

The report of the UNAIDS Advisory Group on HIV and Sex Work

This document does not necessarily represent the views of all members of the Advisory group on HIV and Sex Work, nor the stated positions, decisions or policies of the UNAIDS Secretariat or any of the UNAIDS Cosponsors.

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Introduction

This report was prepared by the UNAIDS Advisory Group on HIV and Sex Work to complement the UNAIDS Guidance Note on HIV and Sex Work (2009). The Advisory Group includes representatives of organisations affiliated with the Global Network of Sex Work Projects, independent experts from academia and civil society organisations, representatives of UNAIDS Co-Sponsors and the Secretariat. The Advisory Group was constituted in 2009 by the Executive Director of UNAIDS to provide advice and guidance to UNAIDS on matters related to HIV and sex work, while paying particular attention to the human rights of female, male, and transgender sex workers and the goal of universal access to HIV prevention, treatment, care and support for sex workers.

Among its first tasks, the Advisory Group prioritised the development of these analyses. In a meeting in May 2009, UNAIDS Executive Director Michel Sidibé, UNAIDS Cosponsors and the Secretariat, and representatives of the Global Network of Sex Work Projects agreed on four themes on which further clarification was needed. The four themes are as follows:

- 1) The legal and policy environment for sex work, including criminal and other laws affecting sex workers;
- 2) Shifting the strategic focus from reduction of demand for sex work to reduction of demand for unprotected paid sex;
- 3) The problematic conflation of sex work and trafficking; and
- 4) Economic empowerment of sex workers.

The Advisory Group strongly affirms that sex workers and their organisations play a crucial role in confronting HIV and in many places have an outstanding record in helping to achieve universal access. However, sex workers often face widespread and interconnected human rights violations which impede both their effective participation in HIV responses and their right to access HIV and other health and social services. Stigma and discrimination within society results in repressive laws, policies and practices against sex work, and the economic disempowerment of sex workers. Policies and programmes to reduce the demand for sex work, designed ignoring the voices of sex workers, often result in unintended harms including increased HIV risk and vulnerability for sex workers and their clients, and diverting attention from protecting sex workers' rights. The frequent failure of policy-makers, religious leaders and society to distinguish sex work from human trafficking has sometimes led to involuntary displacement, harassment or detention of sex workers. Violence against sex workers is too often committed with impunity by state and civilian actors, exacerbating sex workers' HIV vulnerability. Sex workers are often excluded from access to benefits and financial services available to the general population and prevented from forming organisations that enable economic empowerment and social inclusion.

The Advisory Group offers these analyses to contribute a greater understanding of the situation of sex workers – an understanding that is necessary to address the abuses they face and to ensure they have universal access to HIV services. Every effort has been made to highlight good practices that enhance human rights protections for sex workers, as well as practices that create barriers to universal access to HIV prevention, treatment, care and support. The hope of the Advisory Group is that the information presented here will help shape programmes and policies on HIV and sex work that are truly human rights-based.

The legal and policy environment and the rights of sex workers

The *UNAIDS Guidance Note on HIV and Sex Work* makes the following observation related to law, policy and law enforcement:

“In many countries, laws, policies, discriminatory practices, and stigmatising social attitudes drive sex work underground, impeding efforts to reach sex workers and their clients with HIV prevention, treatment, care and support programmes... Stigma and discrimination must be effectively addressed; violence and abuse of sex workers must be reduced; and legal barriers to participation should be revised. Achieving the changes in social and legal conditions that limit access to [HIV] services will take time, but it is critical to implement needed legal and policy reforms now.”¹

This document elaborates on the statement above, by highlighting elements of law, law enforcement and policy that are particularly important to sex workers’ right to universal access to HIV services and their empowerment and dignity.

Because HIV disproportionately affects people – including men who have sex with men, sex workers, people who use drugs – who are often discriminated against and criminalised, UN member states and agencies have long recognised the importance of protecting their rights and reducing legal and policy barriers to their access to HIV services. In both the 2001 Declaration of Commitment and HIV/AIDS and the 2006 Political Declaration on HIV/AIDS, UN member states unanimously committed themselves to this goal.² The UN Human Rights Council similarly urged member states to work towards “elimination of criminal and other laws that are counterproductive to HIV prevention, treatment, care and support.”³ The *UNAIDS Strategy 2011-2015: Getting to Zero* identifies as one of its 10 goals that the number of “countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality will be reduced by half”.⁴ The *UNAIDS Guidance Note on HIV and Sex Work* should reinforce global recognition and action in favour of removing legal and policy barriers to HIV services for sex workers.

Laws, enforcement and policies that impede effective HIV responses for sex workers

In many countries, sex workers face social marginalisation and disdain that are barriers to universal access and are exacerbated by a wide range of laws, law enforcement practices and policies. Criminal laws are only one element of this legal and policy environment. Among the laws, policies and practices that can undermine sex workers’ rights and their access to HIV services are the following:

Criminal prohibitions against sex work or aspects of it

Selling sex is a criminal act in some places, and activities associated with the selling of sex – operating a brothel, solicitation for prostitution, living off the earnings of sex work, and transporting or managing sex workers – are frequently criminalised.⁵ Thus, even if the selling of sex is not a criminal act, sex workers and their managers, other associates and even family

members can face criminal charges. In Sweden and Norway, the buying of sex is criminalised, an approach based on the idea that the client may merit punishment, but the sex worker is a ‘victim’.

There is very little evidence to suggest that any criminal laws related to sex work reduce demand for sex or the number of sex workers. Rather, all of them create an environment of fear and marginalisation for sex workers, who often have to work in remote and unsafe locations to avoid arrest of themselves or their clients. These laws can undermine sex workers’ ability to work together to identify potentially violent clients and their capacity to demand condom use of clients. The approach of criminalising the client has been shown to backfire on sex workers. In Sweden, sex workers who were unable to work indoors were left on the street with the most dangerous clients and little choice but to accept them.⁶ Where sex work is criminalised, sex workers are very vulnerable to abuse and extortion by police in detention facilities and elsewhere.

Municipal laws and regulations

A wide range of municipal laws related to “public order” frequently target sex workers, whether criminal laws are widely applied or not. Sex workers are often charged with such offences as vagrancy, public nuisance, stopping the flow of traffic, being in parks or other public places after hours, obscenity, public alcohol consumption and the like. These statutes give police wide latitude to arrest and detain sex workers. Even if they do not generally result in long periods of detention, they contribute to an atmosphere of fear and marginalisation.

Anti-trafficking laws

Sex workers have been arrested and imprisoned under anti-trafficking statutes, even when they have never been trafficked and do not seek “rescue” (see the section ‘Differentiating sex work and trafficking’).⁷ Raids of workplaces of sex workers in the name of anti-trafficking are harmful and wasteful, often displacing sex workers and ironically undermining the anti-trafficking work of sex worker organisations.

Other criminal laws

Many countries criminalise HIV transmission and exposure. These laws are often unevenly applied, but sex workers are particularly vulnerable to charges under these laws, which in many cases do not correspond to UN guidelines.⁸ In addition, male and transgender sex workers are disproportionately vulnerable to criminal charges in places where sex between men and transgender are criminalised.

Health regulations and practices

Whatever the criminal law regime, sex workers may be subjected to mandatory HIV testing and other medical procedures. Where the police are heavily involved in enforcement of 100% condom use programmes (see the section ‘Shifting the strategic focus’), they may represent one more context in which sex workers have to fear police abuse and extortion.

In addition, customary and religious law may prohibit sex work or may contribute to an atmosphere of moral condemnation of sex work.

Impact on the lives of sex workers

The application of criminal law to sex work is often associated with heinous abuses of the rights of sex workers. They are highly vulnerable to sexual and physical abuse in detention. They are often not properly charged or allowed to appear before a judge or magistrate. Police may confiscate condoms and use possession of condoms as evidence of sex work in the absence of other evidence. Confiscation of condoms is clearly counter-productive from a health perspective and disrespectful of the rights of sex workers to protect themselves from HIV. Incarceration not only exposes sex workers to abuse by those detaining them, but it disrupts their livelihood. Moreover, it is clear that when sex work is criminalised or targeted by administrative laws, sex workers who suffer violence or abuse at the hands of clients or other persons are too fearful to report these offenses to the police. They have little reason to expect that the police would help them.

Criminalisation of sex work can impede sex workers' ability to form collectives and other organisations. Sex worker collectives in many parts of the world have greatly enhanced sex workers' ability to organise HIV prevention and information services for themselves, their clients and the communities where they live. From the perspective of universal access to HIV services, undermining sex worker organisations is one of the most important negative effects of law enforcement practices.

Laws and policies such as those described above contribute to the economic and social marginalisation of sex workers and their families (see the section 'Economic empowerment'). Effectively seen by society as criminals even if they don't have a formal criminal record, sex workers may be unable to own or inherit property; register the births of their children; gain access to education, justice, health care or banking services; get a loan or purchase a house. This legal discrimination can lead to further social exclusion, as well as poverty, harassment and exploitation. Plainly, moreover, this marginalisation is a barrier to access to health care and adds to the risk that sex workers will be treated disrespectfully even if they have access to health services.

Examples of good practice

Courts in several countries have challenged laws that undermine sex workers' enjoyment of human rights. For example, in 2010, the South African Labour Appeals Court held that even though sex work was illegal in the country, sex workers were still entitled to protection against unfair dismissal by employers.⁹ This decision noted, however, that sex workers as part of an illegal profession would not be able to participate in collective bargaining. An earlier case in Bangladesh faulted abusive action by police who evicted sex workers from brothels in Tanbazar and Nimtali, concluding that this removal of their livelihood was a violation of sex workers' right to life.¹⁰ Violence and verbal abuse by the police in this case were condemned by the court. In 2010, a provincial high court in Ontario (Canada) found that Canadian criminal law provisions against brothel-keeping, "communicating" for prostitution and living on the earnings of sex work were not consistent with sex workers' right to liberty and security of the person as protected by Canadian law. The court found laws to be unreasonably limiting "in a free and democratic society."¹¹

Some countries and sub-national jurisdictions have decriminalised sex work, removing all penal code violations related to sex work, sometimes also establishing health regulations

or other non-penal code regulatory frameworks for sex work. These include Germany, the Netherlands, Senegal, New Zealand, parts of Australia, and some counties in the US state of Nevada. When it decriminalised sex work and sex work-related activities in 2005, the government of New Zealand undertook a study of the impact of this change on the lives of sex workers. The study found that post-decriminalisation many sex workers felt more empowered to refuse difficult clients and more able to seek help from the police when they were the victims of crime or violence.¹²

Sex workers in some countries have benefitted from programmes facilitating their access to legal services or to information about their rights. For example, the Healthy Options Project Skopje (HOPS) in Macedonia provides legal services to female sex workers.¹³ It worked with sex worker groups to raise public awareness and fight police repression following the detention, forced HIV testing and public humiliation of sex workers in 2008. The Asociación de Mujeres Meretrices de la Argentina (AMMAR) provides legal aid to female sex workers and has challenged police harassment and restrictions on where sex workers can work, partly through an alliance with labour unions.¹⁴

Sex worker collectives in many parts of the world have been able to overcome many of the consequences of punitive legal and policy environments. Sex worker organisations in India, for example, have been able to work with both the police and the community to reduce levels of violence against sex workers, as well as to establish health and social services for themselves and their families.¹⁵ The VAMP collective that grew out of the work of the NGO SANGRAM in Sangli, India, established housing and other services for children of sex workers whose mothers died.¹⁶

Conclusion and recommendations

Laws, police practices and policies in many countries undermine sex workers' enjoyment of their rights. Criminalisation of sex work and the application of non-criminal laws to sex work exacerbate the stigma and moral judgementalism experienced by sex workers. Law and law enforcement practices often open sex workers to extra-legal abuses, including sexual and physical abuse by police and violations of due process. In many ways, including by undermining sex workers' ability to organise to help each other, these violations of sex workers' rights are barriers to their access to comprehensive HIV services.

States can take many actions to establish legal and policy environments that are conducive to universal access to HIV services for sex workers. Among these are the following:

- States should move away from criminalising sex work or activities associated with it. Decriminalisation¹⁷ of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers' rights or dignity and that ensure their enjoyment of due process of law.
- Whatever the legal regime, states should ensure that sex workers have unimpeded access to all HIV prevention, treatment, care and support programmes and that they participate meaningfully in programme and policy decision-making affecting them. Prevention programmes should ensure access to lubricants as well as condoms. HIV-positive sex

workers must be considered a high-priority population for uninterrupted access to treatment services.

- States should take all necessary measures to enable sex workers to enjoy work-related protections like other workers, including workplace safety and protection from violence, exploitation and discrimination.
- Where criminal law applies, governments and donors should support sex workers' access to legal services, mechanisms of accountability for police abuse, information for sex workers on their rights, and removal of impediments to forming sex worker organisations. Reduction of sex work-related stigma should figure in public awareness and information programmes.
- Where governments have recognised the legality of sex work, health regulations related to sex work should avoid mandatory medical procedures, respect sex workers' right to meaningful participation in health services, and give priority to measures that empower sex workers to protect themselves from HIV and other sexually transmitted diseases.

These recommendations are in line with the spirit of UN declarations and strategies noted above as well as the International Guidelines on HIV/AIDS and Human Rights. As the International Guidelines note, states have a responsibility to ensure that criminal law is reviewed with the aim of removing criminal sanctions on sex work and ensuring that any non-criminal regulations support safe sex in sex work and ready access of sex workers to comprehensive HIV services.¹⁸

Creating a legal and policy environment conducive to sex workers' access to comprehensive HIV services is good practice from both public health and human rights perspectives. Male, female and transgender sex workers have the right to protect themselves from discrimination, violence, abuse and disease. Realising that right enables them to live lives of dignity and also to be agents of HIV prevention and information with their clients and the larger community.

Shifting the strategic focus from reduction of demand for sex work to reduction of demand for unprotected paid sex

What are the issues?

Sex workers around the globe are disproportionately affected by HIV.¹⁹ However, eradicating sex work is neither feasible nor an appropriate goal for public health programmes. Effective approaches to HIV prevention in the context of sex work are those that recognise the realities of sex work and enable sex workers to protect themselves from the risk of HIV transmission. One of the key aspects of this is to enable sex workers to protect themselves every time they have sex with a client.

Sex in and of itself – whether paid for or not – does not cause HIV infection. Rather, unprotected sex between HIV sero-discordant partners can result in the transmission of HIV from one infected partner to the other. Penetrative sex is an HIV-infection risk for sex workers and their clients when condoms are not used—particularly in countries where people have a low perception or knowledge of the risk factors involved in HIV transmission. Correct condom use during penetrative sex is an effective way of reducing transmission of HIV and other sexually transmitted infections.²⁰ However, in many settings, issues such as poor availability of condoms and water-based lubricants, police harassment and arrest of sex workers when they carry condoms, condoms being used as evidence of brothel keeping, and clients’ lack of knowledge about condoms and preference for sex without condoms are barriers to consistent condom use.

UNAIDS has recommended that criminal laws and punitive policies around sex work, which are barriers to universal access to HIV prevention, treatment and care, should be removed and that supportive policies should be enacted to empower and “protect sex workers and their clients, including safe sex during sex work”.²¹ Similarly, the UNAIDS Joint Action for Results Outcome Framework states that HIV prevention activities should promote the empowerment of sex workers to protect themselves from HIV infection, and that law enforcement agencies and the judicial system should protect the rights of sex workers.¹⁹

The term “end demand” is often used to mean policies, strategies and legal efforts to target the clients of sex workers in an effort to reduce or eliminate sex work altogether. In countries where buying or seeking to buy sex is illegal, such “end demand” efforts can include arresting and prosecuting clients, and imposing fines, jail or rehabilitation programmes on convicted clients; impounding or seizing clients’ vehicles; and publishing clients’ names on billboards, on websites or in newspapers. Furthermore, well-meaning but ill-informed service and healthcare providers and policy actors from community-based organisations, nongovernmental organisations, donors, international organisations and government agencies believe that they are helping sex workers by calling for criminalisation of clients. However, there is no evidence that these “end demand” initiatives reduce sex work or HIV transmission, or improve the quality of life for sex workers. “End demand” initiatives are often either the product of punitive laws criminalising sex work, or the approach used by those wishing to see punitive

laws introduced. These laws do not reduce the scale of sex work, but they do make sex workers more vulnerable.

The generally negative attitudes to sex workers and clients that characterise efforts to end demand also contribute to the neglect of evidence-informed HIV prevention programmes and services. These attitudes also encourage law enforcement officials and local authorities to enforce laws in ways that increase HIV vulnerability among sex workers—for instance, by using condoms as evidence of involvement in sex work and thus as grounds for arrest or detention, which discourages condom use.

Activities to ensure that clients take responsibility for their own sexual behaviour, thereby protecting themselves and all their sexual partners from HIV infection, must be developed and supported. Clients' negative attitudes towards, female, male and transgender sex workers and towards condom use need to be addressed and challenged.

Expanding and ensuring condom use by sex workers and their clients is feasible: it has been achieved in many settings. More needs to be done to ensure consistent protected sex. Permanent availability of both male and female condoms and water-based lubricant, empowerment of sex workers to demand condom use, and increased acceptance of condom use by clients are all issues that require urgent and immediate action.

What does it mean for HIV?

Empowering sex workers to have greater control over their working conditions, rather than “end demand” approaches, should be the focus of HIV prevention efforts. Additionally, reducing exploitation of, and violence against, sex workers is a key strategy in HIV prevention and comprehensive workplace-related health and safety for all sex workers. When sex workers can successfully ensure that their customers use condoms, sex workers are less likely to become infected by HIV. As condom usage in sex work settings becomes normalised, and unprotected sex is seen as undesirable, clients will adapt their expectations and not insist on sex without condoms, effectively reducing the demand and extent of this risk behaviour. Moreover, when customers of sex workers actively participate in and facilitate the use of condoms with all sex encounters (paid and unpaid), HIV transmission will be substantially reduced. The aims of programmes in the context of sex work and HIV prevention should be to:

- reduce the demand from clients for unprotected sex;
- reduce exploitation of sex workers of all genders;
- change the power dynamics within sex work so that sex workers are able to exercise control over the use of condoms and so that these decisions are not put in the hands of clients or managers;
- ensure that male and female condoms and water-based lubricants are available, and that sex workers are not penalised for possession of condoms; and
- increase the ability of sex workers of all genders to demand the use of condoms with clients.

The key issue for HIV prevention should be on changing clients' attitudes to women, men and transgender sex workers, and to condom use. Increasing clients' responsibilities and role in reducing HIV infection goes hand in hand with improving the status

of sex workers. Challenging stereotypes and norms that disadvantage sex workers—legally, economically, politically, socially and culturally—provides greater autonomy and thus choices for sex workers, and reduces the pressure to engage in sex with clients who refuse to use condoms. Efforts and messaging that aim to reduce HIV risk and vulnerability associated with sex work need, in particular, to address the demand for unprotected paid sex.

Typically, commercial sex acts involve two people. Both have responsibility for practicing safer sex, although it is also important to recognise that power dynamics in commercial sex encounters tend to favour clients—particularly if clients are prepared to pay more money for sex without a condom.

Clients of sex workers need to take responsibility for their own sexual behaviour: they have a responsibility to insist on protected paid sex. Clients also have a responsibility to not compromise the health and safety of sex workers by demanding unprotected paid sex. In this way, they take responsibility for protecting themselves and their partners from HIV infection and other sexually transmitted infections.

Communication strategies addressing clients are unlikely to succeed if they are moralising or blaming, or if they depict clients as perpetrators of exploitation or as immoral. Clients are people. Clients also deserve HIV prevention services, including education about condom usage with paid partners. Moreover, when programmes adopt judgemental approaches, they fail to address the reasons many clients are reluctant to use condoms—such as low perception of risk for HIV infection, lack of knowledge and lack of availability of condoms and water-based lubricant.

Good practices

HIV prevention programmes should work to empower sex workers to insist on protected and safe paid sex in their workplace. This approach would be in accordance with the emphasis placed by the ILO HIV and AIDS Recommendation, 2010 (No. 200) of all modes of HIV transmission.²² Condoms and water-based lubricants should be made readily available to sex workers and in all sex work settings, and they should be accessible and affordable. Under no circumstances should the police or any other regulatory authority use possession of condoms, discussions of condoms or safer sex, or any other evidence of condoms and safer sex practices (for example, signs requiring condoms or condom wrappers in trash receptacles) as evidence of sex work for arrest or prosecution purposes.

One critical issue is the involvement of brothel owners and managers in condom programmes. Brothel owners or managers can play a supportive role in ensuring that sex workers and their clients have access to condoms, and that condom use is the established norm within that setting. Alliances should be made with managers and agents of sex workers to encourage and support efforts to implement worker safety initiatives, such as requiring all customers to use condoms and posting signs to such effect. It is critical that all programmes follow a sex worker-led approach and enable sex workers to collectively determine what role brothel owners should play in HIV/AIDS intervention programmes.

Male and transgender sex workers have unique, as well as overlapping, challenges and needs in comparison to female sex workers engaged in commercial sex. It is important

that HIV prevention programmes working with sex worker communities enable male and transgender sex workers to identify how to address their own specific needs.

In all cases, sex workers must have continuous access to both male and female condoms and water-based lubricants.

Specific examples of programmes that have improved sex workers' ability to ensure condom use in their work include:

- In Mombasa, Kenya, the Population Council conducted an intervention to meet male sex workers' health needs and promote behaviour change. Male sex workers were supported as peer leaders and educators in their communities to engage other male sex workers on condom use with clients. The project demonstrates the importance of engaging sex workers, using their existing access to the broader sex worker community and developing their ability to educate and support one another on health and safety matters in the industry;²³
- In Rio de Janeiro, Brazil, the Horizons programme conducted a study to document the process and effectiveness of integrating community development activities and interventions to prevent HIV and other sexually transmitted infections among female sex workers. Community development components, including social cohesion and mutual aid, were significantly associated with consistent condom use among sex workers and their paying clients in this study.²⁴ More research should be done to evaluate the relationship between belonging to a community with shared values, norms and understandings and health behaviours and outcomes; for example consistent condom use and reduction of HIV/STI;
- In China the International Labour Organization is targeting men in the mining sector with comprehensive HIV/STI prevention interventions. Men working in industrial sectors that require them to work away from their families often engage in risky behaviours such as unprotected paid and casual sex. Consequences can include increased HIV/STI transmission among sex workers and the regular partners of these men. To address this, the International Labour Organization is working with large and medium-scale mining companies in southern China to promote responsible sexual behaviours among mine workers, including proper treatment of STIs, consistent condom use and elimination of violence against women, including sex workers. Preliminary results, assessed through qualitative and quantitative surveys, show significant increases in condom use and health-seeking behaviours, and increased reported condom use in paid and casual sex.

More generally, an essential component of any HIV prevention programming is the inclusion of sex workers in the development, implementation and evaluation of HIV programmes for sex workers. Merely consulting sex workers is insufficient; rather, strong programming should be based on the stated needs of the sex workers themselves in the area of the intervention. As needs, experiences and perceptions can change from region to region, local sex workers must be involved in the design of interventions to be implemented in their area.

Effective HIV programming with sex workers and clients also requires non-judgemental services from health care providers. Health systems need to build the capacity of health workers at all levels and strengthen condom programming to make it more

effective in protecting and promoting the health and human rights of sex workers. Condoms should not be the sole focus of HIV interventions for sex workers; they should be provided alongside access to non-judgemental health care, development of sex worker leadership, economic empowerment, strengthening collective identity, and the elimination of stigma and discrimination related to sex work and sex workers.

In terms of engaging clients, a growing number of studies indicate that men are disadvantaged by ‘masculinity’ norms such as machismo and other gender norms which entrench male dominance. Some of these studies show that men who adhere to rigid notions of manhood experience a range of poor health outcomes. For example, a 2009 article by Peacock et al. concludes that “men who hold traditional views about masculinity are more likely to have contracted a sexually transmitted infection (STI). They are more likely to view sexual relationships as adversarial, to have more negative attitudes toward condoms, and to use condoms less consistently”.²⁵ HIV prevention programmes should therefore explore ways of challenging these regressive norms.

Barriers to good practice

In general, demonising and marginalising clients are approaches that create major barriers to effective HIV programming with sex workers. Moreover, these approaches are often adopted with the aim of reducing sex work and also trafficking, but they have not been shown to be effective in achieving these aims. They should therefore be avoided, from both a public health and a human rights perspective.

Some programmes have been successful in helping to change the norms and practices around sex work by sex workers, with a subsequent effect on rates of HIV infection. The 100% condom use programme initiated in Thailand in the early 1990s,²⁶ is one such example. However, as these programmes have evolved and been replicated in many countries, they have not necessarily adhered to best practice.

In a review by SANGRAM (an Indian nongovernmental organisation working with sex workers) of 100% condom programmes implemented in South Asia, several challenges were identified in the implementation of those programmes as well as key recommendations that rights-based and empowerment models be employed in regards to sex workers.²⁷ The authors cautioned against employing the police or other local government authorities to enforce 100% condom use in the sex industry. As they point out, “Sexual acts involve only two persons—the sex worker and the client—so successful rights-based programmes should focus on empowering sex workers to enforce condom use in their own way and on their own terms”.

Experience has shown that asking law enforcement officers, health professionals and sex establishment managers to take the lead on safer sex programming is counterproductive and can disempower and penalise sex workers. Sex workers and their clients should be the main implementers and decision-makers in making sex work safer. Other stakeholders can be useful partners but should not be given an authority role.

Conclusion

This section aims at fostering a shift from an unrealistic approach that demonises clients and depicts them as criminals or exploiters, towards a more pragmatic approach that recognises that clients are involved in every commercial sex act, and therefore have a key role to play in both HIV prevention efforts and in protecting sex workers more generally. Programmes should work with both sex workers and clients to support their mutual responsibility in preventing HIV infection and other STIs.

Differentiating sex work and trafficking

What are the issues?

The United Nations Trafficking in Persons Protocol requires States parties to criminalise and comprehensively tackle trafficking in persons in all its forms. Under these treaty obligations, states often pass laws or take action to end such trafficking. However, anti-trafficking laws or actions often encourage the assumption that all, or at least most, trafficked persons are trafficked for commercial sexual exploitation, and that all or most sex workers are trafficked into sex work against their will. In reality, trafficking and sex work are two very different things. Trafficking involves coercion and deceit; it results in various forms of exploitation, including forced labour, and is a gross violation of human rights. Sex work, on the other hand, does not involve coercion or deceit. Even when it is illegal, sex work comprises freely entered into and consensual sex between adults, and like other forms of labour provides sex workers with a livelihood.

The persistent confusion and conflation between trafficking in persons and sex work leads to laws and interventions that negatively impact sex workers, and at the same time undermine efforts to stop trafficking. In some cases, this conflation results in legislation and interventions that criminalise sex work and target the sex industry as a whole, resulting in harmful outcomes for sex workers, including increasing their HIV risk and vulnerability to abuse and exploitation. Whether sex work is legal or illegal there is an urgent need for States, the UN system, law enforcement agencies, and civil society to understand and differentiate between trafficking in persons and sex work.

Several examples from around the world show how anti-trafficking legislation and law enforcement have been used to attempt to eradicate or disrupt the sex industry. This has been done without consideration of the negative impact such legislation has on human rights and health, including the lack of impact on eradicating trafficking. These have resulted in sex workers being arrested and detained in an attempt to eradicate trafficking.

Through the conflation of trafficking and sex work, local and migrant sex workers in several countries have been subjected to the following: (a) arbitrary and aggressive anti-trafficking interventions (often involving the “raid and rescue” model) which fail to take into consideration the stated wishes of the individual being targeted, who does not need to be or want to be “rescued”;²⁸ (b) indiscriminate arrest and incarceration of sex workers; (c) sex workers being beaten and raped by formal and informal law enforcement agents while in detention (this is not part of anti-trafficking legislation, but has escalated in countries with inappropriate anti-trafficking and related laws and regulations); and (d) sex workers being denied their freedom of movement.

What is sex work and what is trafficking?

Sex work

Sex worker organisations globally, and locally, understand sex work as a contractual arrangement where sexual services are negotiated between consenting adults, with the terms of engagement having been agreed upon between the seller and the buyer of sexual services. By definition, sex work means that adult²⁹ female, male and transgender sex workers who are engaging in commercial sex have *consented to do so* (that is, are choosing voluntarily to do so), making it distinct from trafficking.

For sex workers, working in the sex industry is not usually a result of coercion or an irrational act of desperation arising from their economic or social vulnerability. On the contrary, men, women and transgender people who sell sex are exercising their agency to make a realistic choice from the options available to them.³⁰ A woman deciding to sell sexual services in order to support herself or her family is not a trafficked person. A man deciding to sell sexual services to fund his drug use is not a trafficked person. A transgender person deciding to sell sexual services because of lack of employment options is not a trafficked person. There may be people in sex work who might prefer to be in another form of employment, but do not have many alternatives – a situation that many people in other employment sectors are in. They should not be deemed as being coerced into sex work, as trafficked persons are.

Trafficking in persons

According to international treaties, trafficking in persons is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.³¹ In this definition, exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation; forced labour or services; slavery or practices similar to slavery; servitude; or the removal of organs.

Trafficking for the purposes of commercial sexual exploitation involves adults or children providing sexual services against their will, either through direct force or through deception, violating their fundamental freedoms. As such, it violates the rights and removes the agency of trafficked persons.

However, it is important to understand that being trafficked is often a temporary situation: people who are trafficked do not necessarily remain in situations of powerlessness and coercion. For example, individuals who have been trafficked into the sex industry, or those who find themselves tricked or coerced once within the sex industry, can find their way out of situations of coercion but remain in sex work operating more independently and usually with support from their fellow sex workers, their clients, their intimate partners and their managers or agents.³² Clearly, care has to be taken to ensure that the individuals concerned are able to freely assess the situation for themselves and, as with all sex workers, empowerment opportunities should be provided.

Understanding the differences between sex work and trafficking in persons for the purpose of sexual exploitation

The *UNAIDS Guidance Note on HIV and Sex Work* clearly states that trafficking in persons for the purposes of sexual exploitation is a gross violation of human rights³³ At the same time, the Guidance Note strongly and clearly states that trafficking in persons for any distinct purpose, including commercial sexual exploitation, should never be implicitly or explicitly conflated with sex work. This is because, as the definitions given above show, they are clearly not the same. Sex work implies *consent* of sex workers and their capacity to exercise that consent voluntarily. The exercise of *agency*—that is, people determining for themselves what they want to do and when—is central to the definition of sex work. Trafficking, on the other hand, involves coercion and deceit, resulting in *loss of agency* on the part of the trafficked person.

One of the reasons for the conflation of sex work and trafficking is that some people believe sex work to be inherently harmful and exploitative. However, many sex workers work in situations where there is no greater exploitation than that experienced by many other workers. Moreover, the harm and abuse that do occur in contexts of sex work often have nothing to do with trafficking. For instance, a major source of violence and extortion against sex workers is law enforcement officials, who are supposed to be preventing rather than causing harm.

The unwillingness or inability of people to recognise that people can freely decide to engage in sex work means that sex workers are often automatically labelled as victims of trafficking when they are not. Often sex workers are portrayed as passive victims who need to be saved. Assuming that all sex workers are trafficked denies the autonomy and agency of people who sell sex. Moreover, such perspectives mean that anti-trafficking efforts typically ignore the possibility of engaging sex workers as partners in identifying, preventing and resolving situations that do involve trafficked people. Sex workers themselves are often best placed to know who is being trafficked into commercial sex and by whom, and are particularly motivated to work to stop such odious practices.³⁴

What does it mean for HIV?

Anti-trafficking measures often concentrate on getting people out of sex work, without considering whether they are trafficked, or whether the efforts will disrupt the access sex workers have to services that safeguard their health and well-being, and that create opportunities for them to share information and seek assistance for individuals they are concerned may have been trafficked. Many projects that focus on rescuing trafficked persons interrupt and undermine efforts to provide sex workers with access to HIV prevention, treatment, care and support.

Many countries are failing to address the actual violence and abuse experienced by sex workers, and by trafficked persons, at the hands of state officers implementing anti-trafficking measures—for instance, unlawful arrest, incarceration, harassment, physical and sexual assaults, rape and even murder by law enforcement and detention officers. The vulnerability of sex workers is increased as a result of having to pay bribes to avoid arrest or detention, or to be released from prison or rehabilitation centres, often requiring them to take out loans that potentially increase their burden of debt.³⁵

There is a growing body of evidence that “raiding” sex work venues and forcibly “rescuing” or “rehabilitating” sex workers results in increased displacement of sex workers, mobility of sex work venues and migration among sex workers; it also has a direct impact on HIV risk.³⁶ Forced rescue and rehabilitation practices lower sex workers’ control over where and under what conditions they sell sexual services and to whom, exposing them to greater violence and exploitation. In turn, this leads to social disintegration and a loss of solidarity and cohesion (social capital) among sex workers, including reducing their ability to access health care, legal and social services. Low social capital is known to increase vulnerability to sexually transmitted infections among sex workers and therefore has a detrimental impact on HIV prevention efforts.³⁷

The conflation of sex work and trafficking directly limits the ability of migrant sex workers to protect themselves from HIV, since they are often assumed to be trafficked. Migrant sex workers often live with the constant threat of being reported, arrested and deported which creates a real barrier to accessing health and welfare services. Female migrant sex workers are frequently assumed to be trafficked when “moral panics” around migration and sex work are created for populist political gain.

Such situations are counterproductive to creating enabling environments for sex workers to practice or promote safer sex and other HIV risk reduction strategies.

Additionally, the frequent overestimation and sensationalism associated with allegations of trafficking divert attention and important resources away from the much needed services that could have a real impact upon HIV prevention, treatment, care and support among sex workers and their clients, and on rights-based support mechanisms for trafficked persons. For instance, money for HIV programmes is either diverted away from sex work programmes as sex work is seen as a criminal law issue, or funds are spent on misguided “rehabilitation” programmes.

Good practices

Immediate and active consultation between sex workers, anti-trafficking advocates, governments, law enforcement agencies and civil society organisations is required to clarify the distinction between sex work and trafficking in persons for the purposes of commercial sexual exploitation. To achieve universal access to HIV prevention, treatment, care and support for sex workers, efforts should be refocused on the real and persistent risks that sex workers face, in terms of both human rights violations, and HIV risk and vulnerability. Such discussions should actively involve both sex workers and others directly involved in the sex industry, as well as people who have been trafficked, to benefit from their experience.

Do no harm

Anti-trafficking interventions should be reviewed and evaluations carried out to ensure that the human rights of both sex workers and trafficked persons are being protected. All anti-trafficking interventions should be monitored closely to ensure that sex workers are not targeted; and that on-going HIV prevention, treatment, care and support services are not disrupted or undermined.

Involve sex workers in addressing trafficking in persons within the sex industry

Sex workers' organisations and sex work networks can, and do, play a significant role in addressing trafficking in persons, including the sexual exploitation of children. Sex workers know and understand sex work settings. They are in an ideal position to identify and gain the trust of those who may be trafficked for the purpose of sexual exploitation; and they are well placed to provide assistance, support and appropriate referral without further increasing their vulnerability. Organised groups of sex workers are also best placed to establish safe working norms within the sex industry, and influence other actors in the industry to ensure that trafficked adults and children are not retained in sex work. Some sex worker organisations, such as the Durbar Mahila Samanwaya Committee in India, have established models of self-regulatory boards that effectively address trafficking in persons from within the sex industry itself. These self-regulatory mechanisms, which are established, implemented and overseen by sex workers' organisations can limit trafficking into the sex industry as well as the sexual exploitation of children. They also form a platform for addressing labour exploitation of sex workers.³⁸

Review anti-trafficking and sex work legislation and law enforcement practices

National anti-trafficking legislation should be reviewed to ensure that it focuses on addressing trafficking of persons and is not misused to target sex workers. Exploitation that does not fall within the definition of trafficking in the Palermo Protocol should be regulated through national civil, criminal and labour laws and dealt with separately to any trafficking legislation. Similarly, laws on sex work should be reviewed to ensure that they do not conflate sex work and trafficking. Any conflicts between laws should be resolved to ensure that the rights of both sex workers and trafficked persons are respected and protected.

Collate, generate and disseminate evidence

There is a need to collect and analyse existing evidence and ensure that new research is undertaken to provide policy-makers with an accurate picture of the impact of anti-trafficking laws; conflating sex work with trafficking; the extent of trafficking for commercial sexual exploitation; the ways in which sex workers can lead effective interventions to stop trafficking within the sex industry; and the sexual exploitation of children. Such research must be rigorous and ethically sound.

Barriers to good practice

No form of legislation, whether it be related to trafficking or sex work, should be used as an excuse to withhold health care and access to other support services from any member of the population.

Many of the abuses and problems that occur in the context of anti-trafficking initiatives and legislation also occur in the context of laws that criminalise sex work.

Whatever the legislative framework, it is essential to challenge the behaviour of law enforcement and justice officials to ensure that due process is followed and abuses of power do not take place.

Conclusion

This section urges all stakeholders to combat the persistent confusion and conflation between trafficking in persons and sex work. To improve effectiveness, anti-trafficking legislation, and law enforcement initiatives should be reviewed, in partnership with sex workers and people who have been trafficked, to ensure their rights are respected and protected, and that HIV prevention, treatment, care and support services are not undermined.

“In the end, simplistic approaches that equate all migration for sex work with ‘trafficking’ and exploitation only complicate efforts to provide appropriate health and social services to meet the immediate needs of sex workers. Increased efforts to abolish the sex industry can force it underground, making access to sex workers in need all the more difficult.”³⁹

Economic empowerment of sex workers

What are the issues?

HIV epidemics spread rapidly in settings of economic and social vulnerability. Unprotected sex in the context of sex work, particularly in settings of high population mobility and poor provision of health information and services, has been identified as a major factor in rapid epidemic growth. Sex workers can and should play a key role in efforts to reduce the spread of HIV.

Sex workers face multiple risks, including social marginalisation, violence, and poor health.^{40,41} These overlapping and mutually reinforcing factors have been shown to restrict sex workers' ability to improve their living and working conditions, and achieve economic security. They are also among the most frequently cited factors affecting the ability of sex workers to adopt safer sexual practices and condom use.

Furthermore, sex workers, like other people working in informal economies, commonly report a lack of access to bank accounts, saving schemes, loans and legal forms of credit, insurance, pensions and other employment benefits. Stigma and discrimination aggravate economic disempowerment, restricting sex workers' access to financial services. This further compromises their ability to manage and plan their finances.

Efforts to empower sex workers as a way of improving difficult working conditions have resulted in measurable improvements in sex workers' quality of life, self-confidence and agency.^{42,43,44,45} Studies have documented good social and economic outcomes, increased social capital, high rates of condom use.

However, some programmes that aim to empower sex workers fail to do so; this is particularly common in the case of "economic empowerment" programmes which aim to provide alternative incomes and to exit people from sex work. Actions aimed at "rehabilitation" through training and steering sex workers toward alternative employment or income generation often incorrectly assume that sex workers want to be rehabilitated or want to leave sex work. While in many countries HIV programmes offer income-generating activities, training and credit to sex workers, their aim is often to encourage sex workers to leave sex work, rather than to provide them with increased choice and reduced risk and vulnerability. As a result, access to these programmes can even be conditional on leaving sex work. Moreover, income generation, training and credit schemes are not always based on current markets and opportunities—and unsuccessful ventures risk disempowering sex workers further, since they often entail debt and the stigma of failure.

Nonetheless, economic empowerment can be an important strategy to improve sex workers' living and working conditions. By increasing economic options, sex workers can achieve greater financial security, which makes it easier for them to make important decisions that affect their lives. These include their choice of work and their capacity to save and plan for the future for themselves and their dependents. Improving economic options also helps sex workers to reduce the likelihood of having to accept

clients' requests for unprotected sex or that they will be put in situations that inhibit their ability to negotiate with clients and reduce the risk of violence or abuse.

Economic empowerment means equality and equity within the financial system. There are considerable advantages in recognising that sex work is work, as this provides a framework within which sex workers can benefit from the same protections, including the same access to services and freedom from discrimination as other workers.⁴⁶ The ILO's new labour international standard, the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) applies to sex workers. Delegates to the HIV/AIDS Committee, the tripartite body responsible for finalising the text of Recommendation No.200 submitted to the International Labour Conference for adoption at its 99th Session in June 2010, proposed a specific amendment to the text of the Recommendation proposing that sex workers be explicitly mentioned. The delegates discussed the importance of bringing the needs of sex workers into the mainstream of HIV prevention, care and treatment, noting that if this critical group were to be excluded, it would undermine HIV prevention efforts. Ultimately, the delegates agreed that the broad scope of application in paragraph 2 of the Recommendation implicitly covers sex workers for purposes of the Recommendation.⁴⁷

If sex work is recognised as work, this would also imply that sex workers have the right to choose whether to remain in or leave sex work. Knowing how to manage one's financial resources, being able to cope with financial crises and being able to change employment are also important aspects of this choice.

Initiatives for economic empowerment of sex workers can operate at individual and collective levels. These are potentially complementary and mutually reinforcing. At the individual level, they can include assistance to individual sex workers in savings, credit, education and training. At the collective level, empowerment activities can strengthen the capacity of organisations led by sex workers to improve economic and social conditions for all sex workers in a given community.

What does it mean for HIV?

Many positive benefits can result from both individual and collective initiatives to support the economic empowerment of sex workers, including access to HIV- and sexual health-related services.

The effects of adding micro-enterprise services to sex worker-led HIV interventions were assessed among 227 female sex workers in Kenya over two years.⁴⁸ Two thirds of the women had operational businesses at the end of the period. More than half chose to remain engaged in sex work. A number of benefits were measured including reduction of the mean number of sex partners and more consistent condom use with regular and casual partners.

The USHA sex worker cooperative in West Bengal, India, has more than 13 000 members who are able to access official loans through the cooperative credit union.⁴⁹ A study reported tangible improvements in sex workers' lives in five areas:

- increased knowledge of sexually transmitted infections and condom use to prevent HIV infection;
- reframing of sex work as valid work and increasing aspirations, reflected in a desire for more education or training;
- improved skills in sexual and workplace negotiations reflected in more successful condom use negotiations and increased ability to change workplace and contractual arrangements;
- building social support by increasing social interactions outside work, social function participation and helping other sex workers; and,
- addressing economic vulnerabilities by increasing savings, credit and supplementary income sources.

The results of a study in Andhra Pradesh, India, illustrate the importance of sex worker control over work and access to economic resources.⁵⁰ Among the 803 sex workers interviewed, involvement in economic independence programmes was positively associated with control over both the type and cost of sexual services provided and with consistent condom use. Among respondents who reported both programme exposure and high levels of collective agency, consistent condom use was significantly higher than among other sex workers.

In Brazil, sex work is decriminalised. Sex workers are able to register their occupation and have the same rights as other workers. Such high-level policy change is in line with an approach that considers sex work as work. The International Labour Organization HIV and AIDS Recommendation, 2010 (No. 200) applies explicitly to all workers in the formal and informal economies.⁵¹

An example of a successful initiative for sex workers was set up by DAVIDA, a sex worker-led organisation in Rio de Janeiro. DAVIDA established the fashion company DASPU, which manufactures a range of clothing and organises fashion shows to promote not only the clothes, but also respect for sex workers and their human rights.⁵²

Good practices

Evidence strongly supports the benefits of empowering sex workers so that they may enjoy improved working and living conditions, and at the same time, reduce their HIV risk and vulnerability.

Policy-makers and service providers working on the economic empowerment of sex workers should take steps to achieve the following:

Ensure compliance with the International Labour Organization's HIV and AIDS Recommendation, and apply the principles established in the standard to sex workers in both the formal and informal economies to ensure access to prevention, treatment, care and support;

Support the development of sex worker-led organisations that advocate for, and implement, programmes to reduce sex workers' economic and social vulnerability;

Ensure that access to economic empowerment programmes is not conditional on leaving sex work or reducing involvement in sex work. The outcomes of such programmes should be measured primarily in terms of improvements of economic independence.

Develop economic empowerment initiatives, taking the views of sex workers into account, to:

- increase options for savings and reduce debt
- expand earning potential and economic choices
- develop capacity and skills;

Ensure that access to financial services including savings schemes, access to bank accounts, insurance and loans are non discriminatory and accessible to sex workers, their families and community organisations;

Ensure that access to credit includes assistance in financial planning and business management to achieve goals;

Ensure that educational opportunities are relevant, of good quality, acceptable to sex workers, non discriminatory and available without being conditional on leaving sex work;

Options for increasing and diversifying earning potential should be nondirective, supportive of sex workers' decisions about how they earn their living, and designed to increase choices and reduce economic and social marginalisation.

Community initiatives should be sex worker-led and provide:

- opportunities and choices valued by sex workers;
- training in areas prioritised by sex workers themselves, which often include entrepreneurial skills and financial management;
- capacity building to diversify earning potential or facilitate transiting;
- safeguards and flexibility to prevent debt accumulation;
- improved functional literacy.

Economic empowerment programmes should include support to sex worker organisations to open and operate sex worker-led cooperatives, credit unions and collectives, and lending and savings schemes.

Economic empowerment approaches should consider the needs of all sex workers—female, male and transgender—with attention to the special needs of older sex workers and those with HIV or other illnesses or disabilities. There are a number of jobs that such sex workers can do within the sex work community, enabling them to remain attached to their community, friends and networks.

Sex workers from Ashodaya Samithi, a collective working in several districts of Karnataka, India, have initiated several ventures to enhance their economic security, and meet specific needs identified by sex workers themselves. Hotel Ashodaya is a restaurant initially set up to meet sex workers' needs for affordable meals and now attracts a wide range of customers, generating funds to support activities for the sex worker

community.⁵³ The Care Home managed and run by HIV-positive sex workers, addresses basic care, shelter and nutritional needs of sex workers and others living with HIV.

Experiences from the Wonetha Association in Uganda and Danaya So in Mali highlight similar benefits to sex workers from programmes that build on basic health interventions. These include collective action to improve living and working conditions, access to bank accounts and loans, capacity-building, income-generating activities, health insurance, and support for sex workers' families.

Barriers to good practice

Programmes that have the sole aim of getting sex workers out of sex work, rather than having an aim of empowerment, have had little success; moreover, there is little evidence that they have an impact on the scale of the sex industry or vulnerability to HIV. Economic empowerment should not be a stand-alone intervention, but should be combined with a range of measures that empower sex workers and provide them with supplementary incomes rather than focusing on creating alternative incomes or livelihoods.

In addition, unsuccessful empowerment programmes have often targeted the wrong groups of people, such as those who are not interested in the support or who have less of a need or capacity to benefit. For example, microcredit schemes are often targeted toward younger sex workers, but the available evidence shows that older sex workers (who often have less earning potential and negotiating power and who may be planning to leave sex work) benefit more from such schemes.

Conclusion

Economic empowerment is a critical component of initiatives to reduce vulnerability and empower sex workers to gain greater control over their lives. As such, initiatives should aim to involve sex workers, reduce harm, increase options and respect choice – initiatives must be voluntary and available to sex workers without any conditions that they stop or reduce their involvement in sex work. Economic empowerment should emphasise both individual opportunities and collective action through support to sex worker-led organisations and networks. The potential benefits of such initiatives are numerous – both for sex workers themselves and for the larger community, in terms of poverty reduction, women and child welfare and public health. Economic empowerment initiatives should be provided in the context of broader empowerment and HIV-prevention efforts designed with and for sex workers.

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