

THE IMPACT OF PUNITIVE SEX WORK LAWS AND REGULATIONS ON HUMAN RIGHTS AND PUBLIC HEALTH

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1. WHY THE EATG IS ADDING ITS VOICE TO THE GLOBAL DEBATE ON SEX WORK LAWS AND REGULATIONS

The European AIDS Treatment Group is a member-led network of 180 volunteer activists based in 47 countries across Europe and Central Asia. Members represent different communities coming together to strengthen the voices of people living with or at risk of HIV infection, in clinical research, as well as in the design, implementation, and evaluation of policies, laws, and programmes that affect their lives. Our members come from a diverse range of backgrounds, including social workers, researchers, medical doctors, service providers and recipients, counsellors, community-peer workers, all linked to national, regional and sub-regional organisations. The majority of members are people living with HIV.

This paper seeks to clarify where the EATG stands in the sex work policy debate and approaches to delivering health-based policies. Sex workers are one of the five key-populations groups that are particularly vulnerable to HIV and frequently lack adequate access to services¹. Moreover, the ongoing and increasing criminalisation of sex work across WHO Europe has a negative impact on sex workers' health and human rights. Therefore, EATG aims to further its

engagement with sex workers and optimise its contribution to policy discussions in Europe and beyond.

Given that one of the crucial lessons from the response to HIV and AIDS is the meaningful engagement of people directly affected by HIV or who belong to communities that are disproportionately affected by HIV, the European AIDS Treatment Group is committed to encouraging programme planning, implementation and evaluation processes in which sex workers are meaningfully involved. We adhere to this principle because we know that programmes are more responsive, more effective, more sustainable and more ethical when they emerge from processes in which the voices of the people most affected are heard.

2. LINKAGES BETWEEN HIV AND SEX WORK

Sex workers are a diverse group with varied needs, working and living conditions and can be defined as "female, male and transgender adults and young people (over 18 years of age) who receive money or goods in exchange for sexual services, either regularly or occasionally"². Whilst sex workers globally face disproportionately high burdens of HIV infection (HIV burden among female sex workers is unacceptably high at approx. 10.4%³), prevalence is very heterogeneous, as

¹ <http://www.unaids.org/en/topic/key-populations>

² WHO, UNFPA, UNAIDS, NSWP, World Bank & UNDP, "Implementing Comprehensive HIV/STI Programmes with Sex Workers: Practical Approaches from Collaborative

Interventions" October 2013,

³ Shannon K., Crago A-L., Baral S.D., Bekker L-G, Kerrigan D., Decker M.R., et.al., "[The Global Response and Unmet Actions to HIV and Sex Workers](#)", *The Lancet*, vol. 392, 10148, pp 698-

the vulnerabilities of sex workers are strongly linked to their intersecting identities and the legal, social and economic environments in which they operate. In particular, gender and gender identity, sexual orientation or practices, migration status, ethnicity, drug use, poverty, homelessness, stigma, criminalisation and enforcement-based policing are all linked to sex workers' vulnerability to HIV and human rights violations⁴. Each of these factors also contribute to sex workers' vulnerability to violence, which itself directly increases their vulnerability to HIV.⁵

In Europe and Central Asia, the availability of data on sex workers' HIV prevalence is very inconsistent. As noted in ECDC's 2014 Thematic Report on sex work: "Few countries have accurate population size estimates. This means that there are little nationally representative data on HIV prevalence, HIV testing, condom use or treatment coverage, and that data cannot be compared over time or across countries. In addition, there are little data on new HIV diagnoses or late diagnosis in sex workers, and since most countries report data for female sex workers, there is a lack of data on male, transgender, or other subgroups of sex workers who may be at increased risk of HIV." Many of the factors that increase sex workers' vulnerability to HIV, such as stigma, and criminalisation of sex work and migration, also pose direct barriers to generating accurate data on the burden of HIV among sex workers globally.⁶

Globally, most research focuses on street-based cisgender⁷ female sex workers and rarely includes men (cis and transgender) and trans women working in the sex industry. Data specific to trans women have also been obscured by a tendency in previous epidemiological research and surveillance to conflate trans women with cis men who have sex with men⁸. However, in countries where some data are available regarding male and trans sex workers, HIV prevalence appears to be high (male sex workers: 16.9% in Spain, 13.5% in Portugal and 9.1% in Belgium⁹; trans sex workers: 18.8% in the Netherlands¹⁰, 14.9% in Portugal¹¹ and 37.5% in a very small study in the UK (24 participants)). Similarly, data on sex workers working indoors (e.g. in brothels, hotels and/or private homes) are scarce, but some studies indicate that cis women working indoors may be less vulnerable to HIV than women working on the street, partly due to many of the structural factors listed above¹².

The intersection of sex work and drug use is also a contributing factor to HIV prevalence - in particular, but not only, for street-based female sex workers. Women who inject drugs often also sell or exchange sexual services but are less likely to access harm reduction services. Meanwhile, specific issues relating to sexualised drug use (or 'chemsex') in the context of sex work (or sex work in the context of sexualised drug use), by male and

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⁴ Shannon, K., Strathdee, S. A., Goldenberg, S. M., Duff, P., Mwangi, P., Rusakova, M., Reza-Paul, S., Lau, J., Deering, K., Pickles, M. R. & Boily, M. C. 2015. Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385, 55-71 and Decker, M. R., Crago, A. L., Chu, S. K., Sherman, S. G., Seshu, M. S., Buthelezi, K., Dhaliwal, M. & Beyrer, C. 2015. Human rights violations against sex workers: burden and effect on HIV. *Lancet*, 385, 186-99.

⁵Deering, K. N., Amin, A., Shoveller, J., Nesbitt, A., Garcia-Moreno, C., Duff, P., Argento, E. & Shannon, K. 2014. A systematic review of the correlates of violence against sex workers. *American Journal of Public Health*, 104, 42-54.

⁶Baral, S., Beyrer, C., Muessig, K., Poteat, T., Wirtz, A. L., Decker, M. R., Sherman, S. G. & Kerrigan, D. 2012. Burden of HIV among female sex workers in low-income and middle-income countries: a systematic review and meta-analysis. *The Lancet Infectious Diseases*, 12, 538-549. [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(12\)70066-X/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(12)70066-X/fulltext)

⁷A cisgender person is someone whose gender identity is the same as the sex they were assigned at birth, as compared with a transgender person, whose gender identity is different from the sex they were assigned at birth.

⁸ Perez-Brumer AG, Oldenburg CE, Reisner SL, Clark JL,

Parker RG, 2016. Towards 'reflexive epidemiology': Conflation of cisgender male and transgender women sex workers and implications for global understandings of HIV prevalence, *Global Public Health*, 11(7-8):849-65

<https://www.ncbi.nlm.nih.gov/pubmed/27173599>

⁹ Baral SD, Friedman MR, Geibel S, Rebe K, Bozhinov B, Diouf D, Sabin K, Holland CE, Chan R, Cáceres CF. 2015. Male Sex Workers: Practices, Contexts, and Vulnerabilities for HIV acquisition and transmission. *The Lancet*. 385(9964):260-73. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60833-3/fulltext?code=lancet-site](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60833-3/fulltext?code=lancet-site)

¹⁰van Veen, M. G., Gotz, H. M., van Leeuwen, P. A., Prins, M. & van de Laar, M. J. 2010. HIV and sexual risk behavior among commercial sex workers in the Netherlands. *Arch Sex Behav*, 39, 714-723.

¹¹Gama, A., Martins, M. R. O., Mendao, L., Barros, H. & Dias, S. 2017. HIV Infection, risk factors and health services use among male-to-female transgender sex workers: a cross-sectional study in Portugal. *AIDS care*, 1-8.

¹² Platt L, Jolley E, Rhodes T, et al. Factors mediating HIV risk among female sex workers in Europe: a systematic review and ecological analysis. *BMJ Open* 2013;3:e002836.

doi:10.1136/bmjopen-2013-002836
<https://bmjopen.bmj.com/content/3/7/e002836>

trans sex workers in particular, remain under-researched and under-addressed.

Migrant sex workers, both documented and undocumented, who in many European countries represent the majority of sex workers, also face specific vulnerabilities in regards to HIV and human rights violations. Criminalisation and stigmatisation of sex work and migration, over-policing and fear of deportation create barriers in accessing health and justice whilst simultaneously hindering data collection.

3. OUR CONCERNS WITH THE CRIMINALISATION POLICY PARADIGM

Sex workers face high levels of human rights violations: physical, sexual and structural violence, stigmatisation and denigrating treatment, discrimination in access to housing, health and social welfare services and justice, deportation, exploitation and bad working conditions¹³. Punitive laws and policies around sex work greatly contribute to the vulnerabilities that sex workers face. In particular, the inability of sex workers to report crimes committed against them creates a context of impunity for individuals who attack, threaten, rob or otherwise exploit sex workers. Concurrent stigmatisation means that those sex workers who do report crimes committed against them to the police are often ignored, blamed and/or further criminalised¹⁴.

Several international health and human rights agencies, including WHO, UNAIDS¹⁵ and

Amnesty International, as well as numerous non-governmental organisations, sex-worker led-organisations and researchers converge in their analysis that criminalising laws and policies increase sex workers' vulnerabilities to HIV and their exposure to human rights violations.

A recent systematic review and meta-analysis (including 40 quantitative and 47 qualitative studies across 33 countries) concluded that 'repressive policing practices of sex workers were associated with increased risk of sexual/physical violence from clients or other parties (OR=2.99 95% CI=1.96-4.57), HIV/STI infection (OR=1.87, 95% CI=1.60-2.19) and condomless sex (OR=1.42 95% CI=1.03-1.94)¹⁶. The review also showed that, where any aspect of sex work is criminalized (including the purchase of sex), police harassment and arrest (of sex workers or their clients) pushed sex workers into more remote workplaces further away from peer support networks and health services, discouraged sex workers from carrying condoms (for fear of them being used against them as 'evidence of sex work'), and disproportionately affected sex workers who are transgender, migrants and/or who work outdoors or use drugs.

By contrast, research from settings where sex work is decriminalised shows that sex workers are now better able to screen and negotiate with clients, and access justice¹⁷. The Lancet estimates that the decriminalisation of sex work has the potential to prevent 33-46% of HIV infections in sex work over the next decade, provided concurrent reductions in police harassment and client violence, safer work environments and increased condom use.¹⁸

¹³Crago, A. L. 2009. Arrest the violence. Human Rights abuses against sex workers in Central and Eastern Europe and Central Asia, Sex Workers' Rights Advocacy Network and Decker, M. R., Crago, A. L., Chu, S. K., Sherman, S. G., Seshu, M. S., Buthelezi, K., Dhaliwal, M. & Beyrer, C. 2015. Human rights violations against sex workers: burden and effect on HIV. *The Lancet*, 385, 186-99.

¹⁴Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, Mwangi P, Crago AL. Associations between sex work laws and sex workers' health: a systematic review and meta-analysis of quantitative and qualitative studies PLOS Medicine 2018; and Crago, A. L. 2009. Arrest the violence. Human Rights abuses against sex workers in Central and Eastern Europe and Central Asia, Sex Workers' Rights Advocacy Network.

¹⁵https://www.who.int/hiv/pub/guidelines/sex_worker/en/

¹⁶Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, Mwangi P, Crago AL. Associations between sex work laws

and sex workers' health: a systematic review and meta-analysis of quantitative and qualitative studies PLOS Medicine 2018

¹⁷Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, Mwangi P, Crago AL. Associations between sex work laws and sex workers' health: a systematic review and meta-analysis of quantitative and qualitative studies PLOS Medicine 2018; Abel GM. A decade of decriminalization: sex work 'down under' but not underground. *Criminol Crim Justice*. 2014; 14(5):580-92; Armstrong L. Screening clients in a decriminalised street-based sex industry: insights into the experiences of New Zealand sex workers. *Aust N Z J Criminol*. 2014; 47(2):207-22; Armstrong L. From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry. *Br J Criminol*. 2016; 57(3):570-88.

¹⁸Shannon, K., Strathdee, S. A., Goldenberg, S. M., Duff, P., Mwangi, P., Rusakova, M., Reza-Paul, S., Lau, J., Deering, K.,

Whilst in many countries, sex workers are directly criminalised in order to protect moral or public order, several European governments have shifted their political approach to end the 'demand' for sex work - based on an understanding of prostitution as a form of violence against women which must be abolished. Some European countries like Serbia and Lithuania have criminalised clients whilst keeping in place the criminalisation of sex workers themselves. Other European countries have shifted to sanctioning or criminalising the 'demand' side, i.e. clients of sex workers. Sweden, Norway, Northern Ireland, France and the Republic of Ireland have over the last 20 years implemented such models, repealing offences such as soliciting. Yet in a number of these countries, sex workers continue to be indirectly criminalised either through municipal by-laws, immigration law or third-party laws¹⁹. This legal framework - referred to as the 'End Demand', Swedish or Nordic model - has also been condemned by sex workers, human rights and public health groups²⁰.

Third-party criminalization, which manifests itself through brothel-keeping, profiting or pimping laws, also increases the vulnerability and exploitation of sex workers and limits their access to justice. Third-party laws indiscriminately criminalise anyone helping or facilitating sex work and are often used against sex workers themselves - for example those sharing a workplace for safety. The criminalisation of third parties limits sex workers' ability to self-organise and combat exploitation and bad working conditions.

Punitive sex work related laws also negatively impact the most marginalised sex workers - including migrant sex workers, sex workers who use drugs and trans sex workers who face double or triple burdens of criminalisation. Fines, arrests and incarceration (as well as fines and arrests of clients) greatly contribute to sex workers'

marginalisation and precarity, forcing them to work longer hours and negatively impacting their ability to refuse potentially dangerous clients and negotiate condoms and safe sex practices²¹.

Other laws, policies and practices such as HIV criminalisation, mandatory or forced testing, possession of condoms as evidence of sex work, and arbitrary use of municipal by-laws to target sex workers, also contribute to sex workers' vulnerability.

As one of the leading European organisations advocating for the rights of people living with or at risk of contracting HIV, the European AIDS Treatment Group expresses profound concern that the current criminalisation and legal oppression of sex work undermines, rather than supports, the reach and impact of health programmes for sex workers.

Therefore, EATG supports the demand from sex workers' rights organisations and networks to end the criminalisation and legal oppression of sex work, including sex workers, their clients and third-parties (those managing, facilitating or helping sex workers including friends, partners and family members).

4. OUR SUPPORT TO WHAT IS PROVEN WORK

Over the last four decades, sex workers have been at the forefront of the battle against the HIV epidemic and have, often in extremely precarious and adversarial environments, developed their own local collectives, national organisations, regional and global networks and services whilst demanding - and sometimes obtaining - social change and legal reforms. Furthermore, they have, in partnership with leading agencies such as UNAIDS and WHO, developed recommendations and practical guidance on the best ways to address disparities in health

Pickles, M. R. & Boily, M. C. 2015. Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet*, 385, 55-71. <https://www.ncbi.nlm.nih.gov/pubmed/25059947>

¹⁹ Levy, J. & Jakobsson, P. 2014. Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers. *Criminol Crim Justice*, 14, 593.

²⁰ <http://www.nswp.org/timeline/event/icrse-campaign-against-the-honeyball-report-calling-the-adoption-the-swedish-model>

²¹ Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, Mwangi P, Crago AL. Associations between sex work laws and sex workers' health: a systematic review and meta-analysis of quantitative and qualitative studies PLOS Medicine 2018.

and human rights of sex workers communities. Community-based and sex worker-led programmes have been instrumental in reducing sex workers' vulnerability to HIV and violence, and increasing their access to health, social welfare and justice²². These programmes have been most effective when sex workers are centrally involved in decision-making and an integrated, social model of health is adopted²³.

The Sex Workers Implementation Tool (SWIT) developed by WHO, UNFPA, UNAIDS, NSWP, World Bank and UNDP for effective and rights-based HIV/STI programmes, provides practical guidance for programming, as well as **evidence for the necessity of the decriminalisation of sex work, the involvement of sex workers in developing policy, and the empowerment and self-determination of sex work communities** as a fundamental part of the fight against HIV. The concepts of 'meaningful involvement' and 'community empowerment' are considered as an 'absolutely necessary component' of health and rights interventions.²⁴

Addressing violence and human rights violations is also crucial to improving sex workers' health and lives (including but in no way limited to their vulnerability to HIV) and this is another key element of the SWIT. The "End Demand" approach, based on the assumption that all sex work is inherently dangerous, is counter-productive in that it

obscures the structural factors that expose some sex workers to violence more than others²⁵ and, in effect, normalises violence against sex workers:²⁶ indeed, research in Sweden and Canada demonstrates how this notion contributes to fatalistic attitudes towards violence faced by sex workers among police and service providers, assuming that nothing can be done to support sex workers²⁷. Programmes led by sex workers which contribute to safe reporting of crime and violence, on the other hand, improve sex workers' safety, health and well-being²⁸.

5. RECOMMENDATIONS TO STAKEHOLDERS

Based on these considerations, the European Aids Treatment Group calls for the following principles to be adhered to by all stakeholders - including itself - to improve the prevention, treatment and care of HIV and other blood-borne infections among sex workers, and to promote their broader health and well-being.

- **Support the decriminalisation of sex work, including sex workers, clients and third parties.**
- **Support the establishment of anti-discrimination, hate crime and other rights-respecting laws to protect against discrimination and violence, and other rights violations, faced by sex workers.**

²²Beattie, T. S., Bhattacharjee, P., Ramesh, B. M., Gurnani, V., Anthony, J., Isac, S., Mohan, H. L., Ramakrishnan, A., Wheeler, T., Bradley, J., Blanchard, J. F. & Moses, S. 2010. Violence against female sex workers in Karnataka state, south India: impact on health, and reductions in violence following an intervention program. *BMC Public Health*, 10, 476; Kerrigan, D., Kennedy, C. E., Morgan-Thomas, R., Reza-Paul, S., Mwangi, P., Win, K. T., McFall, A., Fonner, V. A. & Butler, J. 2015. A community empowerment approach to the HIV response among sex workers: effectiveness, challenges, and considerations for implementation and scale-up. *The Lancet*, 385, 172-85.

²³Cornish, F. & Campbell, C. 2009. The Social Conditions for Successful Peer Education: A Comparison of Two HIV Prevention Programs Run by Sex Workers in India and South Africa. *Am J Commun Psychol*, 44, 123-135.

²⁴ WHO, UNFPA, UNAIDS, NSWP, World Bank and UNDP, "[Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions](#)", 2013

²⁵Katsulis, Y., Lopez, V., Durfee, A. & Robillard, A. 2010. Female sex workers and the social context of workplace violence in Tijuana, Mexico. *Medical Anthropology Quarterly*, 24, 344-62.

²⁶Krüsi, A., Kerr, T., Taylor, C., Rhodes, T. & Shannon, K. 2016. 'They won't change it back in their heads that we're trash': the intersection of sex work-related stigma and evolving policing strategies. *Social Health Illn*, 38, 1137-50.

²⁷ Krüsi, A., Kerr, T., Taylor, C., Rhodes, T. & Shannon, K. 2016. 'They won't change it back in their heads that we're trash': the intersection of sex work-related stigma and evolving policing strategies. *Social Health Illn*, 38, 1137-50.

²⁸Iradaolu, M., Burris, S., George A., Jena A., Blankenship K. (2009). Can sex workers regulate police? Learning from an HIV prevention project for sex workers in southern India. *Social science & medicine* (1982). 68. 1541-7. 10.1016/j.socscimed.2009.01.040.

Beattie, T. S., Bhattacharjee, P., Isac, S., Mohan, H. L., Simic-Lawson, M., Ramesh, B. M., Blanchard, J. F., Moses, S., Watts, C. H., Heise, L. (2015). Declines in violence and police arrest among female sex workers in Karnataka state, south India, following a comprehensive HIV prevention programme. *Journal of the International AIDS Society*, 18(1), 20079. doi:10.7448/IAS.18.1.20079

- **Stand in solidarity with the sex workers and their fight for self-determination, self-organisation and the pursuit of human and labour rights.**
- **Advocate for the meaningful involvement of sex workers in developing, implementing and evaluating laws, policies, programmes, services and research that affect them.**
- **Invite sex workers who reflect the diversity of local sex working communities to collaborate fully in policy, practice and research development, implementation and evaluation.**
- **Support sex-worker-led organisations and services, by offering relevant resources, advice and expertise where possible.**

This paper was written in December 2018 by Luca Stevenson, with input from EATG members and staff