Legal environments, human rights and HIV responses among sex workers in Asia and the Pacific

Consultation Draft: East Asia Sub-region

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1 Introduction

1.1 Objectives and method

The objectives of this study are to:

i. describe the diversity of laws that affect HIV responses among sex workers in the Asia Pacific region;

ii. assess the impact of laws, legal policies and law enforcement practices on HIV responses for sex workers; and

iii. provide recommendations for actions required to create enabling legal and policy environments for HIV responses among sex workers.

The report is intended to provide an evidence-base for: policy makers working in government, regional and multilateral organizations; parliamentarians; members of the judiciary; civil society organizations; donor agencies; and sex workers and their organisations engaged in advocacy to improve the legal and policy enabling environment for HIV responses.

The first Asia and the Pacific Regional Consultation on HIV and Sex Work (2010) highlighted the need to document laws and enforcement practices so as to inform advocacy and programming to address the human rights of sex workers.1

The study focuses on 48 countries of the Asia Pacific region, with an emphasis on low and middle-income countries. The study method involves: review of legislation, cases, published research and grey literature;2 consultations with sex workers, technical experts and UN agencies; and analysis.

This consultation draft relates to the East Asia sub-region. Separate consultation reports have been prepared for the other Asian sub-regions and the Pacific.

The study focuses on laws and law enforcement practices affecting adults engaged in sex work. The study does not aim to map laws relating to children who are sexually exploited. Although the study considers the relevance of trafficking laws particularly as it affects adults voluntarily engaged in sex work, it does not map all trafficking legislation in detail.3

The report summarizes laws and law enforcement practices that affect the human rights of sex workers and which may be detrimental to HIV responses, including:

- criminal offences applying to adult sex work and the sex industry;
- public order, vagrancy and other offences selectively enforced against sex workers;
- trafficking laws that are enforced against sex workers, rather than traffickers.

In addition, the report identifies examples of civil and administrative laws and regulations that affect HIV responses among sex workers, such as brothel and entertainment establishment

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2 Utilizing databases of: UNAIDS HIV and AIDS data hub for Asia Pacific (www.aidsdatahub.org); AIDSlex (www.aidslex.org); Paulo Longo Research Initiative (www.plri.org); and google searches of peer review and grey literature published since 2000.
3 Laws relating to trafficking are detailed in other studies e.g. Thomas S. (2011) Legal and Policy Review: Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka, New Delhi: UNODC ROSA.
registration/licensing laws, tenancy laws, censorship laws and laws affecting rights of citizenship, such as birth registration and access to ration cards.

The report also summarizes protective and enabling laws and practices that are supportive of HIV responses, including:

- community mobilization of sex workers, sex worker unions and self-regulatory initiatives;
- labour laws regulating the sex industry as an occupation;
- anti-discrimination laws; and
- legal recognition of the human rights of sex workers, under constitutional provisions or other human rights legislation.

Laws and law enforcement practices relating to narcotic drugs affect sex workers who are also drug users. Laws and law enforcement practices relating to homosexuality and transgender people also affect male and transgender sex workers. While this study recognizes these overlaps, analysis of laws and practices relating to narcotic drugs, men who have sex with men, and transgender people are not the central concern of this study.

The report recognizes that legal environments comprise not only written laws, but also law enforcement practices of police, public security and military personnel, legal institutions (including the judiciary and the formal, religious and informal customary courts), systems for documenting and addressing human rights violations, and delivery of legal aid and community legal education. Legal environments set the overall context for HIV responses of government and civil society and influence the social climate in which prevention, treatment, care and support programmes operate. Legal environments that are coercive and punitive can contribute significantly to stigma. Legal environments that are protective and empowering can help combat stigma and underpin health promotion efforts that rely on the voluntary cooperation of populations in changing behaviours and accessing prevention, testing, treatment and care services.

3 East Asia

3.1 Overview

Punitive laws and law enforcement practices affect HIV responses among sex workers throughout East Asia. Detention facilities for sex workers exist in mainland China and South Korea (Republic of Korea).

There has been some experience in regulation of sex work in East Asia. Licensing systems that require periodic STI tests operate for sex workers in parts of Taiwan, and operated prior to 2004 near US bases in South Korea. Taiwan is currently debating new models for licensing of brothels. A new licensing system for red-light districts is due to commence in 2011. During colonial times, brothels in some of China’s European settlements were licensed (e.g. Shanghai). This was designed to address the spread of STIs and to raise revenue.

Independent sex workers can operate legally as sole operators in Hong Kong. However, sex workers are harassed due to the legal prohibition on soliciting and illegal brothels are associated with organised crime syndicates.

Examples of gradual progress towards a less punitive approach to sex work in East Asia include:

4 See: Godwin, J. (2010), Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: an agenda for action, Bangkok: UNDP.
- The 2009 decision of the Constitutional Court of Taiwan recognising the rights of sex workers to equality before the law.
- The policy of authorities in Taiwan since 2009 to not enforce offences against sex workers and to introduce licensing rather than prohibition.
- The role of the Collective of Sex Workers and Supporters, COSWAS, in advocating for non-discriminatory laws that protect health and safety of sex workers in Taiwan;
- The work of Zi Teng and the JJJ Association in Hong Kong, a sex worker peer support and advocacy group, in forming cooperative arrangements with police to address police abuses of sex workers’ rights.

100% condom use programmes (CUPs) in China and Mongolia have engaged public security and police officers in cooperative arrangements with health officials to enable HIV prevention activities to occur among sex worker populations. Although these 100% CUPs have had very positive public health outcomes, the human rights implications of the programmes for sex workers in relation to such issues as consent to testing and voluntary participation in programmes have raised concerns.

Overview of East Asian criminal laws on adult sex work

<table>
<thead>
<tr>
<th>Country/Territory/SAR jurisdiction</th>
<th>Sex work</th>
<th>Soliciting</th>
<th>Brothels</th>
<th>Applicable laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Illegal</td>
<td>Illegal</td>
<td>Illegal</td>
<td><em>Security Administration Punishment Law</em> imposes administrative penalties for sex work. Sex workers may be detained for up to 2 years in ‘reeducation through labour’ camps. Brothels are illegal under the <em>Criminal Law</em>.</td>
</tr>
<tr>
<td>Hong Kong SAR (China)</td>
<td>Legal</td>
<td>Illegal</td>
<td>Illegal</td>
<td><em>Independent sex work is legal. The Crimes Ordinance</em> creates offences of soliciting and keeping a brothel.</td>
</tr>
<tr>
<td>Japan</td>
<td>Legal (except coitus)</td>
<td>Illegal</td>
<td>Legal (except coitus)</td>
<td>Article 3 of the <em>Anti-Prostitution Law of 1956</em> prohibits soliciting and sex work that involves coitus, <em>Businesses Affecting Public Morals Regulation Law</em> 1948 regulate sex work businesses.</td>
</tr>
<tr>
<td>Macao SAR (China)</td>
<td>Legal</td>
<td>Illegal</td>
<td>?</td>
<td><em>Criminal Code</em> Book II, Title I, Chapter V refers to crimes against sexual freedom. Sex work is not illegal. Soliciting is illegal.</td>
</tr>
<tr>
<td>Mongolia</td>
<td>Illegal</td>
<td>Illegal</td>
<td>Illegal</td>
<td><em>The Law on the Fight Against Pornography</em> prohibits sex work, soliciting and brothels.</td>
</tr>
</tbody>
</table>
| North Korea                        | Illegal  | Illegal    | Illegal  | *The North Korean Criminal Code* imposes strict penalties on clients of sex workers of up to two years hard labour. The death penalty reportedly applies for persons organising ‘prostitution rings’.

| South Korea                        | Legal    | Illegal    | Illegal  | *The Special Law on Prostitution 2004* prohibits the buying and selling of sex and brothels. |

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Table 2  Legality of sex work in East Asia

| Taiwan | Legal | Illegal | Licensed in specified zones | New licensing laws for red light districts are due to commence in 2011. |

3.2  Mainland China

3.2.1  Laws

Sex work and involvement in the sex industry are illegal under criminal and administrative laws.

**Articles 358-361 of the Criminal Law, 1997**

The *Criminal Law* states that it is illegal for people to be involved in organizing or profiting from sex work, but does not create specific offences for sex workers or their clients (except in the case of sex workers who have an STI). Selling or buying sex when knowingly being infected with an STI carries a sentence of up to five years in prison, or detention, or surveillance. (Article 360)

The *Criminal Law* provides that: “organizing, forcing, inducing, housing or introducing” sex workers is punishable by up to 10 years’ imprisonment (or more under some circumstances), a fine or confiscation of proceeds.

Organizing sex work, or compelling others to engage in sex work, carries a sentence of five to ten years in prison. For repeat offenders, the sentence ranges from ten years imprisonment to the death penalty (Article 358). The death penalty has been applicable since the 1991 *Decision on Strictly Forbidding the Selling and Buying of Sex*. The 1991 *Decision on the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women and Children* also imposes strict penalties.

A person who profits, invites or accommodates a woman for sex work may be sentenced to up to five years in prison, or detention, or surveillance. (*Criminal Law* Article 359).

Offences apply to managers of hotels, restaurants, bars, show businesses, and taxi companies, whose staff are involved in organizing prostitution. (*Criminal Law* Article 361)

The 1992 *Law on Protecting the Rights and Interests of Women* defines ‘prostitution’ as a social practice that abrogates the inherent rights of women to personhood.

Since 2003, male sex workers have also been prosecuted under prostitution offences.\(^6\)

The 1999 *Regulations Concerning the Management of Public Places of Entertainment* prohibit commercial practices that involve sex work. These regulations are supported by local licensing measures.

Under the *Frontier Health and Quarantine Law*, persons knowingly infected with HIV who continue to practice sex work commit the offence of creating a risk of spreading disease. The penalty for this offence is detention from 6 months to 2 years.\(^7\)

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Administrative law penalties
Selling and buying sex is prohibited by the Law on Penalties for Administration of Public Security 2005. Article 66 provides a penalty for sex work or being a client of a sex worker of up to 15 days and a fine of up to 5,000 yuan, and a penalty for touting for sex work of detention for not more than five days or a fine of not more than 500 yuan. Article 67 provides an offence for a person who seduces, shelters or introduces another person to engage in sex work, with a penalty of detention for up to 15 days and a fine of up to 5,000 yuan.

Sex workers may be detained under administrative law for the purposes of reeducation. Detention for ‘custody and education’ may be for a period of between 6 months and 2 years. Detention for ‘reeducation through labour’ may be for a period of up to 3 years, and is usually imposed for repeat offenders.8

AIDS Regulations
The Regulations on AIDS Prevention and Treatment9 require local governments to provide confidential HIV testing and antiretroviral drugs to residents, prohibits discrimination against people living with HIV and guarantees the right to healthcare, employment, marriage, and education. Under the Regulations, people who intentionally transmit the virus to others will be punished by civil and criminal means. Provision of condoms at establishments may be ordered by health authorities under Article 61 of the Regulations. The sanction for failure to comply with an order relating to condom availability is revocation of business permission or license. Comprehensive Regulations on prevention, testing and treatment have also been enacted at provincial level e.g. in Yunnan Province. It is unclear how the Regulations have been applied to sex workers.

3.2.2 Law enforcement practices
Several sources refer to an officially recognised typology that categorizes sex work as falling within seven tiers, which informs law enforcement practices. This list should be regarded as “far from exhaustive”:\textsuperscript{10}

(i) Ernǎi: mistress or “second wife”. The ernai receives a monthly fee from a steady client in exchange for sex.
(ii) Bāopó is similar to the ernai, although for limited times only.
(iii) Escort girls, usually found in karaoke bars, or in regular bars.
(iv) ‘Call girls’ who may operate from hotel rooms they rent themselves. University students and others advertising their private services through the internet also belong to this tier.
(v) Hair salon workers (fálángmèi), massage providers, and others who perform contractual work under a proprietress or a pimp.
(vi) Street workers.
(vii) Factory workers or ‘work-shack’ workers (xiàgōngpéng), who provide services to poor migrant workers

Street-based workers are more likely to be arrested and detained than those who work from

establishments.\textsuperscript{11} Arrests are usually of sex workers rather than clients. Most sex workers are penalized by a caution and a fine, although repeat offenders may be held for reeducation for up to three years.\textsuperscript{12} According to Dougherty, unless aggravating factors are present the usual punishment is a fine and a warning, and sometimes also informing relatives.\textsuperscript{13}

Anti-sex work campaigns and police crackdowns occur periodically, e.g. to coincide with the Beijing Olympics.

A study conducted in Beijing in 2008-2009 found that of 348 migrant female sex workers surveyed 62 percent of street based workers reported that they had been arrested compared to 30 percent of those working from entertainment establishments and 15 percent of workers operating from personal services businesses such as hair salons, footbath, sauna, and massage parlors.\textsuperscript{14}

Zheng describes an incentive based system whereby police who arrest high numbers of hostesses and collect the most fines receive high honors and cash bonuses from their municipal government.\textsuperscript{15}

In 2010, as part of a major crackdown, police arrested 1,100 suspected sex workers from entertainment establishments, saunas and hair salons in Beijing. In 2010, the basement of the Hilton hotel in Chongqing was raided and 102 people were detained at a karaoke club of whom 22 were charged.\textsuperscript{16}

Since 2003, there have been media reports of male sex workers being arrested.\textsuperscript{17} There is little research literature about male sex work in China.\textsuperscript{18}

\textit{Affect of law enforcement practices on HIV vulnerability and risk}

According to Wu \textit{et al.}:

The traditional strategy for controlling HIV transmission through commercial sex workers has been the development of stricter laws to prevent risky behaviours, accompanied by raids on suspected sex establishments by public security officials. Those apprehended are subject to compulsory education on law and morality, testing and treatment for sexually transmitted diseases, and forced participation in productive labour.\textsuperscript{19}

The frequent policing of the sex industry marginalizes sex workers and creates barriers to obtaining peer support and accessing HIV and STI prevention, treatment and care services.\textsuperscript{20}

Pirkle \textit{et al} note that some sex workers live under semi-slave conditions. “They turn all their earnings over to the manager who provides them with daily necessities in return.”\textsuperscript{21}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{12} 1,100 arrested in Beijing crackdown on prostitution, \textit{Bangkok Post}, 14 May 2010.
\item \textsuperscript{13} Dougherty N., (2006) \textit{op cit}.
\item \textsuperscript{14} Yi H., Mantell J. \textit{et al} (2010) \textit{op cit} p.176.
\item \textsuperscript{16} Hilton hotel closed by Chinese police over prostitution charges, 21 June 2010, The Telegraph (UK).
\item \textsuperscript{20} Tucker J, Ren X. (2008) \textit{op cit}.
\end{itemize}
\end{footnotesize}
these circumstances have very limited decision making power and are highly vulnerable to HIV, with condom use determined by clients or managers of sex workers (pimps, establishment owners etc.).

Police crackdowns present obstacles to outreach work, make sex workers reluctant to carry condoms and force sex workers to move to new cities and counties. Fear of police crackdowns and arrest may lead to increased mobility of sex workers, thereby expanding sexual networks and discouraging sex workers from accessing testing and treatment of HIV and other STIs. This problem is exacerbated because many sex workers belong to floating populations of migrants from rural areas who are already susceptible to police abuses.22 As informal migrants, many are unable to register for government entitlements under China’s hukou system (household registration system).23

According to Burris and Xia, there is a significant difference between law on the books and the enforcement of laws against sex workers on the streets:24 the commercial sex trade has not been forbidden, but just informally regulated. Police practices are, to some extent, independent of the written laws concerning prostitution. Police generally have the discretion and the dexterity to deploy a wide variety of criminal and public order laws to accomplish their street control and public safety missions, … one hears repeatedly in China of varieties of cooperation, coexistence, symbiosis and oppression among sex workers and police, often persisting along with periodic crackdowns. While crackdowns can appear harsh to the casual observer, they in fact leave much of the industry untouched…

Law enforcement against sex is uneven geographically and sporadic over time. Internal migration is one way for sex workers to avoid legal troubles. One governmental official argued: “If there is a crackdown at the provincial level, the prostitutes will retreat to counties; if there is a crackdown in one county, then there will be more prostitutes in other counties. Do such crackdowns really work?” If sex workers move frequently to avoid being disciplined, the risks of spreading HIV may increase…

There is evidence that police activities can influence the willingness of sex workers to carry condoms (Lau et al., 2002).25 Though the Chinese Ministry of Public Security has already stipulated that officers should not regard carrying a condom as evidence of prostitution, in practice, many police still do so.

Zheng describes local corruption as a factor in exploitation of sex workers. Some police demand sexual favours and sex workers face increased exposure to risk of violence: Because the state’s anti-prostitution policy is manipulated and usurped by local officials and bar owners for their own ends leading to a violent working environment for the hostesses, hostesses do not disclose their real identity, which makes it more convenient for men to be violent towards them and even to murder them.26

Choi identifies a gradual intensification of state control over sex workers.27 She argues that repressive measures undermine the supportive professional networks of sex workers, increase

economic pressure on sex workers and increase their exposure to client-perpetrated violence. These consequences weaken the ability of sex workers to negotiate condom use with clients: ...Information about effective means of STI and HIV prevention, proper ways of applying condoms, strategies to prevent condom failure (slippage and breakage during intercourse) and methods to screen out potentially violent clients or clients who refuse to use condoms is circulated through these (informal) networks (of sex workers)...The formation of these networks, however, has been hampered by frequent police raids and arrests. After release, arrested sex workers may not return to the same venue for fear of becoming the target of further police action again. The fear of police raids and arrests is part of the reasons that sex workers change work venues and locations frequently, thus greatly reducing the stability and strength of their networks …The rapid turnover of women undermines the HIV prevention work of health personnel and outreach workers. For it creates great difficulties for outreach workers to build up a more stable and trusting relationship with women...

Police raids and arrests also increase the economic pressure of sex workers, in particular drug-using sex workers and streetwalkers…In a climate where competition for clients is already intense because of the continuous supply of women from rural areas, police raids scare potential clients away, seriously interrupt the livelihood of women, and put these women in an even more powerless position in negotiating safe sex with customers...

The fines imposed by police once sex workers are arrested directly increase their operational cost. Many women incur debts from owners and managers of the establishments where they work because they need to borrow money to pay for police fines… This indirectly increases the control that managers and owners have over sex workers, and reduces their ability to resist pressure from owners/managers to accept clients who refuse to use condoms, or clients who agree to pay for a higher price for non-condom sex. Client-perpetuated violence is an obstacle to the practice of safe sex because it may be directly used to make sex workers comply with unprotected sex, or it undermines the control sex workers have over enforcing the contract...

The illegal status of sex work in China and intensified police crackdowns increase the suspicion of sex workers towards the police and their fear of being arrested. This in turn inhibits sex workers from seeking police help in order to deal with violence, and increases the vulnerability of sex workers to violence. Sexual violence in turn exacerbates women’s risk of contracting HIV/STI because most sexual violence occurs in contexts without the use of condoms.28

**100% Condom Use Programmes**

100% CUPs have been piloted and implemented in numerous sites since 2001 (e.g. Wuhan City in Hubei province, Jingjiang County in Jiangsu province, Danzhou City in Hainan province, Lixian County in Hunan province, Liuzhou City, Guangxi Zhuang Autonomous Region). Scale-up of 100% CUPs is supported by UNFPA, WHO and the Global Fund to fight AIDS, Tuberculosis and Malaria.

According to WHO, these pilot projects have confirmed that 100% CUPs can be effective in China, local authorities can organize multi-sectoral support for the 100% CUP, and these programmes can achieve increases in condom use and a reduction in STI among workers in entertainment establishments.29 Evaluation of the projects included the following observations regarding the role of public security officials:

29 WHO WPRO & China CDC (2005) *100% Condom use programme: experience from China (2001-2004)*
Collaborative relationships between Public Health and Public Security have been worked out at the local level although it was clear that in some aspects of the programme, the dual role of Public Security presented difficulties to the programme. This was especially evident in the methods that were practical to use in carefully monitoring condom use in entertainment establishments and “enforcement” methods... staff in several of the pilot project sites felt that stronger policy guidance from central levels of the government was needed before there could be scale-up...

All pilot projects recognized that the establishment of a good working relationship between Public Health and Public Security authorities was one of the most critical needs in local efforts... Where projects were designed and implemented with the Chinese Center for Diseases Control and Prevention staff having a major role in outreach to entertainment establishments, they found it useful to have identity cards that made it clear they were working with Public Security involvement in this effort. This was an especially useful device for opening doors in working with entertainment establishments, making it clear that condom promotion in entertainment establishments was taken seriously by owners and managers and for reassuring Public Health outreach workers that they would not encounter difficulties if they were in entertainment establishments at the time of Public Security crackdowns. 

It is unclear whether sex workers were involved in the design and evaluation of these programmes. Sex worker organizations have raised concerns that the top-down and coercive nature of some 100% CUPs undermine their effectiveness and result in stigmatisation and human rights violations, such as involuntary testing and breaches of privacy. 

Re-education through labour

Each year, approximately 50,000 women are detained in ‘re-education through labour’ camps due to being identified as sex worker. The law requires STI and HIV prevention education at the camps. However, the approach in these facilities is to punish sex workers for engaging in behaviour that is regarded as a social evil, rather than to offer health care or support.

According to Burris and Xia: support for the use of reeducation through labor is waning. In a general meeting of National People’s Congress in 2004, the level of skepticism about reeducation through labor was unprecedented. Opinions of some representatives against reeducation through labor were sharp, pointing out the lack of legitimate grounds for detention, the unclear scope of those subject to detention, exceedingly harsh penalties, improper procedures, multiple and conflicting judicial interpretations, all adding up to abuse of power and undue deprivation of civil rights.

Tucker et al. compared access to HIV services among incarcerated and non-incarcerated sex workers. They reported that voluntary HIV testing, antiretroviral therapy and HIV prevention is less accessible for sex workers who are incarcerated (‘ISW’) than those who are not. Mandatory testing occurs in detention facilities and patients may not receive results. HIV

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prevention services are variable depending on the facility's relationship with the local STI clinic. They concluded:

Chinese sex worker detention camp practices may not only systematically increase HIV/syphilis risk among ISW, but also work to narrow women's social spheres of influence... A limited empiric analysis of Guangxi Province STI clinic data shows that cities detaining sex workers have higher mean HIV prevalence compared to cities that do not detain sex workers. While incipient medical and legal movements in China have generated momentum for expanding ISW services and resources, there is still substantial variation in the implementation of laws that ensure basic life-saving medical treatments. Post-incarceration social justice programs for sex workers linking women to essential STI/HIV resources, reconnecting broken social lives, and helping restore interpersonal relationships are urgently needed.34

It has been argued that provision of both legal aid and health care for incarcerated sex workers is important in curbing the spread of HIV in China.35

3.3.3 Efforts to improve the legal environment

The China Sex Worker Organization Network Forum was established in 2009, bringing together nine organizations working with female sex workers and three organizations with male sex workers in a national network. Shanghai Leyi is an NGO that advocates for the rights of male sex workers in Shanghai. In Yunnan Province, NGOs that advocate for sex worker rights include Yunnan Parallel (which works with male sex workers in Kunming) and Phoenix (which works with female sex workers in Gejiu city).

Sex workers in southern China have formed sex-worker organizations, linked to NGOs based in Hong Kong SAR such as JJJ Association, Zi Teng,36 and Action for Reach Out. These NGOs have conducted needs analyses with Chinese sex workers, and engage in advocacy for law and policy reform.

Zheng argues that criminalization of sex work in China means that mobilization of sex workers to form advocacy organizations (as has occurred in Taiwan and elsewhere in Asia) is unlikely to occur among sex workers working as karaoke hostesses in mainland China. If hostesses mobilized together to defend their rights, their stigma as a hostess would be publicized. It would severely endanger rather than promote their upward mobility. Also, they hope that hostessing would be a springboard for them to move on to more respectable entrepreneurial professions. Therefore, any kind of mobilization or unionization amongst hostesses could serve only as a barrier to their ultimate objective. Finally, because their work sites were subject to a series of police raids regularly each year, mobilization was highly circumscribed by political repression and hostesses’ lack of political resources.37

In 2010 the international NGO Asia Catalyst identified sexual violence, mandatory urine testing of people suspected of drug use and access to government services under the hukou registration system38 as the most urgent legal issues for sex workers.39 Asia Catalyst and local

36 Zi Teng (2008) Sex work: Commentary Sex Transm Infect 84 (1)
38 Hukou is a household registration record that officially identifies a person as a resident of an area.
partners argue that laws should be revised with removal of provisions that punish sex workers and removal of criminal transmission of STIs.

Korekata AIDS Law Center has conducted legal and advocacy training of sex workers in Yunnan province.

Beijing AIZHIXING Institute is a Chinese human rights NGO that advocates for sex work law reform. In 2010, the Institute was planning to hold a Sex Worker Rights and Health Workshop. Police ordered the workshop to be cancelled and issued an order to the media that prohibited any reporting of the workshop.40

A police crackdown in 2010 prompted a public demonstration in Wuhan, Hubei Province, calling for the legalisation of sex work. It is thought to have been the first of its kind in China. The protest organizer was detained briefly. The protest occurred after sex workers were publicly humiliated following police raids.41

Academics have argued that prevention strategies that only emphasize measures such as condom promotion and education must be reinforced by strategies to address structural issues such as decriminalization of sex work,42 reform within sex worker re-education centers and addressing policing.43 One analysis recommends introduction of regulations to address sexual health for establishment-based sex workers:

By beginning with provinces, which already have a good relationship between establishment venues and the local Health Department, China can develop city ordinances and establishment regulations that begin to require regular examinations of female sex workers and entertainers in the local STI clinic.44

The risk of such a regulatory approach is that it could introduce compulsory testing, undermining voluntary, peer-based approaches to health promotion. It would also potentially further marginalize those sex workers who are working outside of regulated establishments.

3.3 Hong Kong SAR

3.3.1 Laws

Sex work is not illegal in Hong Kong. The law prohibits keeping a brothel (of more than one sex workers), or control of sex workers by brothel owners or pimps. Many sex workers operate legally as individual sex workers from apartment style buildings.

Offences under the Crimes Ordinance45 include:

• bringing another person into, or taking another person out of, Hong Kong for the purpose of ‘prostitution’. Consent of the person being transported is not a defence. (section 129);
• harbouring another person or exercising control, direction or influence over another person for the purpose of or with a view to that person’s ‘prostitution’ (section 130);
• procuring another person to become a ‘prostitute’ (section 131);
• living on the earnings of ‘prostitution’ (section 137);

42 Professor Pan Suiming at the Institute of Sexuality and Gender, Remin University of China, advocates for decriminalisation of sex work and treating sex work as legitimate labour.
45 Laws of Hong Kong Chapter 200.
• keeping a vice establishment (brothel) (section 139);
• soliciting for any immoral purpose in a public place (section 147);
• advertisement of sex services (section 147A).

3.3.2 Law enforcement practices

Most of Hong Kong’s sex workers are from mainland China and are at risk of jail pending deportation due to visa violations. Some enter using a short-term travel visa. Penalties and deportation apply to migrant sex workers who overstay their travel visa or who work whilst on a travel visa. Some sex workers are prosecuted for possession of fake visas or identity cards.

Legal sex work occurs in sub-letted apartments. If two women are found working in the same apartment, it is considered to be an illegal ‘vice establishment’. Sex workers are vulnerable to harassment by customers and police because the law requires them to work alone. Occasionally the police raid apartments used for sex work, but usually the only arrests are for visa violations. Illegal brothels also operate, which are associated with organised crime.

Many sex workers operate from karaoke clubs. Individual migrant sex workers from other Asian countries operate from clubs, discos and bars.

According to Jordan, high-class sex workers and brothel owners are generally left alone by the police, whereas street workers (who are usually older) are targeted by police for arrest due to soliciting (whereas clients are rarely harassed or arrested).

The NGO Zi Teng began as a service provider for sex workers and evolved as an advocacy organisation. Zi Teng provides educational resources on human rights, gender-based violence, HIV and STIs. Zi Teng formed the JJJ Association, a sex worker peer support and advocacy group. JJJ Association trains sex workers to lead campaigns against police abuse and engage in public dialogue with law enforcement. JJJ Association holds meetings between sex workers and police to address reports of abuse. The police set up a special taskforce to help sex workers after advocacy from sex worker groups and documentation of police abuses. The police began to meet regularly with sex workers and sex workers groups and exchange crime information with them.

3.4 Macao SAR

Soliciting and keeping a brothel are offences under Macau's Criminal Code. Soliciting in a public place is an offence, which attracts a fine of up to 5,000 pataca fine.

It is also offence to administer a brothel or to "control prostitution." Anyone who acts as an agent encouraging the sex trade may be imprisoned for one to five years.

Press reports suggest there are about 4,000 mainland Chinese women working as sex workers in clubs in Macau.

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46 Call for reform in HK sex industry, RMIT News, 11 January 2011.
47 Hong Kong police arrest triad leaders in city-wide raids Agence France-Presse, 15 December 2010.
### 3.5 Taiwan

Sex work was an offence from 1991-2009 under Article 80 of the *Social Order and Maintenance Act 1991*, under which sex workers could be imprisoned for up to three days, detained or fined for up to NT$30,000. This provision is not currently enforced and some sex workers are licensed.

In 2009, Taiwan's Constitutional Court ruled that Article 80 of the *Social Order and Maintenance Act* is unconstitutional because it undermines the right of equality of sex workers under the *Constitution of the Republic of China* (Article 7) by prescribing penalties for sex workers, but not their clients. Technically the Act remains in force until 2 years after the court decision i.e. 6 November 2011.

The *Management of Prostitution Regulations* allow licensed sex workers to trade subject to health checks. The numbers of sex workers allowed to register is limited, with many more workers known to operate outside the system.\(^{52}\) No licences have been granted in Taipei since 2001.

Provincial and city level governments have allowed single women to become registered sex workers. Licensed sex workers must obtain bi-monthly physical examinations or lose their licenses. Prior to 1997, brothels could operate in designated zones in Taipei.

In 2010 the government announced it was planning to allow small brothels to operate. Authorities are debating the content of new laws to establish legal red light zones.\(^{53}\) In 2011, the government announced that it will allow local governments to set up special districts in which the sex trade would be permitted, while sex work outside those areas will be prohibited by law.\(^{54}\) Draft regulations indicate that the legal sex industry will be restricted to red-light districts, away from residential and religious zone, brothels and sex workers will be required to apply for licenses and sex workers will have to undergo periodic health checks.\(^{55}\)

### Community mobilisation

The Collective of Sex Workers and Supporters (COSWAS) advocates for the rights and welfare of Taiwan’s sex workers and has played a significant role in recent progress towards legalization of sex work.

COSWAS engages in community education, public awareness-raising and lobbying and advocacy at governmental and institutional levels. COSWAS is arguing that the only effective way to empower women and men involved in sex work lies in their decriminalization and the proper management of their work environment by law so as to protect them from violence and exploitation including trafficking and sexual slavery. COSWAS also conducts outreach work to street sex workers through emergency aid, case work, distribution of condoms, advice and counseling and provision of legal advice.

The Taiwanese government includes COSWAS in its consultations with civil society when formulating policies on the sex industry.

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\(^{53}\) Activists call for referendum on red-light zone issue, *Focus Taiwan*, 8 April 2011.

\(^{54}\) Group calls for vote on sex trade legality *Taipei Times* 9 April 2011.

\(^{55}\) Lee Seok Hwai, Taiwan set to lift 20-year sex trade ban *Asia News Network*, 13 May 2011.
3.6 Mongolia

3.6.1 Laws

The 1998 *Law on Combating Licentiousness (Prostitution and Pornography)* and the *Criminal Code* criminalise sex work or soliciting customers, the act of organizing sex work, luring, recruiting or forcing someone into sex work and facilitating sex work by providing space or transportation.

The 1998 law defines pornography as including “prostitution, the exploitation of prostitution, and organizing, mediating, and promoting prostitution” (Article 3.1.2).

Under Article 13.2.1, persons engaging in sex work shall have their income confiscated and be subject to 14-30 days detention. Persons who organize, mediate, or promote sex work shall be fined MNT 35,000-50,000 or detained for 7-15 days, and any organization involved in such activities shall be fined MNT 100,000-250,000. Any hotel, bar, or other location knowingly used for the purpose of sex work shall be closed, and any vehicle knowingly used to facilitate sex work shall be confiscated.

Article 12.2 of the 1998 law authorizes the police to inform local officials of sex workers residing in their districts and to make public information about sex workers.

3.6.2 Law enforcement

The *Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015* states:

Partly as a result of the illegal character of sex work and the associated police harassment and arrests, sex work has become more organized and clandestine. Recent trends show an increase in mobile sex workers who are contacted by cell phones, sex workers working as masseuses in saunas, and ‘table girls’ or waitresses in bars and karaoke bars…Negative attitudes and harassment by police officers hamper harm reduction interventions among sex workers.

The Strategy also notes that negative attitudes of health-care providers to most-at-risk populations including sex workers limits their access to a range of HIV and STI prevention services.

The National Human Rights Commission has raised concerns that the prohibition of sex work drives sex workers underground and exposes women to serious rights violations including breach of privacy.

There are periodic police crackdowns. For example, in 2008, police closed 21 saunas, massage services and five small hotels. 80 girls and women were arrested for sex work and 34 owners of saunas and massage centers were being investigated. Police target street workers, and those operating in cheaper hotels and saunas.

Survey findings reported in a Country Gender Assessment conducted in 2008 included:

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58 Ibid.


59.2 percent of a sample of sex workers who work on the streets had been subjected to administrative penalties for sex work. 40.8 percent stated they have a hidden status and have not been registered by the police.

72 percent of the sex workers stated they will not turn for police assistance. Policemen reportedly "frequently beat, demand money, force women to enter sexual contact, and insult the women."

According to the Country Gender Assessment, the 1998 law has reportedly:
given police officers license to frequently raid sites of prostitution, arrest sex workers, subject them to humiliating and dehumanizing treatment, and extort sexual services and bribe money under the threat of arrests and high fees. Often such raids are accompanied by a television crew, which then broadcast highly negative reports on sex workers. The stigmatization of sex workers, reinforced by their criminalization by the law and negative media reports, has created an atmosphere of impunity and lawlessness, depriving sex workers of basic human rights and any protection of their human rights by the state.

Respondents of a 2006 rapid assessment reported that brokers do not protect sex workers from police raids and arrests, and that women pay for their release through payment of bribes to police.61

It is not an offence to buy sexual services. A study of 342 Mongolian sex workers found that the occupations of their most frequent clients included government workers (17.5%) and soldiers/police (3.5%).62

100% Condom Use Programme (CUP)

In 2002, a 100% CUP pilot was established in Darkhan-Uul province. The provincial Governor issued a Decree (No 316) requiring provincial organizations to participate in the implementation of the 100% CUP. The Decree included a standard agreement to be used with the participating entertainment establishment owners.

A WHO/Government of Mongolia report of the pilot describes initial resistance from law enforcement agencies who believed that their participation in the programme conflicted with the law:

It took time and effort to convince the police to become an important part of the programme. Many training sessions, seminars and advocacy meetings were conducted at all levels of law enforcement entity...As a result, the attitude of police officers towards sex workers has changed and they give more importance to the participation of sex workers in the programme... The principles of police involvement in the programme include the following:

• avoiding arrests of women performing sex work;
• checking “green cards” of sex workers for their validity to ensure collaboration of sex workers with the programme;
• finding sex workers who are new or who work out of sight of the programme staff; and
• preventing sex workers from getting involved in crime, advocating for their human rights.

Collaboration of the police in the use of “green cards” was considered to be very effective in

61 Ibid.
involving sex workers in the programme. In some sites, cards were provided to sex workers to facilitate referral of the sex workers for STI testing and treatment services and to protect the sex workers from police harassment (sex workers with green cards are those participating in the 100% CUP). UNFPA and WHO support the scale-up of 100% CUPs in Mongolia. Some sex workers have expressed opposition to the scale-up of 100% CUPs in Mongolia due to concerns about stigma and discrimination.

Implementation of the 100% CUP forms part of the Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015, which states that to increase its effectiveness, efforts will be made to ensure the empowerment of sex workers as part of the programme.

3.6.3 Efforts to improve the legal environment

In 2006, the Ministry of Justice and Home Affairs established a working group with participation of the Ministry of Health, the Police Department and an NGO working with sex workers to review the Law against Prostitution and Pornography with a view to decriminalization of sex work.

The Mongolian National Strategic Plan on HIV, AIDS and STIs 2010-2015 commits to a needs assessment that will examine stigma, discrimination and human rights violations among sex workers. Special attention will be given to attitudes among health care and law enforcement staff, as well as the need to prepare legal amendments to strengthen the human rights position of sex workers. The results of the assessment will inform a training programme on human rights issues, and advocacy will be done among policy makers and legislators to support the creation of a more supportive legal environment. Health care workers, law enforcement staff and media workers will be sensitized on the importance of HIV prevention services among sex workers.

3.7 Japan

The Anti-Prostitution Law of 1956 prohibits sex work or being a client of a sex worker, but no penalty is defined. Penalties apply to soliciting, procuring a person for sex work, coercing a person into sex work, profiting from the sex work of others, inducing a person to be a sex worker, furnishing a place for sex work and engaging in the business of making a person a sex worker. The definition of ‘prostitution’ is strictly limited to coitus. If convicted of soliciting, sex workers may be imprisoned or detained at rehabilitation centers.

The Anti-Prostitution Law is rarely enforced against sex workers, except migrant sex workers soliciting in the streets. It has been argued that the Anti-Prostitution Law needs to be amended in the context of HIV prevention, as police interference prevents street workers, especially foreign sex workers, from seeking STI and HIV services. The Businesses Affecting Public Morals Regulation Law of 1948 regulates businesses where legal sex work occurs i.e. that does not involve coitus. In effect, this law allows sex work to occur without attracting legal

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63 Review Of The 100% Condom Use Programme and Sexually Transmitted Infection Services in Selected Sites in Mongolia Final Report (April 2009)
64 Working for a Living, The Humanitarian 7 July 2008 (Australian Red Cross).
65 www.redcross.org.au/library_publications_humanitarian_July08_article4.htm
67 Article 3.
sanctions.

Most of Japan’s sex workers are from poorer Asian countries and have no legal protections. The primary law enforcement issues relate to identification and deportation of migrant or trafficked sex workers. Few government resources are allocated to anti-trafficking measures.68

3.8 Republic of Korea (South Korea)

Under the Anti-Prostitution Law 2004, it is illegal to engage in sex work or to be a client of a sex worker. Penalties include up to one year in prison or fines. Brokers face up to seven years in prison or fines.69 It is illegal to keep a brothel. Women who repeatedly engage in sex work can be ordered to undergo rehabilitation in detention centres run by the Ministry of Health and Social Affairs.

Research indicates that the Anti-Prostitution Law 2004 has resulted in a reduction of people seeking testing and treatment for STIs. The number of people seeking treatment for sexually transmitted diseases at health offices was 156,000 in 2003, before the law went into effect, and 129,000 in 2004 before declining to 117,000 in 2006.70 Prior to the Anti-Prostitution Law 2004, the government authorized the Korean Tourist Association to license bars or Kisaeng (professional entertainer) houses near U.S. military bases and tourist enclaves. The government provided the workers based at these licensed entertainment establishments with STI and HIV testing. Women who operated outside the licensed bars or houses were subject to arrest.71 The police routinely round up women who solicit on the streets. The Ministry of Justice operates schools for convicted male clients of sex workers who may attend seminars in lieu of punishment.72

69 Park Si-soo (2009) 1,400 Nabbed for Prostitution in a Week Korea Times, 16 April 2009.
7 Draft recommendations for an agenda for action

The following draft recommendations are proposed as a basis for discussions and are subject to consultations with sex workers and their organizations, UN partners and technical experts in the Asia Pacific region.

The draft recommendations are not intended to apply equally to all countries. A priority should be given to in-country work to further map the issues and to develop country-specific advocacy plans with active participation of sex workers and their organizations.

Some communities are already making good progress in areas outlined below. The recommendations are intended to be a reference for actors at the country-level that helps them to define a national agenda for action, tailored to local conditions. Country-specific cultural, religious and political factors need to be taken into account in determining which recommendations should be accorded a priority in each country.

1. Support to leadership, community empowerment and advocacy

1.1. Governments and donors should support sex workers and their organizations to participate in law reform processes and to engage in advocacy on legal and human rights issues. Capacity building for sex workers should include training in legal literacy, human rights and advocacy skills. Sex workers’ organisations should be resourced to provide peer-based advocacy on legal and human rights issues.

1.2. Governments, donors and UN agencies should engage with sex worker organizations, including national and regional networks of sex workers, as partners to inform policies and programmes relating to legal and human rights issues. Governments should work in partnership with sex worker organizations to develop non-judgmental, rights-based and evidence-based laws, policies and programmes.

2. Improvements to law enforcement practices and support to judiciary

2.1. Governments should prohibit law enforcement agencies from participating in coercive practices including mandatory HIV and STI testing, forced rehabilitation, or health promotion programmes implemented by police or based upon detention of sex workers.

2.2. Governments should ensure that sex workers, outreach workers, peer educators and HIV services are not prosecuted on the basis of evidence of possession of materials properly used in promoting sexual health, such as safe sex literature, condoms and lubricant.

2.3. The appropriate role for the police in enforcing laws against trafficking is to target traffickers rather than sex workers, and to ensure that enforcement of laws occurs in ways that protects the human rights of sex workers and reduces rather than exacerbates the HIV vulnerability of sex workers.

2.4. Governments should ensure that police and public security personnel receive training on HIV, human rights, and sex work, and should specifically address prevention of police abuses of sex workers including sexual violence and extortion.

2.5. Law enforcement policies and practices relating to 100% CUPs must be consistent with the human rights of sex workers, including rights to non-discrimination, privacy and autonomy in medical decision-making. Sex worker participation in designing
and evaluating 100% CUPs is critical. If sex worker participation and human rights protections cannot be guaranteed, alternatives to 100% CUPs that are rights-based and sex worker led should be considered.

2.6. Governments should ensure that transparent and independent police complaint mechanisms are in place that can help prevent and remedy police abuses. Police departments should ensure disciplinary proceedings and prosecutions are brought against police involved in harassment, extortion or violence towards sex workers.

2.7. Governments and national human rights institutions should ensure that all allegations of human rights violations perpetrated against sex workers are investigated thoroughly by independent bodies, and that those responsible are held accountable for their actions.

2.8. Justice Ministries and professional associations should include information on human rights-based responses to HIV and sex work in training of magistrates and judges. Governments and donors should provide resources to enable training of magistrates, judges, police and national human rights institutions on how best to address violence and discrimination directed at sex workers through supportive laws, policing, education and care.

2.9. Ministries of Police and Justice should work cooperatively with other Ministries involved in the HIV response (e.g. those with responsibility for health, welfare, education) to ensure that law enforcement approaches are supportive of HIV prevention, sexual health promotion and violence prevention strategies for sex workers.

3. Law reform

3.1. Governments should reform or repeal legislation that discriminates against people on the grounds of their occupation as a sex worker. This includes:
   (a) laws explicitly criminalizing sex work or clients of sex workers;
   (b) laws that criminalize activities associated with sex work such as soliciting or advertising of sexual services;
   (c) laws that require mandatory HIV or STI testing or treatment of sex workers;
   (d) trafficking laws that are enforced against sex workers;
   (e) laws that authorize the detention of sex workers for the purposes of re-education, rehabilitation or correction;
   (f) public order offences that are selectively enforced and are used as a pretext for extortion or for harassing, assaulting, detaining and punishing sex workers.

3.2. Governments should apply the ILO International Labour Standard on HIV and AIDS (2010) to sex workers.

3.3. Laws should support sex workers who are living with HIV to access condoms and HIV and STI services without discrimination.

3.4. Governments should remove legal barriers to the distribution of sexual health information, e.g. by providing exceptions to obscenity offences for health promotion materials targeted at sex workers and their clients.

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3.5. Governments should prohibit vilification and discrimination on the grounds of a person’s occupation as a sex worker particularly in areas of: employment; access to services including health care; education; accommodation; travel; provision of identity documents; and access to welfare services.

3.6. Legislation should provide sex workers with the right to comprehensive and quality sexual and reproductive health services, including for migrant sex workers regardless of their migration status.

3.7. In relation to sex workers identified as victims of trafficking:
(a) ensure that legislation does not permit the routine detention of victims of trafficking;
(b) ensure that irregular immigration status is not a justification for victim detention by providing foreign victims with a right to temporary residence and work permits.

4. Legal services
4.1. Governments should ensure provision of legal aid for sex workers who require legal advice and representation in relation to police matters, discrimination in accessing health services or other human rights violations.

4.2. Governments and/or donors should support provision of information and peer education to sex workers regarding their human rights and legal rights, and practical options for claiming and enforcing their legal rights;

4.3. Ministries of Justice and the legal profession should ensure the creation of a trained and sensitized legal work force that has expertise in providing legal services to sex workers including to defend prosecutions, to complain against excessive police conduct or discrimination and to seek justice for sex workers subjected to violence and abuse.

5. Research, evidence and monitoring
5.1. Detailed mapping of the legal environments of sex workers is required in each country to inform an agenda for action, using the rapid policy assessment and response methodology. Detailed mapping should be led by sex worker organisations where feasible and informed by qualitative studies on the impact of laws and law enforcement practices on the health and human rights of sex workers.

5.2. Donors and national AIDS authorities should support research and documentation of the effects on HIV responses of discrimination, criminalization, and other human rights violations against sex workers.

5.3. Human rights violations experienced by sex workers need to be systematically documented so that redress can be sought. Documentation should be used to inform planning of protective measures and for advocacy with policy and decision-makers to prevent future violations of rights from occurring.

5.4. National AIDS authorities should promote the sharing of evidence of successes and lessons learnt from programmes that support sex workers and their organizations to advocate for their human rights and improved legal environments for effective HIV responses.

74 Rapid Policy Assessment and Response (RPAR) methodology entails a desk review of legislation, academic literature and policy. It is being implemented in Fiji and Malaysia by Paulo Longo Research Initiative and has been implemented by Project Parivartan and the Lawyers Collective to map the legal environment for sex workers in Andra Pradesh, India: http://cira.med.yale.edu/research/project_page.asp?projID=222.
6. National planning of HIV responses

6.1. Governments should ensure that national HIV Strategies and Plans recognize the importance of ensuring non-punitive, enabling legal environments for HIV responses among sex workers and their clients.

6.2. National HIV Strategies and Plans should address the legal and policy environment, including law reform priorities, participation of sex workers in legal reform and policy processes, support to the advocacy and policy role of sex worker organizations, community legal education and access to legal and advocacy services.

7. National human rights institutions

7.1. National human rights institutions should ensure that resources are applied to protecting and promoting the human rights of sex workers, and to raising awareness of the HIV impacts of human rights violations of sex workers.

7.2. National human rights institutions should hold governments accountable for protection of sex workers from police harassment, abuse and violence.

8. Recommendations to donors and multilateral organizations

8.1. Donors and governments should recognize and support the important role played by national, regional and international sex worker networks in monitoring and documenting violations of human rights, participating in policy development processes relating to sex work and advocating for law reform and legal protections for sex workers.

8.2. The ASEAN Intergovernmental Human Rights Commission should take proactive measures to promote and protect the human rights of sex workers and ensure that member states commit to action to review discriminatory laws and policies that undermine HIV responses among sex workers.

8.3. The Global Fund should implement commitments of its Sexual Orientation and Gender Identities Strategy, including by promoting:
   - inclusion of sex worker-led activities to address legal environment issues in funding proposals;
   - sex worker participation in Country Coordinating Mechanisms; and
   - inclusion of people with expertise on human rights and sex work on the Technical Review Panel;

8.4. UNAIDS and its Cosponsors should support country partners to include measures to improve the legal environment for HIV responses among sex workers in national HIV plans, in partnership with sex worker organizations.

8.5. UNODC and other multilateral and regional agencies involved in the implementation of law enforcement responses to trafficking in support of Article 6 of CEDAW and the Palermo Protocol should ensure that the enforcement approaches adopted do not violate the human rights of sex workers and are consistent with the human rights based HIV policies of UNAIDS, UNDP, UNFPA and ILO.