

# UNAIDS Advisory Group on HIV and Sex Work

The UNAIDS Advisory Group on HIV and Sex Work  
is co-chaired by the Global Network of Sex Work Projects (NSWP) and UNAIDS.

Global Commission on HIV and the Law – Secretariat  
United Nations Development Programme  
BDP  
HIV/AIDS Practice  
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29<sup>th</sup> August 2011

Dear Commissioners

I am writing to you on behalf of the UNAIDS Advisory Group on HIV and Sex Work. The Advisory Group has been set up to support and advise the UNAIDS family on effective policy, programme, advocacy and capacity-building activities in relation to HIV and sex work. The group includes representatives of UNAIDS Co-sponsors and the Secretariat, representatives of organisations affiliated with the Global Network of Sex Work Projects, and independent experts from academia and civil society organisations.

We note the two key questions posed in this submission, namely;

- **How can the law be used to scale up effective HIV responses?**
- **How can the law be a ‘game-changer’ – i.e. substantially change the trajectory of the HIV epidemic?**

The Advisory Group is well aware of the regional dialogues that have taken place so far and members have participated in supporting sex work organisations around the world to contribute to these events. The feedback from the sex work organisations that have participated is that the Commission have been highly respectful and interested in their evidence.

To further support the input from sex work organisations we also attach for your information and attention 3 papers prepared by the Advisory Group which now form an integral part of the **UNAIDS Guidance Note on HIV and Sex Work 2009**. The 4<sup>th</sup> and final annexe to the Guidance Note is currently in the final stages of review by the Advisory Group and will be submitted to you at the earliest possible opportunity.

The focus of these Annexes is much broader but we hope you will find them worthy of incorporating into your analysis. The Annexes are as follows:

- **The impact of legal and policy environments on sex workers and some policy options for protecting the rights of sex workers (to be submitted);**
- **Differentiating sex work and trafficking;**
- **Reducing the demand for unprotected paid sex; and**
- **Economic empowerment.**

The Advisory Group strongly affirms that sex workers and their organisations play a crucial role in confronting HIV and AIDS 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.

One of the basic principles contained within the UNAIDS Guidance Note states that:

*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 those services will take time, but it is critical to implement needed legal and policy reforms now.*<sup>1</sup>

Removing the legal barriers that exist to access to HIV prevention, treatment, care and support as well as ensuring the legal protection of the rights of those vulnerable to HIV infection are areas of paramount importance. This principle is well documented and recognised by international organisations, states and civil society groups. For example, the UN Human Rights Council in 2009 urged states to work towards the elimination of criminal and other laws that are counterproductive to HIV prevention<sup>2</sup>. The first of the Annexes listed above, 'The impact of legal and policy environments on sex workers and some policy options for protecting the rights of sex workers', outlines in some detail how law and law enforcement impacts sex workers through criminalisation and regulation, as well as affecting their vulnerability to HIV.

The law can be used productively by developing frameworks that enable safer sex work, support sex workers to claim their human rights and protect the health of sex workers, their clients and the wider community. However, these frameworks require accurate local data about domestic laws, policies and enforcement practices and their impact, intended and unintended, on the health of female, male and transgender sex workers, and their clients. There needs to be consistent use of well-defined terminology to describe different possible legal and regulatory environments for commercial sex, as well as their possible positive and negative effects.

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.

States must have a legal obligation to protect, respect and fulfil the human rights of everyone, including female, male and transgender sex workers, regardless of whether sex work remains criminalised. States must take steps to protect sex workers from violence and exploitation, prevent illegal police practices against them, provide them with equality before the law and due process, and implement measures to ensure that they are able to access health services including HIV prevention and treatment in a non-discriminatory, confidential and voluntary manner, including protection from mandatory testing.

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<sup>1</sup> UNAIDS (2009), UNAIDS Guidance Note on Sex Work

<sup>2</sup> Human Rights Council Resolution A/HRC/RES/12/27/12/27, *The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)* October 2009  
[http://www.aidslex.org/site\\_documents/G-0242E.pdf](http://www.aidslex.org/site_documents/G-0242E.pdf).

In order to effectively address HIV, states must reform the laws governing sex work in a manner that is cognisant of the variety of forms that commercial sex may take, and the range of individuals who perform roles associated with the conduct of commercial sex other than the physical provision of sexual services. These include brothel owners, managers, and cleaners, drivers, cooks and other support staff.

Another option, chosen by some States, is to move further away from criminalisation, prohibition and penalisation, to create regulatory frameworks for commercial sex that recognise sex work as a legitimate occupation and regulate safety and health within that occupation. Such regulatory frameworks can:

- Enable sex workers to be recognised as persons before the law capable of holding and exercising all human rights, including the right to mobilise and form representative bodies to advocate for further social and legal reforms ;
- Ensure that sex work can take place under healthy and safe conditions;
- Guarantee sex workers' access to health and social services; and
- Provide protection from violence, exploitation, coercion, abuse and discrimination.

Sex workers around the globe are disproportionately affected by HIV.<sup>3</sup> 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.

We hope you find these points, and in particular the Annexes attached to this letter, useful and constructive.

Yours sincerely,



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Secretariat  
On behalf of the UNAIDS Advisory Group on HIV and Sex Work

cc Members of the UNAIDS Advisory Group on HIV and Sex Work

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<sup>3</sup> UNAIDS. Joint Action for Results: UNAIDS Outcome Framework 2009-2011. 2009.  
([http://data.unaids.org/pub/Report/2010/jc1713\\_joint\\_action\\_en.pdf](http://data.unaids.org/pub/Report/2010/jc1713_joint_action_en.pdf))