

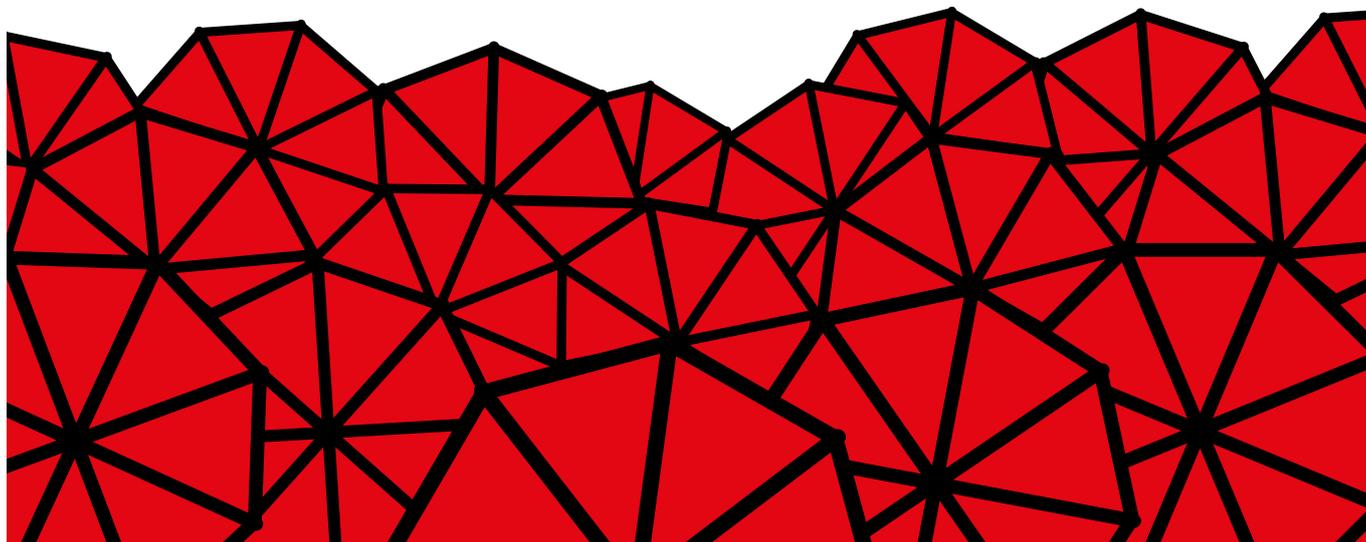


nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

POLICY BRIEF

The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence



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Introduction

In almost every country in the world, sex work is in some way criminalised, compromising the health and wellbeing of sex workers around the globe. Whether sex work is criminalised in all contexts or specific aspects of sex work are criminalised, this has dire consequences. This policy paper seeks to break down exactly how criminalisation increases the incidence of and vulnerability to violence and HIV transmission for all those engaged in sex work.

Sex workers are disproportionately affected by violence. The perpetrators of violence include law enforcement, clients, those posing as clients, institutional representatives such as medical personnel, and peers. While prevalence research on violence against sex workers is scant, some regional studies estimate that 40-70% of sex workers experience violence in a given year.¹

Within this paper, violence is defined as physical, sexual or psychological/emotional violence. Included in the definition are traditional understandings of physical violence and rape. To understand

the full spectrum of violence experienced by sex workers, this paper also takes into account harassment, coerced sexual encounters, and psychological or emotional violence, encompassing stigma, verbal and emotional abuse, exploitation, coercion and threats.

Sex workers are also disproportionately affected by HIV. In 2014, UNAIDS estimated that HIV prevalence among sex workers was twelve times greater than that of the general population, even in countries with high prevalence among the general population.² Many international health organisations have come to a consensus on the

importance of decriminalisation to the health and wellbeing of sex workers, with a focus on reducing their vulnerability to HIV.

The World Health Organization guidelines state: "All countries should work toward decriminalisation of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."³ The Global Commission on HIV and the Law, drawing from over one thousand oral and written submissions globally, came to a similar conclusion, noting that "[c]riminalisation, in collusion with social stigma makes sex workers' lives more unstable, less safe, and far riskier in terms of HIV. There is no legal protection from discrimination and abuse where sex work is criminalised", and that punitive laws against sex workers create "a state-sanctioned culture of stigma, discrimination, exploitation, and police and client violence against sex workers."⁴

Many international health organisations have come to a consensus on the importance of decriminalisation to the health and wellbeing of sex workers, with a focus on reducing their vulnerability to HIV.

1 Kate Shannon et al., "Violence, Condom Negotiation, and HIV/STI Risk Among Sex Workers," *Journal of the American Medical Association*, 304:5 (2010): 573.

2 UNAIDS, 2014, "The Gap Report," 21.

3 World Health Organization, 2012, "Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries".

4 Global Commission on HIV & the Law, 2012, "Rights, Risks and Health," 36-37.

HIV prevalence is only one indicator of the public health implications of criminalisation. Vulnerability to HIV also indicates vulnerability to other STIs. Experiencing violence impacts the physical and emotional wellbeing of sex workers. The emotional and mental consequences caused by the anxiety of constant surveillance, policing, and isolation can range from post-traumatic stress disorder to depression and suicide. While this paper focuses on the direct implications of criminalisation on HIV and violence, it does not seek to deny the importance of the psychological impacts of existing in a criminalised state but instead recognises the need for a more in-depth look at these issues.

Criminalisation of sex work is one of several interrelated structural factors that create vulnerability. A significant body of literature looks at the relationship between sex work laws and their impact on HIV transmission, with an overwhelming consensus:

Modelling suggests that across both generalised and concentrated HIV epidemics, decriminalisation of sex work could have the largest effect on the course of the HIV epidemic, averting 33–46% of incident infections over the next decade through combined effects on violence, police harassment, safer work environments, and HIV transmission pathways.⁵

Decriminalisation could reduce the policing, isolation, and abuse that make sex workers more vulnerable, and reduce vulnerability that results from increased risk-taking behaviour under criminalisation.

Decriminalisation could reduce the policing, isolation, and abuse that make sex workers more vulnerable, and reduce vulnerability that results from increased risk-taking behaviour under criminalisation. Decriminalisation would also create an enabling environment for best practice HIV prevention and outreach such as peer education and community-led research and service provision; it would mitigate the stigma, fear of arrest and outright restrictions on engagement with sex workers and their communities under criminalisation.

To better explore the impact of criminalisation on vulnerability, this policy brief examines the impact of criminalisation at three distinct phases:

- The initial phase of criminalisation is the surveillance and policing of sex workers prior to arrest. This also encompasses the general knowledge that sex workers are a criminalised population. For those who are criminalised, including sex workers, clients and third parties, the fear of arrest can impact behaviour and force decisions about taking risks: often the risk of violence and transmission of HIV is weighed against the risk of arrest.⁶
- The second phase of criminalisation occurs during arrest and formal involvement with the criminal justice system as a person breaking the law under sex work or related charges, including arrest, court-involvement and incarceration.
- The final phase of criminalisation is upon release and return to a person's community, penalisation outside incarceration and other ramifications of system-involvement.

These experiences overlap, especially considering the many ways in which sex workers are criminalised. For instance, upon re-entry to the community, criminalised populations return to the experience of being policed and subject to surveillance. Post-conviction requirements and restrictions, such as probation or a ban from certain neighbourhoods may compound this, further extending a person's monitoring and surveillance beyond incarceration.

⁵ Kate Shannon et al., "Global epidemiology of HIV among female sex workers: Influence of structural determinants" *The Lancet*, 385 (2015): 55–71.

⁶ Amnesty International, 2016, "Sex Workers At Risk: A Research Summary on Human Rights Abuses Against Sex Workers," 13.

This policy brief examines the impact of sex work-related laws that criminalise sex work as well as the larger context of mass policing and incarceration, enacted through various laws. NSWP members provided submissions as part of an e-consultation that informed this paper. These submissions and other reports noted that several areas of law and law enforcement practices disproportionately impact sex workers, including:

- Anti-human trafficking laws
- Immigration laws
- Policing of public spaces
- Anti-LGBTQ laws
- HIV criminalisation
- Religious and morality codes

Surveillance, Policing and a Culture of Impunity Increase Vulnerability to Violence

The impact of being criminalised begins before contact with law enforcement is even made. The experience of being policed and criminalised impacts sex workers' decision-making regarding how and where to find clients, as well as what their interactions with clients look like. Sex workers weigh the risk of arrest against the risk of violence and health considerations. Criminalisation turns sex workers into a target population and promotes stigma and discrimination, which impacts not only interactions with law enforcement, but also clients, the larger community, and service providers. Law enforcement can use the threat of arrest to extort money, sex and information from sex workers.

Street-based sex workers are, in particular, severely impacted by the physical policing of sex work. Increased visibility to law enforcement, and working locations that are more difficult to secure and control can lead to increased harassment

and violence. According to one study, "30% of [female sex workers] have experienced police harassment or workplace violence in formal indoor establishments compared with 70% in informal indoor or outdoor venues."⁷ A review of four localised studies on violence against sex workers found that street-based workers faced higher levels of violence than those who worked indoors in every location.⁸ This review included one study on sex workers in Britain, where sex workers in outdoor locations reported six times as many incidents of violence as those working indoors.

Sex workers weigh the risk of arrest against the risk of violence and health considerations. Criminalisation turns sex workers into a target population and promotes stigma and discrimination...

⁷ See footnote 5 at 62.

⁸ Kathleen Deering, et al. "A Systematic Review of the Correlates of Violence Against Sex Workers," *American Journal of Public Health* 104.5, (2014): 42–54.

Criminalisation Creates a Culture of Impunity

“Criminalisation has a negative impact on the ability and desire to report cases of violence because [sex workers] are convinced that instead of being rehabilitated in their rights after being subjected to violence, they will be incarcerated for their unregistered trade.”

ASSOCIATION POUR LE SOUTIEN DES PERSONNES VULNÉRABLES (ASOUPEVU), BURUNDI

Criminalisation creates a culture of impunity which fosters a variety of human rights abuses, most notably physical and sexual violence. If an individual fears arrest, reporting violence (often to the same institution that perpetrated violence against them) is unlikely. In a culture where a specific population is broadly known to be less likely to report or receive a response upon reporting violence, that population becomes a target for abuse. Further, perpetrators of violence against sex workers use the threat of punitive measures to control and exploit sex workers.

...sex workers' reports of violence may be ignored, and sex workers may be abused, arrested, humiliated or chastised upon reporting crimes against them.

Compounding this culture of impunity, sex workers' reports of violence may be ignored, and sex workers may be abused, arrested, humiliated or chastised upon reporting crimes against them. When sex workers are viewed as 'criminals' under the law, violence against them is encouraged, even when they are reporting violence.

The Asociación de Mujeres “Las Golondrinas” in Nicaragua described the failure of police to investigate the murder of one of their members:

“The murderer was unknown and is a fugitive, however when the complaint was filed the police minimized the fact and were very negligent and unable to do an investigation, claiming that since she had been a sex worker, it could have been any ‘client’... That is discrimination, stigma and injustice.”

LAS GOLONDRINAS, NICARAGUA

The Alliance of Women Advocating for Change (AWAC) explained that in Uganda, legal services often would not support sex workers in reporting violence for fear that they would be seen as accomplices or clients, further isolating and marginalising sex workers. The knowledge that violence will most likely go unreported means that perpetrators, including law enforcement, know there are no repercussions for enacting violence against sex workers.

“Micheline was 23 years old and met with one of her clients. Once in the hotel room the gentleman paid the agreed price before going to the sexual act. Micheline had kept this money in a pocket of her skirt. Once after the ejaculation, the client demanded that she should pay him money because she had also enjoyed during the sexual intercourse, and that is how he began to knock out our beneficiary with violent blows. When the police arrived at the scene on the alert of the entourage, they brought Micheline and her client to the police station to hear them. Upon reaching the post, our beneficiary was taken to an office by 3 police officers who forced her to have sexual intercourse with them in exchange for her freedom. Having no choice, she gave in.”

AVENIR JEUNE DE L'OUEST (AJO), CAMEROON

Criminalisation further promotes stigma against sex workers, which also fuels violence. Reflecting this stigma, perpetrators of violence may believe that sex workers “deserve to be punished for what they are doing,” as noted by AWAC, Uganda. This, “coupled with their assumption [that] even when sex workers report [violence] they will be detained instead of being helped,” promotes violence against sex workers.

Law Enforcement as Perpetrators of Violence

Sex workers often experience violence at the hands of law enforcement. The role of law enforcement as enforcers of criminal and administrative laws places them in a unique position of power over criminalised populations. As criminalisation puts sex workers under a constant

threat of arrest, law enforcement may extort money, information and sex in exchange for avoiding arrest.

Regional studies conducted by and with sex worker networks in the Asia-Pacific⁹, Caribbean and Latin America¹⁰, Africa¹¹, and Eastern Europe and Central Asia¹² regions document that police are among the main perpetrators of sexual, physical and emotional violence against sex workers.

As criminalisation puts sex workers under a constant threat of arrest, law enforcement may extort money, information and sex in exchange for avoiding arrest.

Harassment by law enforcement and arrest increases sex workers' vulnerability to HIV. A study of law enforcement interactions with sex workers in India found that “giving gifts to police to avoid trouble, having police take condoms away, experiencing a workplace raid, and being arrested were associated with sexually transmitted infection symptoms, inconsistent condom use, acceptance of more money for sex without a condom, and experiences of client violence.”¹³ Through evaluation of a nation-wide HIV intervention targeting sex workers, Sex Workers Education and Advocacy Taskforce (SWEAT), South Africa similarly found that decreasing police violence alone resulted in significant reductions in STI prevalence.

Sex workers also experience emotional violence upon reporting physical and sexual violence. For example, a sex worker in Papua New Guinea told Amnesty International that after reporting client abuse, she was told by police that they did not want to “waste time” on her. She did not report subsequent abuse, saying, “If I am abused and I go to the police, they'll tell me: ‘that's what you deserve.’”¹⁴

“Every time I come forward to report violence I end up threatened to be arrested and prosecuted for prostitution...Next time I suffer violence, I sure as hell won't report it.”¹⁵

SEX WORKER, KENYA SEX WORKERS ALLIANCE (KESWA), KENYA

Police violence can also consist of public humiliation and shaming, as well as mobilisation of the public to engage in such activities. Tais Plus, Kyrgyzstan, described how the “head of the press service of the Central Internal Affairs Directorate called on citizens of the city of Bishkek to photograph sex workers and bring photos to the police station.” This call was directed at nationalist movements, where desire to purge stigmatised communities was realised in an attack on sex workers.

9 UNDP, UNFPA, APNSW, & SANGRAM, 2015, “The Right(s) Evidence – Sex work, violence and HIV in Asia.”

10 RedTraSex, 2014, “Human Rights Situation of Female Sex Workers in 15 Countries of the Americas.”

11 Africa Sex Worker Alliance, 2011, “I expect to be abused and I have fear: sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries.”

12 SWAN, 2008, “Arrest the Violence.”

13 JT Earausquin et al., “Police-Related Experiences and HIV Risk Among Female Sex Workers in Andhra Pradesh, India,” *The Journal of Infectious Diseases*, 204 (2012): S1223–S1228.

14 See footnote 6 at 14.

15 KESWA and BHESP, 2017, “Aren't We Also Women?” 12.

Impact of Policing on Sex Workers' Risk Analysis and Decision Making

Policing of the sex industry also leads sex workers to adapt their own behaviours to avoid arrest, often forcing them into situations which have higher risks of violence. Two of the most notable behavioural changes are moving into more isolated locations and shortening negotiation times with clients.

To avoid arrest, sex workers may seek out isolated locations to find clients and negotiate the parameters of an interaction.

"In order to avoid prosecution, sex workers tend to practice their trades in places that are too clandestine where prevention services are not sufficiently available and in such circumstances, even clients may refuse to pay the agreed sum ...for fear of the arrests."

ASOUPEVU, BURUNDI

Being in isolated locations increases sex workers' vulnerability to violence. Policing also leads sex workers to isolate themselves from each other to reduce visibility and risks of third party charges for merely working together, impeding basic harm reduction techniques made possible only when working with others. These techniques

include looking out for law enforcement, offering assistance when called upon for help, providing information about problematic clients and simply holding money and personal items for a fellow sex worker when they are with a client.

Policing further disrupts sex workers' interactions and negotiations with clients. In areas with a police presence, negotiation times must be shortened to avoid detection, making insistence on things like condom use more challenging. And shifts to more isolated locations and disruption in negotiation with clients are interconnected; one study examining structural determinants of

condom use negotiations with clients found that "women who moved working areas away from main streets because of local policing and those with zoning restrictions...experienced a 3-fold increase in odds of being pressured into unprotected sexual intercourse."¹⁶

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'End Demand' Policies Increase Vulnerability to Violence and HIV

It is extremely important to note that even when only the *buying* of sexual services is criminalised (a model known as 'End Demand' or the 'Nordic Model') vulnerabilities connected with criminalisation persist.

End Demand legislation results in increased policing of the sex industry. After three months of increased policing of areas associated with street-based sex work in Montreal, Canada, Stella reported a three-fold increase in violence experienced by street-based sex workers, leading "the local police prefect [to acknowledge] that the targeting of clients had been an ineffective response to sex work in the community."¹⁷ Increased policing of areas known for street-based sex work in Edinburgh led to a 50% increase in reports of violence against sex workers in the first six months alone.¹⁸

16 Kate Shannon et al., "Structural and Environmental Barriers to Condom Use Negotiation With Clients Among Female Sex Workers" *American Journal of Public Health* 99 (2009): 659-665.

17 Sandra Chu and Rebecca Glass, "Sex Work Law Reform in Canada," *Alberta Law Review* 51 (2013), 118.

18 "SCOT-PEP's response to the ILO consultation on violence and harassment in the workplace," SCOT-PEP.

Increased policing may also decrease the number of available clients for street-based sex workers, who already experience disproportionate violence. Clients who feel the burden of criminalisation may alter their behaviour to avoid arrest, turning to internet-based avenues and indoor venues, and leaving street-based sex workers with fewer options due to greater competition and declining income. This in turn has resulted in street-based sex workers reporting increased risks and experiences of violence.

Sex workers with fewer potential clients are less likely to turn away those who are intoxicated or about whom they simply feel unease. One social worker described the increased vulnerability for those in even

more desperate situations – “fewer clients on the streets, and the women still need the money to get the heroin, so the customers are able to offer less money for more... no condom, for an example... And if they really do need the money, and they have been standing there the whole night, and they need their fix... then maybe you say ‘Yes’.”¹⁹

Sex workers, especially those with more immediate economic needs or in exploitative work situations, are forced to engage in riskier interactions, increasing their vulnerability to violence.

“...the customers are able to offer less money for more... no condom, for an example... And if they really do need the money, and they have been standing there the whole night, and they need their fix... then maybe you say ‘Yes’.”

“Less demand or less business can put sex workers in situations where they feel pressured to take on more dangerous clients, work longer hours, lower their rates, or engage in unsafe work practices.”²⁰

GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN

End Demand legislation is accompanied by increased sentencing for, and enforcement of third party- laws, increasing sex workers' isolation. Under these legal frameworks, sex workers' informal support networks weaken, making it harder to warn other sex workers about perpetrators of violence posing as clients. Service provision is also impacted by the increased mobility and displacement of sex workers to hidden venues.

Increased policing not only increases sex workers' vulnerability to violence but also sex workers' punitive interactions with law enforcement, as sex workers can still be arrested for a variety of crimes in these circumstances, including disorderly conduct, lewd conduct and drug possession. These punitive interactions further widen the gap between law enforcement and sex workers, leading sex workers to feel they cannot turn to the police after experiencing violence. An increased sense of vulnerability, and barriers to accessing justice lead sex workers to seek out third-party support, including from abusive individuals who may use the underground nature of sex work to abuse and exploit individuals.

Client mistrust of the police also prevents reporting. One report noted that following the introduction of End Demand laws, “clients who would have previously helped to report violence, coercion or other abuse towards a sex worker are now much more reluctant to go to the police for fear of their own arrest.”²¹

¹⁹ Global Network of Sex Work Projects, 2015, “The Real Impact of the Swedish Model on Sex Workers Advocacy Toolkit,” 3.

²⁰ Global Alliance Against Trafficking in Women, 2013, “Moving Beyond Supply and Demand Catchphrases,” 33.

²¹ See footnote 17 at 106.

...many End Demand campaigns conflate sex work and violence, fuelling stigma, undermining sex workers' call for rights, and promoting dehumanisation of sex workers.

Finally, many End Demand campaigns conflate sex work and violence, fuelling stigma, undermining sex workers' call for rights, and promoting dehumanisation of sex workers. One study found "that men who saw prostitution as just another sector of work were more likely to be concerned about women trafficked into prostitution. Clients who were most likely to use the services of trafficked persons shared abolitionist ideas that women were commodities and that payment signified ownership, not exchange".²²

The Impact of Surveillance and Policing on Vulnerability to HIV

Policing and criminalisation also directly impact vulnerability to HIV. It is important to note that sexual violence, including rape (which is frequently condomless) significantly increases sex workers' vulnerability to HIV and other STIs. A global review of research on violence against female sex workers found that:

*Within criminalised environments, physical and sexual violence in the workplace, whether by clients, police, managers, pimps, or predators posing as clients, are among the most ubiquitous and influential determinants of HIV acquisition and transmission risk among [female sex workers], linked to inconsistent condom use, client condom refusal, condom use failure and breakage, and HIV infection.*²³

Violence may also be directed specifically at sex workers living with HIV. As sex workers are often described as vectors of disease, public discourse can vilify sex workers living with HIV as intentionally trying to engage in harmful behaviour. Multiple NSWP members reported the particular vulnerability of sex workers living with HIV.

"HIV-positive sex workers in our region are marginalized, stigmatized, regularly subjected to sexual violence, assault and battery in the course of their work, and their life. This violence against them is done by their clients, their relatives and even the authorities that are supposed to protect them. It is a violation of their inalienable rights and a flouting of human value. Everyone, regardless of his occupation, has the right to security and social service."

COVIE, COTE D'IVOIRE

Additionally, sex workers living with HIV face the risk of being doubly criminalised through laws that target people living with HIV, leading to longer sentences and increased system involvement.

²² See footnote 20.

²³ See footnote 5 at 60.

Use of Condoms as Evidence

“The police in Nicaragua have arrived at the stupidity and abuse of removing or taking condoms from sex workers, as if walking or having or using condoms is a crime, a total violation of our rights to protect us from HIV, STIs and our health.”

LAS GOLONDRINAS, NICARAGUA

One of the most well documented ways in which policing increases vulnerability to HIV is the use of condoms, lubricant and anti-retroviral medication (ARVs) as evidence that a person intends to engage in

One of the most well documented ways in which policing increases vulnerability to HIV is the use of condoms, lubricant and anti-retroviral medication (ARVs) as evidence that a person intends to engage in prostitution.

prostitution. This police procedure is documented across the globe.²⁴ Under this practice, possessing condoms is enough to warrant an arrest for ‘prostitution,’ leading many to falsely assume possession of condoms is a crime. This practice also interferes with the ability of outreach workers to distribute condoms, both due to sex workers’ fear of taking condoms, and because outreach workers are harassed themselves. This practice makes sex workers (and those profiled as such) fear carrying condoms. For sex workers living with HIV, this also includes fear of carrying medications, which means they will not have

access to their ARVs if they are arrested or detained. Best Practices Policy Project, U.S.A., reported that 20% of respondents in one study specifically noted being searched for medication.

Criminalisation as a Barrier to Care, Treatment and Programme Implementation

“Sex workers’ experience of justice (arrests, detentions, judicial proceedings), leaves them strongly thinking and maintaining that they are left behind. This leads them to avoid visiting jurisdictions to report cases of rape and violence against them and even to miss visiting HIV care, support and treatment centres.”

COVIE, COTE D’IVOIRE

Criminalisation and policing impact on sex workers’ ability to access services. As noted previously, criminalisation contributes to the stigma and social rejection that can fuel human rights abuses, including from service providers. Violence perpetrated by health service providers can take many forms, including refusal of services, stigmatising and shaming behaviours, and requiring sex workers to undergo testing or procedures unconnected to their medical condition. In a study on sex workers’ experiences accessing care in four different African countries, a sex worker reported that sex workers “are despised in the hospitals. [Providers] say, ‘We don’t have time for prostitutes’ and they also say that if one prostitute dies then the number reduces.”²⁵

An NSWP member in Asia reported that healthcare providers withheld treatment because they saw sex workers, as well as people who use drugs and other key populations, as “hopeless causes.”

²⁴ Open Society Foundations, 2012, “Criminalizing Condoms.”

²⁵ Fiona Scorgie, 2013, “We are despised in the hospitals: sex workers’ experiences of accessing health care in four African countries,” University of Peoria Space.

This hostile environment for sex workers seeking services, including medical care, can dissuade sex workers from accessing basic medical services, including HIV treatment and testing, and can lead to poorer health outcomes for unaddressed AIDS-related illnesses.

“The stigma and discrimination [sex workers] face often leads them to move further away from HIV / AIDS prevention and care services, thus increasing prevalence. In our context, sex workers are constantly subjects of ‘corrective’ rapes, denials of care in health facilities, insults after sexual intercourse by their clients who do not want to pay, backed by the law enforcement forces.”

AVENIR JEUNE DE L'OUEST (AJO), CAMEROON

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Service providers who work with sex workers may also experience stigma and harassment for simply serving the population. For example, 50% of outreach workers interviewed in Kenya said police had harassed them during the course of their

work.²⁶ Stigma and criminalisation may also constrain programming. Sex worker leaders of sex workers' rights, advocacy and service organisations have been arrested or harassed, and organisations have been harassed and closed for supporting sex workers' rights. Many sex worker organisations report being denied registration, or having to change their organisation's name to avoid clearly identifying the organisation as sex worker-led or for sex workers. An HIV programme manager in the U.S.A. explained that they had to adjust their outreach materials:

“We said you should really include a non-identifying photograph of people [engaged in street-based sex work] to acknowledge that [this community] exists but this was completely lacking. Sex work is illegal in this country and that can make it difficult to mention directly in prevention and treatment efforts.”²⁷

Stigma also prevents sex workers' full participation in HIV programming, a direct affront to well-defined best practice in health programming, which includes peer-based education and service provision. *Implementing Comprehensive STI/HIV Programmes with Sex Workers* – known as the Sex Worker Implementation Tool (SWIT) and developed collaboratively by NSWP and UN agencies – notes that community empowerment and community-led services, including meaningful participation in service design and delivery, are a key element of best practice in development of effective HIV programming.²⁸ Criminalisation and stigma hinder, or outright prevent, meaningful involvement of sex workers, undermining the efficacy of prevention, outreach and treatment programmes.

Arising from criminalisation, and further impeding effective service provision with sex workers globally, is the Anti-Prostitution Loyalty Oath (APLO). This is a contractual agreement required for those receiving HIV funding through the United States' *President's Emergency Plan for AIDS Relief* (PEPFAR) Program, which has been in place since 2003. It states that funds may not be used to “promote, support, or advocate the legalization or practice of prostitution.” The pledge has had demonstrable impacts on the ability of outreach organisations to engage sex workers. For example, in Bangladesh, *Durjoy Nari Shango* (DNS), a sex worker organisation whose drop-in centres were recognised as a UNAIDS ‘best practice’ programme, lost funding when an international funder signed the APLO. As a result, DNS was forced to close sixteen drop-in centres, reducing the number to just four.²⁹

²⁶ See footnote 24 at 4.

²⁷ Best Practices Policy Project, 2015, “Nothing About Us Without Us,” 7.

²⁸ WHO, UNFPA, UNAIDS, NSWP, The World Bank and UNDP, 2013, “Implementing Comprehensive HIV/AIDS Programmes with Sex Workers: Practical Approaches from Collaborative Interventions,” 5.

²⁹ Center for Health and Gender Equity, 2008, “Implications of U.S. Policy Restrictions for HIV Programs Aimed at Commercial Sex Workers.”

Vulnerability During Arrest, Court-Involvement and Detention

When sex workers are arrested and enter the court system, vulnerability to violence and compromises regarding health continue. Beyond arrest, the confiscation or theft of property can create additional vulnerability, especially for those already experiencing economic

While incarcerated or detained, sex workers experience violence at the hands of law enforcement, government officers, and other incarcerated persons.

insecurity. Procedures such as mandatory HIV testing violate sex workers' privacy and human rights. While incarcerated or detained, sex workers experience violence at the hands of law enforcement, government officers, and other incarcerated persons. This process can be abusive and dehumanising, especially for transgender individuals who face additional vulnerability and discrimination.

Mandatory HIV and STI Testing

In many jurisdictions across the globe, sex workers are subjected to mandatory HIV and health screenings when arrested, another human rights violation that promotes stigma and the belief that sex workers are vectors of disease. Some groups reported that once tested, their HIV status was disclosed openly. In Greece, 29 women were arrested, subjected to mandatory testing, and faced criminal charges if they tested positive. The media released their images and identities without their consent. Even when not required by law, service providers may demand testing of sex workers. The World Health Organization documented reports from sex workers in Russia and India of "callous" treatment from service providers when seeking medical care, and having care withheld until submitting to an HIV test.³⁰

Impact of Detention on Sex Workers' Health

Detention, even for brief periods, can damage a person's health. In particular for sex workers living with HIV, who are substance users or who have other medical concerns, access to basic medication or drugs ranges from challenging to impossible. While in detention, sex workers face the possibility of withdrawal or the untreated progression of their medical conditions. For those who are HIV-positive and take ARVs, incarceration without medication makes treatment adherence impossible. A sex worker described the impact of being detained for four weeks without ARVs:

*"It was a bad experience, because I stayed without medication leading to deterioration of my health. My CD4 went down and I also lost weight. When I went back for treatment, the doctors were harsh on me for defaulting and told me in such cases I should speak out and ask for help. They had also tried looking for me, but they did not know I was arrested. This situation is not likely to change because the police officers are always harsh and not ready to listen."*³¹

SEX WORKER, KESWA, KENYA

³⁰ World Health Organisation, 2005, "Violence against sex workers and HIV prevention," 2.

³¹ See footnote 15 at 11.

According to the Community and Family Aid Foundation (CAFAF), Ghana, after a raid in one neighbourhood, sex workers were denied “bail including providing them food and sanitary support. Some of the sex workers were breast feeding at the time of their arrest and were forced to be at the police joint with their children.” Compounding the harm, for incarcerated individuals, condoms, syringes and other forms of harm reduction are viewed as contraband and denied or confiscated, increasing the risk of contracting HIV while in detention.

Violence in Detention

Once in detention, sex workers may continue to experience violence at the hands of other inmates or law enforcement. As Asociación Civil Angel Azul, Peru notes, “when our trans colleagues are arrested, they have them in the holding cells for several hours, the problem is that [the police] keep them with people who are criminals, who are in the same cells and they are abused by these individuals.” In Kazakhstan, sex workers are often raped when being held by police, and are also taken to another area of the precinct where they are further assaulted by other officers.³²

Sometimes detention occurs in facilities designated as ‘rehabilitation centres’ where sex workers experience similar violence. A study undertaken by UN agencies, in collaboration with the Asia Pacific

Network of Sex Workers (APNSW), found sex workers in rehabilitation centres were “detained and isolated from their children and families with no trial or option to appeal. In those settings, violence was reportedly committed by the warden, officers and other prison staff as well as other inmates, with sex workers at the bottom of the hierarchy of prisoners.”³³

For transgender sex workers, arrest and interaction with law enforcement carries an additional risk of violence. Midnight Blue, Hong

Kong, reported that members who were transgender women had described being strip searched in the presence of male guards upon arriving at the police station, as well as having no access to gender-affirming clothing, having their hair cut, being subject to additional strip searches, and having no access to hormone treatment. Some were also sentenced to a psychiatric facility instead of a traditional prison or jail.³⁴

Violence also occurs when migrant sex workers are detained. While there is little data specific to sex workers held in detention facilities, there are reports of high rates of violence against female migrants in general. One study on recent female migrants in Europe and Central Asia reported that around 70% had experienced sexual violence, with high rates of violence from European officials and professionals.³⁵

“...violence was reportedly committed by the warden, officers and other prison staff as well as other inmates, with sex workers at the bottom of the hierarchy of prisoners.”

32 Public Association Amelia, 2015, “Documenting Human Rights Abuse,” 20.

33 See footnote 9 at 65.

34 Midnight Blue, 2016, “Cases of Arrested Transgender Sex Workers.”

35 ICRSE, 2016, “Surveilled. Exploited. Deported. Rights Violations against migrant Sex Workers in Europe and Central Asia,” 26.

Vulnerability After Criminal Justice System Involvement

Punitive interactions with law enforcement and the criminal justice system can create long-lasting vulnerabilities. Penalisation through fines and other restrictions can lead to financial hardship and an inability to return to a person's community. Public shaming and outing as a sex worker can lead to family and community rejection. These harms, which can follow a person long after interactions with law enforcement and the criminal justice system, increase vulnerability to violence and promote the structural conditions which compromise a person's health, especially those with chronic illnesses such as HIV.

For many sex workers, penalisation for sex work activity can mean additional restrictions after punitive interactions, such as being legally prohibited from entering certain neighbourhoods, sex offender registry, and severe financial hardship as a result of fines, fees and penalties. This financial hardship can exacerbate economic conditions individuals were trying to address through sex work, forcing them to engage in riskier behaviour to pay off these new expenses.

Where arrest and incarceration records are publicly available, these records can bar individuals from accessing other types of work and other resources including housing. According to AJO, Cameroon, "this reduces or completely destroys the financial capacity of sex workers. As a result, they no longer have the financial means to go to the HIV prevention and care centres to take full advantage of the services."

"Several cases have emerged where [the] majority have not been able to settle fines imposed on them thus, had resorted to offer sex as mean of paying for their fines. [A]s a result some have acquired HIV due to status of people not known to them."

CAFAF, GHANA

...mugshots are often available to the press, who may reprint these images with full names, addresses, HIV status, or transgender identity.

In countries such as the United States and Germany, mugshots are often available to the press, who may reprint these images with full names, addresses, HIV status, or transgender identity. This can contribute to stigma, abuse and rejection from a person's community. According to Tais Plus, Kyrgyzstan, "close relatives of sex workers, after learning [their status] from the

media, expelled them from the family or subjected [them] to physical violence (beating, shaving bald). In such cases, there were attempts at suicide, one sex worker fell into a psychiatric hospital." This community rejection isolates sex workers and promotes shame and stigma, further cementing the vulnerability to violence caused by criminalisation.

Involvement with the criminal justice system also reaffirms sex workers' fear of reporting violence to the police. The abuse and trauma carried after these experiences make sex workers less likely to reach out after experiencing violence for fear of another arrest.

"A sex worker who was released from Lowell Women's prison in March of 2015 reported that she was raped at the bus station on arrival to Orlando by teenage gang members and they smashed her dentures and kicked her in the ribs before leaving her behind a grocery store. She did not report the incident to police because she was afraid they would send her back to prison."

SWOP BEHIND BARS, U.S.A.

Recommendations

- **To promote the health and wellbeing of sex workers, governments, policy makers and advocates must pursue full decriminalisation of the sex industry.** Criminalisation is a primary cause of sex workers' vulnerability to HIV and violence, and neither can be fully addressed without full decriminalisation of sex work.
- **Local, national and international bodies must investigate human rights abuses against sex workers, either through existing bodies or tribunals for this specific purpose.** Many reports and responses indicated widespread abuse and violence, primarily at the hands of law enforcement and other state institutions. To understand the pervasive nature of these abuses, sex workers should be able to access reporting mechanisms, and independent monitors and reporting mechanisms must be made available to sex worker communities to report such violations.
- **Sex workers, and other communities disproportionately affected by HIV, must be meaningfully involved in the planning and implementation of health services.** Best practice for HIV services relies on the knowledge of the communities impacted. To improve HIV prevention and treatment and curb the HIV epidemic, sex workers must be meaningfully included in this conversation.
- **Service providers and law enforcement should address the pervasive stigma that hinders access to services and care.** Stigma and shaming, two consequences of criminalisation, prevent sex workers (especially those with other stigmatised identities) from fully accessing care and sharing relevant information with medical providers.
- **Law enforcement must stop using condoms, and other commodities, as evidence of sex work.**

Conclusion

Criminalisation increases sex workers' vulnerability to violence and HIV, severely inhibiting the health and wellbeing of sex workers globally. Anti-sex work laws, in all their forms, compromise sex workers' lives and wellbeing. Even before arrest, the common knowledge that sex workers are unlikely to report violence, or to be taken seriously when they do, creates a culture of impunity for law enforcement and civilians alike. During policing, harassment and violence is commonplace, especially when the threat of arrest is imminent. Practices like

confiscation of condoms and denial of medication in detention increase vulnerability to HIV. Public shaming encourages communities to further isolate and discriminate against sex workers, including service providers.

As governments around the world begin to re-examine their laws on sex work, there has never been a more important moment to look at

the range of negative impacts of criminalisation. These laws promote violence and isolation, compromise health outcomes and reinforce structural marginalisation. Full decriminalisation is an integral step to improving the lives of sex workers and upholding human rights, and NSWP urges governments around the globe to take the consequences of continued criminalisation seriously.

Full decriminalisation is an integral step to improving the lives of sex workers and upholding human rights...

This policy brief is the result of desk research and gathering case studies from NSWP members.



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NSWP is part of Bridging the Gaps – health and rights for key populations.

Together with almost 100 local and international organisations we have united to reach 1 mission: achieving universal access to HIV/STI prevention, treatment, care and support for key populations, including sex workers, LGBT people and people who use drugs.

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