



5 ISSUE PAPER FOR THE SESSION: HIV, sex work and human rights

Background

Though long recognized as important agents in local, national and global HIV responses, sex workers in many countries remain burdened by human rights abuse and social exclusion. They continue to face disproportionate HIV risk because of their marginalization and criminalization and are often excluded from policy and programme decision-making.

Numerous experts and international commissions and agencies have concluded that decriminalization of sex work is a necessary means of addressing human rights violations against sex workers and enabling them to make use of HIV services and be part of HIV responses. For example, the Commission on AIDS in Asia, which presented its report to UN Secretary-General Ban Ki-moon in 2008, noted explicitly that the criminalization of sex work “neutralizes otherwise supportive AIDS policies” and was “counterproductive and dangerous”.¹ The UNAIDS Advisory Group on HIV and Sex Work commissioned by the Executive Director of UNAIDS in 2009 made the following recommendation:

States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal laws and penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.²

In its 2011 report,³ the Global Commission on HIV and the Law, a body of eminent legal and HIV experts, called for decriminalization of sex work and sex work-related activities, including repealing “laws against ‘immoral’ earnings...and brothel-keeping”. In its 2012 recommendations for programming for sex workers on HIV and sexually transmitted infections, WHO, UNFPA, UNAIDS and the Global Network of Sex Work Projects recommended that all countries work toward decriminalization of sex work.⁴

¹ Commission on AIDS in Asia. *Redefining AIDS in Asia: Crafting an effective response*. New Delhi: Oxford University Press, 2008, pp. 5, 187.

² Joint United Nations Programme on HIV/AIDS. UNAIDS Guidance Note on HIV and Sex Work (with 4 clarifying annexes), Geneva, 2012, p 6 of Annex.

³ Global Commission on HIV and the Law. *HIV and the law: risks, rights and health*. New York, 2012.

⁴ World Health Organization, UNFPA, UNAIDS and Global Network of Sex Work Projects. *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in*

The implementation guide accompanying this expert consensus, produced jointly by WHO, UNFPA, NSWP, UNAIDS and the World Bank, also notes that empowerment of sex workers depends on countries' taking steps to decriminalize sex work and to eliminate the "unjust application of non-criminal laws and regulations against sex workers".⁵

A 2012 report of UNAIDS, UNFPA and UNDP on sex work in Asia notes:

To enable sex workers to fully enjoy legal rights to health and safety at work requires decriminalization. Decriminalization of sex work requires the repeal of: a. laws explicitly criminalizing sex work or clients of sex workers; b. laws that criminalize activities associated with sex work, including removal of offences relating to: soliciting; living on the earnings of sex work; procuring; pimping; the management and operation of brothels; and promoting or advertising services....⁶

As sex worker organizations have noted, the human rights case for decriminalization goes far beyond HIV-related concerns. Criminalization impedes the work and dignity of sex workers in countless ways, including fundamentally threatening their relationships with family members (who may be criminalized for living from the earnings of sex work), keeping them from having basic financial services such as bank accounts and insurance, and undermining their right to organize and assemble. Organization of sex workers in collectives or other solidarity networks enables them to root out and protect themselves from violence and exploitation and ensure safe working conditions for themselves.

Campaign by Equality Now

In September 2013, the New York-based organization Equality Now, which states its central focus as protecting the rights of women and girls, launched a campaign criticizing the United Nations for its association with the position that "to reduce HIV/AIDS and to promote the human rights of people in prostitution, all aspects of the commercial sex industry should be decriminalized".⁷ Based on testimony it gathered from "survivors of prostitution and sex trafficking," the organization asserted that there is "mounting evidence that decriminalization and legalization — including of

low- and middle-income countries. Geneva, 2012. At:

http://apps.who.int/iris/bitstream/10665/77745/1/9789241504744_eng.pdf

⁵ WHO, UNFPA, UNAIDS, NSWP, World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva: WHO, 2013. At:

http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf

⁶ UNAIDS, UNFPA and UNDP. *Sex work and the law in Asia and the Pacific*. Geneva, 2012.

At: [http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-](http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf)

[SexWorkAndLaw.pdf](http://www.undp.org/content/dam/undp/library/hiv/aids/English/HIV-2012-SexWorkAndLaw.pdf)

⁷ Equality Now. "United Nations: Listen to survivors – don't jeopardize efforts to prevent sex trafficking." Action brief, September 2013. At:

http://www.equalitynow.org/take_action/sex_trafficking_action511

brothels — does not protect people in prostitution or improve their situation.” Referring to the report of the Global Commission on HIV and the Law and the 2012 UN report on sex work and the law in Asia, it accused the UN agencies involved of espousing a position that undermines global anti-trafficking efforts. It stated that demand for sex work fuels sex trafficking, and recommended the criminalization of buyers of sex and of “pimps”, along the lines of the Swedish model, as the most effective way to combat sex trafficking.

Equality Now called on UNAIDS, UNFPA and UNDP to “clarify their position on the decriminalization of pimps, brothel owners and buyers [of sex]”. It also demanded that “in all future development of policies and programs on issues that affect people in the commercial sex industry” UN agencies consult “survivors of commercial sexual exploitation as well as a more diverse range of groups working on the issue of prostitution and sex trafficking.” The organization also called on the public to write letters to UN officials and offered a model letter for that purpose. Almost 3000 emails were received by the UNAIDS Executive Director. This call to action attracted a good deal of international media attention.

Equality Now had earlier spearheaded a coalition of about 90 organizations, including many faith-based organizations, that in November 2012 wrote an open letter on sex work to the heads of UNAIDS, UNFPA and UNDP. That letter criticized specifically the Asia report on sex work and the law and the report of the Global Commission on HIV and the Law. It made similar points to those reprised in the 2013 campaign and also criticized the UN’s citing of decriminalization of sex work in New Zealand as a “best practice” and the UN’s rejection of the Swedish model.

Reactions to the Equality Now campaign

A UNDP spokesperson responded to the launch of the Equality Now campaign, noting that the Asia report “clearly distinguishes between adult consensual sex work and human trafficking for sexual exploitation” and calls for strong anti-trafficking measures.⁸ UNDP also asserted that criminalization of sex work increases vulnerability to HIV and limits access to condoms and health services.⁹ UN Women also made a statement, noting that as a UNAIDS co-sponsor, it “supports the decriminalization of sex work in order to ensure the access of sex workers to all services” and also “supports the regulation of sex work in order to protect sex workers from abuse and violence.”¹⁰ UN Women also underscored the importance of distinguishing between sex work

⁸ See L Westcott, “Survivors question U.N. focus on legalising sex work,” *Inter Press Service*, 26 Sept 2013, and L Anderson, “Rights groups challenge U.N. push to legalise prostitution,” *Thomson Reuters Foundation*, 22 September 2013.

⁹ L Westcott, “Survivors question U.N. focus on legalising sex work,” *Inter Press Service*, 26 Sept 2013.

¹⁰ UN Women. Note on sex work, sexual exploitation and trafficking. New York, 9 October 2013.

and sex trafficking so as not to “infringe on sex workers’ right to health and self-determination.”

The reaction to Equality Now from sex worker rights organizations was swift and worldwide. The Global Network of Sex Work Projects, which includes over 150 organizations in over 60 countries, emphasized the following points about the Equality Now campaign:

- It fundamentally rejects the human rights of sex workers and essentially denies the existence of sex workers.
- It is based on an “irresponsible and deliberate conflation of sex work with trafficking, which has been shown repeatedly to harm both sex workers and people who are genuinely trafficked into a range of industries.”
- It continues to promote the Swedish model though that model “further harms those it purports to help and makes invisible the majority of sex workers.”
- It misrepresents the processes leading to the UN reports that it criticizes in that both reports resulted from consultation with a wide range of organizations of current sex workers.¹¹

The Asia Pacific Network of Sex Workers noted in a statement that when the report on sex work and law in Asia was launched, it anticipated a pushback from those seeking to eradicate prostitution: “The concern we conveyed at that time was founded in historical prejudice visited upon sex workers by so-called ‘feminists’.”¹² The National Network of Sex Workers of India similarly asserted that the Equality Now campaign was the “continuation of a long history of mixing messages on sex work and trafficking that serves to undermine the human rights of people in sex work” and stressed that sex workers are workers and neither criminals nor victims. It also noted importantly that “sex worker collectives are frequently important agents for combating trafficking, especially that of minors,” and that criminalization of sex work undermines this agency.¹³ A statement from the Sex Workers’ Education and Advocacy Taskforce (SWEAT) in South Africa added that a wide range of sex workers in Africa “bravely revealed their identities, told their stories and affirmed their agency and choices” in the process leading to the report of the Global Commission on HIV and the Law and rebuked Equality Now for belittling that contribution.¹⁴

¹¹ <http://www.nswp.org/news-story/nswp-statement-response-equality-now-attack-un-recommendation-calling-decriminalisation-s>.

¹² <http://www.nswp.org/news-story/apnsw-respond-equality-now-we-are-the-view-sex-workers-have-the-right-consent-and-have-th>

¹³ <http://www.nswp.org/news-story/the-national-network-sex-workers-india-join-nswp-and-aswa-decrying-the-latest-attack-sex->

¹⁴ Response to the misguided petition by Equality Now and allies attacking sex worker human rights and the decriminalisation of sex work (available via <http://www.sweat.org.za>)

On November 4, Michel Sidibé wrote a letter to concerned organizations entitled “How can the world reduce human rights violations while improving health outcomes in the context of sex work?” The letter stressed that “evidence indicates that criminalization of sex work can make it difficult for sex workers to protect themselves from HIV, violence and/or exploitation.” It also noted the following:

We see as crucial efforts focused on the identification and criminal prosecution of individuals and criminal networks that exploit and abuse sex workers through force, deception or fraud. This includes people who procure clients for sex workers (called “pimps” in some places) and people who run brothels... UNAIDS is not advocating for the decriminalization of pimping or brothel ownership.

This letter in turn elicited a further response from a large coalition of women’s groups and human rights organizations and experts. On 27 November, some 81 signatories, including members of the UNAIDS Reference Group on HIV and Human Rights, representatives of human rights and sex worker rights NGOs, the UN Special Rapporteur on the Right to Health, and numerous academic experts wrote to Michel Sidibé expressing concern over his November 4 letter, particularly his statement that UNAIDS does not support decriminalization of brothel owners or “pimps”.¹⁵ As this letter states:

The argument that decriminalization will increase exploitation by legalising pimps and brothel owners is made with a limited understanding of commercial sex. Decriminalization will help sex workers address abusive or sub-standard or unfair working conditions instituted by both state and non-state actors. Branding decriminalization an attempt to legalise ‘pimps’ and brothel keeping does not help sex workers in their struggles for rights.

The letter asserts that the term “pimp” is a “stigmatizing racial stereotype” that also feeds an image of sex workers as victims, “denying their agency”. It further notes that criminalization of brothel owners or managers — that is, criminalization of workplaces — “mitigates against sex workers’ ability to protect themselves from HIV...and gain labour rights.” The letter concludes by urging UNAIDS to align itself completely with the Commission on HIV and the Law “in calling for the full decriminalization of sex work, including sex workers, their clients and third parties. Sex workers need the appropriate use of legislation to protect them from criminal acts of abuse and violence, HIV and substandard working conditions.”

On 22 November, the UNAIDS Executive Director wrote to the sex worker networks stating he understands that the sex worker community is concerned about the position of UNAIDS and reiterating his commitment to and solidarity

¹⁵ Meena Seshu, Michael Kirby et al. Now more than ever: sex workers need UNAIDS to respect and protect their human rights. Unpublished letter, 27 November 2013.

with sex workers. In anticipation of a planned meeting with sex workers at ICASA, he stated:

More than ever, I consider it important to remain collectively engaged. To build on our positive history of collaboration, I would like to propose that UNAIDS convene a process, including the possible reconstitution of the Sex Work Advisory Group — or a similar body — that will involve consultation with sex worker communities in early 2014 to address the legal and programmatic issues that influence health and human rights in the context of the AIDS response. With the full support of the Joint Programme and the potential participation of other stakeholders, this process can be a mechanism to address key issues now and in the future.

Based on this, UNAIDS intends to work with sex workers and the co-sponsors to flesh out this proposal and use it to galvanize increased action for sex workers at the global and country levels on:

- the legal and human rights framework relating to sex work;
- scaling up services to and with sex workers; and
- strategic information, monitoring, evaluation and funding to respond effectively to HIV epidemics among sex workers.

Potential key messages and recommendations

1. The Reference Group appreciates that UNAIDS convened the Advisory Group on Sex Work and HIV, published helpful clarifying annexes to the Guidance Note on HIV and Sex Work, and has advocated for the removal of punitive laws that impede HIV responses. However, recent events have shown that on the important issue of full decriminalization of sex work and related activities, there remains some distance between the position of sex worker rights organizations and UNAIDS Secretariat.
2. The Reference Group is aware that the UNAIDS Executive Director has proposed that he convene a process, with sex workers and cosponsor, to address legal and programmatic issues in the context of sex work, including the possibility of reviving the Advisory Group on HIV and Sex Work. This effort should, inter alia, pull together an authoritative UN account of the importance of the harms of criminalization of sex work and related activities and the benefits of decriminalization of sex work and related activities. Co-sponsors and the UNAIDS Secretariat at the highest levels should publicly promote this evidence.
3. It should also comprise a consistently available mechanism for direct and prompt consultation with sex worker representatives. UNAIDS Secretariat should declare publicly its support for the full decriminalization of sex work

and related activities and should advise country teams and co-sponsors of the importance of this position for the HIV response.

4. The UNAIDS Executive Director should publicly endorse the annexes to the 2009 Guidance Note on HIV and Sex Work.

This issue paper was prepared by Joanne Csete and Meena Seshu and edited by Ralf Jürgens, to facilitate discussion at the Reference Group's December 2013 meeting.

Please see the Summary and Recommendations report of the Reference Group's Fifteenth Meeting for an overview of the discussion at the meeting and the Reference Group's recommendations.