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Conflicting rights: How the prohibition of human trafficking and sexual exploitation infringes the right to health of female sex workers in Phnom Penh, Cambodia

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Abstract

While repressive laws and policies in relation to sex work have the potential to undermine HIV prevention efforts, empirical research on their interface has been lacking. In 2008, Cambodia introduced anti-trafficking legislation ostensibly designed to suppress human trafficking and sexual exploitation. Based on empirical research with female sex workers, this article examines the impact of the new law on vulnerability to HIV and other adverse health outcomes. Following the introduction of the law, sex workers reported being displaced to streets and guesthouses, impacting their ability to negotiate safe sex and increasing exposure to violence. Disruption of peer networks and associated mobility also reduced access to outreach, condoms and health care. Our results are consistent with a growing body of research which associates the violation of sex workers' human rights with adverse public health outcomes. Despite the successes of the last decade, Cambodia's AIDS epidemic remains volatile and the current legal environment has the potential to undermine prevention efforts by promoting stigma and discrimination, impeding prevention uptake and coverage, and increasing infections. Legal and policy responses which seek to protect the rights of the sexually exploited should not infringe the right to health of sex workers.

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Introduction

Previous research has demonstrated that law enforcement can have adverse effects on public health.¹ When it does so, such state action is not just bad medical and social policy: it also infringes the right to health of those subject to it. A state may legitimately claim that its laws are intended to promote other rights, including by preventing exploitation. However, the right to be free from exploitation does not trump the right to health. State law and policy must be calibrated so that both sets of rights are protected.

In 2008, Cambodia introduced anti-trafficking legislation ostensibly designed to suppress human trafficking and sexual exploitation. The new law led to police crackdowns and brothel closures, prompting an exodus of female sex workers from brothels to entertainment and street-based sex work. While justified by Cambodian authorities as meeting international legal obligations to tackle sexual exploitation under the Palermo Protocol, the anti-trafficking law's effect was to infringe sex workers' right to health.²

As part of the Young Women's Health Study, a prospective observational study of young women (15–29 years) involved in sex work in Phnom Penh, we conducted in-depth interviews in 2009 and 2011 (n=80) designed to explore HIV risk and protective behaviours. Interviews were conducted in Khmer by trained interviewers, transcribed and translated into English and analysed for thematic content. This article reports empirical research on sex work in Cambodia which shows that law enforcement against trafficking and sexual exploitation had seriously counterproductive effects in exposing sex workers to increased risk of violence and infection. Such actions severely undermine sex workers' right to health.

HIV and sex work in Cambodia

Cambodia has historically had one of Asia's most severe HIV epidemics. Poverty, high prevalence of sexually transmitted infections (STI), a highly mobile workforce and the patronage of sex workers have been the principal drivers of the epidemic.³ However, crucial progress has been made in reducing risk by increasing condom use and access to screening and ART. Recent reports show a decline of HIV prevalence in the general population from 2.7% in 2001 to less than 1% in 2010.⁴ However, this progress is threatened by significant changes in the sex work landscape in Cambodia over the past decade, including a 300% increase in the estimated total number of female sex workers, a steady decline in brothel-based sex workers and a corresponding increase in entertainment-based sex workers.⁵ By 2009, 96% of the estimated 35,000 female sex workers in Cambodia were working in settings other than brothels, primarily in entertainment venues or on the street.⁶

Previous research by our group documented a high prevalence of HIV among young women involved in sex work in Phnom Penh - 23% or almost one in four women.⁷ HIV incidence was 3.6/100 person-years (PY) and incidence of Gonorrhoea was 6.1/100 PY and Chlamydia and 18.2/100 PY.⁸ Length of employment as a sex worker (Adjusted Hazard Ratio [AHR] 1.1; 95% CI 1.1–1.2) and use of amphetamine type stimulants (ATS) (AHR 4.3; 95% CI 1.7–11.0) were independently associated with incident STI infection. Women who used ATS

had five-fold higher odds of incident STIs, as well as more sex partners and higher level of alcohol use than non-ATS users.⁹

While individual and biological factors remain important determinants of HIV epidemics among sex workers, structural conditions, including criminalized legal environments, also shape vulnerability to HIV and other STIs in this group.¹⁰ Law and public policy provide the contexts within which government agencies and civil society respond to HIV. Coercive and punitive legal environments undermine responses to HIV in the context of sex work and the human rights of sex workers by encouraging violence, including sexual violence, against them, rendering women reluctant to report abuses, making authorities hesitant to offer support or protection, facilitating stigma and discrimination, and restricting access to HIV and sexual health services.¹¹ In particular, anti-trafficking laws that conflate human trafficking and sex work and define sex work as ‘exploitation’ to which a worker’s consent is irrelevant have been used to justify crackdowns and raids that suppress voluntary sex work, resulting in abuses of sex workers’ human rights and undermining responses to the HIV epidemic.¹²

Punitive laws and policies are familiar responses to sex work globally and most countries criminalize aspects of sex work, including in the Asia-Pacific region.¹³ Despite growing recognition that legal and policy environments have the potential to undermine the success of HIV prevention efforts, empirical research on their interface has been limited.¹⁴

Rights in conflict

Action by the Cambodian authorities against sex workers has been justified as meeting international obligations to protect the rights of women and children subject to trafficking and sexual exploitation.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), was adopted by the UN General Assembly in 2000 and entered into force on 25 December 2003.¹⁵ Article 3 provides “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring 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... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used”. Any dealing with a person for sex work (or ‘prostitution’, which the Protocol does not define) is prohibited. The sex worker’s consent is irrelevant. Article 5 requires signatory states to “adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol...” Article 2 provides that one of the Protocol’s purposes is to “protect and assist the victims of such trafficking, with full respect for their human rights”. The Protocol is directed at those who exploit people, not at those trafficked or exploited. The

latter are treated as victims for whom states are to “consider implementing measures to provide for the physical, psychological and social recovery” (Article 6(3)) including housing, counselling, “medical, psychological and material assistance” and “employment, educational and training opportunities”. Article 14 indicates an awareness of potential unintended consequences, requiring that the Protocol “shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons”.

In 2008, the Cambodian Government enacted a new law (Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008) ostensibly designed to suppress human trafficking and sexual exploitation “*in order to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to implement the UN Protocol to Prevent, Suppress and Punish Trafficking*”.¹⁶ This law (‘the Trafficking Law’) included a wide range of broadly defined offences that criminalized most aspects of sex work, including the prohibition of public soliciting, procurement of prostitution, management of an establishment of prostitution and provision of premises for prostitution.¹⁷ The law effectively made the sale and purchase of sex illegal and was accompanied by widespread police crackdowns and brothel closures.

However, these rights are not the only ones that the Cambodian Government is bound under international law to protect. The human right to health is recognized in numerous international instruments, including the Universal Declaration of Human Rights (Article 25.1) and the International Covenant on Economic, Social and Cultural Rights (Article 12.1) which provides that states which are parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.¹⁸ The UN General Comment 14 (2000) interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health”.¹⁹ The comment clearly acknowledges the challenges that HIV/AIDS presents to the realization of the right to health. In placing an obligation on states to respect the right to health of those affected by HIV/AIDS, these international human rights commitments require states not to impose laws or policies which infringe this right.

The current study aimed to explore the impact of the 2008 Trafficking Law on vulnerability to HIV and the right to health among female sex workers in Phnom Penh.

Methods

The Young Women’s Health Study-2 (YWHS-2), which followed the YWHS-1, was a prospective observational study of young women involved in sex work in Phnom Penh, Cambodia.²⁰ YWHS-2 was conducted in 2009 and 2010. The epidemiological aims of the YWHS-2 were to: 1) estimate prevalence and incidence of HIV and human papilloma virus (HPV); 2) examine the prevalence and risks associated with by amphetamine-type substance (ATS) use and; 3) assess completion and adherence to a multi-dose HPV vaccine regimen.

As part of the YWHS-2, we conducted two waves of qualitative data collection. Results of Phase 1, conducted in 2009 (n=33), identified the impact of the new law and associated police crackdowns as a persistent and recurrent theme.²¹ Phase 2 data collection, involving an additional 47 in-depth interviews to further examine and explore the impact of the law on women's lives, was conducted in 2011.

Participants engaged in sex work in brothels, entertainment venues and in streets and parks were recruited through outreach by study staff employed by the Cambodian Women's Development Association (CWDA), a community partner. Eligibility criteria were that women were aged 15 to 29 years, reported transactional sex (sex in exchange for money, goods, services, or drugs) in the previous three months and understood spoken Khmer. Following informed consent, women were interviewed at the CWDA offices and the Cambodian Prostitutes Union Women's Room, a community location used by various sex worker organisations in Phnom Penh. Interviews were conducted in Khmer by trained interviewers under the supervision of two medical anthropologists, including a Cambodian national, and took between 40 minutes and two hours to complete. Participants were reimbursed USD \$5 for their participation.

Interviews were digitally-recorded and transcribed verbatim in Khmer. Transcripts were checked for accuracy against the recordings before being translated into English. Following the general tenets and principles of grounded theory, data were analyzed in both Khmer and English using an inductive approach.²² Two researchers reviewed the data, one in Khmer and one in English. Interview narratives were read and re-read and emerging themes discussed and refined to develop an initial coding scheme. Data were then formally coded in parallel by two researchers using both open and axial coding to clarify and consolidate initial themes. Identification of final themes and interpretation of results was performed by consensus. Ethical approval for the study was provided by the Cambodian National Ethics Committee, the University of California San Francisco Institutional Review Board and the University of New South Wales Human Research Ethics Committee.

Impact of the Trafficking Law on sex workers' right to health

Key themes identified in the data included the closure of brothels and the concomitant displacement of women, impacting their ability to negotiate safe sex, increasing their exposure to violence, and reducing their access to health services. While women's perceptions of why the Trafficking Law was introduced varied, many felt that it was designed to eliminate sex work.

It tries to stop us from working messily [creating an image of public disorder] on streets. To stop us from sitting messily in parks ... They want to eliminate sex work
(Kaseka, 18 year-old woman).

They said that we ruin the environment by standing on the street. Our job is considered not good for the society
(Chamnan, 28 year-old woman).

However, some women felt that the new law was also designed to eliminate sex workers.

They want to abolish sex workers, so they catch us in order to send us for education and stop working like this. There are many jobs we can do. They don't want us to do like this because it affects Khmer culture and tradition

(Chakriya, 22 year-old woman).

[I]t is for the reduction of sex workers in our Cambodian country. They don't want us to exist. And we protested back saying that it can't be reduced as long as there's still poverty. We are poor and we can't do any other jobs that would feed us

(Viriya, 22 year-old woman).

Closure of brothels and displacement of women

The Trafficking Law led to police crackdowns on sex work, particularly brothel-based sex work. There was a strong consensus among women that the police crackdown following the introduction of the new law had resulted in the closure of most brothels, displacing sex workers to the streets and to entertainment venues and massage parlours.

Women waving hands [to attract customers] and although this place is closed, there is another opens. Although brothel is closed there is still on the street. There is also at the garden now. Before only at the brothel when the law was not strict. Now they close brothel but there are almost everywhere else. [Where else?] Also in the club, Karaoke. Almost everywhere, massage, coining and also at the café

(Vichheka, 28 year-old woman).

I think the old law is easier because it was open. I don't need to work secretly like now. If the new law could totally crack down all the sex work it is good, but if the new law cannot do so and there are still many sex workers at the restaurants and Karaoke, it is useless

(Kolap, 29 year-old woman).

The end result was not only that women were doing sex work in a wider array of locations and settings, but that they were forced to conduct their work furtively for fear of being arrested.

It is very difficult now. The new law makes sex work more difficult because it is about the closure of the brothels. We have to work at the shop secretly. We cannot let them know that we are sex workers

(Romany, 26 year-old woman).

Now we cannot stand openly to work as before. We need to hide from police, hide under the trees. Sometimes we run even if we see the car driving past

(Srey Neang, 29 year-old woman).

Exposure to violence

Examining the impact of this displacement from the perspectives of the women, we identified a number of sub-themes. Key among these was an increase in exposure to violence

as a result of increased police harassment and a reduced ability to negotiate safe sex outside the brothel context.

In 2008 [the] government has a new law and they can crack down on brothel and policemen were strict with us. They beat and hurt us, curse us and some even hit us with rock. They cursed and threatened us very badly

(Kanha, 29 year-old woman).

[T]hey threw rock till women's heads broken. Women tried to swim, but some don't know how to swim and cannot find a way. There was one woman died at Tonle Sap [night club] when trying to escape from policemen's catch

(Leap, 22 year-old woman).

They teased and hit us. They pulled our hair to the back. They caught us and they would tear the valuable thing out from us if we had the necklace, bracelet, ring which equal to money. They will take it all

(Sophorn, 29 year-old woman).

In addition to increasing their vulnerability to victimisation by police officers, law enforcement crackdowns subsequent to the Trafficking Law also influenced women's exposure to violence by reducing their ability to screen clients and displacing women to settings where sex was transacted in isolation.

I think that working in the brothel is much better than working outside because some clients try to negotiate the price with me for \$5 and agree to have sex at the guest house but they did not go to the guest house. They took me to the rice field and rape me

(Neary, 27 year-old woman).

In the past we could just stay at the brothel. Nobody hurts us. But now we stand independently, secretly. Like I told you, we can face eight clients at a time. Yes. I can compare like that. In the past, we just stay in the brothel and no one dared to hurt us or beat us because we are there in the brothel. But now we cannot know where they take us to. Such as taking us to Prek Ho [a village 15 km from Phnom Penh] and hurt us. We don't know in advance. There is no one to control us. So it is not safe for us

(Romany, 26 year-old woman).

By equating sex work with trafficking, the Trafficking Law increased the exploitation of women. The irony of a law ostensibly designed to “*reduce the trafficking and sexual exploitation of women and to protect their rights and dignity and to improve their health and welfare*” but actually increasing the vulnerability of women and infringing their rights, was not lost on our participants.

At the brothel it was comfortable. They didn't dare to do anything to us. Now they see us standing on the street like that they are always tricky such as not using condom, having sex without paying money, taking us alone to have sex with several people ... At the guest house, how can they stop him? We are in the room and they

are outside. [So your safety is not like before?] No, not so safe. [How about when you were at the brothel? You screamed?] At the brothel, we screamed because the rooms at the brothel were small and the brothel was also small. They can hear us scream

(Narom, 22 year-old woman).

It [violence] increases because there was the brothel before and there were people to help when clients hurt us but [now] when we go out with clients, only clients know and if we shout, only people near our room or the guest house owner know ... If [we are] in a brothel, we shout out and the door opens

(Vichheka, 28 year-old woman).

If a motor taxi brings woman to a guesthouse, he is considered to traffic human being. If a guesthouse rents room to women, the guesthouse owner is a human trafficker

(Cheata, 29 year-old woman).

In response to the Trafficking Law, some women reported renting 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.²³ Transacting sex in private environments such as apartments or guesthouses, where there is little or no oversight in the form of peer or managerial support or protection, increases the vulnerability of women to violence and HIV.

Reduced access to prevention and treatment

The other key sub-theme in our analysis of the displacement that occurred consequent to the place crackdown, was a reduction in access to prevention strategies. Sex workers reported being reluctant to carry condoms and entertainment establishments as hesitant to provide them.

When I hold condoms, they [police] will catch me because they said I am a sex worker

(Ny, 27 year-old woman).

It affects the carrying of condoms. When they arrest us and when they check and see condoms in our purse they will order us to chew all condoms they can find ...

When they come, they hit and throw stones and they use sticks to hit us

(Vitheavy, 28 year-old woman).

We cannot carry [condoms] because we are afraid that police will come to check the shop and the shop owner does not require us to carry condoms. He told us not to carry any condoms. We should not have any condoms at the shop ... The police check because they already told the shop not to have any condom in the rooms. If there is any condoms, they will arrest. They would not think we are Karaoke women but sex workers

(Kolap, 29 year-old woman).

As we have shown previously, the settings or environments in which women transact sex matters; in the YWHS women who worked freelance had the highest risk of HIV and STI infection.²⁴ Women who reported having a boss had lower rates of HIV/STI infection, suggesting that some brothels may provide a less risky work environment and potentially better access to condoms. The relative safety of brothels was a persistent theme in women's accounts.

I never carry with me. It is dangerous. *[How?] When I was working at Doun Penh [a khan or district in Phnom Penh] there was a sex worker whose husband was a Motodop driver. They carried condoms. When the wife was caught the husband was also caught and they were accused of human trafficking and being the brothel owner because they have condoms. In fact, they received condoms from organization. That is why I don't want to carry condoms. I am afraid of being accused*

(Chorpum, 20 year-old woman).

[Before] there was no crackdown. There was no policemen disturb us. We were safe living in brothel and we were not scared of police. We also protected ourselves better by using condoms than now. Now some clients may force us not to use condoms but when we lived in the brothel we had more rights than clients and they dared not to force us because they come into our house

(Seiha, 22 year-old woman).

After the new law is created, we don't care about wear or not wear condoms. All we care about is money. We don't have time talk it out [negotiate condom use] with customers because we want money

(Srey Neang, 29 year-old woman).

Some women elaborated on how the displacement of sex workers consequent to the police crackdown had disrupted women's networks, restricting their access, not only to condoms, but to health and medical services such as HIV testing and treatment.

Because the policemen crack down often we cannot earn money. We are sleepless so we sleep at day time so I am lazy to go to check my health. I have no feeling to go

(Chakriya, 22 year-old woman).

It was much easier before the law was created, much easier. The girls can easily find money, easy to get health service, other service and meet friends to go wherever we want to go but now it is hard to find them and get those services

(Srey Neang, 29 year-old woman).

Since the new law was passed fewer women access health care and prevention services because we live at different places nowadays and NGOs could not find us. In the past women live in one place at the brothel. We also want to contact NGOs but we don't know the location of the NGOs ... So we could not access to prevention services ... Since the brothel was closed I have never contacted it again

(Seiha, 22 year-old woman).

The data presented here are also consistent with contemporaneous accounts. During 2008 activists, sex worker groups and health workers voiced concerns about increases in police abuses against sex workers, condoms being confiscated and/or used as evidence for arrests, and the decline in women accessing health services. Human Rights Watch found that police extortion and demands for bribes were common during 2008–2009 and that sex workers reported arbitrary detention, violation of due process rights, physical violence, sexual assault, forced labour, confiscation of their possessions, being denied medication and forced separation from their children.²⁵ A joint position statement of public health agencies, UN agencies and NGOs affirmed that the police crackdown in the wake of the new law was increasing the risk of HIV transmission by displacing sex workers and reducing their access to health services.²⁶ Indeed, the NCHADS reported a 26% reduction in women seeking STI services, a 16% decrease in HIV testing and a 46% increase in the number of women working on the street following the introduction of the law.²⁷ The National AIDS Authority has also expressed concerns that the new law displaced sex workers, increased their exploitation, and reduced their access to condoms and health care.²⁸ While subsequent changes in government policy now prohibit the confiscation of condoms and other police abuses that interfere with HIV prevention, ongoing inappropriate police conduct and the conduct of sex work in unsafe and clandestine conditions continued to be reported by women interviewed in 2011. In 2012, 440 street-based sex workers were reportedly detained in Phnom Penh prior to the ASEAN Summit.²⁹

Public health and the human rights of sex workers

The implementation of the new anti-trafficking law by the Cambodian government in 2008 clearly stimulated dramatic shifts in the sex work landscape.³⁰ Historically, brothel-based sex workers were easily accessed and monitored in HIV prevention efforts.³¹ As sex work in Cambodia is now negotiated and transacted in a wider range of settings, women at highest risk have become harder to reach.³² The data presented here indicate that the new law displaced female sex workers in Phnom Penh to entertainment and street settings, increasing their vulnerability to violence and reducing their access to HIV prevention.

While our intention is not to depict a ‘pretty picture’ of the brothel based sex scene, evidence suggests that supportive management practices and access to condoms in brothels is associated with increased condom negotiation among workers.³³ Prior to the implementation of the Trafficking Law, brothels in Phnom Penh were well known and even counted by health officials and workers were reached by outreach, prevention and health surveillance efforts.³⁴ The implementation of the new law clearly forced many of these women beyond the public health system. Our data also indicate an increase in exposure to violence, including sexual assaults, following the introduction of the new law. Such violence clearly undermines the right to health and should be regarded as a public health matter. Studies have shown that sex workers at risk of violence are less likely to use condoms and there is a growing literature on the links between violence, condom negotiation and HIV/STI infection among sex workers and how this is mediated by punitive legal and policy

environments, including criminalisation, aggressive policing and repressive occupational settings.³⁵

Our findings suggest firstly, that the policing of sex workers in Phnom Penh subsequent to the introduction of the new law resulted in increased human rights abuses. In addition to physical assaults, women reported being humiliated, degraded and sexually assaulted by the police – potential violations of their rights to security of the person (Article 9) and to freedom from torture and cruel, inhuman, and degrading treatment (Article 7) under the International Covenant on Civil and Political Rights. Sex workers are entitled to fundamental human rights, including rights to non-discrimination and equal treatment before the law consistent with the ICCPR and the right to the highest attainable standard of health consistent with the International Covenant on Economic Social and Cultural Rights. Sex workers in Cambodia clearly lack the rights and protections afforded to other workers, including the right to a safe and healthy workplace, reasonable terms and conditions of employment, and freedom from discrimination and exploitation.

Our results are consistent with a growing body of research that indicates that aggressive policing of sex workers increases the risk of HIV and other STI transmission by encouraging women to conduct furtive and hurried transactions and/or by displacing these transactions to isolated or unregulated settings and reducing the ability of women to negotiate condom use and to control the nature of these transactions.³⁶ A review found that female sex workers in low and middle income countries had an increased risk of HIV infection relative to the general female population of reproductive age, with those in Asia at highest risk.³⁷ Despite evidence showing only modest effectiveness, interventions targeting female sex workers in Asia continue to focus on individual behavioural change.³⁸ Recent mathematical modelling by Shannon et al. suggests that decriminalization of sex work could potentially avert 33–44% of HIV infections among female sex workers and their clients over the next decade through its impact on violence, police harassment, safer work environments and HIV transmission pathways.³⁹ Similarly, our results suggest that impacting HIV in this population also requires addressing structural conditions, including the legal and policy environments in which sex work is criminalized, the prevalence of police harassment, and occupational conditions that remain conducive to violence and victimization.

Conclusions

Criminalisation and police crackdowns are familiar public policy responses to sex work globally. Many Asian countries have instituted punitive ‘prevention’ policies or crackdowns on sex workers.⁴⁰ Public health responses are often undermined by moralistic responses including police crackdowns and ‘raid and rescue’ operations designed to eliminate sex work and sex workers. The Cambodian Trafficking Law designed to implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children infringed the right to health of female sex workers by exposing them to risky environments, exploitation and violence. There is a clear need for greater vigilance and further research about how legal frameworks, including UN protocols and treaties, can have counterproductive effects, including the infringement of the right to health.

We began by noting previous studies which documented the unintended, adverse effects of law enforcement on public health. Authorities have often been disappointingly untroubled by such adverse consequences: short-sightedly, they have prioritised reducing crime or improving social order. In the report above, we have shown how action against trafficking in Cambodia endangered the health of women engaged in sex work. What distinguishes this example is that the Palermo Protocol which provided the foundation for the Cambodian Trafficking law was so deliberately aimed to benefit the victims of trafficking. It is particularly unfortunate and ironic that the Protocol has infringed their rights to health and undermined public health in the ways reported here.

While the purpose of anti-trafficking laws is to address exploitation, including through lack of consent due to coercion or the involvement of minors, in many instances, including in Cambodia, these laws are used to justify punitive responses and law enforcement practices including crackdowns on sex work and sex workers that violate human rights. The over-reach of anti-trafficking measures to suppress voluntary adult sex work is exacerbated by the language of international treaties and regional instruments which view all sex work as exploitation and synonymous with trafficking. Interpreting UN treaties in such a way that their implementation violates human rights is inconsistent with international human rights law. A recent report recommends that UNODC and other multilateral and regional agencies involved in the implementation of law enforcement responses to trafficking should ensure these responses do not violate the human rights of sex workers and are consistent with UN human rights-based HIV policies.⁴¹

A core obligation of states is to “ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups”.⁴² The implementation of the Trafficking Law in Cambodia led to numerous violations of the right to health including violations of the right of access to health facilities and violations of the obligation to respect defined in General Comment 14.⁴³

Despite increasing recognition of the centrality of human rights to HIV responses, most public discourse and academic debate in relation to sex work focuses on decriminalisation as a solution.⁴⁴ However, as Overs and Loff have recently argued, decriminalisation is necessary but not sufficient. The vulnerability of sex workers to HIV and human rights abuses is also exacerbated by their “lack of recognition as a person before the law”.⁴⁵ Moreover, a singular focus on the decriminalisation of sex work diverts attention away from other factors that create and reinforce the marginalization and social exclusion of sex workers. As this paper has shown, focusing on the legal status of sex work in the absence of a commitment to the application of human rights standards means that the rights of sex workers to legal personhood, health and the same protections and benefits as other workers, are in conflict with well-intentioned if misdirected attempts to tackle human trafficking.

Despite the successes of the last decade, Cambodia’s HIV epidemic remains volatile and the current legal and policy environment has the potential to undermine prevention efforts by exposing sex workers to violence and human rights violations, promoting stigma and discrimination, impeding their access to health services and exacerbating their social and economic exclusion. The discourse of human rights provides a way to analyse, understand

and improve the situation of Cambodian sex workers and the society of which they are part. Legislative and enforcement action to protect rights against exploitation and trafficking must take account of the right to health of sex workers. If this is done, there will be benefit not only to this marginalised group but also, though the corollary of protecting public health, to Cambodian society as a whole.

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