

The Global Commission on HIV and the Law: Sex Workers

HIV and the Law: Risks, Rights and Health is a July 2012 report by the Global Commission on HIV and the Law. The Commission was an independent body of experts and respected statespersons established by United Nations Development Programme to address the ways in which human rights abuses, stigma, and discrimination fuel the global HIV epidemic. The Commission set out to examine where and how these abuses were occurring and to consider how legal reforms—through new legislation, better enforcement of existing law, and court decisions—could slow the spread of HIV and reduce its impact.

The Commission conducted an eighteen month process of research, consultation, analysis, discussion, and decision-making. They held regional dialogues in seven global regions and collected **written and oral submissions from over 1000 individuals and organizations**, more than 700 of whom included people living with, or directly affected by HIV and AIDS.

The report is an important tool for civil society groups, particularly those working with populations at high risk of HIV. This briefing paper highlights the report's findings about people living with HIV. It offers information and language that may be useful for advocacy, campaigning, and lobbying.

Key Report Findings on Sex Workers

116 countries have punitive laws against sex work (page 37), which effectively denies sex workers legal protection from assault, theft, compulsory medical examinations, and other abuses. These laws create a state-sanctioned culture of stigma, discrimination, exploitation, and police and client violence against sex workers.

- ▶ Criminalization makes it difficult and dangerous for sex workers to organize collectively to improve their working conditions. Denial of labor rights and fundamental civil entitlements such as public education, housing, healthcare, and police protection deepens sex workers' economic instability and social marginalization. In some countries, sex workers are not recognized as full persons under the law and are, thus, unable to own property, register the births of their children, access education, bring legal claims, or open accounts with bank or public utilities.

Globally, sex workers are “approximately eight times more likely to be infected with HIV than other adults” (page 38). In developing countries, female sex workers “are 14 times more likely to be infected with HIV than [other] women of reproductive age” (page 39).

- ▶ When forced into “underground” settings through criminalization, sex workers have less negotiating power to insist on condom use. Police harassment, extortion, and client violence go unpunished. Sexual violence makes HIV transmission more likely. At the same time, HIV prevention and care services become harder for sex workers to access and are less trusted by sex workers who suffer discrimination on a daily basis. “Criminalization, in collusion with social stigma, makes sex workers' lives more unstable, less safe, and far riskier in terms of HIV” (pages 36 and 37).

International anti-human-trafficking campaigns often make it impossible to use best practices approaches to HIV prevention among sex workers.

- ▶ Some major funders and policy-makers (including the U.S. and other governments, and international NGOs) believe that sex work is never a free choice, and promote that belief strongly. They claim that, “any person selling sex is so vulnerable that she by definition is unable to consent,” a pattern of belief that “turns self-directed actors into victims in need of rescue” (page 39). As a result, they see no difference between those forced into sex work against their will and those who assert that they are doing sex work by choice.

The conflation of voluntary sex work with trafficking denies sex workers' agency to think and act for themselves, wastes resources, and damages legitimate efforts to assist exploited people—including those who have been trafficked. Best practice approaches to HIV prevention for key populations like sex workers tend to focus on a people's strengths and experience. They invest resources to build a population's ability to design and implement prevention strategies specific to their needs. Such programs work precisely because they recognize that people should make informed choices, and must not be seen as helpless victims.

The Swedish Model of criminalizing buying sex, and assisting or managing sex workers—but not the selling of sex—negatively impacts sex workers, and hinders effective HIV responses.

- ▶ In 1999, Sweden introduced new legislation that shifted the legal framework for the sex industry by making the buying of sex and assisting or managing sex workers illegal. In looking at the evidence that has been gathered since the introduction of the “Swedish Model,” the Commission found that the law has pushed the Swedish sex

industry further underground, potentially making the trade more violent (page 38). It also found that resources had been diverted from social services for sex workers towards policing, yet very few prosecutions and convictions have occurred (page 38).

“Where sex workers organize, where the police do not harass them and they are free to avail themselves of quality HIV services, sex workers have lower rates of STIs, more economic power and a greater ability to get education for their children” (page 39).

- ▶ Increasingly, sex workers are forming collectives or other sex worker-managed organizations to demand their rights, bring court challenges against police and employer abuses, and create their own HIV prevention initiatives. One such group in India collaborated with police to promote safer sex practices. As a result “condom use among sex workers rose from 27 percent to 85 percent from 1992 to 2001, and HIV prevalence among sex workers fell from over 11 percent in 2001 to less than 4 percent by 2004” (page 42). In 2003, New Zealand decriminalized sex work when the Prostitution Reform Act became law. National workplace health and safety standards are now in place and sex workers can confidently report violent incidents to the police. And in Bangladesh, Canada, South Africa, and elsewhere, courts have upheld the legal rights of sex workers who have used existing laws and constitutional guarantees to challenge discrimination (pages 40–42).

Actions the Report Recommends (page 43)

To respect human rights and create effective, sustainable national HIV responses, countries must:

- ▶ Stop punishing consenting adults involved in commercial sex. Instead, decriminalize sex work by repealing laws that prohibit the sale or purchase of sexual services, as well as ancillary laws

that prohibit brothel keeping or “living off the earnings” of sex workers—i.e. as sex workers’ drivers or security guards, and more.

- ▶ Create and legally mandate the maintenance of safe working conditions for sex workers. Ensure access to effective HIV-related services and commodities.
- ▶ Prohibit practices that violate the human rights of sex workers, including police harassment, mandatory HIV and STI testing, and the use of “move on” laws to penalize or harass sex workers, as well as civil and administrative offences such as “loitering without a purpose,” “public nuisance,” and “public morality” orders.
- ▶ Ensure that anti-human-trafficking laws and programming are carefully targeted to prohibit and punish only those who use force, trick, or coerce people into commercial sex, or abuse migrant sex workers through debt bondage, violence, or deprivation of liberty.
- ▶ Replace compulsory detention and “rehabilitation centers” for those who have been trafficked with evidence-based, voluntary, community empowerment services that support their recovery. Provide exploited and abused children with safe, protective, and empowering family settings that meet their needs and serve their best interests.
- ▶ Remove all conditions attached to development assistance (such as the anti-prostitution pledge currently attached to PEPFAR, the U.S. government’s HIV and AIDS response funding) that inhibit sex workers’ ability to access HIV services, form their own organizations, and advocate for their rights.
- ▶ Take action to reform international law that currently fails to conform to human rights principles, including the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000).

How You Can Use the Report

This report provides concrete precedents and examples you can use as evidence when advocating to government and other influential organizations, the media, civil society organizations, and the general public. Because of the report's legitimacy as an official UN document, these case studies and the statements made about them are important tools to support your advocacy, campaigning, and lobbying.

1. Set up or advocate for a process to judge your country against the above recommendations.

This could include a “Peoples Committee” of academic, health, and human rights experts from your country. It could be an inquiry by a Parliamentary Committee, or a report from the lead human rights body in your country. You could approach UN agencies based in your country to support that process.

2. Use the text and examples in the report make the case for removing criminal laws on sex work.

Point to the chart on page 37 showing how many countries now have punitive laws against sex work. **Data published in *The Lancet*** (a globally well-respected medical journal), and mentioned in this *Lancet* **commentary**, show that “structural conditions that increase risk of HIV and prevent engagement in interventions among female sex workers, including criminalized legal and policy environments, violence, stigma, and restrictive funding policies.”

3. Use the report to brief organizations that may not be fully supportive of your campaign.

They could include networks of lawyers, sexual and reproductive health groups, people living with HIV networks or others. The international nature of the recommendations and the status of the members of the Commission may help them to understand the need to take action to support your campaign.

4. Challenge attempts to introduce the “Swedish Model.”

Based on independent evidence about the operation of the sex work laws in Sweden, the report strongly concludes that a legal framework of criminalizing the buying and not the selling of sex does not improve the lives of sex workers, and instead creates conditions that may increase vulnerability to HIV (page 38). Where a government is considering the introduction of the “Swedish Model,” the report provides evidence to argue that such laws have been difficult to enforce, and have negative public health and human rights implications.

5. Highlight examples of countries and institutions where sex work is recognized as work.

The International Labour Organization addressed sex workers' need for occupational safety and fair access to health services in labor standards on HIV and AIDS that it adopted in 2010. It recommended that “sex work be recognized as an occupation so that it can be regulated in ways that protect workers and customers” (page 40). The New Zealand Prostitutes' Collective—working with brothel owners and the Labor Inspectorate—have been drafting workplace health and safety standards for sex work (page 40).

6. Advocate for a clear distinction between trafficking and sex work.

The report is one of the most prominent international documents to reject the conflation of trafficking for sexual exploitation and voluntary adult sex work (page 39). Where trafficking and adult consensual sex work are conflated in national laws, or a government is considering anti-trafficking legislation, the report can highlight the need to clearly distinguish between the two. At the same time, the Commission's recommendations can be used to advocate for carefully targeting anti-trafficking programming to cases of sexual exploitation of adults and children, without interfering with services and programs designed to improve the health and human rights of voluntary adult sex workers.

7. Consider taking legal action.

Legal challenges to denials of sex workers' rights have been upheld in national courts. In Bangladesh, a court stopped the police from evicting sex workers from brothels because, "curtailment of their livelihood was a violation of their right to life" (page 41). A Canadian Court of Appeal ruled that legislation prohibiting brothels and living off the earnings of a sex worker was unconstitutional (page 41). A South African Labour Court ruled on appeal in favor of a sex worker contending that she had been illegally dismissed from her job in a massage parlor (page 41).

Depending on the legal system in your country, challenging existing laws in court can result in judicial decisions that have far-reaching effects. They are set rulings that you can build on in future advocacy. Be aware that the process of pursuing a court case is labor-intensive, can take years to complete, and may result in media coverage and public focus on the sex worker community that may not be wanted. But, if you can get local human rights organizations and entities that provide pro bono legal representation to take on your challenge and support advocacy around the case, it may yield a decision that improves the situation in your country.

"Sound Bite" Quotes

One benefit of this report is that it simply and eloquently frames key arguments we make as we advocate for change in existing policies. These are listed below as sound bites that organizations can use in their own documents or when talking to the media. Citing the Global Commission on HIV and the Law may add credibility for audiences who are less receptive to such arguments.

- ▶ "Decriminalization is the first step toward better working conditions—and with them, less HIV risk" (page 40).
- ▶ "Sex work and sex trafficking are not the same. The difference is that the former is consensual whereas the latter is coercive" (page 40).
- ▶ "International anti-human-trafficking campaigns often promote the prohibition, either intentional or effective, of proven best practices in HIV prevention" (page 40).
- ▶ "No government explicitly allows police brutality: such acts can be investigated and punished. Stigma and discrimination can similarly be challenges—if not by government, then by community organizations and non-governmental organizations (NGOs). Just as the cycle of discrimination, violence and government neglect of key populations erect barriers to HIV prevention, treatment and care, these incremental changes can help to dismantle those barriers" (page 27).

Open Society Public Health Program

The Public Health Program of the Open Society Foundations aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices reflect these values and are based on evidence. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

For more information, see: www.opensocietyfoundations.org.