

POLICY BRIEF

Expanding the role of law enforcement in the HIV response among Sex Workers in Myanmar

KEY MESSAGES

- Sex workers have the right to equal protection under the law, regardless of the legal status of sex work.
- Sex workers have the right to access HIV, sexually transmitted infection (STI) and other health services free from the threat of violence, intimidation, incarceration, and stigma and discrimination.
- Justice and law enforcement sectors, together with the health sector and sex worker communities, should work in partnership to reform relevant legislation, policies and practices.
- Capacity development of all partners is critical to the success of the HIV response among sex workers. Conducting sensitisation trainings for police on HIV, and rights and gender equality, reframing police performance monitoring frameworks and involving of female police at the operational level, will help eliminate the harmful impact of punitive law enforcement measures, such as police crackdowns, coercion, extortion, intimidation and violence toward sex workers.

INTRODUCTION

Stigma and discrimination, violence and punitive legal and social environments are key determinants of increased HIV and other STI risk and vulnerability among sex workers.^{1, 2, 3, 4, 5} In Asia, the risk of HIV is 29 times greater for female sex workers (FSW) than for women of a similar age who are not sex workers.⁶

In Myanmar, unprotected sexual intercourse with females who sell sex accounts for almost one third (32%) of new infections.⁷ In 2015, the Integrated Biological and Behavioral Surveillance (IBBS) survey conducted in a representative sample of the population, showed a particularly high prevalence of HIV among FSW in specific areas. In Yangon, one quarter of FSW who participated in the survey tested HIV-positive, 14% in Mandalay, 11% in Patheingyi and Pyaw.

The national HIV prevalence among FSW based on HIV Sentinel Surveillance (HSS) and IBBS data input into Asian Epidemic Model (AEM) is estimated at 14.6% in 2015, almost 25 times greater than among the general population.⁸

CHALLENGES

Punitive legal framework in Myanmar is a major obstacle to scaling up HIV and other health services and leads to treatment disruption for sex workers.

Recommendations have been put forward for legal review and amendment of the Suppression of Prostitution Act 1949.⁹ Sex workers are arrested under various sections of this Act including Section 7, which can bring charges against women who are "suspected of prostitution" due to reputation. Sex workers are also commonly charged with "loitering after dark" pertaining to Section 35 of the Police Act 1945, and Section 30 of the Rangoon Police Act 1899.¹⁰

Implementing partners and sex worker networks report that sex workers are oftentimes arrested when they are not working or even after they have left the sex industry. Incarceration can cause sex workers living with HIV to default from antiretroviral therapy programmes, which can result in drug resistance, treatment failure and the progression to advanced HIV infection or AIDS, which will become a burden to the individuals, their families, the health system and the country. Sex workers may be the sole income earner for their family, and incarceration prevents them from providing for, or taking care of, dependent family members. Incarceration also precludes sex workers from participating in peer-lead HIV prevention efforts. Their involvement is essential to the success of the HIV response.

Stigma and discrimination affects sex workers' ability to protect themselves against HIV.

Criminalisation of sex work worsens stigma and discrimination experienced by sex workers. Stigma and discrimination can have a profound effect on an individual's confidence, sense of self-worth and capacity.¹¹ This can impact on sex workers' ability to successfully negotiate condom use. It can also be a barrier to accessing health and social services, as well as seeking legal protections and remedies for rights violations such as physical violence.¹²

Law enforcement activities and police arrest quotas present barriers to HIV prevention, treatment and care among sex workers.

Implementing partners and sex worker networks report police-related violence and abuse of sex workers, and express concerns that law enforcement activities deter sex workers from accessing HIV services. These law enforcement activities include "crackdowns" to fulfil arrest quotas.^{13,14} This can sometimes include the arrest of peer educators and outreach workers, and result in the disruption of HIV and STI prevention services, including condom distribution. In light of the important role of condoms in HIV prevention, this can have serious consequences, not only for sex workers but for the overall public health response to HIV and other STIs.

Condoms are still used as proof of sex work, despite the Administrative Order issued in 2000 by the Ministry of Home Affairs.

An Administrative Order issued by the Ministry of Home Affairs in 2000, directs police not to use condoms as evidence to prosecute sex workers, it is reported that this practise still occurs at the local level,¹⁵ including confiscation of condoms from sex workers. Reportedly, police have sometimes used peer education meetings as opportunities to identify sex work venues and subsequently arrest sex workers.¹⁶ As a result, many establishments refuse entry to peer educators and outreach workers.¹⁷ Such police conduct is an ongoing problem in Myanmar as it deters sex workers from carrying condoms, placing them at risk of HIV, STIs and unintended pregnancy. It also undermines the significant investments made by the Government of Myanmar towards halting and reversing the HIV epidemic.

Sex workers lack access to adequate legal services.

Of great concern is the fact that sex workers in Myanmar currently have no protection or safe mechanism to report acts of violence or abuse, particularly if the perpetrator is a police officer. The legal service providers that do exist, such as Myanmar Equality and Myanmar Law Project, have limited coverage (Yangon and Mandalay) and human resource capacity. Legal provisions scheduled to be developed in 2015, such as the Prevention of Violence against Women Law and the Legal Aid Provision Bill, will facilitate increased access to legal services among women and key populations. Access to legal services and representation for female, male and transgender sex workers remains integral to an effective HIV response.

ACTIONS

Reform existing laws such as the Suppression of Prostitution Act (1949) and establish new regulations to protect sex workers from violence, stigma and discrimination. The involvement of sex worker communities in advocacy efforts is essential. Reform efforts should consider international evidence supporting the benefits of alternative legislative approaches to sex work, including models of public health and safety regulation and the protection of human rights of sex workers. Amendments to the existing laws or the drafting of a new law on sex work should take into consideration recommendations outlined in the National HIV Legal Review Report (2014).¹⁸

In a joint letter sent to the Ministry of Home Affairs (dated 19 August 2015) responding to a call for public comments to the draft amendments of the Suppression of Prostitution Act of 1949, the members of the United Nations Gender Theme Group in Myanmar (UNAIDS, UNDP, UNESCO, UNFPA, UN Women, and ILO), recommended taking a comprehensive approach towards improving health and human rights of sex workers in line with international policy documents, declarations, commitments, and guidelines.

Other specific laws for review should include: Section 268 of the Penal Code 1860 (public nuisance), Section 54 of the Code of Criminal Procedure (arrest without warrant), Section 34(7) of the Police Act (causing disorder by drunkenness), and Section 377 of the Penal Code 1860 which impacts on male and transgender sex workers (carnal intercourse against the order of nature).

Develop appropriate legal services and protection options for sex workers in order to end impunity and the denial of sex workers' right to justice. Increased funding for legal aid programmes and pro bono legal services as well as, a hotline number, for key populations, including sex workers, should be made available.

Endorse and reinforce the Ministry of Home Affairs Administrative Order (of 2000) not to use condoms as evidence of sex work, at all levels. This Order should be updated and reissued by the Ministry of Home Affairs.

Strengthen the capacity of local operational police, judiciary and other law enforcement agencies to effectively respond to victims and survivors of sexual violence and to undertake investigations by enhancing their training to include topics on gender-based violence, reproductive health and HIV. This will also encourage sex workers to report crimes committed against them without fear or threat of arrest. A systematic monitoring system should be developed and implemented to ensure all allegations and reports of violence against sex workers, including those perpetrated by police and other state officials, are promptly and impartially investigated. More female police officers should be recruited and trained to better meet the needs of sex workers and respond to their complaints.

End impunity and the denial of sex workers' right to justice and redress. Impose penalties and disciplinary measures to those carrying out violence against sex workers.

Provide training for operational police on how best to support HIV and STI programming for sex workers and their clients. Such training should emphasise the public health goals of interventions among sex workers and the importance of peer educators and outreach workers in the HIV response. Central to this training should be the introduction of a system that recognises the good work undertaken by police who support HIV and STI prevention programming. Further, tailored training should be provided to police and prison staff to ensure incarcerated sex workers are treated with dignity and respect, and those living with HIV have adequate access to appropriate health services, including uninterrupted access to antiretroviral therapy, and screening, diagnosis and treatment of opportunistic infections. These trainings would be best provided by law enforcement officers with experience and expertise in this area. Focusing on female police officers, as trainers and trainees, will help with outreach to FSW.

Highlight examples of good policy and practice undertaken by police in support of HIV prevention, treatment and care among sex workers and disseminate these examples to law enforcement and other organisations working on sex work issues in Myanmar. In addition, local “health support liaison officers” should be established whenever possible, to serve as focal points for all sex work-related law enforcement issues, and to provide guidance and direction to fellow officers on best practices in law enforcement responses to communities vulnerable to HIV. The mandate of the health support liaison officer should be to support key populations by protecting them from violence and rights violations and ensuring access to health services and tools, including condoms.

Remove sex workers (female, male, and transgender) from the arrest quotas as a method to appraise police performance and develop a system that reframes police performance monitoring frameworks to strengthen attention and institutional support for the protective role that police can play in promoting public health including the safety and rights of sex workers. Such a framework may include formal recognition of the good work undertaken by police who provide support for HIV and STI prevention programmes among sex workers.

Hold regular forums among cross-sector stakeholders at the local level to address and resolve issues related to sex work, and build more effective working relationships between police, government, sex workers and service providers from public, private and non-government sectors.

References

- ¹ Joint United Nations Programme on HIV/AIDS. UNAIDS Guidance Note on HIV and Sex Work, 2009.
- ² Joint United Nations Programme on HIV/AIDS. The Gap Report 2014.
- ³ World Health Organisation, United Nations Population Fund, Joint United Nations Programme on HIV/AIDS and Global Network of Sex Work Projects. Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: recommendations for a public health approach, 2012.
- ⁴ Open Society Foundations. Criminalizing condoms: How policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe, 2012.
- ⁵ Joint United Nations Programme on HIV/AIDS. We can remove punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV. Joint Action for Results. UNAIDS Outcome Framework: Business Case 2009–2011, 2010.
- ⁶ World Bank. The Global HIV Epidemics among Sex Workers, 2013.
- ⁷ Asian Epidemic Model (AEM) baseline 2016.
- ⁸ HIV Estimates and Projections, Spectrum 5.41. 2016
- ⁹ The National HIV Legal Review Report was released in September 2014. Meetings with government, United Nations and implementing partners and other stakeholders in a Joint Committee were held in May 2014 to identify priorities pertaining to HIV and the law for key populations. Six 'quick wins' were determined at this meeting: i) develop new police instructions to support specific HIV interventions for key populations; ii) develop new guidance on HIV-related discrimination and confidentiality in key sectors; iii) develop guidance on universal ART access; iv) develop guidance on pregnancy rights of HIV-positive women; v) repeal sections of the Burma Excise Act 1917 that criminalize possession of needles and syringes for injecting drugs; and vi) ensure the Patents Bill will enable Myanmar to continue to access affordable generic medicines. Medium term priorities include the review and reform for the Suppression of Prostitution Act (1949). For more information, refer to the HIV Legal Review Report (2014), p.32 and p.43.
- ¹⁰ Ibid
- ¹¹ Joint United Nations Programme on HIV/AIDS, United Nations Population Fund and United Nations Development Programme. Sex work and the law in Asia and the Pacific, 2012.
- ¹² Ibid.
- ¹³ United Nations Development Programme, Joint United Nations Programme on HIV/AIDS and Pyoe Pin. National HIV legal review report: review of Myanmar's legal framework and its effect on access to health and HIV services for people living with HIV and key affected populations, September 2014.
- ¹⁴ Joint United Nations Programme on HIV/AIDS, United Nations Population Fund and United Nations Development Programme. Sex work and the law in Asia and the Pacific, 2012.
- ¹⁵ Order No. 1048 (1/2000), issued by Police Brigadier Zaw Win, see: Khin Ninn Lwin (2010) Burmese sex workers dare not carry condom, fear of arrest. <http://moemaka.org/index.php.current/news-brief/81-news/451-burmese-sex-workers-dare-not-carry-condom-fear-of-arrest> cited in: United Nations Development Programme. HIV and the Law in South-East Asia. Bangkok. 2015.
- ¹⁶ United Nations Development Programme, Joint United Nations Programme on HIV/AIDS and Pyoe Pin. National HIV legal review report: review of Myanmar's legal framework and its effect on access to health and HIV services for people living with HIV and key affected populations, September 2014.
- ¹⁷ Ibid.
- ¹⁸ Ibid