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CRIMINAL LAW, SEX WORK, HIV: NEED FOR MULTI-LEVEL RESEARCH

Marie-Claude Boily^a and Kate Shannon^b

^aInfectious Diseases Epidemiology, Imperial College London, London N13LG, UK

^bGender and Sexual Health Initiative, BC Centre for Excellence in HIV/AIDS, University of British Columbia, Vancouver, BC, Canada

In *The Lancet HIV*, Aaron Reeves and colleagues¹ report an ecological analysis of the association between the differing legal policies regarding sex work of 27 European countries and HIV prevalence among female sex workers. Results suggest that countries where aspects of sex work are fully or partly legalised have a lower burden of HIV among female sex workers than countries that criminalise sex work.

Growing evidence that criminalisation of sex work and enforcement-based approaches increase violence and HIV risks have recently led to global policy calls to remove all criminal sanctions targeting sex work.² Instead, many countries worldwide are adopting approaches that only partly decriminalise or legalise some aspects of sex work despite a paucity of scientific data. Additionally, there is a growing push towards end-demand approaches (eg, the Nordic model), in which the selling of sex is legal, but buying and procuring sex are criminalised. We commend Reeves and colleagues¹ for attempting to disentangle the independent effect of these complex legal and enforcement-based approaches in this first country-level comparison study.

This study is timely and provides much needed data on this important but complex issue. It also supports the science suggesting that the removal of criminalised laws might be a crucial enabling step to reduce HIV among female sex workers.³⁴ However, determination of causality from ecological analyses (eg, changes in HIV prevalence due to laws) is challenging at best, and as discussed by the authors, amenable to ecological fallacies and confounding. We find it reassuring that the association remains statistically significant after adjustment for the prevalence of sex workers who inject drugs, gross domestic product, HIV prevalence, and antiretroviral therapy coverage in the general population. However, some caution is still warranted because, in the sensitivity analysis of the magnitude of association to individual country, the difference in HIV prevalence was noticeably reduced when Ukraine, where sex work is illegal, was removed. The few countries in the analysis where sex work is fully legalised (Germany) or where end-demand approaches have been implemented (Norway and Sweden) precludes any strong conclusions from being made, but suggests that low HIV prevalence is associated with reduced criminalisation.

Contact: mc.boily@imperial.ac.uk.

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Issues of temporality and measures of enforcement (as a proxy for implementation of laws) further complicate assessment of causality. Considering that changes in the law would need to precede the date of HIV estimates, and the slow dynamic of HIV, it is not probable to expect that any changes in the law would have an immediate effect on HIV prevalence (even if new incident cases were reduced). This relation between changes in the law and HIV prevalence particularly limits the comparisons with the Nordic model made in this Article because Norway only made the buying of sex work illegal in 2009, after the date of the female sex worker HIV prevalence estimate used in the analysis, which dated from 2008.

The issue of temporality is further complicated by variations in the microlevel policing and enforcement efforts within countries. The authors investigated the effect of enforcement efforts (downstream product of implementation of laws) using the World Bank Rule of Law (a measure of confidence in effective and fair judiciary and police) on HIV prevalence, suggesting that fair and effective judiciary might act as a mediating pathway. Although marginalised populations, including female sex workers, might not be well represented in estimates from the rule of law, the findings do suggest that where sex work remains fully criminalised, an improved relationship with the police is not linked to reduced HIV prevalence among female sex workers.

Importantly, in view of the absence of a comparison with fully decriminalised models (no European countries have fully decriminalised sex work), the results presented cannot be interpreted to suggest evidence that legalisation is the preferred approach. Indeed, we know from several settings that legalisation (which includes explicit regulation of where and how the industry can operate) rather than decriminalisation of sex work (where the industry can follow regulations of other businesses) can create a two-tier system and lead to punitive and coercive practices that stigmatise some female sex workers and displace the most marginalised (eg, individuals who use drugs, migrant female sex workers) away from health and social services.⁵

In conclusion, despite its limitations, this study provides useful ecological-level data across many European countries that should raise caution for governments and policy makers considering criminalised or end-demand models. Understanding how criminalisation increases exposure to interacting structural barriers, which affect HIV risks and intervention access and uptake, and how the elimination of some or all of these negative structural factors affects HIV risk in different settings, from ecological-level and longitudinal individual-level data, is key to HIV prevention but is also challenging. Evidence consistently suggests that criminalisation might increase HIV risk through recurrent police harassment, violence, and arrests or fear of arrests of female sex workers or clients, which can perpetuate unsafe working conditions, drug use risks, and physical or sexual violence against female sex workers without recourse. Future research should consider careful monitoring of municipal-level enforcement and arrest data alongside violence and sex worker-level evidence (eg, female sex worker experiences of policing) to disentangle fully how and whether laws translate to enforcement on the ground and how this in turn affects violence outcomes and HIV prevalence for female sex workers. Mathematical models anchored in empirical evidence, in collaboration with social scientists, and in partnership with the sex work

community, remain crucial to the attempt to disentangle legal and policing approaches, violence, and HIV burden.³

Considering that many countries are currently reviewing legislation around sex work and that community-based randomised trials are unlikely to be possible, it is crucial that researchers plan in advance rigorous monitoring and evaluation of the effect of these changes on female sex workers' health, safety, and human rights.

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