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## THE SEX WORKER'S DILEMMA: KEEPING CAMBODIA'S SEX TRAFFICKING LAW FROM NEGATING THE SUCCESSSES OF THE 100% CONDOM USE PROGRAM

*Amanda Dumey\**

*"[T]here is always an easy solution to every human problem—neat, plausible, and wrong."*<sup>1</sup>

- Henry Louis Mencken

### I. INTRODUCTION

The atmosphere is lively—people milling around amongst food stands selling colorful produce, children laughing and playing in the streets.<sup>2</sup> But something is not quite right.<sup>3</sup> It is the notorious sex district in Phnom Penh, known as the White Building.<sup>4</sup> A closer look reveals a young woman lounging

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\* J.D. Candidate, May 2010. I would first like to thank my parents, John and Pam, for all their love and support. They have always been there to help me celebrate my successes and guide me through the challenges I have faced. Love you mom and dad! I would also like to thank my grandparents, especially Grandma Sweetie, for encouraging me in my education and sending me e-cards that brighten my day when I get stressed out. Of course I also have to thank my siblings, Sarah and Zach, for being great friends and providing me with a distraction from school when I check up on them through Facebook instead of doing my homework. Last, but certainly not least, I have to thank my editors and colleagues on this journal, especially Kim. Your patience and very wise advice was invaluable to me through this process.

1. H.L. Mencken, *The Divine Afflatus*, in *A MENCKEN CHRESTOMATHY* 443, 443 (1949).

2. See generally White Building, Phnom Penh, July 2, 2008, <http://carpediemilia.over-blog.com/article-20914544.html> (noting that the website is illustrative of the state of the White Building); see also Paolo Woods, *Prostitutes in Cambodia*, ANZENBERGER AGENCY, Jan. 1, 2007, [http://www.anzenberger.com/en/article/59046.html?t\\_by=&t\\_photographer=&t\\_letter=&t\\_view=&t\\_fpage=0](http://www.anzenberger.com/en/article/59046.html?t_by=&t_photographer=&t_letter=&t_view=&t_fpage=0) (noting that the website shows additional pictures of prostitutes living at the White Building).

3. See Marianne Pearl, *Global Diary: Cambodia*, *GLAMOUR*, Aug. 1 2006, <http://www.glamour.com/magazine/2006/07/global-diary-cambodia?currentPage=5> (providing photographs of prostitutes at the White Building and other locations around Phnom Penh).

4. *Id.* (noting that the White Building is a prominent sex district in Phnom Penh).

outside the building, waiting for clients, while her pimp looks on.<sup>5</sup> Nearby, another young woman, still in her revealing work clothes, returns home from a long night at the bar.<sup>6</sup> Yet another woman stands outside a massage parlor waiting for clients, her son on her hip.<sup>7</sup> Across town, another sex worker walks through one of Phnom Penh's parks.<sup>8</sup> She turned to sex work for the money.<sup>9</sup> With two children to feed and no education, sex work seems the only way she can survive.<sup>10</sup> She tried begging on the streets and at the market, but it just was not enough.<sup>11</sup>

Thousands of hopeless Cambodian women turn to sex work to support themselves and their families because they have no other option.<sup>12</sup> Poverty and lack of education drive these women to sex work.<sup>13</sup> Others are tricked into sex work by the promise of better employment, only to find they have been sold to a brothel.<sup>14</sup> The abuses these women suffer each day at the hands of law enforcement, clients, and brothel owners are unspeakable.<sup>15</sup> Yet they continue to work in the sex industry out of necessity—to feed their families.<sup>16</sup>

Abuse from law enforcement, clients, and brothel owners is not the only threat to sex workers in Cambodia.<sup>17</sup> Sexually transmitted infections (STI's), the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) are a constant threat.<sup>18</sup> The Cambodian government and non-governmental organizations (NGOs) have taken small steps to protect these

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5. Woods, *supra* note 2.

6. *See id.* (noting that the young woman in the black mini dress works at a bar, but is also a prostitute).

7. Woods, *supra* note 2 (noting that massage parlors are often fronts for places of prostitution).

8. *See* U.S. AGENCY FOR INT'L DEV. [USAID], VIOLENCE AND EXPOSURE TO HIV AMONG SEX WORKERS IN PHNOM PENH, CAMBODIA 15 (2006) [hereinafter USAID].

9. *Id.*

10. *Id.*

11. *Id.*

12. CAMBODIAN LEAGUE FOR THE PROMOTION & DEF. OF HUMAN RTS., THE SITUATION OF WOMEN IN CAMBODIA 27 (2004) [hereinafter CAMBODIAN LEAGUE].

13. *Id.*

14. *Id.*

15. *See* USAID, *supra* note 8, at 5-6.

16. CTR. FOR HEALTH & GENDER EQUITY, WORKING WITH WOMEN IN PROSTITUTION: A CRITICAL DIMENSION OF HIV PREVENTION 2 (2003) [hereinafter WORKING WITH WOMEN].

17. *See* USAID, *supra* note 8, at 5.

18. COMM'N ON AIDS IN ASIA, REDEFINING AIDS IN ASIA: CRAFTING AN EFFECTIVE RESPONSE 2 (2008) [hereinafter REDEFINING AIDS].

women, but the threat remains.<sup>19</sup> The policies currently in place to prevent the spread of HIV/AIDS are undermined by Cambodia's new anti-trafficking law.<sup>20</sup>

This comment discusses the plight of sex workers in Cambodia, the status of HIV/AIDS prevention efforts in Cambodia, and the work that still must be done to keep Cambodia on the right track toward uplifting its people and stopping the spread of HIV/AIDS. Section II examines the history of the HIV/AIDS epidemic in Cambodia. Both the country's troubled past under the Khmer Rouge regime and the subsequent political turmoil have left a legacy of poverty and corruption.<sup>21</sup> This provides the perfect backdrop for a booming sex industry, as well as a thriving human trafficking business.<sup>22</sup> This section also discusses the history of the HIV epidemic in Cambodia, from the factors aiding its spread to the actions the government has taken to fight the disease.

Section III looks at the competing policies of the 100% Condom Use Program (100% Program) and the Law on Suppression of Human Trafficking and Sexual Exploitation. The 100% Program was initially implemented to encourage condom use during all sexual encounters with women in brothels.<sup>23</sup> By supplying brothels with condoms, educating sex workers and the general public about HIV and how it spreads, and providing provisions for health care for sex workers, the program enjoyed some success in lowering the HIV prevalence rates in Cambodia.<sup>24</sup> However, the program has many flaws, including abuses of sex workers' human rights and drug use.<sup>25</sup> The Law on Suppression of Human Trafficking and Sexual Exploitation was passed in March 2008 to combat the nation's human trafficking problem.<sup>26</sup> While the law

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19. See Law on Prevention and Control of HIV/AIDS art. 1 (1998) (Cambodia).

20. *Cambodia: Human Trafficking Crackdown also Hits HIV Prevention*, INTEGRATED REG'L INFO. NETWORKS [IRIN], Oct. 21, 2008, <http://www.irinnews.org/Report.aspx?ReportId=81036> [hereinafter IRIN].

21. Nw. Univ. Sch. Of L. Ctr. for Int'l Hum. Rts., *History*, CAMBODIA TRIBUNAL MONITOR, Feb. 22, 2009, [http://www.cambodiatribunal.org/index.php?option=com\\_content&view=article&id=29&Itemid=2](http://www.cambodiatribunal.org/index.php?option=com_content&view=article&id=29&Itemid=2) [hereinafter CAMBODIA TRIBUNAL MONITOR].

22. See Chris Hansen, *Children for Sale*, DATELINE NBC, Jan. 9, 2005, <http://msnbc.msn.com/id/4038249/>.

23. Nat'l Ctr. for HIV/AIDS, Dermatology & STD [NCHADS], *100% Condom Use in Cambodia: Strategy & Guidelines for Implementation* 1 (2001), <http://www.bigpond.com.kh/users/nchadsadb/100%25%20CU%20-%20Strategy%20&%20Guidelines.pdf> [hereinafter NCHADS].

24. See REDEFINING AIDS, *supra* note 18, at 3, 33.

25. *Id.*

26. See Melissa Ditmore, *Punishing Prostitution 'Won't Stem HIV'*, ONE WORLD.NET, June 24, 2008, <http://us.oneworld.net/node/160958>; See Andrew Hunter, *APNSW Call to Action on Cambodia*, INT'L COMM. ON THE RTS. OF SEX WORKERS IN EUR., July 7, 2008, [http://www.sexworkeurope.org/index.php?option=com\\_content&task=view&id=219&Itemid=219](http://www.sexworkeurope.org/index.php?option=com_content&task=view&id=219&Itemid=219).

provides for punishment of people engaging in trafficking of persons, it also criminalizes engaging in and procuring prostitution.<sup>27</sup> This law has been criticized as being overbroad and counter-productive to Cambodia's efforts to fight HIV/AIDS.<sup>28</sup>

Section IV takes a closer look at these two competing policies and explores options for retaining both programs to best serve Cambodian citizens. First, Section IV analyzes changes that must be made to the 100% Program in order to render it more effective. Among the suggestions are to create voluntary health screening programs and expand the program beyond sex workers in brothels.<sup>29</sup> Second, Section IV analyzes the problems with the Law on Suppression of Human Trafficking and Sexual Exploitation and how Cambodia can take steps to make the law work for its citizens. If Cambodia chooses to continue to criminalize prostitution, there must be distinctions made between voluntary and involuntary sex workers in order to preserve their right to engage in a profession of their choice.<sup>30</sup> The better option is to decriminalize prostitution and implement a regulation system to better serve voluntary sex workers and victims of trafficking in the sex industry.<sup>31</sup>

Finally, Section IV examines steps that need to be taken with both programs in order to make them work together. Both programs must be preserved in order to be the most effective in preventing HIV and combating human trafficking, but there must be changes to both programs to achieve these goals. Of utmost importance is to preserve the human rights of sex workers in the execution of anti-trafficking efforts and HIV prevention programs.<sup>32</sup> Cambodian and international officials must also involve sex workers in the policy-making process in order to assure that their rights are preserved and that

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27. See Law on Suppression of Human Trafficking and Sexual Exploitation arts. 23-27 (2008) (Cambodia).

28. Takashi Yasunobu, *Combating Human Trafficking in Cambodia: Establishing A Legal Environment for the Effective Counter Trafficking Measure* 13-15 (May 1, 2004) (unpublished paper, Brandeis University) available at <http://www.no-trafficking.org/content/pdf/combating%20in%20cambodia%20-%20legal%20environment%20for%20effective%20measure%202004.pdf>.

29. See Joint U.N. Programme on HIV/AIDS [UNAIDS], *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version* 27 (2006) [hereinafter *UNAIDS Guidelines*]; see REDEFINING AIDS, *supra* note 18, at 16.

30. See CAMBODIAN LEAGUE, *supra* note 12, at 18-22.

31. Julia O'Connell Davidson & Bridget Anderson, *The Trouble with 'Trafficking', in* TRAFFICKING AND WOMEN'S RIGHTS 14 (Christien L. van den Anker & Jeroen Doomernik eds., 2006).

32. See Joint U.N. Programme on HIV/AIDS [UNAIDS], *Handbook on HIV and Human Rights for National Human Rights Institutions* 4, 13-14 (2006) [hereinafter *UNAIDS Handbook*].

HIV prevention programs meet the needs of sex workers.<sup>33</sup> Additionally, the Cambodian government must ensure that the programs are being used as intended, and not as tools of discrimination against sex workers.<sup>34</sup> The government must crack down on police abuses that threaten the progress of HIV prevention and anti-trafficking programs without creating distrust of authority and producing unintended effects, like discontinued use of condoms by sex workers.<sup>35</sup>

## II. POVERTY, THE SEX INDUSTRY, & HIV IN CAMBODIA

The HIV/AIDS epidemic in Cambodia can be attributed to a number of factors—lack of education about the disease, poor access to healthcare—but perhaps the biggest culprit in the rise of HIV/AIDS in Cambodia is poverty.<sup>36</sup> Poverty has been a constant in Cambodia during recent history, and the problem has been facilitated by the nation's political turmoil.<sup>37</sup> In the late 1970s, this political instability was embodied in the Khmer Rouge regime, which led a communist revolution to transform the nation into a classless society.<sup>38</sup> The Khmer Rouge murdered nearly two million Cambodians and destroyed the nation's healthcare and education systems.<sup>39</sup>

Although the Khmer Rouge no longer exists, the country is still plagued by poverty.<sup>40</sup> In 2007, an estimated 4.8 million people in Cambodia lived in poverty,<sup>41</sup> and in 2008 the Cambodian government released statistics showing that “33 percent of the population live on 50 cents [U.S.D.] a day . . .”<sup>42</sup> In addition to the high prevalence of poverty in Cambodia, its people have low literacy rates, and very few girls attend school, which limits their opportunities

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33. Joint U.N. Programme on HIV/AIDs [UNAIDS], UNAIDS Reference Group on HIV & Hum. Rts., *Recommendations Regarding the “UNAIDS Guidance Note on HIV and Sex Work (April 2007)”* at 3 (2007) [hereinafter *UNAIDS Reference*].

34. See Melissa Dittmore, Editorial, *RESEARCH FOR SEX WORK*, Issue 10, July 2008, at cover.

35. See USAID, *supra* note 8, at 16-17, 45.

36. World Health Org. [WHO], *Controlling STI and HIV in Cambodia: The Success of Condom Promotion*, at 1, 6 (2001) [hereinafter WHO].

37. CAMBODIA TRIBUNAL MONITOR, *supra* note 21.

38. See *id.*

39. See *id.* (noting that the Khmer Rouge regime was led by Pol Pot, who strove to build a pure society. One of the main ways Pol Pot worked toward this goal was to kill educated persons. At the end of the Khmer Rouge's reign, very few educated persons were left alive, and those that were alive were extremely traumatized.)

40. *Id.*

41. *Rural Poverty in Cambodia*, RURAL POVERTY PORTAL (Int'l Fund for Agric. Dev., Rome, Italy), Apr. 4, 2007, <http://www.ruralpovertyportal.org/english/regions/asia/khm/index.htm>.

42. *Cambodia: Gambling Fuels Poverty*, INTEGRATED REG'L INFO. NETWORKS [IRIN], Nov. 19, 2008, <http://www.irinnews.org/Report.aspx?ReportId=80114>.

to engage in professional or skilled work.<sup>43</sup> This combination of poverty and lack of education leads many women and girls to seek work in Cambodia's sex industry to support their families.<sup>44</sup> In fact, some see sex work as their only option.<sup>45</sup>

Cambodia's sex industry is booming business, involving an estimated seventeen thousand sex workers in brothels and other entertainment venues.<sup>46</sup> Tourists from all over the world, including Americans, see Cambodia as a top destination for sex tourism.<sup>47</sup> Many are lured by the bountiful opportunities for cheap sex, but unfortunately, the country's traditionally lax law enforcement also attracts foreign sex offenders looking for sex with children.<sup>48</sup> Cambodian men also contribute to the sex industry in Cambodia, where going out with friends to buy sex after a night of partying has become a social norm.<sup>49</sup>

When the first case of HIV in Cambodia was discovered in 1991, the country established the National AIDS Programme to help provide awareness about the disease and promote condom use amongst the general population.<sup>50</sup> The country recognized that condom use by sex workers, especially sex workers in brothels, was crucial to the AIDS program's effectiveness, since the prevalence rate of HIV at the time was estimated at over fifty percent among brothel-based sex workers.<sup>51</sup> Initial program efforts enjoyed only limited success, because sex workers experienced abuse by brothel owners and clients; making it difficult for the workers to use condoms with every sexual encounter.<sup>52</sup> The effects of such a high HIV prevalence rate among sex workers can be felt far beyond the confines of the sexual encounters between the sex

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43. WHO, *supra* note 36, at 1.

44. *See id.*

45. *See Cambodia Law Threatens Effectiveness of HIV Prevention Work with Sex Workers*, INT'L HIV/AIDS ALLIANCE, June 26, 2008, <http://www.aidsalliance.org/sw55037.asp>.

46. *Id.* (noting that there are approximately 3,430 sex workers in brothels, massage parlors, and saunas, and 13,723 sex workers in karaoke parlors and bars. Sex workers in brothels are known as "direct sex workers," whereas those in karaoke parlors and bars are called "indirect sex workers"); *see also Cambodia Sex Tourist Guide to Phnom Penh*, BAR DV8 GUESTHOUSE, [http://www.dv8-cambodia.com/cambodian\\_sex\\_nightligfe.html](http://www.dv8-cambodia.com/cambodian_sex_nightligfe.html) (displaying an unofficial guide to Cambodian sex tourism. The website guides tourists on where to go to meet girls, how much entertainment will cost, and even boasts that the women in Cambodia are "softer and not so much business minded (money grubbing) as those in Thailand.").

47. Hansen, *supra* note 22.

48. *See id.* (noting that police officers are often "in the pimps' pockets," and take bribes to not enforce trafficking laws).

49. *See* WHO, *supra* note 36, at 2.

50. *Id.* (noting that the National AIDS Programme is now called "the National Center for HIV/AIDS, Dermatology, and STD (NCHADS)").

51. *Id.*

52. *Id.*

worker and the client, as clients include married men, who may pass the disease on to their wives.<sup>53</sup> In turn, the infected wives pass the disease on to their infants.<sup>54</sup> Cambodia's growing HIV/AIDS epidemic led the Cambodian government to re-evaluate the National AIDS Programme in search of other methods of controlling the spread of HIV and AIDS in Cambodia.<sup>55</sup>

### III. CONFLICTING POLICIES

#### A. *The 100% Condom Use Program*

In 1998, Cambodia had one of the highest HIV prevalence rates in South Asia with 3.3% of the general population living with HIV and 42.6% of commercial sex workers working out of brothels living with HIV.<sup>56</sup> Facing a rapidly growing HIV and AIDS epidemic, Cambodia implemented a 100% Condom Use Program.<sup>57</sup> The Cambodian government implemented this program recognizing that the only effective way to prevent the spread of HIV is the consistent use of condoms during sexual encounters.<sup>58</sup> As a country with limited financial resources, the program was also seen as a less expensive alternative to other preventative programs.<sup>59</sup>

The program began in late 1998, after the Cambodian National AIDS Committee endorsed the 100% Program with a pilot program in Sihanoukville, and was soon expanded to the entire country.<sup>60</sup> The basic premise of the 100% Program was to encourage sex workers to use a condom during every sexual encounter; if a client refused, workers were advised to refuse services and refund payment.<sup>61</sup> However, the program only applies to sex workers at a brothel.<sup>62</sup> The program also called for the establishment of sexually transmitted infection

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53. Ben Schnayerson, *AIDS IN ASIA: The Continent's Growing Crisis, Cambodia Finding Success vs. AIDS*, SAN FRANCISCO CHRON., Jan. 15, 2003, at A8.

54. *Id.*; see also WHO, *supra* note 36, at 5 (adding that married men's mistresses and their infants are also vulnerable to infection).

55. See WHO, *supra* note 36, at 4-5.

56. POPULATION SERV. INT'L [PSI], *DECLINING HIV GIVES HOPE IN CAMBODIA 1* (2004) [hereinafter PSI].

57. World Health Org. [WHO], *Guidelines for Scaling-Up the 100% Condom Use Programme: Experience from Cambodia*, at 8 (2003) [hereinafter WHO *Guidelines*].

58. WHO, *supra* note 36, at 6.

59. See *id.*

60. NCHADS, *supra* note 23, at 1 (explaining that the pilot city chosen for this project was the coastal town of Sihanoukville. This city was chosen not only because of the willingness of its leaders to participate in the program, but because of the extraordinarily high number of sex workers in the city. The sex industry in Sihanoukville is fed mostly by seamen, who come ashore for entertainment before continuing on their way).

61. *Id.*

62. PSI, *supra* note 56, at 2.



(STI) clinics staffed by people with special training in managing STIs where sex workers can go for free STI screening and treatments.<sup>63</sup> Additionally, the program involved distribution of educational materials tailored to different groups, including sex workers, clients, and the general public.<sup>64</sup> Cooperation between local government officials and owners of brothels and a steady supply of condoms to sex workers were also central to the program.<sup>65</sup>

One final important aspect of the program was the establishment of punitive measures for brothels who violated the 100% Program.<sup>66</sup> This involved a four-step system: the first violation garnered a written warning, the second warning meant the brothel would be closed down for seven days, and the third warning shut down the brothel for a month.<sup>67</sup> After the fourth warning, the brothel would be closed permanently.<sup>68</sup>

Since the 100% Program has been in place, Cambodia has experienced a steady decline in HIV/AIDS prevalence rates.<sup>69</sup> In 2002 the prevalence rates had dropped from 3.3% to 2.6% in the general population and 42.6% to 28.8% in sex workers working out of brothels.<sup>70</sup> By 2006, the prevalence rate of HIV-positive female sex workers had dropped to 12.7%, and by 2008 the prevalence rate of HIV/AIDS among the general population had dropped to 0.9%, or less than 1 in 100 people.<sup>71</sup> The 2008 United Nations General Assembly Special Session on HIV/AIDS (UNGASS) estimates that if the trend of decreasing HIV prevalence rates continues, the prevalence rate of HIV could decrease to 0.6% by 2011.<sup>72</sup>

The program's efforts to educate the general public have also made a positive impact on citizens' awareness about HIV and AIDS.<sup>73</sup> The 2008 UNGASS Report on Cambodia found that a great number of citizens have been tested for HIV and are aware of their status (as HIV positive or negative).<sup>74</sup> More sex workers in brothels and indirect sex workers have been tested for and

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63. WHO, *supra* note 36, at 9.

64. *Id.* at 10.

65. *Id.* at 9, 29.

66. *Id.* at 10.

67. *Id.*

68. WHO, *supra* note 36, at 10.

69. PSI, *supra* note 56, at 1.

70. *Id.*

71. Chhay Channyda, *HIV/Aids Infection Rates Down*, PHNOM PENH POST, Aug. 18, 2008, at 5; see also NAT'L AIDS AUTH. KINGDOM OF CAMBODIA, UNGASS COUNTRY PROGRESS REPORT: CAMBODIA 2 (2008) [hereinafter UNGASS].

72. UNGASS, *supra* note 71, at 2.

73. *Id.* at 9.

74. *Id.*

are aware of their HIV status.<sup>75</sup> Young people are also more aware of misconceptions about HIV and AIDS and ways to prevent the spread of the disease.<sup>76</sup> The report also found that the consistent use of condoms among brothel-based sex workers increased from 96% of sex workers in 2003 to 99% in 2007.<sup>77</sup>

*B. The Law on Suppression of Human Trafficking and Sexual Exploitation*

In response to pressure from the United States, the Cambodian Legislature in March of 2008 passed the Law on Suppression of Human Trafficking and Sexual Exploitation.<sup>78</sup> The passage of this law was largely responsible for Cambodia's placement on Tier 2 of the U.S. Department of State's 2008 Trafficking in Persons Report.<sup>79</sup> This is an improvement from the 2007 report, which placed Cambodia on the Tier 2 watch list.<sup>80</sup>

The objective of the Law on Suppression of Human Trafficking and Sexual Exploitation is:

[T]o suppress the acts of human trafficking and sexual exploitation in order to protect the rights and dignity of human beings, to improve the health and welfare of citizens, to preserve and enhance good national customs, and to

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75. *Id.* at 11 (noting that 68.1% of brothel-based sex workers were tested for HIV in 2007, an increase from 51% in 2003. The testing rates were lower for indirect sex workers, where 51% had been tested for HIV and knew their status. No comparison data for indirect sex workers was reported).

76. *Id.* at 15 (reporting that in a survey conducted by the Cambodia Demographic and Health Survey, 90.7% of 15-24 year olds surveyed correctly answered that a person can reduce his or her risk of contracting HIV by using a condom every time he or she has sex).

77. UNGASS, *supra* note 71, at 17.

78. Ditmore, *supra* note 26; Hunter, *supra* note 26.

79. Press Release, U.S. Dept. of State, U.S. Embassy in Phnom Penh, Cambodia, Cambodia Placed on Tier 2 in 2008 Trafficking in Persons Report (June 5, 2008) available at [http://cambodia.usembassy.gov/pr\\_060508.html](http://cambodia.usembassy.gov/pr_060508.html) [hereinafter U.S. State Dept. Press Release I]; see also *Country Ratings: Tier Placements*, <http://www.gvnet.com/humantrafficking/00-Ratings.htm> (discussing the tier rating system. Countries are ranked according to their compliance with the Trafficking Victims Protection Act. Countries listed as Tier 1 are fully compliant with the Act. Tier 2 nations are making significant efforts toward meeting the Act's minimum standards. Countries rated as Tier 3 are not compliant and are not making significant efforts. When a country is placed on the Tier 2 Watch List, it means the country is making efforts to be compliant with the Act, but is in danger of slipping down to a Tier 3 rating).

80. Press Release, U.S. Dept. of State, U.S. Embassy in Phnom Penh, Cambodia, Cambodia Remains on Tier 2 Watch List in 2007 Trafficking in Persons Report (June 12, 2007) available at [http://cambodia.usembassy.gov/2007\\_tip.html](http://cambodia.usembassy.gov/2007_tip.html) [hereinafter U.S. State Dept. Press Release II].

implement the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons . . . .<sup>81</sup>

Most significantly in the context of HIV/AIDS prevention, the law makes prostitution illegal.<sup>82</sup> The law also provides for the punishment of a wide-range of human trafficking activities and pornography.<sup>83</sup>

Article 23 of the law defines prostitution as “having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value.”<sup>84</sup> The law further prohibits soliciting prostitution and procuring prostitution.<sup>85</sup> Article 50 of the law provides that the Law on Suppression of Human Trafficking and Sexual Exploitation prevails should there be any contradictions with any other laws.<sup>86</sup>

The Law on Suppression of Human Trafficking and Sexual Exploitation replaces the old Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Persons enacted in 1996.<sup>87</sup> The old law was widely criticized as inadequate, leaving many issues surrounding human trafficking untouched.<sup>88</sup> Human trafficking is a well-documented problem in Cambodia, as there is an almost indefinite supply of poverty-stricken citizens to feed the

81. Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia).

82. *Id.* arts. 23-25.

83. *Id.* art 38.

84. *Id.* art 23.

85. The relevant articles provide:

Article 24: Soliciting

A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment for 1 to 6 days and a fine of 3,000 to 10,000 riel.

....

Article 25: Definition of Procuring Prostitution

The act of procuring prostitution in this law shall mean:

- (1) drawing financial profit from the prostitution of others;
- (2) assisting or protecting the prostitution of others;
- (3) recruiting, inducing or training a person with a view to practice prostitution;
- (4) exercising pressure upon a person to become a prostitute.

....

*Id.*

86. Law on Suppression of Human Trafficking and Sexual Exploitation art. 50 (2008) (Cambodia).

87. *Id.*

88. Yasunobu, *supra* note 28, at 13.

trafficking industry.<sup>89</sup> Families sell their children to traffickers for menial amounts—sometimes for only \$100 USD.<sup>90</sup> Recognizing the human trafficking problem, Cambodian legislators made defining crimes involving human trafficking and punishments for those crimes a priority in the new law.<sup>91</sup>

#### IV. IMPACT OF THE LAW ON SUPPRESSION OF HUMAN TRAFFICKING & SEXUAL EXPLOITATION

##### *A. Renewed Fears of Another HIV/AIDS Epidemic*

The passage of the Law on Suppression of Human Trafficking and Sexual Exploitation has renewed fears of an HIV/AIDS epidemic not seen since the 1990s.<sup>92</sup> Tia Phalla of the National Aids Authority in Cambodia warned attendees at a national AIDS conference in Phnom Penh, “Enforcement of the [new] anti-trafficking law harms the 100 percent condom use in brothels.”<sup>93</sup> Dr. Melissa Ditmore, a research consultant for the Sex Workers Project, calls the new law “a ‘failure’ because it increases the victimization of sex workers and raises the risk of the spread of HIV . . . .”<sup>94</sup> Andrew Hunter, the director of Asia Pacific Network of Sex Workers (APNSW), says the law “equates all sex work with trafficking and has led to . . . sex workers” being “forcibly detained in rehabilitation centres where they have been raped and robbed by police and guards.”<sup>95</sup>

The criminalization of trafficking and prostitution in Cambodia has turned the purpose of the 100% Program completely on its head.<sup>96</sup> Instead of being a program to educate sex workers about how HIV/AIDS spreads and providing a means to prevent or control the disease, the 100% Program is now being used as grounds to detain people carrying condoms.<sup>97</sup> Srey Mao, a sex worker in Phnom Penh, explains that she feels frightened to carry condoms, because “[t]o carry a

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89. See U.S. AGENCY FOR INT’L DEV. [USAID], INTERNATIONAL JUSTICE MISSION ANTI-TRAFFICKING PROGRAM IN CAMBODIA 7 (2006) [hereinafter USAID INTERNATIONAL] (noting that “Cambodia is a source, transit and destination country for children and adults trafficked for commercial sexual exploitation and forced labor.”).

90. Dan Rivers, *Girl, 6, Embodies Cambodia's Sex Industry*, CNN.COM, Jan. 26, 2007, <http://edition.cnn.com/2007/WORLD/asiapcf/01/23/sex.workers/index.html>.

91. See Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia).

92. See Khoun Leakhana & Mom Kunthear, *Officials Fear Aids on the Rise*, PHNOM PENH POST, Sept. 12, 2008, at 1.

93. *Id.*

94. Ditmore, *supra* note 26.

95. Hunter, *supra* note 26.

96. See IRIN, *supra* note 20.

97. See Seng Ratana, *Condoms Feared Criminal in Sex Crackdown*, VOICE OF AM., Sept. 2, 2008, <http://voanews.com/khmer/2008-09-02-voal.cfm>.

condom now is to carry evidence of a crime . . . .”<sup>98</sup> As this example suggests, the ban on prostitution may have the exact opposite effect than was intended.<sup>99</sup> Rather than preventing prostitution, and thus the further spread of HIV/AIDS, the new law has pushed the sex-selling business further underground.<sup>100</sup> By pushing the sex industry underground, it only makes it harder for those who work with sex workers to promote condom use.<sup>101</sup> Instead of preventing the spread of HIV/AIDS, the anti-trafficking law puts sex workers even more at risk for developing HIV because the fear of being caught with a condom dissuades many from using condoms.<sup>102</sup>

### B. The “Anti-Prostitution Pledge”

The U.S. Agency for International Development (USAID) places several limitations on which organizations can receive its funding, most notably the anti-prostitution pledge.<sup>103</sup> In order to receive USAID funding, organizations and nations must take an anti-prostitution stance through the passage of laws or establishment of policies against the promotion of prostitution.<sup>104</sup> This funding

98. *Id.*

99. *Cambodia Faces New HIV Threat as ‘Condom Campaign at Risk’*, AFP NEWS, Sept. 10, 2008, [http://afp.google.com/article/ALeqM5js6Lp3KFioJJnmX0M\\_skBDIoJWaA](http://afp.google.com/article/ALeqM5js6Lp3KFioJJnmX0M_skBDIoJWaA).

100. *Pro’s and Con’s on 100% Condom Use Policy (CUP) in Cambodia*, ASIA PAC. NETWORK OF SEX WORKERS, <http://apnsw.org/t/ProsandCons100cup.htm> [hereinafter *Pro’s & Con’s*] (last visited Sept. 13, 2008).

101. Ratana, *supra* note 97.

102. *Id.*

103. See United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C.A. §§ 7601-82 (2008); see also Video: Taking the Pledge (Erin Siegal, Network of Sex Work Projects, Niesha Studio 2006) [hereinafter Taking the Pledge] available at <http://www.sexworkersproject.org/media-toolkit/TakingThePledgeVideo.html>; Nicole Franck Masenior & Chris Beyrer, *The U.S. Anti-Prostitution Pledge: First Amendment Challenges and Public Health Priorities*, 4 PLOS MED. 1158, 1158 (2007) (explaining that the pledge requires “a policy that explicitly oppos[es] prostitution and sex trafficking and . . . certification of compliance with the ‘Prohibition on the Promotion and Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking’ . . . .”) (alteration to original).

104. United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, 22 U.S.C.A. § 7631(e)-(f) (2008), which provides:

(e) Limitation

No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(f) Limitation

limitation is in accord with US policy that prostitution should be eradicated because it is a factor in the spread of HIV/AIDS and is degrading to women.<sup>105</sup> The funding limitation applies both to U.S.-based and foreign-based organizations wishing to receive US funding.<sup>106</sup>

Because USAID, along with President George W. Bush's Emergency Plan for AIDS Relief (PEPFAR) are major financial supporters of the fight against HIV/AIDS, this limitation makes a significant impact.<sup>107</sup> Both USAID and PEPFAR are U.S. funded programs providing support for HIV/AIDS programs across the globe.<sup>108</sup> Since 2002, UNAID and PEPFAR have provided nearly \$272.5 million in support of HIV/AIDS programs in Cambodia.<sup>109</sup> In fact, when the 100% Program was evaluated in 2005 by UNGASS, it noted that one of the biggest problems with the program was its lack of sustainable funding.<sup>110</sup> Only thirteen percent of the program's funding came from Cambodia; the remaining funding came from the Global Fund and the United States Government.<sup>111</sup>

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No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking . . . .

105. 22 U.S.C.A. § 7601(23).

106. *CTR. FOR HEALTH & GENDER EQUITY, IMPLICATIONS OF U.S. POLICY RESTRICTIONS FOR HIV PROGRAMS AIMED AT COMMERCIAL SEX WORKERS 2* (2008) (noting that U.S.-based organizations have been involved in litigation challenging the constitutionality of the restrictions. In two separate lawsuits, plaintiffs alleged that the funding restriction violates the organizations' right to free speech. The District Court in *DKT Int'l v. U.S. Agency for Int'l Dev.*, 477 F.3d 758, 759 (D.C. Cir. 2007), initially ruled for plaintiffs, but the Court of Appeals reversed. In *Alliance for Open Society Int'l v. U.S. Agency for Int'l Dev.*, 570 F.Supp. 2d 533 (S.D.N.Y. 2008), the District Court found the restriction to be unconstitutional, but while the government's appeal was pending, the government instituted guidelines allowing US-based organizations to set up affiliates with private funding. These privately funded affiliates were not required to take the anti-prostitution pledge, but the separation of the privately funded and US funded affiliates had to be complete, both physically and financially. Eventually, the court in *Alliance for Open Soc'y Int'l*, found these guidelines to "require more separation than is reasonably necessary to satisfy the Government's legitimate interest . . ." and granted the plaintiffs a preliminary injunction stopping the government from enforcing the anti-prostitution pledge on the plaintiffs. 570 F.Supp. 2d at 549. Thus, the injunction is not applicable to foreign-based NGOs).

107. See Taking the Pledge, *supra* note 103.

108. See U.S. PRESIDENT'S EMERGENCY PLAN FOR AIDS RELIEF, PEPFAR: A COMMITMENT RENEWED 1-2 (2008) available at <http://www.pepfar.gov/documents/organization/114676.pdf>.

109. U.S. AGENCY FOR INT'L DEV. [USAID], USAID PROVIDES OVER \$34 MILLION FOR HEALTH AND EDUCATION IN CAMBODIA 1-2 (2008); see U.S. PRESIDENT'S EMERGENCY PLAN FOR AIDS RELIEF, 2008 COUNTRY PROFILE: CAMBODIA 1 (2008) available at <http://2006-2009.pepfar.gov/documents/organization/81981.pdf>.

110. UNGASS, *supra* note 71, at 23.

111. *Id.*

Criticism of the USAID anti-prostitution pledge is widespread among organizations that say their work with sex workers is essential to fighting HIV/AIDS.<sup>112</sup> UNAIDS calls for donors to “remove conditionality or policies that prevent their partners from supporting organizations that work with sex worker organizations.”<sup>113</sup> While some nations, such as Cambodia, have passed laws to be compliant with this limitation, others have refused to comply and have rejected USAID funding.<sup>114</sup> The most prominent critics of the anti-prostitution pledge are foreign-based NGOs.<sup>115</sup> The NSWP attacks this anti-prostitution pledge requirement as “the result of a too simple and inefficient analysis that claims moral high ground while eclipsing the plight of many trafficked people and sex workers.”<sup>116</sup> Specifically, organizations express concern that the pledge requirement goes against “best practices” in public health and undermines their work with sex workers.<sup>117</sup> Organizations also allege that the passage of this law brings consequences beyond that of increasing the risk of sex workers contracting HIV; it also makes sex workers more vulnerable to violence and harassment.<sup>118</sup>

NGOs report that reaching sex workers in the fight against HIV/AIDS poses a great challenge, because it requires NGO workers to gain the trust and credibility of a traditionally marginalized class of persons.<sup>119</sup> Earning the trust of sex workers and other marginalized groups requires that NGOs provide services to the workers without judgment.<sup>120</sup> However, taking an anti-prostitution stance causes NGOs to lose their credibility with the populations they serve.<sup>121</sup> The funding restriction is based on a flawed assumption that

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112. Letter from Organizations Opposing Mandatory ‘Anti-Prostitution Pledge’ to George W. Bush, President of the United States (May 18, 2005) [hereinafter Letter to George W. Bush] available at <http://www.hrw.org/en/news/2005/05/17/us-restrictive-policies-undermine-anti-aids-efforts> (noting the letter was signed by more than 200 organizations opposing the Global AIDS Act funding restrictions).

113. REDEFINING AIDS, *supra* note 18, at 12.

114. Press Release, Ctr. for Health & Gender Equity, Restrictive U.S. Policies Undermine Anti-AIDS Efforts: Mandatory ‘Anti-Prostitution Pledge’ Threatens Lives of Sex Workers and Trafficking Victims 1-2 (2005) (noting that in 2005, Brazil rejected \$40 million in US grants because of the anti-prostitution pledge requirement) [hereinafter Restrictive Policies].

115. See Letter to George W. Bush, *supra* note 112.

116. Taking the Pledge, *supra* note 103.

117. CTR. FOR HEALTH & GENDER EQUITY, *supra* note 106, at 2.

118. USAID, *supra* note 8, at 5.

119. CTR. FOR HEALTH & GENDER EQUITY, *supra* note 106, at 4.

120. U.S.: Restrictive Policies Undermine Anti-AIDS Efforts, HUMAN RTS. WATCH, Nov. 9, 2005, <http://www.hrw.org/en/news/2005/11/08/us-restrictive-policies-undermine-anti-aids-efforts> [hereinafter HUMAN RTS WATCH].

121. WORKING WITH WOMEN, *supra* note 16, at 1.

permissive activities, such as condom use promotion, can be successful despite an organization's attitude toward prostitution.<sup>122</sup>

Additionally, the pledge threatens some of the most effective strategies employed by NGOs to reach sex workers—drop-in centers and empowerment programs.<sup>123</sup> Drop-in centers offer a safe place for sex workers to gather and allow them to participate in activities such as language classes, and allow the workers access to computers.<sup>124</sup> Empowerment programs provide training for sex workers to become peer educators about topics such as HIV transmission and condom negotiation techniques.<sup>125</sup> In Cambodia, the funding restriction led to the closure of the Lotus Project, which offered language and computer courses as well as health care services to sex workers in Svay Pak.<sup>126</sup> After a series of raids in the city's brothels, sex worker mobility became restricted, and the USAID funding restrictions hampered the Lotus Project's ability to take action on the problem out of fear of being seen as "promoting prostitution."<sup>127</sup>

Further, NGOs report that the policy is ambiguous, which has led to a "chilling effect" on the effectiveness of HIV prevention programs.<sup>128</sup> The problematic promoting prostitution language presents a challenge to organizations who wish to provide effective services to sex workers while remaining compliant with the USAID restrictions.<sup>129</sup> For example, a program to increase the use of condoms among sex workers could be construed as promoting prostitution because it requires NGO workers to train sex workers in proper condom use and condom negotiation techniques.<sup>130</sup> Programs that provide both human rights protections and training in alternatives to prostitution are threatened by the anti-prostitution pledge since they could be seen as promoting prostitution.<sup>131</sup> Organizations have adopted different strategies to combat the dilemma: some organizations have avoided media coverage of their

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122. CTR FOR HEALTH & GENDER EQUITY, *supra* note 106, at 4.

123. *Id.* at 3.

124. *Id.*

125. *Id.*

126. Masenior & Beyrer, *supra* note 103, at 5.

127. *Id.*

128. *Id.* at 1159.

129. *Id.* at 1160.

130. WORKING WITH WOMEN, *supra* note 16, at 3-4.

131. *Id.* (noting that such programs are employed by the most effective organizations. Efforts to protect sex workers' human rights help them in the short term by enabling sex workers to protect their health, and providing training for alternative occupations helps sex workers in the long-term by providing them with the skills to find other means of support); see Editorial, *Taking the Prostitution Pledge*, N.Y. TIMES, July 2, 2005, <http://www.nytimes.com/2005/07/02/opinion/02sat3.html> (noting that the Bush administration views "anything that makes life more tolerable for prostitutes encourages prostitution.").



programs, some have removed all references to sex workers from their websites, and some have completely abandoned all programming for sex workers—all for fear of being seen as promoting prostitution and losing their funding.<sup>132</sup>

The Law on Suppression of Human Trafficking and Sexual Exploitation is clearly a response to USAID's funding restrictions.<sup>133</sup> While the passage of the law solves (at least temporarily) the problem of lack of sustainable funding, it creates new problems for organizations at work combating the spread of HIV in Cambodia.<sup>134</sup> The Law on Suppression of Human Trafficking and Sexual Exploitation and the USAID restrictions threaten the progress Cambodia has already made in reducing the prevalence of HIV, and jeopardizes the success of future efforts to quell the disease.<sup>135</sup>

### *C. Police Abuses in Enforcement of the Law on Suppression of Human Trafficking & Sexual Exploitation*

Abuse of sex workers at the hands of police officers is not a new problem.<sup>136</sup> Corruption is a part of everyday life in Cambodia,<sup>137</sup> and the threat of abuse of police power is a part of everyday life for sex workers.<sup>138</sup> A study conducted in 2006 involving interviews with sex workers and police officers revealed troubling information about the violence suffered by sex workers in Phnom Penh at the hands of police officers.<sup>139</sup> The study also revealed that many police officers in Phnom Penh have little respect for the rights of sex workers, often demanding free sex and ignoring complaints of abuse, and that many officers think it is okay to rape sex workers as long as a condom is used during intercourse.<sup>140</sup> In fact, one officer explained that sex workers are often

132. CTR FOR HEALTH & GENDER EQUITY, *supra* note 106, at 5.

133. *See* Ditmore, *supra* note 26.

134. *See* CTR FOR HEALTH & GENDER EQUITY, *supra* note 106, at 5; *see* WORKING WITH WOMEN, *supra* note 16, at 1-4.

135. *See* Restrictive Policies, *supra* note 114.

136. *See* USAID, *supra* note 8, at 5.

137. U.S. AGENCY FOR INT'L DEV. [USAID], CAMBODIA CORRUPTION ASSESSMENT 2 (2004).

138. *Respect Sex Workers' Human Rights: Stop All Violence Against Sex Workers*, NETWORK OF SEX WORK PROJECTS, Dec. 17, 2005, <http://www.nswp.org/nswp/conferences/wto-051217/index.html>.

139. *See* USAID, *supra* note 8, at 26 (providing statistics about instances of police beatings, rape, and harassment, and stolen money. This study also involved interviewing sex workers about their experiences with police. The interviews paint a grim picture of the relationship between sex workers and police. In the report, one worker recounts her horrifying experience during a police brothel raid. After arresting five sex workers from her brothel, police drove her and the others to a rice field outside Phnom Penh, where they were all raped. One of her fellow sex workers refused sex, and was killed after being hit in the head with an AK47 and raped.)

140. *Id.* at 34-39 (outlining police attitudes toward sex workers. Perhaps most troubling about this section of the report is the instances of laughter during the interviews with policemen. For

referred to as Pradap, which means “‘equipment that people can use for doing something,’ [i.e.] a public vagina for men.”<sup>141</sup>

Although police abuse of sex workers is not a new problem, the Law on Suppression of Human Trafficking and Sexual Exploitation only provides another avenue and renewed zeal for police abuses.<sup>142</sup> Cambodian police claim that the new law helps them “put order to the streets . . . .”<sup>143</sup> Once sex workers are arrested, protocol is to detain the workers in the rehabilitation centers, which hypothetically provide rehabilitation services to people who go on a voluntary basis.<sup>144</sup> In reality, sex workers are involuntarily detained, often following arrests that are “completely arbitrary and not based on any investigation of alleged crimes.”<sup>145</sup> The Cambodian League for the Promotion and Defense of Human Rights (LICADHO) reports that these detention centers operate under appalling conditions.<sup>146</sup> During a visit to Kor Kor Center, which is a rehabilitation center accessible only by boat, LICADHO found that detainees were kept in small, overcrowded rooms, fed only small amounts of rice for meals, and provided a small bucket in the center of the room as a toilet.<sup>147</sup> Further, sex workers report being raped and robbed by guards while detained at these facilities.<sup>148</sup>

The Cambodian Government seems to be taking superficial steps toward remedying human rights abuses against sex workers.<sup>149</sup> Cambodia's top anti-trafficking official, Chief Bith Kimhong, has vowed to investigate sex workers' claims of rape and robbery in detention centers and brothels, although he doubts the veracity of the allegations.<sup>150</sup> Chief Kimhong asserts that the detention

example, one police officer who is described as a forty three year old 2<sup>nd</sup> Lieutenant on the force since 1985 recalled: “One day, I saw one policeman rape a sex worker on a stone bench at a park near Wat Phnom at night. I did not do anything. I watched from a distance. I saw everything. The policeman beat her buttocks and f\*\*\*ed her like a dog (laughing).”)

141. *Id.* at 35.

142. See *Cambodian Government Operating Unlawful Detention Camps in Phnom Penh, Locking Up Homeless, Beggars and Sex Workers*, CAMBODIAN LEAGUE FOR THE PROMOTION & DEF. OF HUM. RTS. (LICADHO), July 2, 2008, <http://www.licadho.org/articles/20080702/79/index.html> [hereinafter LICADHO].

143. Ratana, *supra* note 97.

144. LICADHO, *supra* note 142.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*; Hunter, *supra* note 26.

149. See *Cambodia to Investigate Alleged Police Abuse of Sex Workers*, MONSTERS & CRITICS: HEALTH NEWS, June 4, 2008, [http://www.monstersandcritics.com/news/health/news/article\\_1409233.php/Cambodia\\_to\\_investigate\\_alleged\\_police\\_abuse\\_of\\_sex\\_workers](http://www.monstersandcritics.com/news/health/news/article_1409233.php/Cambodia_to_investigate_alleged_police_abuse_of_sex_workers) [hereinafter MONSTERS & CRITICS].

150. *Id.*

centers were merely “re-education centers” for sex workers, and that only brothel owners and managers are being detained for long periods of time.<sup>151</sup> You Oy, the Secretary of State for the Ministry of Women’s Affairs, claims the government is working to help police view sex workers as victims and not offenders.<sup>152</sup> However, Oy emphasizes that sex workers must not solicit in public places or streets, as these activities are prohibited by Article 24 of the Suppression of Human Trafficking and Sexual Exploitation Law.<sup>153</sup>

There are police officers, sympathetic to the sex workers’ plight, who want to see a change in the relationship between sex workers and law enforcement.<sup>154</sup> However, among these officers there is a feeling of helplessness and a fear of revenge by fellow officers.<sup>155</sup> The 2006 USAID study hinted that there are a significant number of officers who are ready and willing to change the role of the police when it comes to sex workers, but this would mean a restructuring of the police system and the establishment of safeguards for officers who turn in fellow officers for rape.<sup>156</sup> Additionally, the study showed that police were becoming more educated about HIV/AIDS, but have not received any training about human or women’s rights.<sup>157</sup>

## V. MAKING POLICIES THAT WORK FOR CAMBODIA

### A. *Why the 100% Program and Anti-Trafficking Efforts Can and Must Coexist*

The reality in Cambodia is that criminalizing prostitution only hurts the thousands of women who work in the sex industry either by choice or out of necessity.<sup>158</sup> There are a number of factors leading women to work in the sex industry, including poverty and lack of education.<sup>159</sup> Women in Cambodia are afforded few educational opportunities.<sup>160</sup> Traditionally, Cambodian girls stay

151. *Id.*

152. Ratana, *supra* note 97.

153. *Id.*; Law on Suppression of Human Trafficking and Sexual Exploitation art. 24 (2008) (Cambodia).

154. USAID, *supra* note 8, at 36.

155. *Id.* (reporting one officer’s fear that he would be “blamed or punished” if other police found out that he helped sex workers, which prevented him from doing anything to help sex workers detained at his precinct being abused).

156. *Id.* at 39.

157. *Id.* (noting that only one police officer interviewed even mentioned rights training for police officers).

158. WORKING WITH WOMEN, *supra* note 16, at 2.

159. *Id.* (noting, “The vast majority of [men and women] engaged in prostitution are driven there by poverty and economic dislocation . . . . Many studies have shown that people turn to prostitution when there is no viable alternative to meeting basic needs, such as food, clothing, and shelter for themselves and their families.”).

160. Keasa Khun, *Gender Issues in Cambodia*, ASIA CULTURE FORUM (2006), at 1-2.

at home and complete household chores or work in the fields while their brothers are at school.<sup>161</sup> A further barrier to education for women is its cost.<sup>162</sup> Even though the government claims education is free, there are cost-prohibitive “unofficial” fees that parents often cannot afford for their children.<sup>163</sup> With this lack of training women are largely unqualified for professional or skilled jobs.<sup>164</sup> Therefore, women who must work to support their families and who have no vocational skills many times turn to prostitution.<sup>165</sup>

By criminalizing prostitution, the government has taken away what is often seen as the only way for women, especially single or widowed women, to support their families.<sup>166</sup> This is a serious problem, especially in a society where women are already valued less than men—as a traditional Khmer saying goes, “Men are gold; Women are cloth.”<sup>167</sup> Women in Cambodia need to have the power of financial independence as well as protection against being trafficked for sexual exploitation or forced labor.<sup>168</sup> Neither of these can be achieved by the 100% Program or an anti-trafficking law alone.<sup>169</sup> What must be done is a thoughtful reevaluation of the goals of both the 100% Program and the anti-trafficking law to meet the needs of Cambodian women and other at-risk groups.<sup>170</sup>

#### *B. Mending the 100% Condom Use Program*

It is undisputed that the implementation of the 100% Program in Cambodia was successful in reducing the prevalence of HIV among sex workers and the general population.<sup>171</sup> Its education initiatives have increased Cambodians' knowledge of how HIV spreads, how to prevent the spread of HIV, and how to

161. *Id.*

162. *Id.*

163. *Id.*

164. WHO, *supra* note 36, at 1.

165. *Cambodia Law Threatens Effectiveness of HIV Prevention Work with Sex Workers*, INT'L HIV/AIDS ALLIANCE, June 26, 2008, <http://www.aidsalliance.org/sw55037.asp> (quoting a 27 year old widow with three children: “I really do not want to go out and sleep with men, but since my husband died, I have no support . . . . I have no skill to find a job. Going out with men at night, I get about US\$30, and sometimes up to \$100. If the enforcement of the law is strict, I think it will be really bad for us—we do not know how to survive.”)

166. *Id.*

167. Andrew Nette, *On the Job: Women Workers are Changing the Employment Sector*, PHNOM PENH POST, Aug. 19, 2008, at 5; see Khun, *supra* note 160, at 3.

168. CAMBODIAN LEAGUE, *supra* note 12, at 28.

169. See generally WHO *Guidelines*, *supra* note 57, at 10-12 (evidencing that neither alone is comprehensive enough).

170. See UNAIDS *Handbook*, *supra* note 32, at 12-14.

171. PSI, *supra* note 56, at 1-2.

treat the disease.<sup>172</sup> Yet, the program is not without its problems.<sup>173</sup> Sex worker's rights organizations in Cambodia, as well as the U.N. Commission on AIDS in Asia, criticize the program for its many human rights abuses.<sup>174</sup>

In a March 2008 report, the U.N. Commission on AIDS explains that violations of sex workers' human rights, such as persistent harassment, undermine the program's potential effectiveness.<sup>175</sup> This harassment is often spurred by the practice of requiring sex workers to participate in an identity card system.<sup>176</sup> This system permits photos of workers to be posted at sex work establishments so men can identify who allegedly gave them a STD or did not use a condom.<sup>177</sup>

Another main criticism of the program is the practice of mandatory STD and health screenings for sex workers.<sup>178</sup> Often, sex workers are escorted to clinics by police, which may violate laws on trafficking and controlling the movements of the sex workers.<sup>179</sup> Additionally, the STD treatment is often not free, making it cost prohibitive for most sex workers.<sup>180</sup> Corruption on the local level also affects the efficacy of health screenings, as sometimes sex workers can pay a small fee to get a clean bill of health without an examination.<sup>181</sup> Finally, these mandatory health screenings apply only to sex workers in brothels, ignoring the clients of sex workers and other sex workers outside brothels.<sup>182</sup>

The program requirement of regular medical examinations for sex workers has been distorted into a system of informal and illegal sex worker registration.<sup>183</sup> Without any legal authority, local officials often require sex workers to be photographed and pay a registration fee, a process, which in some Phnom Penh districts must be repeated every three months.<sup>184</sup> Additionally,

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172. *Id.*

173. See *100% CUP Programmes: The Views For and Against*, ASIA PAC. NETWORK OF SEX WORKERS, <http://apnsw.org/t/ForandAgainst100CUP.htm> [hereinafter *CUP Programmes*] (last visited Sept. 13, 2008); see also *The 100% Condom Use Policy: A Sex Worker Rights Perspective*, ASIA PAC. NETWORK OF SEX WORKERS, <http://apnsw.org/r/Flyer100CUP.htm> [hereinafter *Perspective*] (last visited Sept. 13, 2008).

174. REDEFINING AIDS, *supra* note 18, at 157.

175. *Id.*

176. *CUP Programmes*, *supra* note 173.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *CUP Programmes*, *supra* note 173.

182. *Id.*

183. *Pro's and Con's*, *supra* note 100.

184. *Id.*

many local authorities force sex workers to pay various weekly fees or, protection money, in order to keep the police out of the workers' hair.<sup>185</sup>

APNSW also criticizes the 100% Program for its lack of involvement of sex workers in the policy making process.<sup>186</sup> This criticism is echoed by the Network of Sex Work Projects, which claims that the 100% Program is "[i]n direct contradiction to the policy of the Greater Involvement of People with HIV/AIDS (GIPA) and to contemporary notions about the value of community participation in HIV programming, [since] independent sex workers organizations have had no role in developing [100% Programs] and policies at local or international level."<sup>187</sup> Because sex workers and their advocates were left out of the policy-making process, sex workers are left vulnerable to a variety of abuses by local officials.<sup>188</sup>

The APNSW also notes that the 100% Program is very shallow, as it only applies to sex workers in brothels.<sup>189</sup> For example, the 100% Program does not reach independent sex workers or any other sex workers employed in places of business other than brothels.<sup>190</sup> UNAIDS also acknowledges this gap in the program, stating that the program should be extended to different types of sex workers in order to increase its effectiveness.<sup>191</sup> In fact, the current shift from selling sex in brothels to other methods, such as massage parlors could be partly attributed to the difficulties of dealing with the 100% Program.<sup>192</sup> Also, since the 100% Program only applies to brothels, it may add to the stigma of working in a brothel, implying that only sex workers in brothels are diseased.<sup>193</sup>

One final criticism of the 100% Program is its narrow definition of safe sex.<sup>194</sup> According to the APNSW, the program defines safe sex as penetrative sex with a condom, which "ignores the crucial role of non-penetrative safe sex acts which don't require a condom."<sup>195</sup> Therefore, sex workers are not being educated on how to practice safe oral sex, a practice frequently engaged in by sex workers.<sup>196</sup>

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185. *Id.*

186. *Id.*

187. *Perspective, supra* note 173.

188. *Pro's and Con's, supra* note 100.

189. *Id.*

190. *Id.*

191. UNAIDS *Reference, supra* note 33, at 4.

192. *Pro's and Con's, supra* note 100.

193. *Id.*

194. *Perspective, supra* note 173.

195. *Id.*

196. *Id.*

Notwithstanding corruption problems at the local level, the future of the 100% Program is constantly under the threat of inadequate funding.<sup>197</sup> Currently only six of Cambodia's twenty four provinces have the financial resources to support the 100% Program.<sup>198</sup> A steady supply of quality condoms is crucial to the program's success, but without sustainable funding, this aspect of the program is often ignored.<sup>199</sup> Based on these problems with the program, some of the main concerns include the program's limited outreach and the violation of workers' rights through mandatory health screenings.<sup>200</sup>

### 1. Expand Initiatives to Include Other At-Risk Groups to Increase the Effectiveness of HIV/AIDS Prevention

There are many groups not targeted by the original 100% Program and other initiatives to curb the spread of HIV/AIDS.<sup>201</sup> These groups must be incorporated into future plans in order to make the plan truly effective.<sup>202</sup> Two groups in particular, men who have sex with men (MSM) and indirect sex workers, are at a high risk for contracting HIV in light of the outlawing of prostitution.<sup>203</sup>

MSM are a high-risk group especially vulnerable to human rights abuses that are largely ignored in much of the initiatives to prevent the spread of HIV/AIDS in Cambodia.<sup>204</sup> MSM are often stigmatized and marginalized within Cambodian society and have low knowledge about the prevention of contracting and spreading HIV.<sup>205</sup> MSM with long hair, who dress and identify as women, are particularly vulnerable to stigmatization in Cambodia.<sup>206</sup> The mere fact that MSM are vulnerable to contracting HIV should be enough reason to involve this group in the HIV initiatives, but a further reason to include this group is the fact that many MSM commonly have unprotected sex with partners of either gender.<sup>207</sup>

197. Leakhana & Kunthear, *supra* note 92, at 1.

198. *Id.*

199. *Perspective*, *supra* note 173.

200. *Pro's and Con's*, *supra* note 100; *see also Perspective*, *supra* note 173.

201. KHA SOVANNARA & CHRIS WARD, U.S. AGENCY FOR INT'L DEV. [USAID], MEN WHO HAVE SEX WITH MEN IN CAMBODIA: HIV/AIDS VULNERABILITY, STIGMA, AND DISCRIMINATION at iv (2004).

202. REDEFINING AIDS, *supra* note 18, at 16.

203. *Id.*

204. SOVANNARA & WARD, *supra* note 201, at iv.

205. *Id.*

206. *Id.* at ix (noting that MSM with long hair are more easily identifiable as MSM. MSM with long hair are also called "srey sros," or "pretty girls," and they identify as women).

207. *Id.* at iv (reporting that a large number of MSM, when questioned, report having unprotected penetrative sex with most males and females).

Secondly, there are thousands of undocumented sex workers who work outside of brothels, such as “beer girls” and girls in karaoke parlors.<sup>208</sup> Both of these jobs seem innocent, but these women are at a high risk for contracting and then spreading HIV/AIDS.<sup>209</sup> Although these women are employed under the ruse of a legitimate occupation, they are actually employed in the sex industry.<sup>210</sup> This means they often go undetected and are overlooked by those working with sex workers in the fight against HIV.<sup>211</sup> These women are especially at risk for contracting HIV since studies show condom use is very low after consumption of alcohol.<sup>212</sup>

## 2. Make Health Screenings Voluntary, Not Mandatory

Access to health care is a basic human right.<sup>213</sup> However, it is a violation of human rights to make health screenings mandatory.<sup>214</sup> Mandatory testing is one way that persons at risk for HIV and AIDS are stigmatized by society.<sup>215</sup> This type of policy furthers the stereotype that these at-risk groups are incapable of taking their care and treatment into their own hands.<sup>216</sup> Mandatory testing creates the thought that they have done something wrong, or that they are bad people.<sup>217</sup> Stigma not only creates problems with self-worth and standing in the community, but it may also prevent those who are HIV positive from coming forward and receiving treatment because they are ashamed of their status and afraid of how they may be treated if others find out.<sup>218</sup>

Mandatory testing is a restriction of human rights.<sup>219</sup> While the protection of public health can be a legitimate justification for restricting human rights, this power must be “exercised judiciously” and meet certain criteria: first, that it is “prescribed by law in a democratic society,” and second, that the restriction is

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208. See *Beer Girls: Cambodian Beer Promotion Women*, BEER GIRLS.ORG, 2007, <http://beergirls.org> (last visited Mar. 4, 2009) [hereinafter BEER GIRLS].

209. *Id.* (noting that Beer Girls are employed by beer companies to exclusively sell one brand of beer at restaurants, but part of the job is performing sex acts for customers. Women in karaoke parlors are put on display and men can choose a woman to “sing” for him in a private room. Often, these private appointments involve much more than a vocal performance.).

210. *Pro's and Con's*, *supra* note 100.

211. *Id.*

212. BEER GIRLS, *supra* note 208 (noting the ability to find out if your favorite beer brand promotes a safe environment for beer girls, visit [www.fairtradebeer.com](http://www.fairtradebeer.com) or [www.ethicalbeer.com](http://www.ethicalbeer.com)).

213. See LAWRENCE O. GOSTIN & ZITA LAZZARINI, HUMAN RIGHTS AND PUBLIC HEALTH IN THE AIDS PANDEMIC 69 (1997).

214. UNAIDS *Guidelines*, *supra* note 29, at 27.

215. *Id.*

216. *Id.*

217. *Id.*

218. UNAIDS *Handbook*, *supra* note 32, at 9.

219. *Perspective*, *supra* note 173.



“necessary to protect a valued social goal.”<sup>220</sup> While it may be difficult to craft policies that meet the many human rights standards, a policy that successfully upholds and respects human rights is more likely to enhance public health.<sup>221</sup>

Mandatory testing is simply the wrong approach.<sup>222</sup> A voluntary approach, rather than a coercive approach, to public health should be employed wherever possible.<sup>223</sup> The problems with a coercive approach, as is being employed by many in Cambodia, are that it is applied in a discriminatory fashion—only to sex workers in brothels—and that people are generally less receptive to compulsory measures, essentially causing people to avoid treatment.<sup>224</sup> In contrast, a voluntary approach embraces the ideas of autonomy, consent, and cooperation among affected populations.<sup>225</sup> Cambodia needs to create a supportive, empowering environment where persons living with HIV and AIDS, both in the general public and within the sex industry, feel they will be welcome and understood.<sup>226</sup> Health care facilities must be staffed with medical personnel trained in HIV/AIDS and STI sensitivity.<sup>227</sup> This health staff must be able to bolster media efforts, such as billboards and leaflets, to educate their patients on how to prevent and treat HIV.<sup>228</sup>

The major problem with the mandatory HIV screenings which, in practice, are mandatory for sex workers in brothels, is that it advances the stigma already often associated with being a sex worker.<sup>229</sup> Mandatory testing of such a small portion of the population makes the assumption that this small group is most likely HIV positive.<sup>230</sup> The best way to remedy this problem is to get rid of mandatory testing and make testing a voluntary activity marketed to all citizens.<sup>231</sup>

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220. GOSTIN & LAZZARINI, *supra* note 213, at 57.

221. *Id.* at 57-67 (noting that the authors provide a seven-step Human Rights Impact Assessment).

222. *Id.* at 50.

223. *Id.*

224. GOSTIN & LAZZARINI, *supra* note 213, at 50.

225. *Id.* at 51.

226. WORKING WITH WOMEN, *supra* note 16, at 3.

227. WHO, *supra* note 36, at 10.

228. *Id.*

229. CUP Programmes, *supra* note 173.

230. See generally REDEFINING AIDS, *supra* note 18, at 2 (noting that while there is some truth to the assumption that sex workers have a higher prevalence rate of HIV, it nevertheless is irrelevant when considering the adverse affects of the stigma and discrimination suffered at high rates by people living with HIV and AIDS).

231. *Id.*

Mandatory testing of sex workers also often occurs in sub-par medical facilities where the sex workers are met with a great amount of disrespect.<sup>232</sup> UNAID identifies four elements regarding healthcare which are essential to meet basic human rights standards.<sup>233</sup> The first is availability: that adequate healthcare facilities are available for the general public and that the government makes other essentials, such as clean water to drink and adequate sanitation, available for everyone.<sup>234</sup> The second element is accessibility: that these facilities not only be available, but also accessible to all persons without the threat of discrimination.<sup>235</sup> The third essential element is that the facilities be acceptable, meaning the facilities conform to cultural norms and medical ethics.<sup>236</sup> The fourth, and final, element is quality: that the facilities and services conform to normal standards of scientific and medical quality.<sup>237</sup>

Policy regarding HIV testing must maintain a balance with several competing factors, including a person's right to privacy and choice, and the need for public health officials to know about their infected populations.<sup>238</sup> Since HIV/AIDS policies necessarily implicate a number of civil and political rights, ranging from social to economic to cultural, policymakers must consider all these rights, since upholding each of these rights is essential to HIV/AIDS policy.<sup>239</sup> Especially pertinent to the subject of this comment is that the promotion of human rights is essential to the promotion of public health.<sup>240</sup> Specifically, preserving the human rights of women and other marginalized groups helps these groups protect themselves from disease, demonstrating that health and human rights are interrelated.<sup>241</sup>

### *C. Rethinking the Law on Suppression of Human Trafficking and Sexual Exploitation*

The Law on Suppression of Human Trafficking and Exploitation has attracted much criticism for being overbroad.<sup>242</sup> The law equates all sex work

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232. *Id.*

233. UNAIDS *Handbook*, *supra* note 32, at 4.

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. REDEFINING AIDS, *supra* note 18, at 17.

239. GOSTIN & LAZZARINI, *supra* note 213, at 44.

240. *Id.* at 46.

241. *Id.* (also noting at p. 69 that “[v]iewing public health and human rights as separate, or even antagonistic, is misguided and harmful to public health practice.”).

242. *See* Yasunobu, *supra* note 28, at 26.

with sex trafficking in its complete prohibition of prostitution.<sup>243</sup> In the end, the law hurts both voluntary and trafficked sex workers by pushing the sex industry to different outlets, such as beer girls in beer gardens and girls in karaoke bars, which are not raided by police.<sup>244</sup>

This does not mean that the Law on Suppression of Human Trafficking and Sexual Exploitation must be repealed in its entirety.<sup>245</sup> To the contrary, most of the law is absolutely necessary to combat the serious human trafficking and child prostitution problems plaguing Cambodia.<sup>246</sup> What must be done is a serious reevaluation of each of the law's provisions to determine which articles are a positive step toward combating the nation's human trafficking and child prostitution problems, and which articles do not serve such a purpose.<sup>247</sup>

As discussed earlier, some of the objectives of the law are to "protect the rights and dignity of human beings, [and] to improve the health and welfare of citizens."<sup>248</sup> Much of the law seeks to accomplish these goals: for example, Article 12, which prohibits recruiting people for exploitation by use of deception or coercion, and Articles 34 and 35, which outlaw purchasing or soliciting for child prostitution.<sup>249</sup> Chapter IV of the law discusses many aspects of prostitution and child prostitution.<sup>250</sup> The main problem with this law is that it makes little distinction between voluntary prostitution and prostitution by coercion; the two categories clearly outlined in the law are simply "prostitution" and "child prostitution."<sup>251</sup> The articles dealing with child prostitution are most definitely in line with the law's goal of protecting human rights and improving the welfare of citizens.<sup>252</sup> However, there are some articles which do not conform to these stated objectives.<sup>253</sup>

The most troublesome article in the law is Article 24, which prohibits soliciting prostitution.<sup>254</sup> This article is the article that most directly and

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243. Law on Suppression of Human Trafficking and Sexual Exploitation art. 23 (2008) (Cambodia).

244. *Pro's and Con's*, *supra* note 100 (showing the "creative" nature of the sex industry); *see* BEER GIRLS, *supra* note 208 (noting one outlet for "underground" sex work).

245. *See* Hansen, *supra* note 22.

246. *Id.*

247. UNAIDS *Handbook*, *supra* note 32, at 13-14.

248. Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia) (addition to original).

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia).

254. *Id.* at art. 24.

negatively affects women in the sex industry.<sup>255</sup> This short article puts in jeopardy the health and safety of sex workers by taking out any governmental support of a safe sex industry.<sup>256</sup> By criminalizing solicitation of prostitution, the Cambodian government has essentially deregulated the industry.<sup>257</sup> This leaves women who feel they have no other choice but to be sex workers at the mercy of unregulated and unsupervised brothel owners, pimps and club owners, or forces them out into an uncertain future of soliciting on the streets.<sup>258</sup>

Criminalizing the industry not only makes sex workers much more vulnerable to abuses by brothel owners, pimps, club owners, and clients, but it is also counter-productive to the fight against HIV/AIDS.<sup>259</sup> The law does not stamp out the sex industry, it merely pushes it further underground, making it more difficult for women who suffer from abuses to seek out help for fear of being arrested as a prostitute.<sup>260</sup> The law unnecessarily sacrifices the human rights protections and health care for sex workers to the enforcement of anti-trafficking laws.<sup>261</sup>

Notwithstanding the potential detrimental effects the law may have on the prevention of the spread of HIV/AIDS in Cambodia, the implementation has led to blatant violations of Cambodia's Law on Criminal Procedure.<sup>262</sup> Cambodian criminal procedure calls for the accused to have a proper investigation conducted by the prosecutor, who will then determine whether or not there is sufficient support for the charge to stand.<sup>263</sup> In actuality, those suspected of engaging in illegal prostitution are being arbitrarily detained, often with no more evidence than the person carrying a condom.<sup>264</sup>

UNAIDS urges nations to diligently review laws which have an impact on HIV/AIDS and reform those laws where appropriate.<sup>265</sup> The organization also

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255. *Id.*

256. *Id.*

257. See generally WORKING WITH WOMEN, *supra* note 16, at 2 (evidencing that criminalization essentially equates to deregulation because since prostitution is illegal, it leaves sex workers at the mercy of their brothel owners and their clients).

258. Ditmore, *supra* note 26.

259. *Id.*

260. See ABRAHAM A. SION, PROSTITUTION AND THE LAW 32, 48 (1977) (arguing that prostitution will not ever go away. "So long as the average human male is endowed with an imperative sexual urge that cannot be gratuitously satisfied and is economically in a position to provide some material reward in consideration for his sexual release, prostitution will inevitably exist.").

261. See Press Release, Int'l Justice Mission, International Justice Mission Urges Cambodian Police to Expand Training and Investigate Charges of Police Misconduct, 2 (June 18, 2008) [hereinafter Int'l Justice Mission].

262. Law on Criminal Procedure art. 63 (1993) (Cambodia).

263. *Id.*

264. LICADHO, *supra* note 142; see also Ratana, *supra* note 97.

265. UNAIDS *Handbook*, *supra* note 32, at 13-14.

provides guidelines for nations to review and standards these laws must meet in order to be seen as achieving policy goals of upholding human rights while addressing the problem of HIV/AIDS.<sup>266</sup> First, countries should look at whether or not the law adequately protects human rights and deals with the needs associated with HIV prevention, care, and treatment, as well as nondiscrimination and violence against women.<sup>267</sup> Second, countries should scrutinize how the law has been used or misused to the disadvantage of vulnerable persons.<sup>268</sup> Finally, countries should look at what types of changes to the law and enforcement of the law need to be made so as to help people fully realize their rights and enable them to protect themselves from HIV infection.<sup>269</sup>

UNAIDS emphasizes that legal provisions must not “hamper or disrupt effective efforts to control or treat HIV.”<sup>270</sup> Additionally, the organization calls for nations to avoid programs that emphasize AIDS-related stigma, such as “‘crack-downs’ on red-light areas and arrest of sex workers.”<sup>271</sup> The Law on Suppression of Human Trafficking and Sexual Exploitation does not meet these standards, as it involves both “crack-downs” and the arrest of sex workers, as well as disruption to the efforts to control HIV by discouraging the use of condoms.<sup>272</sup>

Because the Law on Suppression of Human Trafficking and Sexual Exploitation severely hinders the efforts made under the 100% Program, Cambodia is on the brink of violating its citizens’ human right to education.<sup>273</sup> Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights recognize the right to an education that promotes tolerance, understanding, and development of one’s personality.<sup>274</sup> By accepting USAID funding, signing the anti-prostitution pledge, and passing the Law on Suppression of Human Trafficking and Sexual Exploitation, Cambodia has severely restricted its citizens’ access to education about HIV/AIDS.<sup>275</sup> This is most clearly demonstrated by the discontinued sex worker education programs

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266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. REDEFINING AIDS, *supra* note 18, at 12.

271. *Id.* at 17.

272. IRIN, *supra* note 20.

273. GOSTIN & LAZZARINI, *supra* note 213, at 70.

274. United Nations Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 art. 26.2 [hereinafter Universal Declaration]; *see also* United Nations International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, G.A. Res. 2200 (XXI), U.N. Doc. A/6316 art. 13.2(a).

275. *See* Masenior & Beyrer, *supra* note 103, at 1160.

that, under the USAID funding restrictions, could be seen as promoting prostitution.<sup>276</sup>

The problems with the Law on Suppression of Human Trafficking and Sexual Exploitation can be roughly summarized into a few categories—that the law is overbroad and it does not provide a realistic way to deal with the sex industry. The following are recommendations for amending the legislation.

#### 1. Distinguish Between Forced Sex Work and Voluntary Sex Work

The Law on Suppression of Human Trafficking and Sexual Exploitation makes no distinction between those who have voluntarily entered and chosen to remain in the sex industry and those who were trafficked and forced to be sex workers.<sup>277</sup> In a 2004 report, LICADHO expressed that “[i]t is imperative to recognise that not every woman working in the sex-industry is coerced to remain in th[e] trade. Some women choose to stay of their own volition.”<sup>278</sup> Admittedly, it can sometimes be difficult to distinguish between voluntary and involuntary sex workers.<sup>279</sup> This is not, however, an impossible task, and can be accomplished by the establishment of certain regulations and safeguards.<sup>280</sup>

Pressure from the United States was the major reason for the passage of the anti-trafficking law.<sup>281</sup> The passage of the Law on Suppression of Human Trafficking and Sexual Exploitation did achieve one of Cambodia's goals—to move off the Trafficking in Persons Report's Tier 2 Watch list, but its implementation has not worked for the protection of sex workers in the fight against HIV.<sup>282</sup> While the reasons for requiring an anti-prostitution pledge may be well grounded for other nations receiving USAID and PEPFAR funds, they do not have a place in Cambodia.<sup>283</sup>

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276. *Id.* (discussing the closure of the Lotus Project in Cambodia).

277. Law on Suppression of Human Trafficking and Sexual Exploitation arts. 23-37 (2008) (Cambodia).

278. CAMBODIAN LEAGUE, *supra* note 12, at 29 [alteration to original].

279. *Drawing Lines in a Dark Place*, THE ECONOMIST, Aug. 16, 2008, at 58-59 (noting that even when people are aware that they are being taken to be sex workers, they may be unaware of the harsh conditions or “the absolute loss of control over their lives, that they will face.”) [hereinafter ECONOMIST].

280. HUMAN RTS. WATCH, *supra* note 120 (noting that “organizations with the most effective anti-AIDS and anti-trafficking strategies build their efforts on a sophisticated understanding of the social and personal dynamics underlying these issues.” The anti-AIDS and anti-trafficking goals are achieved by providing “social, legal, and health services to men and women in prostitution . . . without adopting positions opposing prostitution.”).

281. Ditmore, *supra* note 26.

282. See U.S. State Dept. Press Release I, *supra* note 79.

283. See IRIN, *supra* note 20.

## 2. Decriminalize Sex Work by Consenting Adults to Continue the Progress Toward Eliminating HIV/AIDS

The anti-prostitution stance similar to the one taken in the Law on Suppression of Human Trafficking and Sexual exploitation is an example of an over-simplification of a complex problem.<sup>284</sup> When solutions to problems are overly simplistic, that solution is “not a solution but a seed for new problems.”<sup>285</sup> The problem of human trafficking in Cambodia is a complex one, involving both trafficking for forced labor and sexual exploitation.<sup>286</sup> The Law on Suppression of Human Trafficking and Sexual Exploitation acknowledges both these aspects, but stops short of being effective because its provisions about prostitution are overbroad.<sup>287</sup>

Since the legal framework dealing with sex workers has a significant impact on the workers’ health and safety, policy makers must carefully consider all aspects of the sex industry in order to form an effective system.<sup>288</sup> There are a variety of available legal responses to prostitution, including the broad categories of regulation, suppression, and abolition.<sup>289</sup> A system of regulation involves establishing laws to control the sex industry to guard both public health and public order.<sup>290</sup> In contrast, a system of suppression is a complete prohibition of sex work and provides for punishment of those involved in almost all stages of engaging in or procuring prostitution.<sup>291</sup> The last broad category is abolition, which refers to a system where all laws regarding sex work are eliminated—essentially abolition is decriminalization and deregulation.<sup>292</sup> Each system has its positive and negative aspects, but the system that seems most compatible with the needs of Cambodia is a system of regulation.<sup>293</sup>

Generally, sex workers’ rights activists “argue that as long as prostitution is criminalised and stigmatised, it is impossible to establish and monitor labour standards in the sex sector, and it is the absence of such standards that encourages the use of trafficked and other forms of unfree labour in the sex

284. Melissa Ditmore, *Trafficking in Lives: How Ideology Shapes Policy*, in *TRAFFICKING AND PROSTITUTION RECONSIDERED: NEW PERSPECTIVES ON MIGRATION, SEX WORK, AND HUMAN RIGHTS* 123 (Kamala Kempadoo ed., 2005).

285. *Id.*

286. CAMBODIAN LEAGUE, *supra* note 12, at 28.

287. Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia) (noting that the law does not differentiate between consensual and coerced sex work).

288. Kate Demaere, *Decriminalisation as Partnership: An Overview of Australia’s Sex Industry Law Reform Model*, 8 *RESEARCH FOR SEX WORK* 14 (2005).

289. SION, *supra* note 260, at 33-54.

290. *Id.* at 33-34.

291. *Id.* at 43.

292. *Id.* at 50.

293. Demaere, *supra* note 288, at 14.

industry.”<sup>294</sup> Given Cambodia’s already established problem with human trafficking, a system abolishing all laws relating to sex work is impractical and dangerous.<sup>295</sup> On the other hand, a complete prohibition of prostitution in Cambodia is detrimental to the women who depend on the industry to support their families.<sup>296</sup> Therefore, considering Cambodia’s unique problems and its continuing struggle with the spread of HIV, a system of regulation would be beneficial to both voluntary sex workers and trafficking victims.<sup>297</sup>

A regulation system, especially when combined with decriminalization of sex work, has many benefits.<sup>298</sup> Decriminalization alone is recognized as the “best model of sex industry legislation because it supports the occupational health and safety, working conditions and human rights of sex workers.”<sup>299</sup> A combination legal system of decriminalization and regulation would mean that the act of prostitution would not be criminalized, but regulations would set standards for workplace conditions, wages, and healthcare provisions.<sup>300</sup> This option might also be attractive to Cambodian government officials who do not want to officially condone sex work but care about the women who work in the industry.<sup>301</sup> Additionally, decriminalization of consensual sex work would be narrow enough to allow laws against human trafficking and child prostitution to remain in force.<sup>302</sup>

Many argue that regulation does not work because it only drives sex work further underground.<sup>303</sup> However, when coupled with decriminalization, a regulatory approach would be greatly beneficial to Cambodia’s unique

294. Davidson & Anderson, *supra* note 31, at 14.

295. See ECONOMIST, *supra* note 279, at 58-59.

296. CAMBODIAN LEAGUE, *supra* note 12, at 27.

297. See Hansen, *supra* note 22 (evidencing the need for laws protecting trafficking victims. Lack of trafficking laws is not an option for Cambodia).

298. Demaere, *supra* note 288, at 14.

299. *Id.*

300. Judy Miller & Dheeshana Jayasundara, *Prostitution, the Sex Industry, and Sex Tourism*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 463 (Claire Renzetti, Jeffery L. Edlson, & Raquel Kennedy Bergen eds., 2001).

301. Sopheheng Cheang, *Cambodian Prostitutes Protest Police Crackdown, Allege Physical and Sexual Abuse*, ASSOC. PRESS, June 4, 2008, available at <http://a.abcnnews.com/International/wireStory?id=4996865> (indicating that prostitution is unacceptable in Cambodian culture).

302. *Pro's and Con's*, *supra* note 100.

303. Yasunobu, *supra* note 28, at 11 (being careful not to confuse “regulation” with “criminalization.” Regulation is merely a means to oversee the industry, but does not criminalize the act of prostitution itself).



situation.<sup>304</sup> On the regulation side of the policy, laws can provide for the punishment of people who violate regulations: for example, a violation of health standards, abuse by brothel owners, or instances involving coerced sex work.<sup>305</sup> But decriminalizing the act of prostitution itself allows women who depend on the industry for their livelihood to continue to feed themselves and their families.<sup>306</sup> Each system has its disadvantages, but the successes of a decriminalization program must not be overlooked when forming policy for Cambodia.<sup>307</sup>

A complete deregulation of the sex industry in Cambodia would perhaps be even more dangerous to sex workers than a complete prohibition.<sup>308</sup> Without any legal system addressing the sex industry, brothel owners, pimps, and corrupt police officers would be given free reign to abuse sex workers' basic human rights, leaving the workers with essentially no legal recourse.<sup>309</sup> Additionally, there would be less monitoring of sex establishments, decreasing the chances of trafficked sex workers from receiving the aid they need, whether it be "rescue" or empowerment programs.<sup>310</sup>

Cambodia's anti-trafficking law is a giant step backward in the progress toward preventing new cases of HIV in the country.<sup>311</sup> The 100% Program has clearly made a great impact on the HIV infection rates throughout Cambodia, even though the program is targeted at a small portion of the population.<sup>312</sup> However, the new anti-trafficking law has hindered this progress and is sending the country down a familiar path to another HIV epidemic.<sup>313</sup>

Outlawing prostitution is dangerous for those in the sex industry because it encourages even more high-risk behavior among groups already seen as vulnerable.<sup>314</sup> This threat of high-risk behavior among high-risk groups brings

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304. Joint U.N. Programme on HIV/AIDS [UNAIDS], UNAIDS Global Reference Group on HIV/AIDS & Hum. Rts., *Sex Work and HIV/AIDS: The Violence of Stigmatization*, 2 (2003) [hereinafter *UNAIDS Sex Work*].

305. Miller & Jayasundara, *supra* note 300, at 463.

306. *Sex Worker Myths vs Reality*, URBAN JUSTICE CTR.: WORKING GROUP ON SEX WORK & HUM. RTS., <http://www.sexworkersproject.org/media-toolkit/downloads/08-Myths.pdf> (last visited Mar. 4, 2009).

307. *UNAIDS Sex Work*, *supra* note 304, at 2.

308. Yasunobu, *supra* note 28, at 14 (noting that when prostitutes do not have legal status, it leaves the door open for human rights abuses and exploitation).

309. *Id.*

310. *Id.*

311. *See* IRIN, *supra* note 20.

312. PSI, *supra* note 56, at 1.

313. *See* IRIN, *supra* note 20.

314. *See* Ratana, *supra* note 97 (noting an illustration that outlawing prostitution drives sex workers and other vulnerable groups to engage in dangerous behaviors. In Cambodia, outlawing prostitution has led to sex workers foregoing condom-use in an effort to avoid arrest.).

with it the chance that the HIV infection rates will increase, despite the progress already made with the 100% Program.<sup>315</sup> High-risk groups not only include sex workers now taking a chance to work in an illegal industry, but also other marginalized groups such as men who have sex with men.<sup>316</sup>

*D. Meeting in the Middle: Taking Steps to Ensure that Both Policies Work Together*

1. Protect Basic Human Rights

Organizations engaged in fighting the spread of HIV/AIDS all agree that essential to the success of any HIV/AIDS program is to uphold and protect basic human rights.<sup>317</sup> As a member of the United Nations, Cambodia is well aware of international standards on human rights.<sup>318</sup> Cambodia is lacking in several key areas, especially education and healthcare.<sup>319</sup>

As a member of the United Nations, Cambodia is already a signatory to several pieces of human rights legislation, including the Universal Declaration of Human Rights and the Convention on Eliminating of All Forms of Discrimination Against Women (CEDAW).<sup>320</sup> In fact, much of the CEDAW is codified in Cambodia's Constitution ratified in 2003.<sup>321</sup> Yet many of Cambodia's current practices are in violation of the provisions of these two pieces of legislation.<sup>322</sup> Most notably, Articles 9, 10, and 11 of the Universal Declaration on Human Rights declare that it is a basic human right to be free from arbitrary arrest and detention, to be presumed innocent until proven guilty and to have a fair, speedy, and public trial.<sup>323</sup>

Women in Cambodia have protested the human rights violations associated with the passage of the Law on Suppression of Human Trafficking and Sexual Exploitation, saying "[d]on't be fooled by talk of rescuing 'sex slaves' until you

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315. *Id.*

316. SOVANNARA & WARD, *supra* note 201, at iv.

317. *See generally* UNAIDS *Handbook*, *supra* note 32, at 13-14 (noting the general notion that upholding human rights is central to the fight against HIV/AIDS).

318. *See* Universal Declaration, *supra* note 274, art. 1.

319. CAMBODIA TRIBUNAL MONITOR, *supra* note 21.

320. Int'l Justice Mission, *supra* note 261, at 1; *see also* Universal Declaration, *supra* note 274; United Nations Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/34/46 (Sept. 3, 1981) (noting that as a signatory to the convention, Cambodia has agreed in Article 3 to "ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.").

321. Kingdom of Cambodia Const. Preamble, art. 32; CAMBODIAN LEAGUE, *supra* note 12, at 9.

322. *See* Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia).

323. Universal Declaration, *supra* note 274, art. 9-11.

have heard our testimonials and seen video evidence of the brutality and misery this new law is causing.”<sup>324</sup> This demonstrates that by the passage of this overly broad law, even though the government is hoping to protect the human rights of some people, the law is unnecessarily hurting the human rights of others.<sup>325</sup> Before passing such a far-reaching law, policy makers must consider the impact the law will have on all citizens, and not look at the problem through such a narrow lens.<sup>326</sup>

## 2. Involve Sex Workers in the Policy Making Process

Sex worker groups, governmental agencies and non-governmental organizations all agree: involvement of sex workers in the policy making process is crucial to its success.<sup>327</sup> The Asian Pacific Network of Sex Workers (APNSW) laments that the “[n]on-inclusion of sex workers in the policy making process shows little respect towards the people that the policy wishes to regulate.”<sup>328</sup> UNAID reiterates this sentiment, saying “there has been a lack of meaningful consultation with sex workers . . . ,” and urges UNFPA and UNAIDS Secretariat to “involve sex workers and consult with the organizations that represent them . . . .”<sup>329</sup>

Those who most understand the plight of sex workers are the sex workers themselves.<sup>330</sup> Until they are involved in the policy-making process, their needs and rights will not be adequately addressed.<sup>331</sup> Involving sex workers in the policy-making process empowers them and gives them a voice in a society where their voices are often lost.<sup>332</sup> Involvement achieves several goals, including promoting understanding of sex worker issues among the general population, and more importantly, law enforcement officers.<sup>333</sup>

It is important to note, however, that it is *genuine* participation necessary to truly make sex workers a part of the solution to their problems.<sup>334</sup> Some nations purport to involve sex workers, but do not actually implement any of their

324. Video: Anti-trafficking: Cambodia the Reality, Women’s Network for Unity (June 4, 2008) available at <http://blip.tv/file/970833>.

325. See generally Ratana, *supra* note 97, and IRIN, *supra* note 20 (illustrating that the Law on Suppression of Human Trafficking is unintentionally affecting sex workers who are not victims of trafficking and limiting their rights, such as access to health care).

326. UNAIDS *Handbook*, *supra* note 32, at 13-14.

327. See Hunter, *supra* note 26.

328. *Pro’s and Con’s*, *supra* note 100.

329. UNAIDS *Reference*, *supra* note 33, at 3.

330. *Perspective*, *supra* note 173.

331. *Id.*

332. *Id.*

333. See UNAIDS *Guidelines*, *supra* note 29, at 27.

334. Melissa Ditmore, Editorial, 8 RESEARCH FOR SEX WORK 1, 7-9 (2005).

suggestions.<sup>335</sup> This is actually counterproductive, since it communicates the attitude that the opinions of sex workers have little value and it furthers the distrust of policymakers in general.<sup>336</sup>

### 3. Ensure Proper Enforcement of Laws and Guard Against Police Abuses

Many international organizations are calling on Cambodia to hold its local governmental authorities accountable when it comes to the enforcement of the Law on Suppression of Human Trafficking and Sexual Exploitation.<sup>337</sup> It is clear that Chief Kimhong does not take the allegations of rape and robbery at the hands of detention center guards and police very seriously.<sup>338</sup> In order for the program to work, there must be a system in place that keeps local authorities in check and establishes a sense of safety and trust in sex workers.<sup>339</sup>

Corruption in the enforcement of the anti-trafficking laws not only affects those voluntarily participating in the sex industry, but also victims of human trafficking.<sup>340</sup> Law enforcement are often poorly trained and therefore not equipped to deal with the special needs of sex workers and victims of human trafficking.<sup>341</sup> In addition to receiving poor training, officers do not follow protocol mandated by law when arresting sex workers in brothels.<sup>342</sup>

Under Cambodian law, detained sex workers must be referred to Ministry of Social Affairs, Veterans and Youth, where they will be referred to women's crisis centers.<sup>343</sup> In reality, sex workers are sent to rehabilitation centers, which are actually more like prisons.<sup>344</sup> By ignoring government protocol and sending sex workers to rehabilitation centers, authorities are further oppressing sex workers by denying them the treatment, education, and support the government clearly thinks is necessary.<sup>345</sup> The abysmal conditions of Cambodian prisons do not have the proper provisions to care for those already living with HIV/AIDS, and nor do the facilities provide safeguards against the spread of the disease to

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335. Nicole Cheetham, *Community Participation: What is it?*, 14 *ADVOCATES FOR YOUTH: TRANSITIONS* 3 (2002).

336. *Id.* (inferring that if true participation is productive, non-genuine participation is counter-productive).

337. Int'l Justice Mission, *supra* note 261, at 1.

338. *MONSTERS & CRITICS*, *supra* note 149.

339. USAID, *supra* note 8, at 45.

340. USAID INTERNATIONAL, *supra* note 89, at v.

341. *Id.*

342. Int'l Justice Mission, *supra* note 261, at 1.

343. *Id.*

344. LICADHO, *supra* note 142.

345. Int'l Justice Mission, *supra* note 261, at 1-2 (noting that it's clear the government wants this because it's part of its protocol).

other prisoners.<sup>346</sup> The fact that these prisons offer such unsafe environments is only aggravated by the fact that many sex workers are unlawfully detained and abused inside the prison walls.<sup>347</sup>

Abuse of police power also undermines the government's efforts to fight human trafficking.<sup>348</sup> While the police are busy cracking down on non-trafficked adults in the sex industry, victims of human trafficking who truly need help are being ignored.<sup>349</sup> Police forces need to use their power in a positive manner, focusing their efforts to enforce the human trafficking purposes of the Law on Suppression of Human Trafficking and Sexual Exploitation.<sup>350</sup>

An important step toward reducing police abuse is sensitivity training for officers.<sup>351</sup> In particular, officers assigned to areas known for sex work must have special training in how to deal with sex workers and increase an understanding of sex workers' issues.<sup>352</sup> Evidence points to the fact that police attitudes toward sex workers could be changed by seminars about sex worker rights, health issues, and the day-to-day lives of sex workers.<sup>353</sup> By providing law enforcement officers with crucial information about the realities of sex workers, Cambodia can help break down barriers of discrimination and help law enforcement be more sensitive when dealing with sex workers.<sup>354</sup>

## VI. CONCLUSION

Cambodians have long been subjected to a tumultuous government, a corrupt police force, poverty, and more recently a HIV/AIDS pandemic.<sup>355</sup> Women have been especially harmed by the country's history, by being blocked from an adequate education and as a result, living in poverty and suffering abuses at the hands of abusive men and police officers.<sup>356</sup> The history of the nation has laid the groundwork for the modern problems, but Cambodia is fertile ground for change.<sup>357</sup>

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346. REDEFINING AIDS, *supra* note 18, at 2.

347. LICADHO, *supra* note 142.

348. *Id.*

349. *Id.*

350. *Id.*

351. *See* USAID, *supra* note 8, at 45.

352. *Id.*

353. Yury Sarankov et al., *Human Rights and Legal Services for Sex Workers in Central Asian Republics: Points for Consideration*, 8 RESEARCH FOR SEX WORK 8-9 (2005).

354. UNAIDS *Guidelines*, *supra* note 29, at 27.

355. *See* USAID, *supra* note 8, at 45; *see also* CAMBODIA TRIBUNAL MONITOR, *supra* note 21.

356. USAID, *supra* note 8, at 45; *see also* CAMBODIA TRIBUNAL MONITOR, *supra* note 21.

357. *See* CAMBODIA TRIBUNAL MONITOR, *supra* note 21.

The Law on Suppression of Human Trafficking and the 100% Program are both programs with great potential, but they are not meeting that potential. If the two programs remain the same and continue to compete and work against one another, the progress the country has made in the fight against HIV/AIDS will be in jeopardy.<sup>358</sup> The Law on Suppression of Human Trafficking and Sexual Exploitation was a law passed in haste and without thought to the true consequences of the law.<sup>359</sup> In a rush to conform to standards of the United States in order to continue receiving funding for HIV programs, the Cambodian government passed a law greatly harming a large, vulnerable portion of the population.<sup>360</sup> The law has a noble goal, but the means of achieving that goal are not worth the sacrifices required of the thousands of adults working voluntarily in the sex industry.<sup>361</sup>

Likewise, the 100% Program has an admirable goal, but has gone about achieving that goal by ineffective means.<sup>362</sup> Through human rights violations and police abuses of sex workers in the name of the program's enforcement, the 100% Program's effectiveness has been severely hindered.<sup>363</sup> Successful HIV prevention programs highly value the human rights of those targeted by the program, and with the right changes Cambodia will be well on its way to an effective program.<sup>364</sup>

In conclusion, the Cambodian government and international community must work together to harmonize the Law on Suppression of Human Trafficking and Sexual Exploitation and the 100% Program.<sup>365</sup> This can be accomplished by implementing a few key changes, taking into account the complex and unique environment in Cambodia.<sup>366</sup> First, the government must reexamine the Law of Suppression Human Trafficking and Sexual Exploitation and find that the flat criminalization of all forms of prostitution is not right for Cambodia.<sup>367</sup> It leaves open the door for human rights abuses and the risk of a second wave of an HIV epidemic.<sup>368</sup> Secondly, the nation's leaders must continue with the 100%

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358. See Ratana, *supra* note 97; see also IRIN, *supra* note 20.

359. Ditmore, *supra* note 26.

360. *Id.*; see U.S. State Dept. Press Release I, *supra* note 79.

361. See IRIN, *supra* note 20.

362. See *Perspective*, *supra* note 173.

363. *Id.*

364. *Id.*

365. See UNAIDS *Handbook*, *supra* note 32, at 12-14.

366. *Id.*

367. See, e.g. Law on Suppression of Human Trafficking and Sexual Exploitation art. 1 (2008) (Cambodia) (noting that the law does not differentiate between consensual and coerced sex work); see also CAMBODIAN LEAGUE, *supra* note 12, at 28.

368. See ECONOMIST, *supra* note 279, at 58-59.

Program, making changes to protect the human rights of sex workers.<sup>369</sup> Finally, the program must be expanded to reach overlooked vulnerable groups, such as MSM and beer girls.<sup>370</sup>

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369. PSI, *supra* note 56, at 1.

370. REDEFINING AIDS, *supra* note 18, at 16.