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TOWARD A LEGAL FRAMEWORK THAT PROMOTES AND PROTECTS SEX WORKERS' HEALTH AND HUMAN RIGHTS

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ABSTRACT

Complex combinations of law, policy, and enforcement practices determine sex workers vulnerability to HIV and rights abuses. We identify “lack of recognition as a person before the law” as an important but undocumented barrier to accessing services and conclude that multi-faceted, setting-specific reform is needed—rather than a singular focus on decriminalization—if the health and human rights of sex workers are to be realized.

INTRODUCTION

This paper attempts to bring clarity to the discussion concerning the regulation of commercial sex, the rights of sex workers, and reducing vulnerability to HIV among adult female sex workers. Varying combinations of law, policy, and enforcement practices are shown to come together along identifiable themes to determine how sex workers live and work.

Though there is a great deal of literature on the effects of criminalizing sex work, the ways in which other forms of law and practice contribute to shaping the working environments of sex workers in different places is less understood. The consequences of the lack of recognition of the sex worker as a person before the law in many countries are hardly discussed. The absence of recognized legal status—not confined to sex workers—may be the result of the lack of a birth certificate, identity card, voter card, or other means that societies create to recognize individual legal personality, which make it possible to act and make claims in society. This can mean that the sex worker is deprived of the benefits of citizenship even though they are born the country in which they work. It is suggested that in some places this phenomenon may be as much to blame for many of the deprivations and violations of rights suffered by sex workers as are other more commonly recognized concerns. Health programs that focus solely on the sexual health of sex workers to the exclusion of this fundamental issue of status may inadvertently reinforce this problem.

In this paper, the singular focus on criminal law is extended to consider the many factors that create and reinforce sex worker marginalization and social exclusion. We set out and explain the issues that must be addressed in order to improve sex workers' status and health. The range of regulatory mechanisms used to govern sex work, enforcement practices, lack of clarity in the language used to describe this, and the claims of sex workers are discussed, as well as the limited steps that have been taken towards seeing the sex worker as a person possessed of at least some rights. We draw particular attention to the failure, in many places, to recognize sex workers as persons before the law. This means they are unable to make

enforceable claims against office holders, employers, and service providers who, as a consequence, are not held accountable to sex workers.

THE CRIMINAL LAW AND THE UNITED NATIONS

The International guidelines on HIV/AIDS and human rights, first issued in 1996 and reissued in 2006, include this language about sex work:

With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim to decriminalize, then legally regulate 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/AIDS prevention and care services to sex workers and their clients...¹

The UNAIDS Guidance Note on Sex Work, published in 2009, echoed these themes.² After the release of this Guidance Note, the executive director of UNAIDS initiated the Joint Action for Results: UNAIDS Outcome Framework 2009-2011. Outcome Area Six specifically calls for the removal of punitive laws, policies, practices, stigma, and discrimination that block effective responses to AIDS.³

Both sex worker groups and United Nations agencies argue that the criminalization of sex work negatively impacts sex workers' health and human rights.⁴ Sex workers throughout the world have consistently claimed they are adversely affected by laws, policies, and enforcement practices that result in their exposure to violence, other criminal acts, and human rights violations, and which frequently reduce their access to education and health services and contribute to their social and economic exclusion. In these circumstances, the vulnerability of sex workers to HIV is significantly heightened. Sex workers identify stigma as the core issue and the law as a powerful tool for either empowering sex workers or further victimizing them.⁵

Law reform advocates suggest that if commercial sex is legitimized, sex workers may seek protection from exploitation and violence by the same laws and mechanisms that protect citizens and workers. They

claim that sex workers might then enjoy the protections that accompany recognition of their equality with others, including the ability to conduct their trade in the safest possible workplaces, form unions, and access health and other services.⁶ If they remain without recognized legal status, these outcomes will be difficult to achieve.

Some feminists have advocated abolition of sex work by women, suggesting that it is indivisible from human trafficking as no person would voluntarily agree to prostitute themselves. They advocate stronger criminal laws against people who sell sex, clients, and sex business operators. Others suggest that liberalization of sex work laws increases demand for commercial sex and therefore also exacerbates human trafficking and other forms of exploitation or abuse.⁷

Regulation of commercial sex

The primary mechanism for controlling sex work is criminal law, which may make all or some activities related to commercial sex illegal. These laws vary greatly from country to country.⁸ In some countries, all aspects of commercial sexual transactions are criminal for all involved. More frequently, criminal laws are directed at those who sell sex or profit from it. The most common form of legal regulation is prohibition of specific activities associated with commercial sex, such as public soliciting for prostitution and procurement of minors. Recently, laws aimed at preventing trafficking and sexual exploitation have proliferated, with many jurisdictions extending the coverage of laws against trafficking to include clients and consenting adults who are deemed to be sexually exploited.⁹

Sex workers are referred to in laws that are enforced against them by a variety of terms including "prostitute," "entertainment worker," "trafficking victim," and "victim of sexual exploitation."¹⁰ Sex work is also regulated by laws drafted to address concerns unrelated to sex work. Examples include laws dealing with vagrancy, obscenity, nuisance, drugs, public order, sodomy, and alcohol consumption. Executive orders aimed at reducing antisocial behavior by restricting access to an area or evicting people from public housing are also used against sex workers.¹¹

In almost all countries, there are laws against third parties involved in prostitution. These include laws against procuring adult women for prostitution,

brothel keeping, advertising transactional sex, human trafficking, transporting or controlling prostitutes, or living on immoral earnings. Police will frequently confiscate condoms as evidence of sex work. All such laws can target managers, drivers, launderers, bartenders, receptionists, and landlords, as well as sex workers and their partners and families. Criminalization of sex business operators and clients alike is increasingly underpinned by an ostensibly humane redefinition of the female sex worker as a victim in need of rescue, rather than a criminal to be punished. Despite this characterization, the sex worker herself continues to be punished in both formal and informal ways. In some cases, sex workers are charged with trafficking and brothel keeping offenses (particularly if they share a workplace with another sex worker) or must agree to be detained for rehabilitation.¹²

Commercial sex may also be regulated and licensed. Some schemes permit commercial sex in certain streets or brothels; others permit commercial sex that accords with prescribed standards, such as the licensing of managers and the registration of workers. In Germany, for example, sex workers have limited access to indoor premises, but in Berlin, they are allowed to work on streets if they pay tax by purchasing a ticket from a machine.¹³ In the Philippines, sex workers must produce a “health card” to avoid arrest.¹⁴

Public health law plays an important part in the regulation of sex workers. In New Zealand, it is an offense to buy or sell unprotected sex.¹⁵ Medical examination of female sex workers and testing for HIV and other STIs is required in many jurisdictions, and steps are taken to prevent sex workers operating if they are HIV-positive or have an STI. In Turkey and Senegal, for example, it is an offense for a person to sell sex if they have not submitted to a medical examination.¹⁶ In other places, such as legal brothels in the state of Victoria in Australia, sex workers cannot work if they have an STI.¹⁷ The US state of Nevada has a similar regime.¹⁸ Under Chapter 441A of the Nevada Administrative Code, sex workers must be medically examined prior to commencing work, then on a weekly basis for certain diseases. Forced HIV and STI testing of arrested sex workers is lawful in some countries, including the United States where police publish pictures of arrested sex workers and their tests on official websites.¹⁹ Similar official “naming and shaming” of sex workers also occurs in the UK and was routine in China until it

was banned.²⁰

Forced medical examination of sex workers has been documented in many other countries, including Macedonia, where it led to several women being charged with serious public health offenses when they were found to have Hepatitis C antibodies.²¹ In Malawi, a newspaper reported that sex workers were taking legal action against the government for forcing them to be tested for HIV.²²

HIV-positive sex workers are also likely to be affected by criminalization of HIV transmission.²³ Several cases have been documented of HIV-positive sex workers being charged with criminal offenses, or being subject to orders that limit movement to prevent them infecting others.²⁴ In a number of American states, a person who engages in sex work—or patronizes someone selling sex—knowing the sex worker is HIV-positive, is charged with a felony as opposed to a misdemeanor.²⁵

A commission investigating sex work and HIV in South Africa said of legalized sex work with health controls:

[It] represents the same difficulties that criminalization does, especially since criminalization is the inevitable ‘default’ position where prostitutes do not comply with the conditions for working within the parameters of the legal sector. The inclusion of mandatory HIV testing as one of the conditions for legalization compounds the difficulties created by criminalization.²⁶

ENFORCEMENT

Policy making and law reform are difficult when patterns of enforcement bear little or no relationship to formal law. Enforcement practices that are substantially based on discretion are unreliable and prone to corruption. In most cases, especially in poor countries, few arrested sex workers are formally charged with an offense, taken to court, and jailed. It is common, particularly in countries where the rule of law is weak, for sex workers and sex business operators to pay fines or bribes or to be incarcerated in police stations, detention centers, and even jails without formal charges and an opportunity to appear in court.²⁷ Indeed, some sex worker activists have alleged that

this process can be so entrenched that only military police or retired officers are able to operate sex venues safely.²⁸ Conversely, in some places, laws against commercial sex are not enforced because there are insufficient resources to do so, or because there is a deliberate policy of tolerance.

Sexual assault by police also plays a routine part in the global commercial sex landscape. Lack of accountable law enforcement processes means that sex workers who are victims of crime often have little incentive to report the crimes committed against them because they know they are highly likely to be ignored, or arrested and further abused.²⁹

As noted above, offenses, whether or not they are designed to respond to sex work, may be routinely enforced against sex workers, their families, and associates, irrespective of whether there are grounds to do so. The presence of condoms as evidence of sex work is often relied upon to harass or prosecute, and is an example of a widely used enforcement practice that both activists and academics have criticized strongly.^{30 31}

Arbitrary (and non-arbitrary) detention, sometimes for the purposes of rehabilitation and “protective” custody, are frequently reported in the literature on sex work. Sex worker activists have dubbed it “raid and rescue.”³² UN Special Rapporteur Anand Grover recommended compulsory detention and rehabilitation centers be closed as they are “ineffective and counterproductive.”³³

Irrespective of whether incarceration is arbitrary or not, it carries additional health risks and has the potential to lead to further human rights abuses. The risks of detention often include assault and sexual violence, exposure to TB, and deprivation of medication, including anti-retroviral medicine for HIV, which has serious health consequences. In Cambodia, Human Rights Watch identified enforcement of the law on the suppression of human trafficking and sexual exploitation as causing arbitrary detention of sex workers in government rehabilitation centers, resulting in human rights violations and adverse health effects. According to Human Rights Watch, detainees reported rape and missed medication among the consequences of their detention, as well as loss of jobs or homes, and the forced abandonment of children and other family members for

whom they were responsible.³⁴

Limited rights

Undocumented migrants and refugees are the most instantly recognized categories of people lacking the rights that accrue to citizens of a country. However the benefits of citizenship are not automatic to all born in the country in which they reside, in particular those whose births are not registered.³⁵ Sex workers appear to be disproportionately affected by lack of citizenship rights, or “recognition as persons before the law.”³⁶ The combination of the legal status of sex work, the lack of legal status of the person who is the sex worker, and social stigma plays a significant role in driving social and economic vulnerability. Sex workers and their children are deprived of all ordinary civil entitlements. Sex workers without documents such as birth certificates or identity cards have limited access to services and are unable to enter into formal agreements, such as leases or contracts, or to interact with government departments. This means they are unable to own, rent, or inherit property, vote, register the births of their children, or access education, justice, health care, loans or banking services, utilities, or work in the formal economy. In some cases, the inability to produce proof of identity will be associated with disrespectful and hostile attitudes in clinics, schools, and government offices. This may lead HIV-positive sex workers to avoid treatment that could both save their own lives and prevent transmission. It can also mean being held in detention centers or police custody longer, as they must be released into the care of someone who is legally recognized as a person.

Negotiating access to goods and services from this disadvantaged position clearly increases susceptibility to exploitation and abuse. Those who cannot access accommodation lawfully are prey for unscrupulous “slum lords,” those who cannot obtain legitimate health services are vulnerable to “quacks,” and “loan sharks” are the only option for those without access to legal finance services. There is little data addressing the health consequences that result from the fundamental denial of sex worker legal subjectivity.

Swaziland provides a poignant example of law that denies the humanity of the prostitute. Section 3(1) of the Swaziland Girl’s and Women’s Protection Act is as follows:

Every male person who has unlawful carnal connection with a girl under the age of sixteen years or who commits with a girl under that age immoral or indecent acts or who solicits or entices a girl under such age to the commission of such acts shall be guilty of an offense and liable on conviction to imprisonment not exceeding 6 years with or without whipping not exceeding 24 lashes and with or without a fine not exceeding one thousand Emalangen in addition to such imprisonment and lashes.³⁷

Section 3 (3) of the Act provides the following defense to the charge of carnal knowledge of a girl child under 16, “that at the time of the commission of the offense the girl was a prostitute.”³⁸ According to this law, a girl under the age of 16 cannot consent to sex – however if she is under 16 and a prostitute, she can neither consent to sex, nor can she claim protection from the law if someone has sex with her. By granting her neither agency nor security, the law offers her no protection.

CONFUSING LANGUAGE AND INADEQUATE CONCEPTS

Addressing the criminal status of sex workers will not fully resolve the abuses suffered, however this debate dominates discussion about commercial sex. This is an interesting phenomenon given that in many countries sex work itself is not prohibited. Yet this discussion is beset by confusion. Terms such as “trafficking,” “sexual exploitation,” “abolition,” “toleration,” “semi-legal,” and “decriminalization” have no uniformly agreed meanings and are, as a consequence, applied inconsistently. Advocates who use this language cannot be confident about what has been communicated to others. Terms such as “legalization,” “decriminalization,” and “regulation” are often used interchangeably, which limits the possibilities for coherent discussion about reform of the law and policy governing commercial sex. For example, decriminalization has many meanings: no law should apply to commercial sex; or no criminal law should apply; or that commercial sex should be permitted in certain forms and not others; or that commercial sex should be regulated like physiotherapy, for example, or some other occupation sharing similar features. Even if something called decriminalization

was possible, this is unlikely to be a complete solution in view of the broad range of problems faced by sex workers. Similar issues emerge for sex workers where police practice is delinked from law, where sex work is legally indivisible from trafficking, or where criminal laws not originally intended to be used to regulate commercial sex are misapplied, and whether the criminal law is silent or unenforced.

The language of rights also contributes to confusion. This is in part because treaties also use phrases such as “traffic in women” and “exploitation of prostitution of women,” which can be interpreted in many ways, including in justification of the punishment of sex workers. For example, Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women states:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.³⁹

Laws that penalize all aspects of commercial sex may be interpreted as being consistent with international treaties that treat sex work as sexual exploitation and indivisible from trafficking, making sex work itself inherently an abuse of rights. Moreover, policies, such as the anti-prostitution pledge contained within the US President’s Emergency Plan for AIDS Relief, that aim to eliminate sex work are constructed as being consistent with a reduction in vulnerability to HIV and therefore in accordance with the right to health.

BARRIERS TO SAFE PLACES TO WORK

Where the law prohibits or limits access to commercial sex in venues, sex workers will find alternative ways and places to work. In rich and poor countries alike, this means soliciting in the street, contacting clients by phone and the Internet, meeting clients in secret places, obtaining employment in clandestine brothels, or using a guise such as hairdressing, karaoke, or massage services. In these circumstances, sex is likely to take place in hidden rooms, streets, parks, cars, and roadsides where there is limited access to water and other physical conditions required for health and safety. Where sex work is bar- or entertainment venue-based, sex workers’ exposure to alcohol and tobacco can also pose a health threat. Where commercial sex is disguised as another business, such

as massage or entertainment, condoms may not be present lest they are discovered by police and used as evidence of sex work, sexual exploitation, or human trafficking. In areas where the laws against commercial sex are strongly enforced, brothels operated by criminals frequently have the worst possible conditions for sex workers; abuse, violence, and unprotected sex are more likely.⁴⁰

Existing circumstances greatly increase vulnerability to HIV, to violence, and to other human rights abuses. This could be remedied by the establishment of legal and suitably regulated workplaces in which labor rights are recognized and occupational health and safety standards apply. Such standards do not include mandatory testing for HIV and STIs. Laws that criminalize sex business operators, or define them as traffickers and procurers deny sex workers the benefit of working as employees in lawful businesses, even where sex work itself is not criminalized. At present, sex business operators may be penalized for “exploiting prostitution,” “living on the earnings of prostitution” or “trafficking,” irrespective of how well they treat their staff. Sex workers are generally unable to rely upon employment contracts, which are unenforceable in most jurisdictions because they relate to an unlawful or immoral purpose, and because the sex worker may not have the legal status needed to enter into a contract.

A notable exception to this is a decision of the South African Labour Appeal Court in 2010 that held that although sex work was illegal, sex workers were still entitled to procedural fairness and protection against unfair dismissal.⁴¹ However, while the court held that the illegality of prostitution does not negate the constitutional protections that may be enjoyed by sex workers, it also noted that although sex workers would, as employees, be entitled to form and join trade unions, they would not be entitled to participate in any activities, including collective bargaining, that amounted to the furthering of the commission of crime.⁴²

ECONOMIC PROGRESS

Criminal records, the inability to obtain goods and services, stigma, and the ensuing erosion of confidence, combine to ensure that many sex workers remain socially excluded; this makes them likely to stay in the sex industry into old age. There are reports of rehabilitation programs that offer lessons in sew-

ing, hairdressing, or cooking, and some that offer small loans to start small businesses. These are aimed at enabling female and sometimes transgender sex workers to earn money to leave sex work. However, such programs reach a very small proportion of sex workers, and there is no evidence that they have, or could, significantly reduce the number of persons selling sex or form a cost-effective strategy for reducing HIV. It may be that recognition of legal personhood, enabling more equal access to employment opportunities, holds greater potential for enabling sex workers to exercise control over their livelihood choices than “rehabilitation”.

SOLUTIONS

Principles

According to the UN Advisory Group on Sex Work, efforts to empower sex workers have resulted in measurable improvements in sex workers’ quality of life, self-confidence, and agency. Studies have documented good social and economic outcomes, increased social capital, and high rates of condom use.⁴³ Creating regulatory frameworks that enable these improvements is crucial.

Although national regulatory regimes will consist of different mixes of laws and policies, the principle that should govern and inform reform efforts is that sex workers should enjoy the same protections and benefits as other citizens and workers. Sex workers must be understood as persons endowed with rights in a meaningful fashion, not merely as a rhetorical claim. To achieve this, the following should form the basis of a reform framework:

- Recognition of sex work as an occupation
- A commitment to the application of human rights standards and norms, including recognition of sex workers as legal persons capable of holding and exercising all human rights, the right to work, freedom of association, and a recognition of the right of consenting adults to form sexual relationships, paid and unpaid
- A commitment to ensuring that commercial sex can take place under healthy and safe conditions that are understood to exclude oppressive testing regimes
- Guaranteed access for sex workers to health and social services
- Justice, including but not limited to, protection

from violence, abuse, and discrimination.

For this to happen, it will be necessary to adopt consistent use of precise language to describe the regulatory environments for commercial sex, the consequences of possible regulatory options, and the potential solutions. It will also be essential to collect accurate local data about the laws, policies, and enforcement practices to be remedied, and their impact, intended and unintended, on the health of male, female, and transgender sex workers.

Law reform

In most countries, it will be necessary to repeal and reform criminal and other types of law (whether applied as intended or misapplied) that unnecessarily limit sex workers' access to safe workplaces, services, and economic opportunities. To be successful, this must be done in a manner that acknowledges the variety of forms that commercial sex takes, and the range of individuals who perform roles associated with commercial sex other than the physical provision of sexual services. As noted, there may be owners, employers, cleaners, drivers, cooks, and other support staff. Sex work can be arranged around entertainment venues such as hotels and bars, in formal brothels, as a home-based occupation or linked to personal services such as massage and escorts. Sex workers can be employees, sole traders, or independent contractors. Examples of suitable regulatory responses to all of these circumstances may be found by examining comparable health and safety and labor regulations for other occupations providing personal services.

At an international level, the ILO has begun this process by incorporating sex work into international labor standards through a recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200). In 2010, during the 99th Session of the International Labour Conference, delegates stated sex workers were implicitly covered in the category of:

all workers working under all forms or arrangements, and at all workplaces, including...persons in any employment or occupation.⁴⁴

Bringing sex workers within the scope of this recommendation may be an important first step toward an international policy and legal framework, within which sex workers may benefit from the same protec-

tions as other workers.

At a national level, the New Zealand Prostitution Reform Act 2003 is often cited as an example of decriminalization of sex work. This Act recognizes various forms of commercial sex and provides that contracts for commercial services are not void. It enables sex workers to refuse service, while allowing for the rescission or cancellation of a contract for a sexual service that is not performed. The Act also creates advertising restrictions, and stipulates that a permit to immigrate to New Zealand will not be granted on the basis that a person intends to operate or invest in commercial sexual business. A 2008 government report found that as a result of this act, many sex workers felt more able to report violent crimes and felt that the police respected their rights.⁴⁵

Court decisions

Courts have made decisions consistent with respect for sex workers' rights, including in countries where sex work is the subject of criminal law.⁴⁶ A case of importance in this regard is the "Tanbazar" case (*Bangladesh Society for the Enforcement of Human Rights v Bangladesh*, 2001). In 1999, police evicted Bangladeshi sex workers in Tanbazar and Nimtali from their workplaces and confined them in a vagrant center for the ostensible purposes of rehabilitation. The judgment describes a night raid where, "the policemen suddenly dragged them, abused and beat them and pushed them and their children into the waiting buses using filthy language."⁴⁷

The court found that upon their eviction from their brothels, the sex workers were deprived of their livelihood and that this amounted to a deprivation of the right to life. The court concluded that the police action was unconstitutional and illegal.

A recent decision of the Supreme Court of India has recognized the impact of lack of legal personality, noting:

We are of the opinion that the authorities should see to it that sex workers do not face these difficulties as they are also citizens of India and have the same fundamental rights as others.⁴⁸

It ordered that sex workers be issued ration cards, voter cards, and identity cards that do not mention their occupation, and that address verification

requirements be relaxed. The court also ordered that the children of sex workers be admitted to appropriate classes in a government school.⁴⁹

In 2010, Justice Himel of the Ontario Supreme Court in Canada recognized the difficulties created by a legislative scheme that allows sex work but criminalizes most aspects of its conduct. She stated:

Three provisions of the Criminal Code that seek to address facets of prostitution (living on the avails of prostitution, keeping a common bawdy-house and communicating in a public place for the purpose of engaging in prostitution) are not in accord with the principles of fundamental justice and must be struck down. These laws, individually and together, force prostitutes to choose between their liberty interest and their right to security of the person as protected under the Canadian Charter of Rights and Freedoms. I have found that these laws infringe the core values protected by section 7 and that this infringement is not saved by section 1 as a reasonable limit demonstrably justified in a free and democratic society.⁵⁰

Other initiatives and activities

In addition to law reform, there are other initiatives worthy of consideration. Primary among these is supporting sex workers to organize so that they are able to spread information about legal rights and contribute to policy development. Better use of existing law is also a strategy that has been taken up to challenge violent, corrupt, and discriminatory treatment. Humanitarian Action in Saint Petersburg, Russia, provides legal services and trains paralegals to accompany female sex workers to court or detention facilities if they are charged with crimes.⁵¹ The Healthy Options Project Skopje (HOPS) in Macedonia provides legal services to female sex workers.⁵² The Asociación de Mujeres Meretrices de la Argentina (AMMAR) provides legal aid to female sex workers and has challenged police harassment and restrictions on where sex workers can work, partly through an alliance with labor unions. As has been pointed out, the provision of legal services is of value irrespective of the legal status of commercial sex.⁵³

CONCLUSION

While themes may be suggested to guide law reform, no single legal model can provide a blueprint for the regulation of sex work because of the variation between laws, policies, and practices. In addition, as Ahmed states, “decriminalization [of sex work] will not eliminate issues that exist for sex workers, such as harassment from state agents.”⁵⁴ The way forward is grounded in addressing the variety of issues raised by sex workers and in accurately identifying the aspects of local legal environments that drive sex workers’ social exclusion and limits their access to services.

We began by looking at the factors that create and reinforce sex worker social exclusion, and the consequent lack of access to health services. These outcomes flow from poverty, violence, poor law enforcement, laws that conflate sex work with human trafficking, and lack of legal personality. Associated with this are criminalization of drug use, gender transgression, and HIV transmission. We particularly emphasized the impact of the failure to recognize sex workers as persons before the law, which prevents them making the same claims as others on office holders, employers, and service providers. This is a critical omission in discussions around health and sex work, particularly in relation to access to services.

In seeking to identify progress, we have observed that while “decriminalization” or other legislative reform is at the forefront of advocacy efforts, many actual improvements to sex workers’ lives and to the governance of commercial sex have resulted from improved enforcement procedures, progressive court decisions, and through changes to laws and policies that are not ostensibly about sex work. This includes laws such as those governing citizenship, public health, drugs or gender rights.

It is commonly asserted that sex workers are unable to realize rights because sex work is illegal. While acknowledging that criminal laws limit sex workers’ rights, we question the notion that these offenses form an insurmountable barrier to sex workers exercising rights. This idea has been unhelpful because it suggests that nothing can improve unless the sex work-related offenses are repealed. This is clearly not the case in countries where there is no law on sex work, where it is unenforced, or where laws that are used to harass sex workers do not specifically mention sex work and may otherwise serve a useful purpose.

Governments have agreed to ensure the legal protection of the rights of people vulnerable to HIV and to overcome the legal barriers that block their access to prevention, treatment, care, and support. To meet these commitments for sex workers, international and national law reform is needed, as are policy changes and enforcement practices. These must occur alongside judicial recognition of sex workers' legal entitlements and increased resources for sex workers' social initiatives. Advocacy around human rights standards and norms and domestic law is more likely to succeed if more tools are used than the singular demand for removal of sex work offenses from the books.

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