 40% by 2015;
- 100% of ‘hot’ provinces/cities have intervention models for reducing vulnerabilities to HIV and HIV prevention for sex workers and models supporting the reintegration of sex workers to the community;
- to provide education, vocational training, social and legal support for sex workers to re-integrate into the community.

590 See: *Statement by Mr. Bruce Campbell, UNFPA Representative, 27 September 2010, Review workshop on the 5-year implementation of sex work prevention in the period 2006-2010 and Plan of Action for Sex Work for the period 2011-2015.*

591 UNFPA (2010) *Reducing HIV transmission among sex workers through stronger partnerships* <http://vietnam.unfpa.org/public/cache/offonce/pid/5922>.

592 Article 254.

593 Article 255.

594 Article 11.

595 Survey response to UNDP (2011), Pham Nguyen Bang, UNFPA Vietnam.

596 Articles 7 and 8.

597 Decision No. 679/QĐ-TTg of 2011. See: *Statement by Acting UN Resident Coordinator Bruce Campbell at the launching ceremony of the Five Year Programme of Action on Sex Work 2011-2015*, 28 June 2011; Pouille L., (2011) *Global monitoring: status of action against commercial sexual exploitation of children, Vietnam*, Bangkok: ECPAT, p.14.

The National Programme aims to free communes and towns from sex work and to minimize harms to society, and addresses law enforcement, vocational training for former sex workers and the role of mass media in disseminating information on HIV and STI prevention. The National Programme encourages women and children involved in sex work to access social services. Although sex work remains unlawful, the National Programme includes harm reduction approaches, such as HIV prevention, treatment, care and support as well as health services and social protection measures for sex workers. Community-based efforts to help sex workers build alternative livelihoods are also parts of the Programme of Action.

In 2011, the government passed a new Anti-Trafficking Statute and a five-year national action plan on trafficking.

6.11.2 Law enforcement practices

There are reports of periodic anti-prostitution police crackdowns. One report describes streets being blocked without warning and people taken into custody unless they could prove that they had a legitimate reason to be on the street:

Men, weapons, searchlights and vehicles including transport vehicles with sirens were involved. Mostly women, but some men as well, would be apprehended as prostitutes, along with their clients, and taken to police stations...The peer educators complained that they were often mistaken for prostitutes and apprehended. The police would let them go only after their cards identifying them as AIDS educators were produced and condoms and health flyers were found in their bags.⁵⁹⁸

MOLISA reported that in the first six months of 2011, police arrested 750 sex workers and 300 pimps, and revoked business licenses of 251 businesses for involvement in sex work. According to MOLISA, as of July 2011 approximately 1,300 sex workers were being 'treated and educated' at 'rehabilitation' centres.⁵⁹⁹ Women who solicit in street-based venues are more likely to be detained than those who solicit clients from an entertainment establishment.

Doussantousse and Tooke describe the adverse impact on HIV prevention of punitive approaches against sex workers follows:

**"THE PEER EDUCATORS
COMPLAINED THAT THEY
WERE OFTEN MISTAKEN
FOR PROSTITUTES AND
APPREHENDED."**

[A] fear of detection appears to limit prostitutes' access to institutionalised health care and means that STDs, including HIV, go undetected and consequently untreated while the women continue to work. Even when they become aware of infection, they tend to rely upon self-treatment or try to ignore the symptoms. Incarceration cuts off their means of income thereby increasing the burden of those in debt. This is particularly so if a woman has dependent children or relatives who, although relying upon her earnings are unaware of their source, because she is then obliged to borrow to maintain the pretence.

598 Thu-Hương Nguyễn-Vô, (2008) *The ironies of freedom: sex, culture, and neoliberal governance in Vietnam*, Seattle: University of Washington Press, p.115.

599 Prostitution could not be a job, *Vietnamnet*, 18 July 2011, available at: <http://english.vietnamnet.vn/en/society/10802/-prostitution-could-not-be-a-job-.html>.

There are also more direct effects, such as the carrying of a number of condoms being used as evidence of prostitution. This is a particular problem where streetwalkers operate – they are prominent and therefore more likely to be stopped and searched by the police at any time. This, and the reluctance of cafés and guesthouses in the areas where streetwalkers operate to stock condoms for similar reasons, increases the risk of any ensuing penetrative sex being without a condom unless the client provided it.⁶⁰⁰

Thu-Hương Nguyễn-Võ describes the detention centres that operated until 2012 as follows:

The organization of these rehabilitation ‘centres’ resembles the organization of a low security prison. Inmates are forcibly committed and incarcerated for the duration of the ‘administrative’ sentence, which could last anything from three months to twenty-eight months, depending on repeat offence or further infractions of camp rules such as escape attempts. Rehabilitative incarceration also entails a strict regimentation of daily tasks and routines, which include STD testing and education, political and ethical classes, and vocational training...⁶⁰¹

Sex workers often returned to sex work, hence reoffending, after release from detention. Recidivism rates as high as 80% were reported.⁶⁰² In addition to female sex workers, male and transgender sex workers were also subject to administrative detention.⁶⁰³

A study published in 2002 reported that sex workers detained at 05 Centres in Ho Chi Minh City were subjected to mandatory testing and treatment for STIs, as well as HIV testing.⁶⁰⁴

Condom promotion among sex workers based on the 100% CUP model has been implemented in selected sites and is being scaled-up. Provincial Health Departments are responsible for 100% CUP implementation including cooperative arrangements with police. Activities include regular detection of STIs and social marketing of condoms. It was reported in 2006 that law enforcement efforts among entertainment establishments had caused sex workers to move to street work where they are more difficult to reach by the 100% CUP services.⁶⁰⁵ The support to harm reduction provided by Decree 108/2007 on HIV is intended to address this problem; however, tensions between public security and public health approaches to sex work remain. In 2011, it was reported that Hanoi authorities allocated funding to support the police to strengthen its crackdown on brothels and sex work in public places.⁶⁰⁶

600 Doussantousse S. and Tooke L. (2002) *Women involved in prostitution in Viet Nam – a Hanoi snapshot* Hanoi, March 2002, Available at: <http://unaid.org.vn/resource/topic/sexwork/cswprostitution.doc>.

601 Thu-Hương Nguyễn-Võ, (2008), op cit., p.122.

602 Ngo A., McCurdy S., Ross M., et al., (2007) The lives of female sex workers in Vietnam: Findings from a qualitative study *Culture, Health & Sexuality* 9(6).

603 UNDP (2011) *Men Who Have Sex with Men and Transgender Populations Multi-City HIV Initiative: Ho Chi Minh City Report*, available at: http://asia-pacific.undp.org/practices/hivaid/docs/msmtg_multi_city/pdf/Reference_Guide_HCMC.pdf

604 Rekart M. (2003) *Sex in the city: sexual behaviour, societal change, and STDs in Saigon*, *Sex Transm Infect* 2002; 78(Suppl 1):i47–i54, pi.48.

605 UNFPA/WHO (2006) *Report of the joint UNFPA/WHO Meeting on 100% Condom Use Programme*, Manila: WHO WPRO, pp.15–70; Ricard D., Long T., Huan T., et al; Scaling-up condom promotion among sex-workers (SWs) and their clients in Viet Nam. *Int Conf AIDS*. 2004, abstract no. C12656.

606 Hanoi funds prostitution crackdown, *Thanh Nien News*, 14 May 2011.

6.11.3 Efforts to improve the legal environment

A *Training Manual on HIV and the Law* was published in 2012 by UNAIDS and the Institute for Research on Policy, Law and Development-Viet Nam (PLD Viet Nam). The Manual was developed with support from the Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE).⁶⁰⁷ The Manual addresses the rights of sex workers to access harm reduction services. BABSEA CLE and the CLE Foundation also deliver Training of Trainers workshops on HIV and the law as part the project, *Raising Awareness of Rights Holders and Duty Bearers on the Legal Rights of People Living with HIV (PLHIV) and Key Populations in Viet Nam*. In a related initiative, UNDP and UNAIDS supported PLD Viet Nam to develop training resources for women living with or affected by HIV (including female sex workers), and to educate women on their rights under the *Law on HIV/AIDS Prevention and Control* and access to legal aid services.

⁶⁰⁷ Institute for Research on Policy, Law and Development Viet Nam & UNAIDS (2011), *Learn about your rights: Training Manual on HIV and the Law*, Hanoi: UNAIDS.



TRANSGENDER SEX WORKER, SHEENA, HAS BEEN WORKING ON THE STREETS OF SUVA FOR THE PAST 12 YEARS AND HAS BEEN THE SUBJECT OF POLICE INTIMIDATION, FEBRUARY 16 2010. SOURCE: GETTY IMAGES/THE SYDNEY MORNING HERALD.

7 PACIFIC

7.1 Overview

The study reviewed the laws of the 22 Pacific island countries and territories, and also of Australia and New Zealand, which are members of the Pacific Community. Compared to Asia, relatively little research has been undertaken in relation to the legal environments of sex work and transactional sex in the Pacific island states. The nature and epidemiological role of sex work in the Pacific island countries are not well researched. Anecdotal evidence suggests that many women and some men exchange sex for money, goods or services in Pacific island countries.⁶⁰⁸ Sex work and transactional sex are thought to play a major role in Papua New Guinea's epidemic.⁶⁰⁹

There is wide diversity in the legal environments for sex work across these countries. Countries influenced by laws of the USA criminalize sex work itself as well as activities associated with sex work (American Samoa, Marshall Islands, Palau, Northern Mariana Islands, Chuuk and Kosrae states of Federated States of Micronesia). By contrast, the former British colonies do not criminalize sex work in private, but offences exist for associated activities such as keeping a brothel, soliciting, or living on the earnings of sex work (e.g., Cook Islands, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Tonga, Tokelau, Tuvalu, Solomon Islands,).

For countries that were British colonies, or were territories of Australia or New Zealand, Penal Codes were modelled on English, Australian or New Zealand precedents. As a result of this colonial legacy, many countries have laws that criminalize brothels, despite the fact that most Pacific island countries have little or no history of brothel-based sex work.

Guam is the only Pacific island state that has introduced regulations to address sexual health in the sex industry by requiring regular HIV and STI testing and certification of massage parlour workers. Some states and territories in Australia also require sex workers to undergo compulsory HIV and STI tests. Compulsory testing approaches such as this are highly stigmatizing and are unlikely to be effective in HIV prevention. Testing diverts resources from more effective prevention approaches such as peer education. Test results are an unreliable guide to infectiousness, given that there is a window period during which a person who has been infected with HIV will nonetheless test negative to HIV

608 Commission on AIDS in the Pacific. (2009) *Report of the Commission on AIDS in the Pacific-Turning the Tide: An OPEN strategy for a response to AIDS in the Pacific*. UNAIDS Pacific Region, p.37.

609 Ibid; and see: Bruce E., Bauai L., Sapuri M., et al (2011) HIV knowledge, risk perception, and safer sex practices among female sex workers in Port Moresby, Papua New Guinea. *Int J Womens Health*.15(3), 53-61.

antibodies. Certification may engender a false sense of security particularly in the clients of sex workers, who may as a result increase their resistance to condoms.

Since 2010 Fiji has introduced heavier penalties for people associated with the sex industry. There is some evidence of the harm to HIV responses caused by the enforcement of these laws.

There is an active debate about sex work law reform in Papua New Guinea (PNG), where sex work is currently criminalized. PNG has the highest prevalence of HIV in the Pacific, with some provinces experiencing a generalized epidemic, and concentrated epidemics among sex workers. For example, a study conducted in 2010 found HIV prevalence of 17.6 percent among a sample of people who sell sex in Port Moresby.⁶¹⁰

New Zealand and the states and territories of Australia have introduced a range of different legislative models for regulating the sex industry. New Zealand and the state of New South Wales have models that come closest to full decriminalization. This has been highly beneficial to both public health outcomes and the human rights of sex workers. Condom use is high and the prevalence of STIs among sex workers has been kept at low levels in these jurisdictions. Australia has no documented case of HIV transmission from a sex worker to a client.

The report of the Independent Commission on AIDS in the Pacific observed:⁶¹¹


























Commercial sex...is most visible and organized in the largest towns and cities (including at sporting and cultural events) and around rural industries with mobile male populations (such as mines and logging camps in Papua New Guinea and Solomon Islands). Foreign sex workers are becoming more numerous in Fiji, where they also often work in local factories, and in the Marshall Islands.

...Much less visible, but more widespread, is unorganized, transactional sex—namely sex exchanged for food, clothing or other resources, or for a ‘good time’ or the attentions of a ‘boyfriend’. Anecdotal evidence suggests that many women and some men exchange sex for money or gifts in all Pacific countries. Studies in PNG, particularly, have found some women partly or fully support themselves and their families by selling sex but do not identify themselves as sex workers.



















610 Kelly A., Kupul M., Man W., Nosi S., et al. (2011) *Askim na save (ask and understand): People who sell and exchange sex in Port Moresby*. Sydney: University of New South Wales & PNG Institute of Medical Research, p.29.

611 Commission on AIDS in the Pacific (2009) *op cit.* fn.6., p.39.

TABLE 4: LEGALITY OF ADULT SEX WORK IN THE PACIFIC

	 Legal	 Illegal	 Not Illegal*	 Information Unavailable	
Sub-region / country / territory	Sex work in private	Soliciting	Brothels	Laws	
Polynesia					
American Samoa				<i>American Samoa Code</i> , Title 46 Chapter 37 provides offences for prostitution (46.3702), patronizing prostitution (46.3703), promoting prostitution (46.3705). Brothels are illegal and considered 'public nuisances'. (46.3703)	
Cook Islands				<i>Crimes Act 1969</i> provides offences for: brothel keeping (defined to include any place used for the purposes of prostitution, whether by one woman or more) (Section 160); living on earnings of prostitution (Section 161); procuring (Section 162); and soliciting (i.e. being a common prostitute who loiters and importunes persons in any public place for the purpose of prostitution (Section 163).	
French Polynesia				Assumed to apply laws based on those of the French Republic, under which sex work is legal. Soliciting, owning or operating a brothel and procuring are illegal.	
Niue				<i>Niue Act 1966</i> provides that it is an offence to 'loiter and importune' any person in any public place for the purpose of prostitution (s.220) and to keep a brothel (s.175).	
Pitcairn Islands (territory of the United Kingdom)				The <i>Sexual Offences Act (UK)</i> provides offences for soliciting (Section 51A); causing or inciting prostitution for gain (Section 52); Controlling prostitution for gain (Section 53); and keeping a brothel used for prostitution (section 33A).	
Samoa				<i>Crimes Ordinance 1961</i> provides offences for brothel keeping, (brothel defined as any place used for the purposes of prostitution, whether by one woman or more) (Section 58K); living on earnings of prostitution (Section 58L); and procuring (Section 58M).	
Tokelau (part of New Zealand)				Rule 25 of the <i>Crimes, Procedure and Evidence Rules 2003</i> provide that any person who loiters and importunes any person in any public place for the purpose of prostitution commits an offence.	

* Generally not prohibited but exceptions apply.

Sub-region / country / territory	Sex work in private	Soliciting	Brothels	Laws
Tonga				The <i>Criminal Offences Act</i> provides offences for keeping a brothel (Section 80); trading in prostitution, including knowingly living on the earnings of prostitution, exercising control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution, soliciting for immoral purposes in a public place (Section 81(1)-(4)). It is an offence for a male person who, whilst soliciting for an immoral purpose, in a public place with intent to deceive any other person as to his true sex, to impersonate or represents himself to be a female (Section 81(5)).
Tuvalu				The <i>Penal Code</i> provides offences for a male person living on earnings of prostitution or persistently soliciting for immoral purposes (Section 145); a woman exercising control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution (Section 146); use of premises for purposes of prostitution, and living wholly or in part on the earnings of a prostitute, or is exercising control, direction or influence over the movements of the prostitute, (Section 147); keeping a brothel (Section 148).
Wallis and Futuna				Assumed to apply laws based on those of the French Republic, under which sex work is legal. Soliciting, owning or operating a brothel and procuring are illegal.
Melanesia				
Fiji Islands				The <i>Crimes Decree 2009</i> provides offences for procuring any person to become a common prostitute (Section 217); knowingly living on the earnings of prostitution (Section 230); soliciting (Sections 231); seeking or using the services of a prostitute in a public place (Section 231); and brothel keeping (Section 233). Sex work in private is not specifically criminalized.
New Caledonia				Assumed to apply laws based on those of the French Republic, under which sex work is legal. Soliciting, owning or operating a brothel and procuring are illegal.
Papua New Guinea				The <i>Summary Offences Act 1977</i> provides offences for living on the earnings of prostitution (Section 55); keeping a brothel (Section 56); and letting or permitting premises to be used for the purposes of prostitution (Section 57). The <i>Criminal Code</i> provides offences for keeping a house, room, set of rooms or place of any kind for purposes of prostitution (Section 231).

Solomon Islands



The *Penal Code* provides offences for procuring a woman or girl to become a prostitute (Section 144); knowingly living on the earnings of prostitution; persistently soliciting or importuning for immoral purposes in a public place; or exercising control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding abetting or compelling her prostitution with any other person or generally (Section 153); brothel keeping, or permitting premises to be used as a brothel or for the purposes of habitual prostitution; or letting premises to be used as a brothel (Section 155).

Vanuatu



The *Penal Code* provides offences for procuring, aiding or facilitating the prostitution of another person or sharing in the proceeds of prostitution whether habitual or otherwise, or being subsidised by any person engaging in prostitution (Section 101); soliciting for immoral purposes in a public place (Section 148).

Micronesia

Guam
























Criminal and Correctional Code (Guam Code Title 9), provides offences for sex work (which criminalize both the sex worker and the client); soliciting to engage in sex work; and promoting or abetting sex work (Chapter 28.10, 28.15, 28.20). Section 28.10 (b)(3): A person convicted of prostitution who is determined to have known that he or she was infected with either HIV or AIDS at the time of the commission of the act is guilty of a felony of the first degree. Workers in massage parlors are required to be tested for HIV and STIs every 3 months and to obtain Health Certificates: *Regulations on Sanitary Operation of Massage Parlors (1984)*, *Health Certificates (1989)*, *Issuance of Health Certificates (2001)*.

Federated States of Micronesia



Prostitution is illegal in Chuuk and Pohnpei, but not in Yap and Kosrae. Chuuk criminalizes clients and sex workers (Title 12 Cap 28 §9025). 'Prostitution' is defined as 'the act of performing, or offering or agreeing to perform, a sexual act for hire, either as a prostitute or as a customer of a prostitute. Prostitution includes engaging in or agreeing or offering to engage in sexual conduct with another person, and engaging in any lewd act between persons, for money or other consideration, either as the person paying or the person receiving the money or other consideration'. In Chuuk and Pohnpei soliciting and the operation of organized premises for the purposes of prostitution are offences.⁶¹²

612 Jivan V., Forster C., (2007) *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* Suva: UNDP & UNIFEM, p.54.

Sub-region / country / territory	Sex work in private	Soliciting	Brothels	Laws
Kiribati				The <i>Penal Code</i> provides offences for procuring (Section 136); Being a male person living on the earnings of prostitution (section 145); Being a woman controlling the prostitution of another woman (Section 146;) having suspicious premises where there is reason to suspect that any house is used for purposes of prostitution (Section 147); keeping or permitting the use of premises for a brothel (Section 148); a common prostitute behaving in a disorderly or indecent manner in any public place (Section 167(c)); soliciting for immoral purposes in any public place (Section 167(f))
Marshall Islands				The <i>Prostitution Prohibition Act 2001</i> provides offences for engaging in prostitution; the aiding and abetting of prostitution and the operation of organized premises; promoting prostitution (Section 503); and regular use of any room, building or other place for prostitution (Section 504).
Nauru				<i>Criminal Code</i> Sections 217, 218 and 220 provide offences of procuring a prostitute. Sections 231 and 235 prohibit the keeping of a house, room, set of rooms or place of any kind for purposes of prostitution. A person who at the time of entry into Nauru is a reputed prostitute, or who is living on or receiving, or who prior to entering Nauru lived on or received, the proceeds of prostitution, is a prohibited immigrant under Section 10 of the <i>Immigration Act 1999</i> .
Northern Mariana Islands ⁶¹³				The <i>Commonwealth Code</i> includes offences for prostitution and promoting prostitution
Palau				The <i>Anti-Prostitution Act</i> (Chapter 36, <i>Code of Palau</i>) provides offences for prostitution, advancing or profiting from prostitution, soliciting or purchasing sex. "Advancing prostitution" is defined to include operating a "house of prostitution or a prostitution enterprise".
Australasia				
New Zealand				<i>Prostitution Reform Act 2003</i> .
Australia				See separate table of state and territory laws.

613 See: Department of Public Safety, Commonwealth of The Northern Mariana Islands (2009) *Press release: joint operation bust. Twelve (12) Chinese females were arrested for promoting prostitution, permitting prostitution and prostitution in Garapan and Susupe.*

7.2 Guam

Illegal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

Although sex work is illegal, there is an active sex industry in Guam, comprised of street workers and workers operating from entertainment establishments such as massage parlours, karaoke clubs and strip bars.⁶¹⁴ Most establishment-based workers are migrant sex workers.

Quarterly screening of massage parlour workers is required by the *Massage Parlour Regulations*. The regulations require massage parlour managers to ensure that workers are certified to be free of STIs and HIV.⁶¹⁵ There is reportedly poor compliance with the regulations. A review of departmental records found that of the 68 female parlour workers who obtained health certificates in the period 2000-2003, only 12 percent complied consistently with the requirement for repeat testing every three months.⁶¹⁶

The Department of Public Health is working with community-based organizations to implement a 100% CUP among massage parlour workers. The Department has stated that sex worker populations are difficult to reach because of fear of prosecution. The *Massage Parlour Regulations* assist the Department to monitor STI outbreaks.⁶¹⁷

There has been an active debate in Guam about formally establishing a red-light district. In 2006, a government task force, composed of representatives from the Guam Visitors Bureau, Department of Public Health and Social Services, Guam Police Department, and Department of Revenue and Taxation, considered legal options.⁶¹⁸ In 2010, a Bill was introduced that proposed special zoning restrictions for adult entertainment establishments, which would have provided a legislative basis for a specified red-light district.⁶¹⁹ The Bill would require strip bars and massage parlours to relocate within five years to industrial zones. This was supported by the Mayors Council but not enacted.⁶²⁰ The proposal sought to address the concern that adult entertainment establishments located in the town centre may deter family-oriented tourists.

Guam has enacted a highly stigmatizing legal provision that creates heavy penalties for sex workers who are working while knowing that they have HIV.

614 Should prostitution be legalized on Guam? www.kuam.com, 29 October 2009.

615 *Regulations on Sanitary Operation of Massage Parlors*, February 13, 1984; *Health Certificates*, December 26, 198; *Issuance of Health Certificates*, March 21, 2001; Schumann B., (2004) *Screening Guam's Massage Parlor Workers: How Often Should they Be Screened*, Presentation to 2004 National STD Conference (USA).

616 Schumann B., (2004), *op cit*.

617 UNFPA, WHO (2006) *Report of the joint UNFPA/WHO Meeting on 100% Condom Use Programme*, Manila: WHO WPRO.

618 Red light district plan for Guam still on, *Pacnews*, 16 March 2006.

619 Bill No. 314-30 (COR) - B.J.F. Cruz, *An act amending Title 21 GCA Chapter 61, the Zoning Law of the Territory of Guam, pertaining to adult entertainment businesses and establishments*.

620 Mayors give red light zone the green light, *Marianas Variety*, 21 January 2010.

7.3 Kiribati

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

Sex work is not illegal; however, police may detain sex workers on public order offences.

The term *ainen matawa* refers to women and girls who board foreign fishing vessels and engage in sex for money and goods with seafarers. When women and girls board private fishing vessels, police are unable to arrest or detain them for offences such as public disorder, loitering or drunkenness, as they are not in a public place.

In 2003, the Government of Kiribati banned Korean fishing boats from coming into the Betio harbour after a Korean newspaper reported girls having sex with Korean fishermen. In 2005, a South Korean government team visited Kiribati and concluded that parents encouraged their daughters because they received US dollars, fish, and expensive items. Once the ban was lifted in 2006, the practice of Kiribati women and girls selling sex to seafarers continued.⁶²¹

UNICEF report evidence that the *ainen matawa* are becoming more organized as a community. UNICEF researchers found that the *ainen matawa* had several organizations, that their movements were guided by information on ship schedules and that they were in communication with police.⁶²²

In 2010, McMillan and Worth⁶²³ conducted qualitative research into the context of HIV vulnerability and risk for i-Kiribati women who engage in sex work on board foreign boats. Interview data were gathered from 25 women. McMillan and Worth estimated there to be approximately 130 *ainen matawa* in 2010. They also found that there is an additional, separate population of sex workers who do not board fishing vessels.⁶²⁴ The study highlighted the need for protections from violence perpetrated by police and others to reduce women's vulnerability to HIV:

The participants' narratives indicate that identification as an *ainen matawa* renders the women vulnerable to violence from family, sexual abuse from local men and local boatmen, and sometimes deters them from laying complaints with the police when these assaults occur... Women who are identified as *ainen matawa* suffer from marginalisation and discrimination.⁶²⁵

621 UNICEF (2010) *I feel I can never get infected, Understanding HIV and AIDS risk and vulnerability among Kiribati islands youth*. UNICEF EAPRO, p.95.

622 UNICEF (2010) *ibid.*, p.58.

623 McMillan K., Worth H. (2010) *Risky Business Kiribati: HIV prevention amongst women who board foreign fishing vessels to sell sex*. UNICEF EAPRO, UNSW, Sydney.

624 *Ibid.*, and see: Tabureka I. (2008) *Sex trade, well organized illegal activity on Tarawa*. Available at: <http://www.kango.org.ki/Views%20Features%20Analysis.php>

625 McMillan K., Worth H. (2010) *op cit.* p.7.

Ainen matawa are at risk from non-consensual sex, especially gang-rape and other violence...The interviewees told of situations where local boatmen demanded sex from *ainen matawa* and abandoned them on small islets if they refused. Others also told of policemen requesting sex in return for ignoring their presence on the boats or releasing them from custody.⁶²⁶

...[T]heir very identity as *ainen matawa* renders them vulnerable to rape and sexual abuse from certain other seafarers, and from local men, including the police. In addition, experiences of marginalisation and fear of discrimination and stigmatisation often deter *ainen matawa* from using HIV and STI testing and treatment services.⁶²⁷

Issues of sexual violence render *ainen matawa* even more vulnerable than other groups of women because of marginalisation. A police liaison program would both encourage the report and prosecution of gang-rapes on land or on boats and further the integration and acceptance of these young women as valued members of local society. It is necessary to ensure that the police themselves do not engage in any abuses, sexual coercion or exploitation of *ainen matawa*.⁶²⁸

Prosecutions for rape are reportedly infrequent in Kiribati, due to cultural taboos on reporting sexual crimes and police attitudes encouraging reconciliation over prosecution.⁶²⁹

7.4 Fiji

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

7.4.1 Laws

The *Crimes Decree 2009* provides offences for procuring any person to become a common prostitute (Section 217); knowingly living on the earnings of prostitution (Section 230); loitering in a public place for the purpose of offering himself or herself for sex in return for a payment of any nature, or soliciting for immoral purposes (Section 231); seeking or using the services of a prostitute in a public place (Section 231); and brothel keeping (Section 233).

The *Crimes Decree 2009* criminalized clients who seek the services of a sex worker in public as well as sex workers who solicit for clients in public. The *Crimes Decree 2009* also introduces comprehensive anti-trafficking provisions.

626 *Ibid.* p.8.

627 *Ibid.* p.11.

628 *Ibid.* p.14.

629 US Government State Department (2010) *Country Reports on Human Rights Practices: Kiribati*.

The *HIV/AIDS Decree 2011* provides that it is unlawful to deny a person access, without reasonable excuse, to a means of protection from HIV. 'Means of protection' includes awareness materials, condoms and lubricant. This provision may discourage police from confiscating condoms as evidence of sex work. The *HIV/AIDS Decree 2011* also includes provisions prohibiting discrimination against a people living with or affected by HIV/AIDS, and providing rights to voluntary HIV testing and confidentiality.

7.4.2 Law enforcement practices

There have been very few prosecutions of sex workers under the *Crimes Decree 2009*. As of September 2011, there was only one recorded prosecution for sex work under the *Crimes Decree 2009*, and the accused in that case was under the age of 18.⁶³⁰

McMillan and Worth conducted interviews with sex workers in 2011, as part of a study exploring the impacts of the *Crimes Decree 2009* on sex work and HIV prevention.⁶³¹ Although there have been few prosecutions, police harassment of sex workers occurs, and abuses by the military have been documented. Sex workers in Lautoka reported that the military have been involved in numerous abuses of sex workers since the Decree was introduced. Military officers were reported to have rounded-up sex workers and inflicted summary punishments, including sleep deprivation, humiliation, sexual assaults and forced labour. The study identified a range of harms to HIV responses associated with developments reported since the commencement of the *Crimes Decree 2009*:

A heightened fear of brutality and harassment from law enforcement agents has reduced sex worker opportunity for negotiation with clients, including condom negotiation. Concern about the risk of HIV infection is displaced by other more immediate concerns.

Some of the tactics used by soldiers who are 'policing' sex work, such as the public exposure of sex workers' identities, has served to reduce the negotiating power of a sector of sex workers. It has also effected changes to the ways that sex work is conducted. Sex workers have begun to operate more covertly and secretly. New sex workers work from new sites, are more isolated and less accessible to peer, NGO and government HIV prevention service providers.

...The criminalisation of clients has reduced the ability of sex workers to negotiate over the terms of the transaction and has created more pressure to accept clients' terms. Criminalisation of clients has also put more experienced and identifiable sex workers at a competitive disadvantage. Fear of losing a client is an incentive to comply with a client's wishes for sex without a condom.

A culture of cooperation and sharing is one of the greatest HIV prevention resources within the Fijian sex work community. The targeting of 'hotspots', the detentions and the mistreatment of those who have been identified in the past as sex workers divides the sex worker community, reducing the opportunity and the motivation for cooperation. New and young sex workers operate from new sites and are not reached by the informal condom distribution networks that remain.

...NGO nervousness as a result of the policing of sex workers and uncertainty about the implications of the Decree have resulted in the closure of programs, withdrawal of

630 Submission of Nazhat Shameem (lawyer) to UNDP, 24 September 2011.

631 McMillan K., Worth H., (2011) *Sex Workers and HIV Prevention in Fiji – after the Fiji Crimes Decree 2009*, Sydney: International HIV Research Group, UNSW.

support and services, and the cessation of information and HIV prevention workshops for sex workers.

Sex worker sense of vulnerability has resulted in a reluctance to engage in advocacy. Most sex worker organisations are feeling more embattled, struggling with the demands of organisation and registration on their limited resources, and are reducing their activities. Targeting of recognisable sex workers has made new sex workers reluctant to associate with more experienced sex workers and advocates... Carrying a large amount of condoms and providing outreach services in general are considered to be more risky and are no longer undertaken on any regular basis.

Access to sexual health services such as HIV and STI testing and treatment has been compromised. The few programs actively encouraging and facilitating access have ceased, and now only mainstream services are available. Publicity around more punitive laws, along with experiences of sex workers themselves, have elevated sex worker fear of authorities and any potential documentation of their identity as sex workers.

...Sex workers report that military policing of sex workers and known sex work 'hotspots' began after February 2010. Data from sex workers indicate that, over the past year, some sectors of the military either misunderstand or knowingly misrepresent their powers in relation to the policing and enforcing of new laws relating to sex work...

Beliefs about the newly punitive nature of the law have not only discouraged sex workers from carrying enough condoms to share, but have resulted in the closure of HIV prevention and condom distribution programs by some NGO groups...

...[U]nder close scrutiny, many of the 'Prostitution offences' detailed in the Crimes Decree may not constitute massive changes to the law in Fiji as it concerns sex work. However, the new criminalisation of clients, the reception and interpretation of the provisions of the Decree by NGO service providers and by sex worker organisations, and the response by some law enforcers in the military who have taken the laws as license to detain, torture, abuse and force the labour of people who they know to be sex workers, have most certainly had a dramatic impact, and a totally deleterious effect on HIV prevention.⁶³²

The above study built on findings from an earlier study by the same authors undertaken prior to commencement of the *Crimes Decree 2009*.⁶³³ Findings of the earlier study included:

Some participants,...most commonly those who worked from the streets, reported police harassment, but mostly this was limited to being chased from the streets. Sex workers said that there was now less police brutality than had been the case up to five years ago. However, in Nadi there were numerous reports of extortion: sex workers having to pay money to police, usually alluded to as 'grog money'. In and around Suva the descriptions of police response are more mixed. Mostly participants describe the policing of the streets: 'chasing' sex workers away, telling them to go home, or threatening them with arrest. Some transgender reported being forced to provide oral sex. Interestingly, there were no claims of corruption or brutality in Lautoka and Labasa, where sex worker organisations have been securely established and engage

632 *Ibid.*, pp.24-26.

633 McMillan K., Worth H. (2010) *Risky Business: Sex work and HIV prevention in Fiji*, Sydney: University of New South Wales.

in building community and liaise with the police to improve understanding about HIV prevention.⁶³⁴

...Reports of police corruption and harassment, along with violence and brutality from clients, were greater in Nadi than in the other centres. Unlike the other study sites, sex workers in Nadi were reluctant to carry more than one condom with them at any time. This was because carrying condoms would give police reason to harass them. Consequently, sex workers were unlikely to be able to provide condoms to others.⁶³⁵

...In recent years advances have been made with respect to the attitude and behaviour of police as well as some health service providers. This has facilitated condom use and service access.⁶³⁶

Overs and colleagues conducted research to map the impact of law, policy and enforcement practices in 2011.⁶³⁷ Findings included:

In all sites sex workers said that law enforcement has increased dramatically since 2009. The majority of [small group interview] participants thought that this is a result of both the 2009 Decree and the publicity about child prostitution and human trafficking. Sex workers in Suva who work in the street are harassed or arrested often enough for street work have become largely unviable.

There was strong agreement in all groups that enforcement periodically becomes stricter and more active. Some suggested that crackdowns happen in response to pressure by religious groups, civil society organisations and diplomatic missions.

Most participants expressed concern about the criminalisation of clients. There was strong agreement that clients are scared by the 2009 Decree. Although they do not know how many arrests or successful convictions of clients there have been, they think there have been some. Some had seen or been with clients when they were arrested. In Suva participants described an important effect of the criminalisation of clients. They said that clients have begun passing phone numbers of sex workers to each other. The client calls the sex worker and makes an arrangement to meet in a motel or house. The advantages and disadvantages of this were experienced differently by different sex workers. Some felt that they were more vulnerable to violence because there is no opportunity to see the client and discuss the services and price with him before they are alone with him. For others there were concerns about being tricked or having their time and money wasted if they book a motel room ('time wasters' are a universal scourge of sex workers). If the client books the motel room the sex worker is at a disadvantage if any violence occurs. In such a situation motels cannot side with the sex worker because any association between the motel and the sex worker could be constructed as illegal under the very broad anti pimping and anti trafficking laws.

When asked who has power over sex workers [small group interview] participants unanimously answered that police are the main source of power over sex workers... anecdotes were told about enforcement. They include the use of pepper spray against a sex worker when walking on the street who refused to get into police

634 *Ibid.*, p.15.

635 *Ibid.*, p.16.

636 *Ibid.*, p.20.

637 Overs C., Gavidia J., Manikiwai S., Hunter A., Hawkins K., and Williams M. (2011) *Sex work in Fiji: Mapping the impact of law, policy and enforcement practices*. Melbourne: Paulo Longo Research Initiative, Michael Kirby Centre for Public Health and Human Rights, Monash University (unpublished draft).

vehicle; transgender sex workers forced to masturbate each other, being thrown in the sea, having their mobile phones thrown away; being robbed of their earning and dumped in isolated area where they are vulnerable to being raped or beaten further. One participant told of seeing a pregnant sex worker being beaten by police.

According to all participants in all groups it is 'very common' for police to confiscate condoms from adult sex workers as evidence. Police demand free sex, often at the police station. When sex workers are arrested it is also common to offer sex to police in exchange for reduced negative consequences.

Sometimes sex workers bribe police officers to allow them to work from a specific street location or to avoid being taken to the police station or court.

Men described as 'street boys' and 'thugs' rob sex workers on the streets with violence but there was strong agreement that sex workers almost never complain about the matter to the police because they know it will not be taken seriously because the person complaining is a sex worker...⁶³⁸

"THE SEX INDUSTRY HAS BECOME LESS SAFE BECAUSE IT IS HAS BECOME NECESSARY FOR SEX WORKERS AND CLIENTS TO MEET IN MORE CLANDESTINE WAYS..."

The sex industry has become less safe because it has become necessary for sex workers and clients to meet in more clandestine ways, particularly since buying sex has become criminal...[this] exacerbates HIV vulnerability because it:

- Relocates workers into more dangerous workplaces where safe work practices are much more difficult to maintain.
- Increases dependency on middlemen who can help sex workers to avoid arrest.
- Reduces incomes so that incentives to do whatever it takes to keep each client are greater.
- Means that less money is available for condoms and medical treatment.

...A number of factors emerged in this study as contributing to threats to sex workers health:

- Confidentiality is not respected and is difficult to maintain so some sex workers are reluctant to attend public clinics. Some try private doctors instead but given fluctuating income and limited services available from general practitioners this is not a good alternative. Private doctors cannot perform HIV tests.
- Condoms are confiscated or 'used as evidence'. This doesn't appear to mean they are actually taken into a court and presented to a judge to counter not guilty pleas. Rather they are confiscated and used to make the sex worker co-operate by either paying a bribe, giving free sex or signing a statement admitting to the offence.

...Giving money to middlemen is not traditionally part of Fiji's sex work culture. Several participants expressed horror at the idea of paying a 'pimp' to find clients, to

638 *Ibid.*, pp.15-17.

provide a place to work or to protect them from police. But the 2009 Decree and the enforcement around it have created a trend toward reliance on third parties – which is defined as sexual exploitation. In other words it creates exactly the situation it aims to prevent.

...Violence was a strong theme in each group with many anecdotes being recounted about violence by local thugs, clients and uniformed men...[T]ransgenders appear to be much more vulnerable to violence and HIV than female sex workers and find it much more difficult to access quality treatment in health services.⁶³⁹

7.4.3 Efforts to improve the legal environment

In 2011, a dialogue was convened to discuss sex workers' rights. Participants included a former High Court judge, Legal Aid Office Director, a police representative, a senior officer from the Attorney-General's office and representatives of sex worker groups such as the Survival Advocacy Network, the national sex workers' network. The dialogue was organized for discussions on the impact of the law, legal aid services, sex workers rights while been detained, police policies regarding sex workers and sex workers' health and violence.⁶⁴⁰

Survival Advocacy Network (SAN) is a network of sex workers that advocates for the rights of sex workers. SAN is a project of Women's Action for Change; however, it operates as an independent organization with its own guidelines and Rules of Management, with a Management Collective made up of sex workers.

In 1999, the Fiji Law Reform Commission recommended that sex work be decriminalized and instead be subject to a system of regulation and licensing to prevent the industry becoming a vehicle for public nuisance or criminal activity.⁶⁴¹

7.5 Papua New Guinea

Illegal

SEX WORK IN
PRIVATE

Not Illegal

SOLICITING

Illegal

BROTHELS

7.5.1 Laws

The legal framework that applies to sex work was largely adopted from the laws that Papua New Guinea (PNG) inherited from Australia at independence.

639 *Ibid.*, pp.19-21.

640 Rina S., Sex trade persistent, *Fiji Times Online*, 6 June 2011.

641 Fiji Law Reform Commission (1999) *Reform of the Penal Code and Criminal Procedure Code: The sexual offences report*, Suva: FLRC, p.79.

The *Summary Offences Act 1977* provides offences for living on the earnings of prostitution;⁶⁴² keeping a brothel⁶⁴³ and letting or permitting premises to be used for the purposes of prostitution.⁶⁴⁴ The *Criminal Code* provides an offence for keeping a house, room, set of rooms or place of any kind for purposes of prostitution.⁶⁴⁵ The *Criminal Code* also criminalizes homosexual sex.⁶⁴⁶

In 1975, the PNG Law Reform Commission recommended that the offence of ‘soliciting’ not be included in the new *Summary Offences Act*. The Commission’s intention was that sex work itself should be decriminalized, while others who profited from sex work (e.g., pimps) should remain criminalized.⁶⁴⁷ However, sex work was in effect criminalized as a result of a controversial 1978 court decision that interpreted the scope of the offence of ‘living on the earnings of prostitution’ to include sex workers, as well as pimps and other persons who profit from employing sex workers.⁶⁴⁸

In 1980 the National Court heard the appeals of three women against their convictions for living on the earnings of sex work.⁶⁴⁹ The judge held that proof of repeated earnings from sex work are required, rather than a single act of sex work.

The *HIV/AIDS Management and Prevention Act 2003* provides that it is unlawful to deny a person access, without reasonable excuse, to a means of protection from HIV. ‘Means of protection’ includes awareness materials, condoms and lubricant.

7.5.2 Law enforcement practices

Factors influencing the nature of sex work in PNG include increased mobility, the development of mines, gas fields, ports and logging camps, urbanization and greater access of men to cash income.⁶⁵⁰ Some sex work occurs in guesthouses or hotels. There are large numbers of women and girls involved in transactional sex on the streets or at markets, and some women work from entertainment venues such as discos, clubs and hotels. ‘Passenger girls’ is a term used to describe women and girls who travel extensively, receiving transport, subsistence and/or temporary protection in return for sex.⁶⁵¹ Men and transgender people also exchange money or goods for sex in PNG, although little research has been done on the nature and extent of their involvement in sex work and transactional sex.

A consultation on legal issues affecting sex workers was held in 2011 to provide input to this study.⁶⁵² Key issues that arose from the consultation included concerns about high levels

642 Section 55.

643 Section 56.

644 Section 57.

645 Section 231.

646 Section 210, Unnatural Offences; and Section 212, Indecent practices between males.

647 Fletcher, K., Gonapa, B., Decriminalisation of Prostitution in Papua New Guinea, in Lucker V. and Dinnen, S. (2010) *Civic Insecurity; Law, Order and HIV in Papua New Guinea*, Canberra: ANU.

648 *Anna Wemay and Others. v. Kepas Tumdual and Others* [1978] PNGLR 173.

649 *Monika Jon and Others v Dominik Kuman and Others*. 8 August 1980. National Court, Papua New Guinea (Unreported).

650 See: Kelly A., Kupul M., Man W., Nosi S., Lote N., Rawstorne P., et al. (2011) *‘Askim na save (ask and understand): People who sell and exchange sex in Port Moresby’* Sydney: University of New South Wales & PNG Institute of Medical Research, p.9.

651 Stewart C., (2006) *Prostitution and Homosexuality in Papua New Guinea: Legal, Ethical and Human Rights Issues Human Rights Issues* Working Paper No. 19, Gender Relations Centre Research School of Pacific and Asian Studies, Australian National University.

652 The community consultation meeting was held in Port Moresby on 13 December 2011, convened

of discrimination and police brutality targeting sex workers, the need for protection from violence, and lack of access to justice. It was reported that female, male and transgender sex workers hide their identities, because of stigma and fear of disclosure. Sex workers at the consultation reported the following incidents:

- Police detained two sex workers, and forced them to strip and climb a tree. The police reportedly then took humiliating photographs of the sex workers with their mobile phones.
- A sex worker applied for work at a company, which required her to produce a police clearance before commencing work. The police reported to her employer that she was a sex worker, which meant she was refused employment.
- A police officer had sex with a sex worker but refused to pay money.
- Police regularly harass sex workers found to be in possession of condoms.

Sex workers at the consultation reported that access to justice is constrained by poor levels of understanding of legal rights among sex workers, and where and how to get legal assistance. They stressed the importance of ensuring that sex workers can seek justice through the Village Court system.

“... ACCESS TO JUSTICE IS CONSTRAINED BY POOR LEVELS OF UNDERSTANDING OF LEGAL RIGHTS AMONG SEX WORKERS, AND WHERE AND HOW TO GET LEGAL ASSISTANCE.”

Village Courts reach 95 percent of PNG’s population. Village Courts apply local customary law to resolve minor matters that are appropriate for community-based resolution. There are concerns that some male dominated Village Courts might be biased against women. Wardlow, in research on Huli ‘passenger women’, found that while women can achieve success in Village Courts, male attitudes against women are a common barrier that needs to be overcome.⁶⁵³ There are concerns that application of customary law can lead to unjust outcomes, e.g., due to bias against women.⁶⁵⁴ Village Courts need to be sensitized to gender inequality and the specific justice and violence protection issues of people who exchange sex for money or goods.

A study into the sale and exchange of sex in Port Moresby conducted in 2010 found:

- When participants were asked about any experience of physical abuse and forced sex as a result of selling or exchanging sex in the last six months, almost half (46 percent of a sample of 593 persons) reported physical abuse, 50 percent reported having been forced to have sex and 14 percent reported having been forced to have sex by police.⁶⁵⁵
- Of the 274 participants who had disclosed their involvement in the sex industry to health care workers in the last six months, 43 percent stated that they were refused

by PNG Development Law Association and International Development Law Organisation. 27 sex workers participated (3 transgender, 1 male, 23 female).

653 Wardlow H. (2006) *Wayward Women: Sexuality and Agency in a New Guinea Society*. Berkeley: University of California Press.

654 Leach T., (2011) HIV and the Law in PNG, *HIV Australia*, 9(2), July 2011.

655 Kelly A., Kupul M., Man W., Nosi S., Lote N., Rawstorne P., et al. (2011) op cit., p.25.

treatment after disclosure, and 10 percent said they were told to stop selling or exchanging sex.⁶⁵⁶

Sex workers report being picked up by police and forced into sex under threat of prosecution, sometimes amounting to serious gang rape. Police are reported in some cases to exploit the illegal status of sex workers by subjecting them to violence, sexual assaults and extortion.⁶⁵⁷ Police involvement in line-ups (systematic gang rapes) has been documented from a variety of sources prior to 2006 and appears to have been an institutionalised aspect of police culture.⁶⁵⁸

In 2004, 76 alleged sex workers were arrested at a guesthouse. The sex workers were forced to blow up condoms and swallow them while being marched to the police station. According to Jenkins:

The police taunted the women saying they were responsible for spreading AIDS. If the women couldn't swallow the condoms they had the butt of a rifle smashed into their face. Some, mainly younger women, who were not rounded up as quickly, were raped at the guesthouse...Eventually all charges were dropped.⁶⁵⁹

According to Stewart:

The Metropolitan Police Commander claimed that the raid was designed to prevent sex workers from contracting and spreading HIV. The women and girls arrested were charged with 'living on the earnings of prostitution'. The evidence produced in support of this charge was that condoms had been found on the premises and in their possession, which supposedly proved that the premises were a brothel and the women were prostitutes.⁶⁶⁰

In a 2006 report, Human Rights Watch documented the following police abuses:

Police often use beatings and other forms of violence and humiliation to administer on-the-spot punishment for sex work. This is particularly evident in Lae during police raids on the old airstrip near the center of town, where sex work occurs openly. Homeless individuals live in some parts of the area; in other parts, people go there during the day but sleep elsewhere. Women, girls, and men described being beaten and robbed in police raids...Women and girls in Lae told us they were occasionally arrested, but arrest does not appear to be a main purpose of the raids.

...[W]omen and men still described being harassed by police in 2005 and 2006 for carrying condoms. Several persons reported being forced to chew, swallow, or inflate condoms. These actions by police and their reported accompanying comments suggest that they see condoms as implicated in the transmission of HIV, rather than as tools for its prevention, and an indication of promiscuity.

656 Ibid., p.26.

657 Commission on AIDS in the Pacific (2009) *Turning the tide: an open strategy for a response to AIDS in the Pacific. Report of the Commission on AIDS in the Pacific*, UNAIDS, p. 55.

658 See e.g., Making Their Own Rules: Police Beatings, Rape, and Torture of Children in Papua New Guinea, *Human Rights Watch*, 17(8), p.37 ff; Human Rights Watch (2006) Still making their own rules: Ongoing Impunity for Police Beatings, Rape, and Torture in Papua New Guinea, *Human Rights Watch* 18(13(C)), pp.15, 27.

659 Jenkins C., Sex Workers and Police in Port Moresby (1994–1998): Research and Intervention, in Luker V., Dinne S., (eds) (2010) *Civic Insecurity: Law, Order and HIV in Papua New Guinea* Canberra: ANU.

660 Stewart C., Enabling Environments: the Role of the Law, in Luker V., Dinne S., (eds) *Civic Insecurity: Law, Order and HIV in Papua New Guinea* Canberra: ANU.

Another man described a raid on the old Lae airstrip in May 2006, carried out by mobile squad officers in dark blue uniforms...Four other men and women in Lae also described police harassing them for carrying condoms, including forcing them to chew, swallow, or inflate condoms...another HIV/AIDS educator described trying to help a sex worker file a complaint with police in November 2005. The woman had been beaten up by a client when she refused to have sex without a condom. The HIV/AIDS educator went with her to Lae's Town police station. "The police made a joke, laughing, saying, 'You should have let him have sex with you because he is paying you a lot of money,'" she said. "I scolded them and told them to stop, but they didn't do any follow up on the beating. They said, 'You are promoting condoms and it brings HIV.'"⁶⁶¹

In its submission to the UN Human Rights Council in its Universal Periodic Review of Papua New Guinea, the UN in PNG argued that PNG laws that criminalize sex work create barriers to people accessing services, prevent service providers from operating in some locations, and reinforce vulnerability, stigma and discrimination.⁶⁶²

7.5.3 Efforts to improve the legal environment

The National AIDS Council advocates decriminalization of sex work. The PNG Constitutional Law Reform Commission is considering options for sex work law reform. The *National HIV and AIDS Strategy 2011-2015* notes that 'laws that criminalise sex work and same-sex practices create barriers to people accessing services and reinforce vulnerability, stigma, and discrimination' and recommends 'legislative reforms to improve the environment for effective HIV and AIDS prevention, treatment and care' as a key strategic objective.⁶⁶³

An objective of the *National HIV Prevention Strategy 2010-2015* is to 'ensure a legal and policy environment supportive of HIV prevention, treatment and care'. The Strategy states a commitment to decriminalization of male-to-male sex in the following terms:

Advocate for and support changes to current laws that criminalize sex work and same sex practices

Laws that criminalize same-sex practices and sex work create barriers to accessing services and reinforce factors of vulnerability, including stigma and discrimination. Greater advocacy is needed to support plans for introducing reforms to legislation that aim to decriminalise same-sex practices and sex work. Health and law enforcement agencies need to work closely together to address HIV-related discrimination that affects the availability, accessibility, and delivery of services for vulnerable populations. This would include expanding and supporting HIV prevention partnerships with police to reduce police harassment, violence, and stigmatisation of men with same-sex partners and women and men involved in sex work, and to enhance HIV prevention among police and their partners.

Dame Carol Kidu (former Minister for Community Development) and the National AIDS Council Secretariat have been exploring options for sex work law reform since 2010. The process has been described as follows:

⁶⁶¹ Human Rights Watch (2006) Still making their own rules: Ongoing Impunity for Police Beatings, Rape, and Torture in Papua New Guinea, *Human Rights Watch* 18(13(C)).

⁶⁶² United Nations in Papua New Guinea (2011) *Joint Report for the Universal Periodic Review of Papua New Guinea*, United Nations Human Rights Council 11th session, http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/PG/UNCT_UNCountryteam-eng.pdf

⁶⁶³ National AIDS Council of Papua New Guinea (2010), *Papua New Guinea National HIV and AIDS Strategy 2011-2015*, p.52.

A Reference Group to seek the decriminalization of sex work...is comprised of public and private sector representatives and civil society organizations. It includes sex workers, MSM, people living with HIV/AIDS (PLHIV) and transgender representatives, and is chaired by the Director of the National AIDS Council Secretariat. Informed by initial research and participatory dialogue in the Reference Group, a multi-pronged strategy of advocacy, and a submission to the National Executive Council...was agreed upon [in 2010]...The National Executive Council declined to make a decision, as requested by the submission, on moral, religious, and customary grounds. However, it directed the Attorney General to refer the issues to the national Constitutional Law Reform Commission.⁶⁶⁴

Since 2006, prevention of violence against women has been a priority for the Police Commissioner. The *Law and Justice Sector Gender Strategy 2005-2010* includes commitments to train police on the *HIV/AIDS Management and Prevention Act 2003* and to prioritize attention to any disciplinary offences within the police force that may contribute to the spread of HIV.⁶⁶⁵

Friends Frangipani is a national network of sex workers formed by male, female and transgender sex workers, which advocates for law reform and protection of the human rights of sex workers. In 2010, members came from eight provinces and included female, male and transgender sex workers. Friends Frangipani is working with Law and Justice Sector Agencies, and the Family and Sexual Violence Action Committee to advocate for law reform,⁶⁶⁶ and participated in the development of the *National HIV/AIDS Strategy 2011-2015*.

Save the Children's Poro Sapot Project (PSP) supports sex workers to educate police about HIV and sex work. The project operates in four cities in three provinces. Trainings, sensitizations and review meetings are conducted with police officers on a range of topics including: HIV, human rights, national law, gender and violence, stigma and discrimination and other issues facing vulnerable populations. In a pilot intervention in January 2007, PSP staff and volunteers conducted a 4-day sensitization workshop for over 100 new recruits at PNG's national police college. PSP reported that a lesson learned from the pilot was that sensitization is more effective when understood and supported by the police hierarchy, and when it involves members of vulnerable populations willing to testify about their experiences. Police interactions with project target groups improved in those communities where police sensitization has taken place.⁶⁶⁷ In 2009, PSP staff and volunteer peer educators reached over 438 new police and continued contact with over 800 police who had been reached by the project in previous years.⁶⁶⁸ PSP's work is endorsed by PNG's Police Commissioner.

The PNG Development Law Association and the International Development Law Organisation are partnering in a project to provide legal services to people living with HIV

664 Kidu C., (2011) A National Response to the HIV Epidemic in Papua New Guinea, *UN Chronicle*, 47(1).

665 AusAID (2008) Violence against women in Melanesia and East Timor, Canberra: AusAID, p.109; Government of PNG, *Law and Justice Sector Gender Strategy 2005-2010*.

666 *Friends Frangipani, the sex workers response to HIV in PNG*, 12 April 2010, conference presentation available at: http://hivconsortium.org.au/images/india/lahui_d.pdf

667 David E., Kilei J., Mohave D., et al (2008) Working with police towards prevention of STIs and HIV amongst PNG's most vulnerable groups: female sex workers, men who have sex with men, people living with HIV, *AIDS 2008 - XVII International AIDS Conference Abstract no. WEPE1094*.

668 Reid E., (2010) Putting values into practice in PNG: Poro Sapot Project and aid effectiveness, *Journal of the Australian Association for the Advancement of Pacific Studies*, Issues 1.2 and 2.1, April 2010.

and key populations, including sex workers. A legal representation and advice service is provided in Port Moresby.

7.6 Solomon Islands

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Illegal

BROTHELS

The National AIDS Council has reported that laws that discriminate against sex workers impeded HIV prevention efforts in 2010-2011.⁶⁶⁹ In 2010, media reports quoted the Police Commissioner as stating that it was not a priority for the police to 'go out looking for prostitutes...the Police force will not chase or hunt down prostitutes as a pro-active stance against the issue.'⁶⁷⁰

Law enforcement appears to focus on identifying businesses that employ Chinese women working as sex workers in the capital, Honiara.⁶⁷¹ Some local sex workers board fishing vessels to sell sex to Asian contract fishermen or exchange sex for goods.⁶⁷² There are reports of sex work and sexual exploitation of children at logging camps.⁶⁷³

7.7 Vanuatu

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Not Illegal

BROTHELS

According to the World Health Organization Western Pacific Regional Office:

669 Solomon Islands National AIDS Council, Solomon Islands Global AIDS Response Progress Report, Honiara: Ministry of Health, p.6.

670 Prostitution is here to stay: Commissioner Marshal, *Solomon Times*, 21 May 2010.

671 Hotels, casinos told not to support prostitution, *Solomon Star*, 13 February 2010; Sasako A. (2007) Are the Chinese triads taking over Honiara? *Islands Business*; Alleged sex trader faces additional charges, *Solomon Star* 15 January 2011.

672 Lal B., Fortune K., (eds.) (2000) *The Pacific Islands: an encyclopedia*, University of Hawaii Press, Vol. 1., p.415.

673 Vitchev A. (2008) Paradise Lost: Logging and the Environmental and Social Destruction of the Solomon Islands, *Japan Focus*.

There appears to be no recognized, established, commercial sex industry in Vanuatu and there are no full-time brothels in Port Vila. It is speculated that casual freelance commercial sex occurs when cruise or navy ships come to Port Vila or Santo.⁶⁷⁴

McMillan and Worth conducted research into sex work in Vanuatu in 2011.⁶⁷⁵ None of the sex workers interviewed had been approached by, or had any interaction with police or the justice system as a result of their engagement in sex work. Sex work was presented as a social/moral transgression rather than a legal one.⁶⁷⁶ Two modes of selling sex were evident:

In the first, small groups of sex workers frequented bars, *nakamals*⁶⁷⁷ and nightclubs in the evenings to find clients and the sexual encounter took place immediately after it was negotiated. In the second, the sex worker worked alone and meetings for sex were prearranged. In this second pattern, clients were regulars or had been found during daytime excursions to town and arrangements would be made to meet for sex later.⁶⁷⁸

Vanuatu's *National Strategic Plan on HIV and STIs* has as a component the building of an enabling environment and the review and revision of national policies, legislation and traditional laws that discriminate against vulnerable populations. This component includes:

The review, amendment or correction of these existing laws and practices, with full support from State of Law office, high-level authority including politicians, to minimize the vulnerability of some groups of population could contribute to the prevention or escalation of HIV epidemic.⁶⁷⁹

7.8 New Zealand

Legal

SEX WORK IN PRIVATE

Legal

SOLICITING

Legal

BROTHELS

The *Prostitution Reform Act 2003* decriminalized soliciting, living off the proceeds of someone else's sex work and brothel-keeping. Section 3 of the Act states:

674 Ministry of Health Vanuatu & WHO WPRO (2000) *STI/HIV antenatal clinic STI survey Port Vila*, Manila: WHO WPRO.

675 McMillan K., Worth H. (2011) *Risky Business Vanuatu: Selling sex in Port Vila*, Sydney: IHRG University of New South Wales.

676 Personal communication, K. McMillan, July 2011.

677 *Nakamals* is an area where the men from a village gather to drink kava after a working day..

678 McMillan K., Worth H. (2011) op cit., p.1.

679 Ministry of Health Vanuatu, *National Strategic Plan on HIV & Sexually Transmitted Infections 2008-2012*, p.22.

The purpose of this Act is to decriminalize prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- a. safeguards the human rights of sex workers and protects them from exploitation;
- b. promotes the welfare and occupational health and safety of sex workers;
- c. is conducive to public health;
- d. prohibits the use in prostitution of persons under 18 years of age...

Sex work is recognized as legitimate work by government. Workplace health and safety standards for sex work have been developed in consultation with the New Zealand Prostitutes' Collective and brothel operators.⁶⁸⁰ Employment disputes can be referred to the Government's Labour Inspectorate and Mediation Service. Sex workers are able to access tribunals to resolve work related disputes and employment discrimination complaints may be made by sex workers to the Human Rights Commission.⁶⁸¹

There is an obligation on operators of sex work businesses to adopt and promote safer sex practices,⁶⁸² and sex workers and clients must adopt safer sex practices.⁶⁸³ The Ministry of Health is in charge of inspection and enforcement of workplace standards, rather than the police.

It is an offence to coerce a person to provide sexual services, or to engage in sex work while on a temporary visa.

“RESEARCH HAS SHOWN THAT, FOLLOWING DECRIMINALIZATION, SEX WORKERS FOUND IT EASIER TO REFUSE CLIENTS WHEN THEY DID NOT WANT THEM.”

The *Criminal Records (Clean Slate) Act 2004* allows sex workers to apply for previous convictions to be removed from the record. It is now easier for sex workers to find other jobs if they choose to change occupation because they are less likely to have a criminal record.

The national government provides a centralized framework and acts as a support to local administrative bodies. Local governments have the power to issue by-laws for zoning and advertising relating to sex work. In Auckland, laws have been proposed to exclude sex workers from specific localities.⁶⁸⁴

With knowledge of their employment rights, brothel workers are better able to assert these rights with brothel operators and clients. The relationship between sex workers and police also improves in decriminalized settings.⁶⁸⁵

A review of the operation of the *Prostitution Reform Act 2003* was undertaken by a parliamentary committee (the Prostitution Law Review Committee) five years after the

680 Department of Labour (NZ) (2004) *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* Occupational Safety and Health Service, Department of Labour, available at <http://www.osh.govt.nz/order/catalogue/pdf/sexindustry.pdf>

681 Lawyers Collective HIV/AIDS Unit (2010) *Sex Work Legislation: Solution or Problem? Report of the Satellite Session at the XVIII International AIDS Conference Vienna*, Lawyers Collective HIV/AIDS Unit, p.5.

682 Section 8.

683 Section 9.

684 The *Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010* if enacted would have effect across the Auckland Region and enable Auckland Council to regulate street prostitution in specified places.

685 Abel G., Fitzgerald L., Healy C., Taylor A. (eds) (2010), *Taking the crime out of sex work: New Zealand sex workers' fight for decriminalization*, Bristol: Policy Press.

legislation had commenced. The Committee found that decriminalization had not led to an increase in the number of street-based sex workers. The Committee reviewed research into the health impacts of the Act and found that there were numerous examples of sex workers being able to negotiate safer sex by stating that it is against the law for them not to practice it. The Committee noted that there were reports of increased confidence, wellbeing and a sense of validation amongst sex workers, as a direct result of the new law. The Committee stated that such confidence would have a 'positive spin-off' in many areas, such as the improvement of employment conditions, and the ability to ensure that safer sex practices remain standard throughout the industry.⁶⁸⁶ The Committee concluded that sex industry had not increased in size since the law had been enacted, and the vast majority of people involved in the sex industry were better off under the new law than they had been previously.⁶⁸⁷

Research has shown that, following decriminalization, sex workers found it easier to refuse clients when they did not want them. Around two thirds of sex workers surveyed in 2006 who had been working prior to decriminalization reported that it was easier to refuse to have sex with a client since the law had changed.⁶⁸⁸ Condom use is reported to be high⁶⁸⁹ and HIV prevalence among sex workers is very low. A study found no HIV infections among the 298 female, 32 male and 13 transgender sex workers who attended sexual health clinics in 2006.⁶⁹⁰

7.9 Australia

Legal

SEX WORK IN
PRIVATE

Illegal

SOLICITING

Not Illegal

BROTHELS

Australia's response to HIV prevention in the sex industry is considered to be one of the most successful in the world. No cases of HIV transmission from sex worker to client have been reported in Australia, and sex workers have consistently low rates of STIs.⁶⁹¹ STI rates are much lower among sex workers than in the general population. In 2010, the chlamydia positivity rate was much higher among young heterosexual men and women attending sexual health clinics (16.3 percent and 15.6 percent, respectively), than female sex workers (5.6 percent).⁶⁹²

686 Government of New Zealand, (2008) *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, Wellington, Government of New Zealand, at Chapter 4.1.1.

687 *Ibid.*, at Chapter 14.

688 Abel G., Fitzgerald L., Brunton C., (2007). *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*. Christchurch School of Medicine. pp.116-117.

689 *Ibid.*, p.135.

690 McAllister S., Dickson N., Sharples K., et al., (2008) Unlinked anonymous HIV prevalence among New Zealand sexual health clinic attenders: 2005–2006, *International Journal of STD & AIDS*, Vol.19.

691 Australian Government, *National HIV/AIDS Strategy: Revitalising Australia's response 2005-2008*, Australian Government, Canberra, 2005, p.19.

692 Kirby Institute (2011) *HIV, viral hepatitis and sexually transmitted infections in Australia 2011*, Sydney: UNSW, p.7.

Laws

State / Territory	Legislation	Model	Requirements
Australian Capital Territory	<i>Prostitution Act 1992</i>	Registration	It is legal to work privately as a registered sole operator, or in a registered brothel. Street work is illegal.
New South Wales	<i>Disorderly Houses Amendment Act 1995</i>	Partial decriminalization. Licensing proposals are being debated.	Working in a brothel is legal. Brothels require local government consent. Working as a sole operator is legal but subject to local government planning requirements. Use of premises as brothels is regulated by councils under the development control provisions of the <i>Environmental Planning and Assessment Act 1979</i> . ⁶⁹³ Street work is legal, subject to exceptions. (In 2012, the government announced plans to establish a Brothel Licensing Authority)
Northern Territory	<i>Prostitution Regulation Act</i>	Licensing	Sex work is legal if delivered as part of a licensed escort service. Street sex work and soliciting are illegal. Brothels are illegal.
Queensland	<i>Prostitution Act 1999</i>	Licensing	Sex work is legal in a licensed brothel. To work in a licensed brothel, a sex worker needs a current sexual health certificate. Private sex workers (sole operators) are allowed to work by themselves.
South Australia	<i>Summary Offences Act 1953; Criminal Law Consolidation Act 1976</i>	Criminalization	Brothels are illegal. Receiving money from sex work, soliciting and procuring are illegal. Laws are rarely enforced.
Tasmania	<i>Sex Industry Offences Act 2005</i>	Partial criminalization	Brothels and street-based sex work are illegal. Laws are rarely enforced. Private sex work is legal if no more than two sex workers work together.
Victoria	<i>Prostitution Control Act 1994</i>	Licensing	Licensed brothels and licensed escort agencies are legal. Private sex workers must register with the Business Licensing Authority. Street sex work is illegal. Advertising is restricted.
Western Australia	<i>Prostitution Act 2000, Criminal Code 1892</i>	Partial criminalization. Licensing proposals are being debated.	Sex work in private is legal. Brothels are illegal, but police allow brothels to operate in prescribed areas. A licensing system for brothels is under consideration.

Factors that contributed to this success include the mobilization of sex workers to participate in the HIV response, establishment of safe sex as a norm among sex workers, community-driven health promotion and peer-based interventions. Law reform and changes to law enforcement practices also played a key role. Leadership was provided by the state of New South Wales, which decriminalized most aspects of the sex industry in the mid-1990s. Decriminalization was critically important to ensuring that HIV prevention efforts led by sex workers were successful.

Each of Australia's eight states and territories have a different legislative framework for sex work (see Table above). Australia's six National HIV/AIDS Strategies implemented since 1989 have encouraged sex work law reform so as to provide a more enabling environment for health promotion. Jeffreys and Perkins describe the diverse legal environments of these jurisdictions as follows:

Sex work in South Australia, Western Australia, and Tasmania is largely criminalised. Toleration operates in Western Australia, where criminalising legislation has not been implemented by the police for some time. In South Australia, brothel raids and criminality has been a regular feature of sex work for over a century. In Tasmania, brothels are illegal, however private workers are permitted to work legally either by themselves or in pairs. In Victoria, Queensland and the Northern Territory sex work is licensed. In those states and territories sex work business owners are required to undergo probity checks and to license their businesses with an external authority in order to gain approval to operate. Owners are also required by law to enforce mandatory HIV and other STI testing of sex workers who work in licensed businesses, which is a counterproductive and expensive measure. In the Northern Territory sex workers who work within licensed businesses are also required to undergo probity checks and to have their sex-work status added to their police record, as a form of registration. New South Wales has decriminalised brothel, private sex work and street sex work; legislated bodies that oversee the regulation of other businesses regulate sex work just like any other work. This includes zoning, industrial relations, occupational health and safety, tax and more. The Australian Capital Territory has mostly decriminalised sex work, requiring private sex workers to register. Similarly, in Victoria private workers are expected to register.⁶⁹⁴

Licensing models versus decriminalization

Victoria, Queensland, Northern Territory and Australian Capital Territory all have forms of licensing or registration of sex workers and/or the premises where sex work occurs. The governments of Western Australia and New South Wales are proposing to introduce brothel licensing laws in 2012. Sex worker organizations (e.g., Scarlet Alliance), sexual health physicians and researchers have expressed serious concerns about licensing models. The Law and Sex Worker Health (LASH) Team at the National Centre in HIV Epidemiology and Clinical Research provided the following recommendation to Department of Health of Western Australia:

Licensing of sex work ('legalisation') should not be regarded as a viable legislative response. For over a century systems that require licensing of sex workers or brothels have consistently failed. Most sex workers remain unlicensed, so criminal codes remain in force, leaving the potential for police corruption. Licensing systems are expensive and difficult to administer, and they always generate an unlicensed underclass. That underclass is wary of and avoids surveillance systems and public health services. Thus licensing represents a potential threat to public health...⁶⁹⁵

Evidence confirms that decriminalization has been a successful approach in reducing opportunities for police corruption and improving the coverage of health promotion

693 See: Crofts P., Maher J., Pickering S., Prior J., (2012) *Ambivalent Regulation: The Sexual Services Industries in NSW and Victoria — Sex Work as Work, or as Special Category?* *Current Issues in Criminal Justice*, 23(3):393-412.

694 Jeffreys E., Perkins R., *Sex Work, Migration, HIV and Trafficking: Chinese and other Migrant Sex Workers in Australia* *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 26, August 2011.

695 Donovan B. et al. (2010) *The Sex Industry in Western Australia: A report to the Western Australian Government*, Sydney: University of New South Wales, p.viii.

“EVIDENCE CONFIRMS THAT DECRIMINALIZATION HAS BEEN A SUCCESSFUL APPROACH IN REDUCING OPPORTUNITIES FOR POLICE CORRUPTION AND IMPROVING THE COVERAGE OF HEALTH PROMOTION PROGRAMMES.”

programmes.⁶⁹⁶ New South Wales decriminalized most of the sex industry in 1995, although street-based work remains illegal if it occurs near a dwelling, school, church or hospital. New South Wales has some of the highest rates of condom use among sex workers anywhere in the world (exceeding 99 percent), and consistently low STI prevalence.⁶⁹⁷ There is no evidence that decriminalization increased the frequency of commercial sex in New South Wales.⁶⁹⁸ An assessment of the New South Wales model found that it had significantly “improved human rights; removed police corruption; netted savings for the criminal justice system; and enhanced the surveillance, health promotion and safety of the NSW sex industry.”⁶⁹⁹ There is no licensing system and brothels only need town planning permission. Concerns have been raised

that proposals announced in 2012 to shift from a decriminalization approach to a licensing approach in this state will be harmful to public health.⁷⁰⁰

The government of New South Wales has published workplace health and safety guidelines for brothels.⁷⁰¹ The guidelines provide brothel proprietors with minimum standards for a safe and healthy environment for sex workers, other employees, clients and visitors. Under the state’s health and safety legislation, brothel proprietors have legal duties with regard to employees and other visitors in the workplace. The government has also published Planning Guidelines for Sex Services Premises. The Guidelines state the principles that sex services premises should be treated in a similar manner to other commercial enterprises, and that sex services premises are a legitimate land use to be regulated through the state planning system.⁷⁰²

To assess whether different legal models have an impact on the delivery of health promotion services to sex workers, researchers compared health promotion programmes in three Australian cities. The cities were Melbourne (Victoria: unlicensed brothels are criminalized), Perth (Western Australia, criminalization) and Sydney (New South Wales: sex work largely decriminalized, no licensing). Research comparing the situation in states with different legal models concluded that the decriminalization of sex work is associated with better coverage of health promotion programmes for sex workers. The unlicensed sector was found to be isolated from peer education and support.⁷⁰³

696 Harcourt C., Egger S., Donovan B. (2005) Sex work and the law *Sexual Health* 2(3):121-8; Harcourt C., O’Connor J., Egger S., et al. (2010) The decriminalization of prostitution is associated with better coverage of health promotion programs for sex workers. *Aust NZ J Public Health*, 34(5): 482-6; Donovan B., Harcourt C., Egger S. (2010) Improving the health of sex workers in NSW: maintaining success, *NSW Public Health Bulletin* 21(3-4):74-77.

697 Donovan B., Harcourt C., Egger S. (2010) Improving the health of sex workers in NSW: maintaining success *NSW Public Health Bulletin* 21(3-4):74-77, p.74.

698 *Ibid.*

699 Donovan B., Harcourt C., Egger S., et al. (2012) *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health* Sydney: Kirby Institute, p.7.

700 See e.g.: <http://catefaehrmann.org/2012/08/brothel-licensing-will-be-public-health-disaster-greens/>

701 Workcover NSW (2001), *Health and safety guidelines for brothels*. Available at: http://www.workcover.nsw.gov.au/formspublications/publications/Documents/brothels_health_safety_guidelines_English_0120.pdf

702 Sex Services Premises Planning Advisory Panel (2004), *Sex Services Premises: Planning Guidelines*, Sydney: NSW Department of Planning.

703 Harcourt C., O’Connor J., Egger S., et al. (2010) *op cit.*

Specific provisions relating to HIV and sexual health

Some Australian jurisdictions have specific legislative provisions related to prevention of STIs and HIV. For example, legislation in Tasmania requires the following practices:

Sex workers and clients to adopt safe sex practices

1. A person must not, in a sexual services business, provide or receive any sexual services that involve sexual intercourse, or any other activity with a similar or greater risk of acquiring or transmitting a sexually transmissible infection, unless a prophylactic is used.
2. A person, while providing or receiving, in a sexual services business, sexual services that involve sexual intercourse, or any other activity with a similar or greater risk of acquiring or transmitting a sexually transmissible infection, must not –
 - c. discourage the use of prophylactics; or
 - d. misuse, damage or interfere with the efficacy of any prophylactic used; or
 - e. continue to use a prophylactic that he or she knows, or could reasonably be expected to know, is damaged.
3. A person who provides or receives sexual services in a sexual services business must take all reasonable steps to minimize the risk of acquiring or transmitting a sexually transmissible infection.⁷⁰⁴

The Queensland *Criminal Code* was amended in 1992 so that the presence or possession of condoms is not admissible as evidence that a place is being used 'for the purposes of prostitution'. Section 229N of the *Criminal Code* provides that the use of a place for the purposes of prostitution may be inferred from evidence of 'the condition of the place, material found at the place and other relevant factors and circumstances', but 'evidence of condoms and other material for safe sex practices is not admissible'.

Offences relating to HIV transmission, exposure and non-disclosure of HIV status also impact the sex industry. For example, in New South Wales, the *Public Health Act 2010* requires a person with an STI to disclose this condition to sexual partners. An offence is also committed if an owner of a brothel knowingly permits a person to have sex without disclosing STI status. It is a defence if the defendant took reasonable precautions to prevent transmission of the STI.⁷⁰⁵

In the Australian Capital Territory, an offence exists for providing a commercial sexual service while knowingly infected with a sexually transmitted disease. It is also an offence for a client with HIV or another STI to receive commercial sexual services.⁷⁰⁶ An HIV-positive male sex worker was sentenced to two-and-a-half months in prison in 2008 for breach of this provision. The national sex workers association, Scarlet Alliance, argued that Section 25 should be reviewed because an HIV positive person being a sex worker does not present a higher risk to the community. Universal condom use in the industry minimizes risk. Scarlet Alliance reported that after the prosecution sex workers' fear of

⁷⁰⁴ Section 12, *Prostitution Offences Act 2005* (Tas).

⁷⁰⁵ Section 79, *Public Health Act 2010* (NSW).

⁷⁰⁶ Section 25 of the *Prostitution Control Act* (Vic).

testing increased, with the regular monthly outreach clinic's attendance figures dropping from 40 persons a month to two per month as a result of this prosecution.⁷⁰⁷

The Australasian Society of HIV Medicine notes that mandatory testing requirements exist in some parts of Australia:

Three jurisdictions (Australian Capital Territory, Queensland and Victoria) operate what might be considered a de facto system of mandatory testing of sex workers with resulting exclusion from the sex industry (or sections of it) if a worker refuses to be tested for sexually transmitted infections, including HIV. The structure of legislation and guidelines combine to ensure brothels will only employ sex workers who undergo prescribed tests.⁷⁰⁸

For example, in Queensland, a licensee of a brothel must not permit a sex worker to work if infected with an STI, including HIV. It is a defence if the licensee or approved manager believed on reasonable grounds that the person had regular medical examinations and was not living with HIV.⁷⁰⁹ Regular medical examinations are defined as occurring every 3 months.⁷¹⁰ In Victoria, quarterly blood tests and monthly swab tests are required.⁷¹¹

Australia's 6th *National HIV Strategy* refers to evidence that, under a decriminalized and deregulated legislative framework, sex workers have increased control over their work and are able to achieve similar or better health outcomes without the expense and invasiveness of mandatory screening.⁷¹²

Principles for Model Sex Industry Legislation

Drawing from lessons learned from the different approaches of states and territories, Scarlet Alliance and the Australian Federation of AIDS Organisations has identified *Principles for Model Sex Industry Legislation*.⁷¹³ These can be summarized as follows:

Principle 1: Decriminalization, & Principle 2: Sex work is legitimate employment

All laws criminalizing the sex industry should be removed and the industry should be regulated through standard business, planning and industrial codes/laws. A decriminalized industry is more open to scrutiny as it is more accessible. Specific sex industry regulations may be considered under certain circumstances where the benefits are the support of occupational health and safety and rights for sex workers.

Principle 3: Choice of employment

Laws regulating the sex industry should include all sectors of the sex industry and not be directed at forcing sex workers to operate in a limited legal framework. Areas of

707 Menadue D., (2008) Outrage over HIV positive sex worker's sentence *Positive Living* 25 November 2008. <http://napwa.org.au/pl/2008/11/outrage-over-hiv-positive-sex-worker-s-sentence>.

708 ASHM (2011) *Guide to Australian HIV Laws and Policies for Healthcare Professionals*, <http://www.ashm.org.au/HIVLegal>

709 Section 89, *Prostitution Act 1999* (Qld).

710 Section 9, *Prostitution Regulations 2000* (Qld).

711 Sections 19 and 20, *Prostitution Control Act 1994* (Vic).

712 *Sixth National HIV Strategy 2010–2013*, Canberra: Department of Health and Ageing, p.39, citing Abel G., Fitzgerald L., Brunton J. (2009) The impact of decriminalization on the number of sex workers in New Zealand *Journal of Social Policy*, 38(2): pp.515–531; Donovan B et.al. (2008), *The Law and Sex Worker Health (LASH) Project*, Australasian Society for HIV Medicine Conference presentation.

713 Banach L., Metznerath S. (2000), *Principles for Model Sex Industry Legislation* Sydney: Scarlet Alliance and AFAO.

the sex industry that should be lawful include street work, brothel (small and large), escorts, and private work.

Principle 4: Occupational Health and Safety

The aim of sex industry legislation should be to maximize occupational health and safety provisions for sex workers. In order to maximize occupational health and safety in the sex industry all that is required is the development of guidelines or a legally enforceable code of practice. Occupational health and safety standards cannot be implemented in illegal sectors of the sex industry.

Principle 5: Public Health - No Compulsory Testing

That public health concerns be met through removing criminal sanctions, so that sex workers can confidentially access health services and promote safe sex practices as an industry standard.

Principle 6: Local Planning Laws and Zoning

Under local planning laws, sex industry businesses should be treated in a similar manner to other commercial enterprises. This means consistency and continuity in local authority planning decisions. Red-light zones are not acceptable as they segregate the sex industry.

Principle 7: Community Attitudes to the Sex Industry

It has been shown that the community generally supports sex industry reforms and is realistic about the consequences of attempting to suppress its operation.

Anti-discrimination laws

In four jurisdictions in Australia, discrimination against lawfully employed sex workers is illegal.⁷¹⁴ However, these laws do not protect sex workers who operate outside of the legal sex industry (e.g., as illegal street-based workers or in unlicensed establishments). A federal law, the *Fair Work Act 2009*, includes general protections that cover contractors and sub-contractors that apply to sex workers regardless of their status as an employee or contractor.⁷¹⁵ The *Fair Work Act 2009* provides opportunities for sex workers and their organizations to seek remedies in an industrial tribunal.

⁷¹⁴ Queensland, Australian Capital Territory and Victoria. Discrimination on the grounds of lawful sexual activity is also unlawful in Tasmania, but it is unclear if this covers sex workers: Rees N., Lindsay K., Rice S., (2008) *Australian anti-discrimination law: text, cases and materials*, Sydney: Federation Press, p.362

⁷¹⁵ Section 342.

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ANNEX II: SUMMARY OF REGIONAL CONSULTATION GROUP WORK

This is a summary of the laws, policies and practices that were identified by sex workers attending the Regional Community Consultation on legal environments and sex work convened by APNSW, UNDP, UNFPA, UNAIDS (22-23 November 2011).

Theme: Status and Identity

Helpful

- The Supreme Court has recognized third gender status (Nepal), and other countries are considering legal recognition of transgender status (Bangladesh).

Harmful

- (Thailand) Health card infringes on people's privacy (we want the right kinds of recognition, not the wrong ones).
- (Nepal) Children of sex workers denied registration in schools.
- Article 6 of CEDAW states that governments should do whatever necessary to stop exploitation in prostitution (which in theory could be helpful, but in current form it is badly written and should be changed).
- (Philippines) Confusion regarding harmful local ordinances. 'Toleration' of sex work comes at the city government level. While some cities have very positive initiatives, other cities have ordinances which make the situation much worse and more confusing in terms of defining the specific laws, policies and enforcement practices that apply.
- Sex workers considered as a 'social disease'.
- (Republic of Korea) Legislation labels sex workers as 'morally corrupt' people.

Theme: Safety and Security

Helpful

- (India) Establishment of a self-regulatory board.
- In cases of trafficking, sex workers can play an important role in self-regulation.

Harmful

- Entrapment and raids.
- Lack of legal protections for sex workers to own house, property, business.
- (Nepal) Difficulties in accessing funding from donors for programmes to protect and promote the rights of sex workers when sex work is illegal.
- Stigmatization of sex workers prevents access to police to report violence.

- Violence from police (e.g., Republic of Korea: given sex work is illegal, police will physically/verbally abuse sex workers, even take pictures of their naked bodies, all in the name of collecting evidence of their 'crime').
- Violence from customers. In Republic of Korea, cases of customers blackmailing sex workers, threatening to report them to police, as customers now know that sex workers cannot report violence as this identifies them as sex workers. This paradox allows the law to undermine justice by allowing an increase in violence against sex workers).
- (Nepal) Lack of safe venues for transgender sex workers to work.
- Arrests/harassment of all transgender persons because it is assumed that they are sex workers.
- (Indonesia) Stigma and discrimination leads to a permissiveness among sex workers of the violence they experience, because of a feeling that they deserve it.

Theme: Access to Means of Protection (e.g., condoms, information)

Helpful

- (Fiji) On paper it is now unlawful to deny any person, without reasonable excuse, access to means of protection from HIV (e.g., condoms) ...BUT there are questions on how this law is being transitioned into practice.
- (Fiji) Police cannot use condoms as evidence to charge sex workers.
- (Fiji) It is an offence to inflict violence ...BUT sex workers need to be empowered to exercise their right to protection by reporting violence.

Harmful

- The use of condoms to threaten or arrest.
- (Republic of Korea) comparatively low percentage of condom use in sex work, so greater risk of HIV and STI transmission however there are no helpful regulations or policies in Korea to promote increased condom usage.
- Possession of condoms is used by police as evidence of soliciting/illegal practice.
- (Malaysia) 100% CUP style of programming is undermining effective access to protection.
- (Myanmar) Carriage of ARVs used by police as evidence that they are committing an offence by transmitting HIV.

Theme: Community Mobilization and Participation

Helpful

- There are some examples of meaningful participation, e.g., the role of OPSI (Indonesian national sex workers organization) as member of National AIDS Commission's Implementing Unit alongside government ministries/departments.

- (Malaysia) Awareness of details in National Strategic Plan helps community groups to hold government accountable.
- (Indonesia) There are 200 local 'red light areas' where police 'tolerate' sex work (approx. 300 female sex workers in each local area). There is a hope that there could be local crisis centres in each of these areas.
- Programmes need to be designed from sex workers perspective, projects need to be 'humanized'.

Harmful

- (South Korea) Demolition (for redevelopment) of traditional sex work venues means that sex workers have been forced to move out with any rights for compensation.

Theme: Labour Rights

Helpful

- ILO's Recommendation 200 is an important advocacy tool for recognition of sex workers' rights.
- Migrant sex workers in theory now have some access to workers' permits (Thailand).
- (Philippines) Work with the League of Bar Owners and Managers has led to some venues providing insurance benefits/health and social security. These establishments could be used as good practice examples.
- Education/awareness-raising initiatives should be encouraged. Education on existing labour and criminal laws is required. In Indonesia, the community should be more aware that under the penal code, pimping is a crime, *not* selling sex.
- If it can be established that 'sex work is work', sex workers will pay tax to government, so both sex workers and the government will win.

Harmful

- Anti-trafficking law used as an excuse to raid and 'rescue' sex workers.
- (Thailand) Requirements to have a 'health card' infringes privacy regarding sexual health history.
- (Thailand) While the government has separate laws regarding sex work in Entertainment Places (*Entertainment Places Act 1966*), workers allowed to work in these venues have no labour rights.
- Issues with work permits, e.g., only non-Singaporeans can get a permit to work in Singaporean brothels.
- No access to social services for sex workers who want to get out of the industry.
- (Bangladesh) As solicitation is illegal, sex workers can only work passively, waiting for clients to come rather than actively selling sex.

Theme: Economic Rights/Right to Livelihood

Helpful

- (Cambodia) The Constitution provides for the 'right to livelihood'. Awareness of this right should mean sex workers / entertainment workers can use the Constitution to push for rights as workers.
- While corruption can be harmful, it can also be helpful in the sense that it can ensure your right to livelihood (by allowing you to pay a bribe and continue to work despite illegality).

Harmful

- (Fiji) New Crime Decree means that clients and people knowingly living off earnings of a sex worker (as well as sex workers) can be prosecuted.
- UN Protocol on Trafficking.
- (Nepal) Sex workers do not have inheritance rights.
- (Nepal) If your employer finds out you are a sex worker you are denied job opportunities, people do not want to hire sex workers.

Theme: Access to Justice

Helpful

- In many countries constitutional and legal rights exist – programmes need to capitalize on this and provide educational initiatives to allow people to realize these rights, (e.g., Thailand: you cannot force anyone to have an HIV test, nor discriminate against them because they are HIV positive). Increased awareness of legislated rights can support community to advocate for recognition and enforcement of these rights.

Harmful

- (Indonesia) No proper screening during raids, so everyone is considered a criminal.
- No access to legal services.
- Entrapment/corruption from police/authorities who are using regulations concerning child abuse, human trafficking and smuggling against individuals.
- Distinctions are not made between the choice to carry out sex work, and coerced trafficking.
- Government of USA (PEPFAR) places restrictions on funding NGOs that provide support to law reform.
- (South Korea) Criminalization of sex work makes sex workers much more vulnerable in relationships with brothel owners or customers.
- (Malaysia) Division between *sharia* and civil law impedes work on issues involving sex workers.
- (Nepal) If you work with sex work community, e.g., as a health worker, peer outreach worker, doctor, you can be harassed or arrested.

Theme: Access to Health Services

Helpful

- (Philippines) Some local ordinances provide for care and support and access to HIV services for sex workers.
- (Thailand/Cambodia) There are constitutional rights to access social security.

Harmful

- (Bangladesh, India) Legislation violates human rights and rights to access HIV services.
- 'Welfare homes' and 'rehabilitation centres' are sites for further abuse.
- Stigmatization of sex workers hampers their access to support systems.

ANNEX III: LIST OF ORGANIZATIONS PARTICIPATING IN THE REGIONAL CONSULTATION

Consultation meeting on Legal Environments, human rights and HIV responses among sex workers in Asia and the Pacific

21-23 November, Bangkok, Thailand

Organization	Country
Shishuder Jonno Amra	Bangladesh
Tree Foundation Bangladesh	Bangladesh
WNU Sex Worker Legal Centre	Cambodia
China Sex Worker Organizations Network Forum	China
Survival Advocacy Network	Fiji
Durbar Mahila Samanwya Committee	India
<i>Organisasi Pekerja Seks Indonesia</i> , Indonesian Organization of Sex Workers	Indonesia
LAC/PT/MAC Legal Clinic	Malaysia
Population Services International	Myanmar
Blue Diamond Society	Nepal
Jagriti Mahila Maha Sangh	Nepal
Unaffiliated sex workers	Philippines
Empower	Thailand
Unaffiliated sex workers	Republic of Korea (South Korea)
Asia Pacific Network of Sex Workers	
Asia-Pacific Transgender Network	
International Labour Organization	
UNAIDS Regional Support Team	
UNFPA Asia and the Pacific Regional Office	
UNDP Asia-Pacific Regional Centre	



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