



# UNAIDS Global Reference Group on HIV/AIDS and Human Rights

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## Issue Paper

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### Sex Work and HIV/AIDS

#### Defining the Issue

The need for clarity on the relationship between HIV/AIDS, human rights and sex work and the best strategies to reduce HIV transmission while promoting and protecting the rights of sex workers have long been of concern. While some positive steps have been taken in recent years in relation to both law and programming, there has been an alarming shift recently against policy and programmatic support for interventions (even when proven effective) concerned with the rights and health of people engaged in sex work.

The distinctions between prostitution and sex trafficking are increasingly lost in current debates and therefore the linkages to HIV/AIDS and the promotion and protection of human rights are not only increasingly ignored but also increasingly unclear. Government and social apathy, restrictive policies, and stringent immigration regulations all contribute to keeping people engaged in sex work invisible and underground. Women may be violated, controlled and abused in situations where they are engaging in sex work as trafficked persons or 'illegal' migrants. The vulnerability of women in prostitution and sex work is heightened because they are often subjected to sexual abuse at the hands of authorities, petty political leaders, immigration and police officials, as well as local criminal gangs. Forcible detention, lack of access to redress, police corruption, and the invisibility of women engaged in sex work only compound vulnerability to HIV infection, and once infected, hinder the ability to access needed care and support.

The repressive nature of most strategies concerned with trafficking ignores the vulnerability of the people engaged and focus on the site wherein the trafficked persons find themselves, for instance prostitution, sex work, domestic labor, mail order marriages, forced and bounded labor. It remains the case that core beliefs about sex work on the part of policy makers influences the ways in which legal, policy and programmatic responses to HIV/AIDS take the health and human rights of people engaged in sex work, whether or not they have been trafficked, into account. Despite the illogic of the statement and evidence to the contrary, people engaged in sex work are still frequently seen as transmitting the virus rather than as being vulnerable to the virus. The problem is aggravated by the fact that public health officials, researchers, and policy makers often address the negative health consequences of sex work as due to "the nature of the work instead of to stigma or specific negative circumstances."<sup>i</sup>

#### Background

A brief overview of the landscape of definitions, law and policy, and programmatic approaches associated with sex work and human rights is presented below.

**Definitions** By some definitions, trafficking can be understood to involve coercion and forced labor, while prostitution infers the voluntary sale of sex.<sup>ii</sup> However, there

is still not an agreed taxonomy of terms which renders discussion amongst different stakeholders concerned with HIV/AIDS, and the health and rights of people engaged in sex work, difficult. Organizations advocating for the rights of sex workers (e.g. Anti-Slavery International and the Network of Sex Work Projects) argue that the redefinition of prostitution as work is vital if sex workers are to enjoy equal human rights, in particular, their rights as workers.<sup>iii</sup> Opponents base their arguments on the premise that it is not possible to conceive that a person can enter prostitution voluntarily as the best of available options.<sup>iv</sup>

**International Human Rights Law** International law is very unclear on the rights and health of people engaged in sex work which may contribute to their HIV/AIDS related vulnerability. For example the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,<sup>v</sup> has been identified as premised on a model which works against the rights and health of people engaged in sex work. In addition to this Convention which may be understood as directly harmful to the rights and health of people engaged in sex work, others are more neutral focusing on sexual exploitation and the like but none address the specifics at issue here. Several international instruments contain provisions that condemn sexual exploitation: the Convention on the Elimination of All Forms of Discrimination Against Women of 1981 (CEDAW),<sup>vi</sup> the Convention on the Rights of the Child of 1990 (CRC),<sup>vii</sup> and the 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>viii</sup> CEDAW calls on governments to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The CRC calls on states to protect children from all forms of sexual exploitation and sexual abuse, and prevent their engagement in any unlawful sexual activity and prostitution. The Optional Protocol to the CRC extends the measures that States Parties should undertake in order to guarantee the protection of children from sale, child prostitution and child pornography. There are also many regional instruments that contain similar provisions. Each of these may potentially be helpful in ensuring the rights and health of people engaged in sex work but interpretation of their provisions may also prove detrimental in some circumstances without further clarification.

**National Level Law and Regulations** Prostitution in most countries remains illegal. In addition the law has often proved harmful in other related ways to the health and rights of people engaged in sex work. For example, mandatory HIV testing of people who are or are assumed to be engaged in sex work, detention and specialized health and “rehabilitation” services all may be understood to push the people engaged in this work further underground. Evidence exists that decriminalization and anti-discriminatory measures have been effective in improving health conditions of sex workers, and some efforts are now focused on decriminalization policies, but more effort is needed to collect the evidence of the sorts of laws and regulations which have proved helpful to the rights and health of people engaged in sex work in the context of HIV/AIDS.<sup>ix,x</sup>

**Public Health Interventions** In the context of sex work, the UNAIDS Technical Update on Sex Work and HIV/AIDS states that the important factors correlated with HIV epidemics are the daily number of clients, the frequency of use of commercial sex by men, the rate of regular condom use, history and current levels of other STIs, injecting drug use or violence, and lack of regular condom use with regular nonpaying partners.<sup>xi</sup>

HIV/AIDS related interventions and policy recommendations which target sex workers only to reduce HIV transmission may ignore the risks faced by sex workers

that need to be addressed for their protection and for HIV/AIDS related strategies to work. In situations where a person has been trafficked or is an illegal migrant it is almost impossible to expect that the person who, fearing repatriation amongst other things, will access prevention and treatment services for HIV simply because they are available. Likewise, the fact that it is almost impossible to access women who are under the 'protection' of the criminal nexus and trafficking syndicates must be taken into account. Finally, even when strategies such as 100% Condom Use are touted as successful in relation to HIV/AIDS prevention, attention must be given to how such programs may actually lead to vulnerability of sex workers if they are non-participatory and do not take into consideration the local socio-political context.

Empowering strategies have adopted the perspective of the rights of the people in prostitution and sex work and placed them at the center of the analysis irrespective of the site of work. A proven way to do this is to ensure that sex workers are part of the planning and implementation of all relevant programs and that HIV/AIDS interventions are made available as part of comprehensive reproductive health services (including safe abortion). Confidentiality is key in the provision of services, particularly in services connected to HIV related illness. Peer education and training programmes have proven that the impossible is possible. Sex workers do reach out to sympathetic social workers with the right attitude. These efforts have of course discouraged punitive action but they have also been understood to offer some hope for people in prostitution and sex work

## Supporting Documents

### 1. The Violence of Stigmatization by Meena Saraswathi Seshu

*This Issue Paper has been prepared by Meena Saraswathi Seshu with the support of the Reference Group Secretariat to facilitate discussion at the Reference Group's August 2003 meeting.*

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<sup>i</sup> Wolffers, I. & van Beelan, N. (2003). Public health and the human rights of sex workers. *Lancet*, 61:1981.

<sup>ii</sup> Butcher, K. (2003). Confusion between prostitution and sex trafficking. *Lancet*, 361: 1983.

<sup>iii</sup> Loff, B. et al. (2002). Prostitution, public health, and human rights law. *Lancet*, 356: 1764.

<sup>iv</sup> Loff, B. et al. (2002). See note 3.

<sup>v</sup> United Nations. (1950). *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. No. 1342. New York. <http://untreaty.un.org/English/TreatyEvent2001/pdf/19e.pdf>.

<sup>vi</sup> United Nations. (1981). *Convention on the Elimination of All Forms of Discrimination against Women*. (G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46.)

<sup>vii</sup> United Nations. (1990). *Convention on the Rights of the Child*. <http://www.unicef.org/crc/crc.htm>.

<sup>viii</sup> United Nations. (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. <http://www.unicef.org/crc/crc.htm>.

<sup>ix</sup> Wolffers, I. & van Beelan, N. (2003). See note 1.

<sup>x</sup> Ahmad, K. (2001). Call for decriminalisation of prostitution in Asia. *Lancet*, 358 (9282): 643.

<sup>xi</sup> UNAIDS. (June 2002). *Sex Work and HIV/AIDS*. Technical Update. UNAIDS: Geneva.