

BUILDING PARTNERSHIPS on HIV and sex work

Report and recommendations from
the first Asia and the Pacific Regional Consultation
on HIV and Sex Work

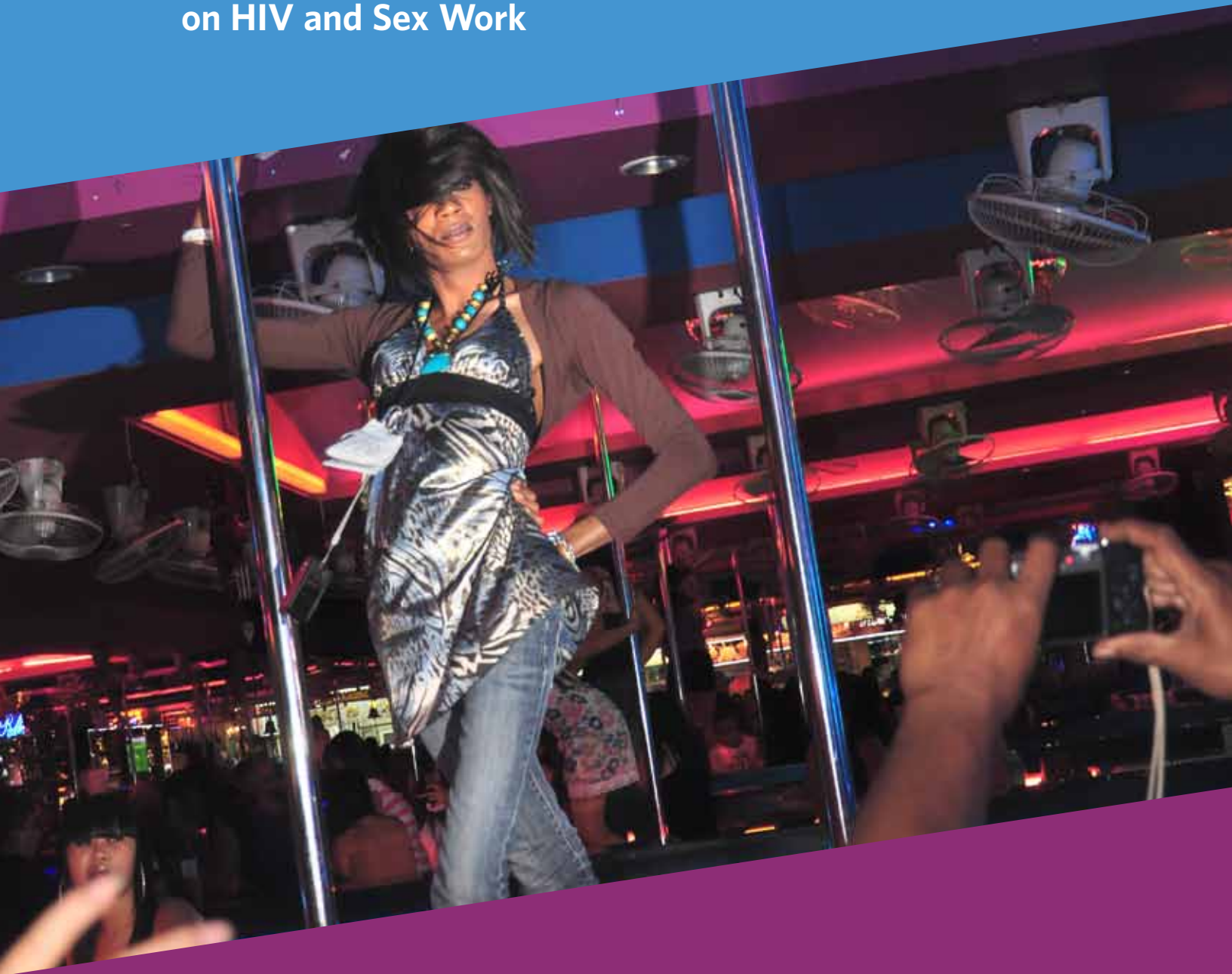


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Acronyms

AIDS	Acquired Immunodeficiency Syndrome	NGO	Non-governmental organization
AICHR	ASEAN Intergovernmental Commission on Human Rights	NSWP	Network of Sex Work Projects
APNSW	Asia Pacific Network of Sex Workers	PIF	Pacific Islands Forum
APRO	Asia and the Pacific Regional Office	PLHIV	People living with HIV
ART	Antiretroviral Therapy	PNG	Papua New Guinea
ASEAN	Association of South East Asian Nations	PSI	Population Services International (international NGO working on health)
CBO	Community Based Organization	RST	Regional Support Team
CEDAW	Convention on the Elimination of All forms of discrimination Against Women	SAARC	South Asian Association for Regional Cooperation
CCM	Country Coordinating Mechanism	SRB	Self Regulatory Board
CUP	Condom Use Programme	SRH	Sexual and reproductive health
DIC	Drop in centres	SRHR	Sexual and reproductive health and rights
DMSC	Durbar Mahila Samanwaya Committee (sex worker organization in India)	STI	Sexually Transmitted Infection
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific	TG	Transgender
FHI	Family Health International (international non-governmental organization)	TOP	Targeted Outreach Programme (PSI programme in Myanmar)
GFATM	Global Fund to Fight AIDS, Tuberculosis and Malaria	TRP	Technical Review Panel (of the Global Fund to Fight AIDS, Tuberculosis and Malaria)
GIPA	Greater Involvement of People Living with HIV	UN	United Nations
HIV	Human immunodeficiency virus	UNAIDS	Joint United Nations Programme on HIV/AIDS
ICCPR	International Covenant on Civil and Political Rights	UNDP	United Nations Development Programme
ILO	International Labour Organization	UNFPA	United Nations Population Fund
MSM	Men who have sex with men	VAMP	Veshya AIDS Mukabala Parishad (sex worker organization in India)
NAC	National AIDS Commission	VCT	Voluntary testing and counseling
		WHO	World Health Organization
		WNU	Women's Network for Unity (NGO in Cambodia)

Executive Summary

To increase the momentum and effectiveness of the HIV response in Asia and the Pacific, UNFPA, UNAIDS and the Asia Pacific Network of Sex Workers (APNSW) joined hands to organize, in collaboration with governments, UNAIDS cosponsors, national and local sex worker organizations, and civil society organizations, the first Asia and the Pacific Regional Consultation on HIV and Sex Work in October 2010 in Pattaya, Thailand. This Regional Consultation, which was the result of an extensive and participatory process spanning over a year, brought together some 140 participants from eight countries in the region as well as selected national, regional and global resource persons that have experience or influence in the area of HIV and sex work. These resource persons included representatives from regional community networks, sex worker organizations, NGOs, researchers, government organizations, and United Nations (UN) agencies. Country teams comprising representatives from national AIDS authorities, Ministries of Health, Ministries of Justice or police, sex worker communities and the UN system participated from Cambodia, China, Fiji, Indonesia, Myanmar, Pakistan, Papua New Guinea, and Thailand.

The Regional Consultation was especially remarkable in terms of ensuring participation of female, male, and transgender sex workers and sex workers living with HIV. Over one third of all meeting participants were sex workers and/or representatives of sex worker organizations and networks. Sex worker experiences and leadership were incorporated into all plenary sessions and sex workers constituted a large portion of the participants in the group work sessions. Sex worker representatives were selected by sex workers in their own country prior to the consultation. Community-friendly whisper translations were provided in seven languages, allowing the best sex worker representatives – regardless of their (English) language competency – to be selected and to be able to participate actively throughout the programme.

This “Pattaya conference” reaffirmed that successful HIV prevention among sex workers can only happen by ensuring universal rights for sex workers – human rights that are extended to all people within international laws. Sex workers must not be excluded. To ensure that universal rights are upheld for sex workers, including the right of a person to be able to protect him/herself from HIV and access to treatment, care and support services, requires that sex worker issues including sexual, reproductive and maternal health and rights, education for sex workers and their children, violence and poverty, etc. – must be addressed through the broader development agenda and sectors. To achieve Millennium Development Goal (MDG) six, particularly in Asia and the Pacific, the specific issues faced by sex workers, people who use drugs and men who have sex with men (MSM) need to be addressed within the context of other development goals. A holistic empowerment-led approach is required to ensure the rights of sex workers are upheld and that their issues are addressed in the broader health and development contexts.

The consultation produced a range of key messages, here listed, and discussed in detail within this report. All partners involved in the consultation, and the wider AIDS response, are urged to take these key messages into account in programming and policy development at all levels in relation to HIV and sex work.

Meaningful participation of sex workers – “Nothing about us without us”

- Successful programmes on making sex work safer and preventing HIV include sex workers as partners in development and implementation
- Self-organizing by sex workers is crucial to the HIV response in Asia and the Pacific

Stigma and discrimination

- Sex workers and their families face multiple forms of stigma and discrimination that impede their human rights and increase their vulnerability to HIV
- Influential people in society need to be involved and leverage their influence to tackle stigma and discrimination related to sex work and HIV

Creating an enabling legal and policy environment

- Insist on universal rights for sex workers
- Removing criminal laws against sex workers is essential, but not sufficient
- Access to justice for sex workers is critically important to address and prevent rights violations
- Sex work is work

Sexual and reproductive health (SRH) and rights

- Focusing HIV prevention on sex work is the most cost-effective investment in Asia and the Pacific
- Condom programmes must address all aspects of supply, demand and environment within a rights-based approach
- A comprehensive set of sexual and reproductive health and HIV services must be provided to sex workers that address the whole spectrum of prevention, treatment, care and support from a rights-based approach

Eliminating violence against sex workers

- Violence against sex workers, including by state actors, are human rights violations that should be taken up by human rights institutions
- All HIV programmes targeting sex workers and their clients should address violence and violence prevention
- Safe working spaces are needed for sex workers



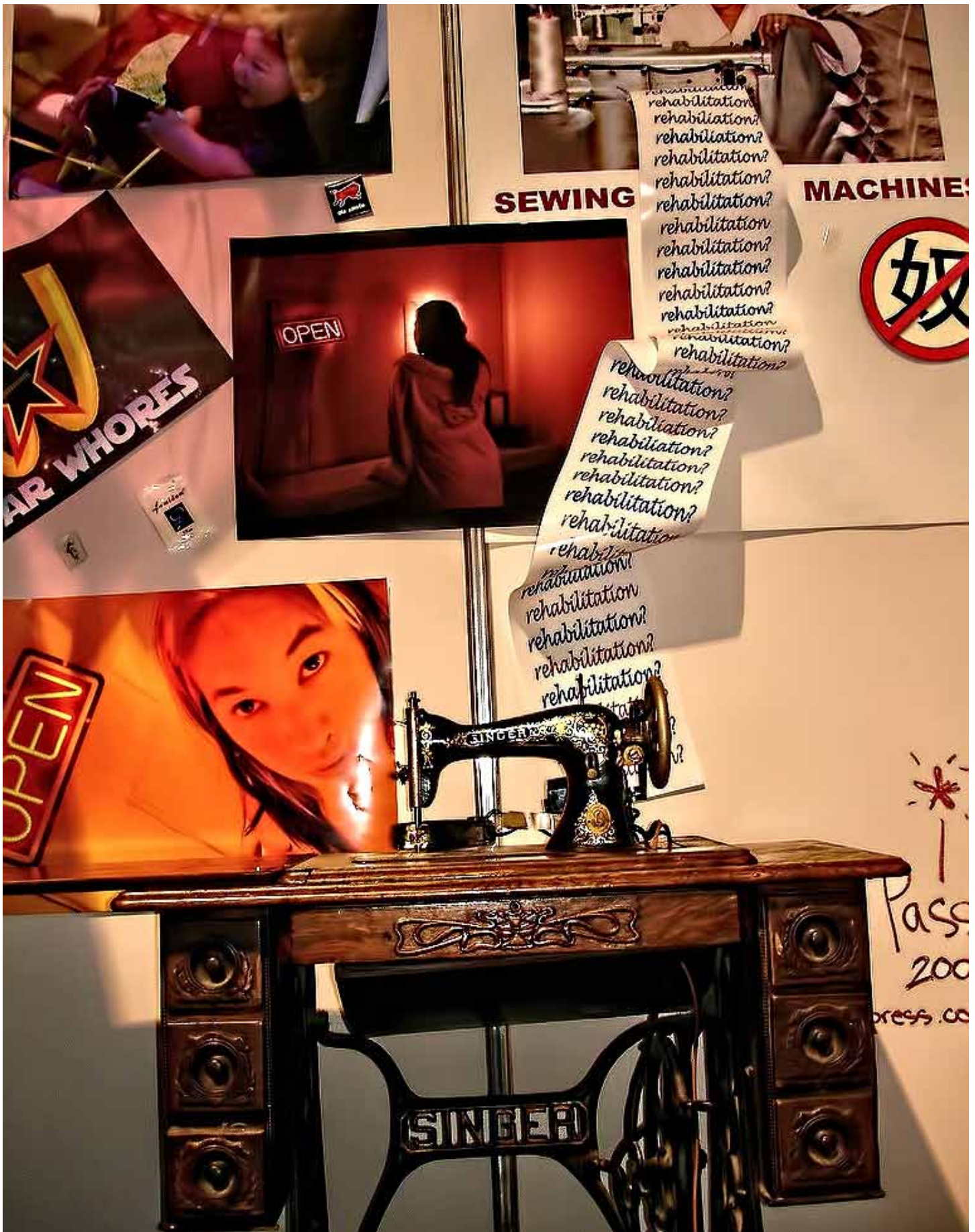
Participants at the consultation watching a video on legal issues produced by APNSW

Addressing migration and mobility in the context of HIV and sex work

- Mobility provides opportunities but increases vulnerability
- Anti-trafficking laws should not impede the human rights of sex workers
- Anonymous health and social services for migrants, including migrant sex workers, need to be provided

Based on discussions and findings and building on previously existing guidance, a set of recommendations for global and regional actions were formulated and country priorities in the four thematic areas identified. Better coordination, more funding support and increased programme coverage were raised in the consultation as persistent issues. Innovative ideas were put forward, such as the need for promotion of the ILO labour standards to make real the statement “sex work is work”, engagement of police and law enforcers in local responses and a recommendation for increased research in the area to be conducted. Marrying the unfinished agenda and new initiatives, a comprehensive and effective approach was developed.

This report covers key issues of each thematic areas, key messages, practical actions and good practices. It highlights how partnerships must be built, strengthened and fostered among sex workers, policy makers, programme managers and international colleagues. The report concludes that urgent action is needed to end HIV in the context of sex work, and this can only be achieved through strong partnership.



An installation about Rehabilitation, Raids and Rescue of sex workers by Mariko Passion and APNSW. AIDS2008, Mexico

Background and process

In the vast and diverse region of Asia and Pacific region, commercial sex is one of the central drivers of HIV. The reports of the Commission on AIDS in Asia¹ and Commission on AIDS in the Pacific² recognize sex work as central to the response to the HIV epidemic in the region. The Asia report calculates that up to 10 million women in Asia sell sex to an estimated 75 million men, who in turn have intimate relations with a further 50 million people. However, HIV prevention coverage is estimated to reach only one third of all sex workers in the region and programmes to reduce the demand for unprotected paid sex are inadequate.

The *UNAIDS 2011-2015 strategy: Getting to zero* (see Annex 1) and the *UNAIDS guidance note on HIV and sex work* provide guidance to UNAIDS Cosponsors in their HIV work. Within these documents, improving the health and safety of sex workers and working in partnership with sex workers are emphasized as essential components of a successful HIV response. The widely endorsed GIPA Principle³ provides guidance to ensure meaningful participation of people living with and affected by HIV.

Definition of Sex Work

The *UNAIDS guidance note on HIV and sex work* (2009) defines sex workers as “female, male and transgender adults and young people [18 years and above] who receive money or goods in exchange for sexual services, either regularly or occasionally.”

1.1 HIV AND SEX WORK: SITUATION AND RESPONSE AT GLANCE

1.1.1 HIV prevalence among female sex workers (FSW)

An estimated 75 million men in the region buy sex from 10 million women. Across the region, the HIV epidemic is mainly concentrated among populations involved in unprotected paid sex, sharing of contaminated needles and syringes by people who inject drugs, and unprotected sex between men. While drug-use related epidemics are known to spur the spread of HIV, it is the epidemics in the context of sex work that gives it a scale and size. In many countries, prevalence data for male sex workers (MSW) is not available.

¹ *Redefining AIDS in Asia: Crafting an Effective Response* (2008)

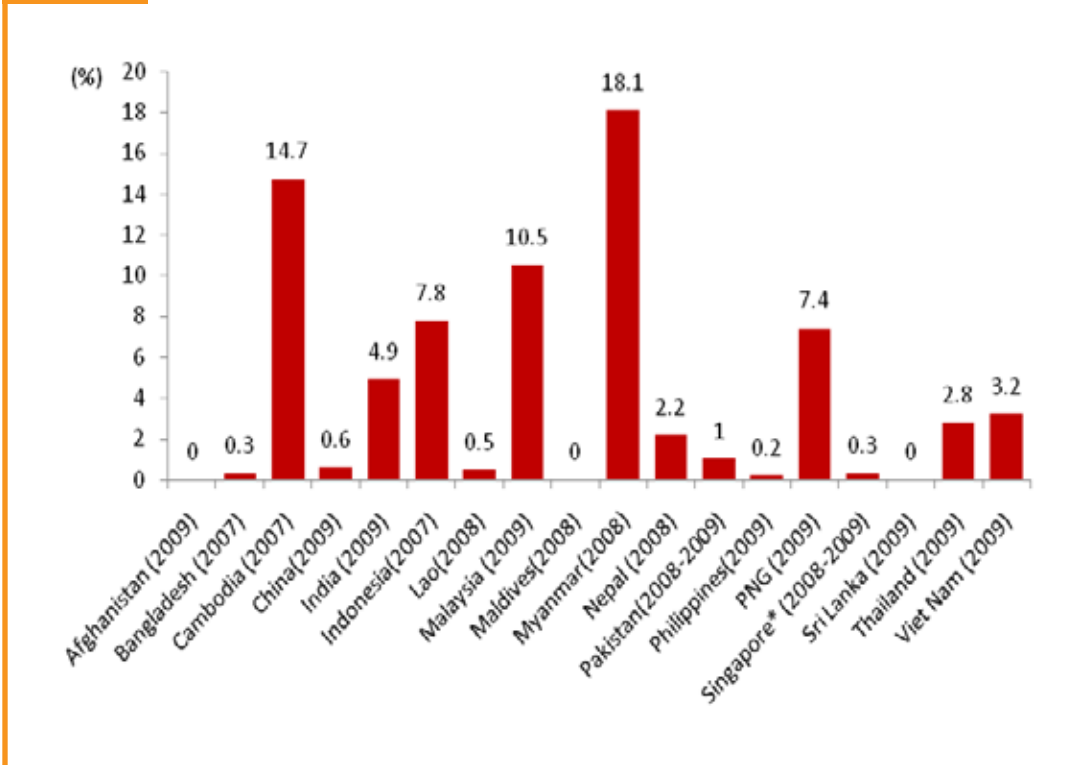
² *Turning the Tide; An OPEN Strategy for a Response to AIDS in the Pacific* (2009)

³ The GIPA (Greater Involvement of People Living with HIV) Principle was first endorsed in 2001 by 189 UN member states

FIGURE ONE

HIV prevalence among female sex workers in selected countries, 2007-2009

Source: UNGASS Progress Reports



“Success stories” in the region show that early interventions in the context of sex work can effectively reduce HIV prevalence, and begin to halt the spread of HIV, as has been shown in Thailand, Cambodia and the state of Tamil Nadu in India. However, HIV epidemics are still active in many areas as reflected by the high HIV prevalence rates among sex workers (see Figure 1).

Within countries, there are also variations of HIV prevalence between different regions or cities. For instance in India in 2007-2008, while nationwide HIV prevalence among female sex workers was reported as 5.1% (NB: now 4.9% in 2008-2009), it ranged widely by state. Seventeen states had HIV prevalence below 5%, while 9 states had HIV prevalence above 5% among this group⁴. Similarly, in Indonesia, the aggregated trend shows an increasing pattern of HIV prevalence among sex workers in different sentinel sites (UNGASS data, 2004-2008), HIV prevalence among female sex workers are not consistent across cities.

1.1.2 HIV prevention coverage among female sex workers

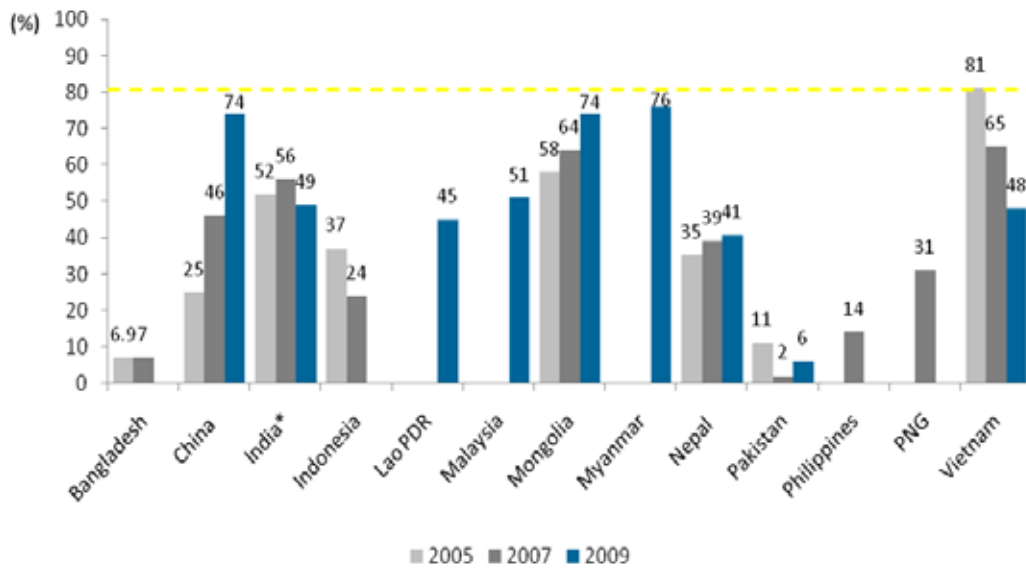
UNGASS ‘coverage’ indicator data for key affected populations prevention (see Figure 2) shows that in majority of countries where data are available, far less than 80% of sex workers have been reached by prevention services – 80% is the target needed to make an impact on the epidemics. In some countries, coverage is even below 40%. It is however important to note that UNGASS data should not be read as

⁴ India, HIV Sentinel Surveillance and HIV Estimation in India 2007, NACO, Ministry of Health and Family Welfare, October 2008

FIGURE TWO

HIV prevention coverage among female sex workers, 2005-2009

Source: UNGASS Progress Reports



national averages because the coverage is measured base on those being “reached” under a programme, although this data is generally not triangulated with programme monitoring data to get an accurate picture of programme coverage. The coverage data, moreover, does not include indicators on the quality of services accessed or comprehensive prevention measures.

1.1.3 Condom use at last sex among sex workers

Condom use among sex workers varies in the region (see Figure 3). Overall, there are more data available on condom use with the last client among female sex workers than on coverage. However, very few countries report the data on condom use among male sex workers.

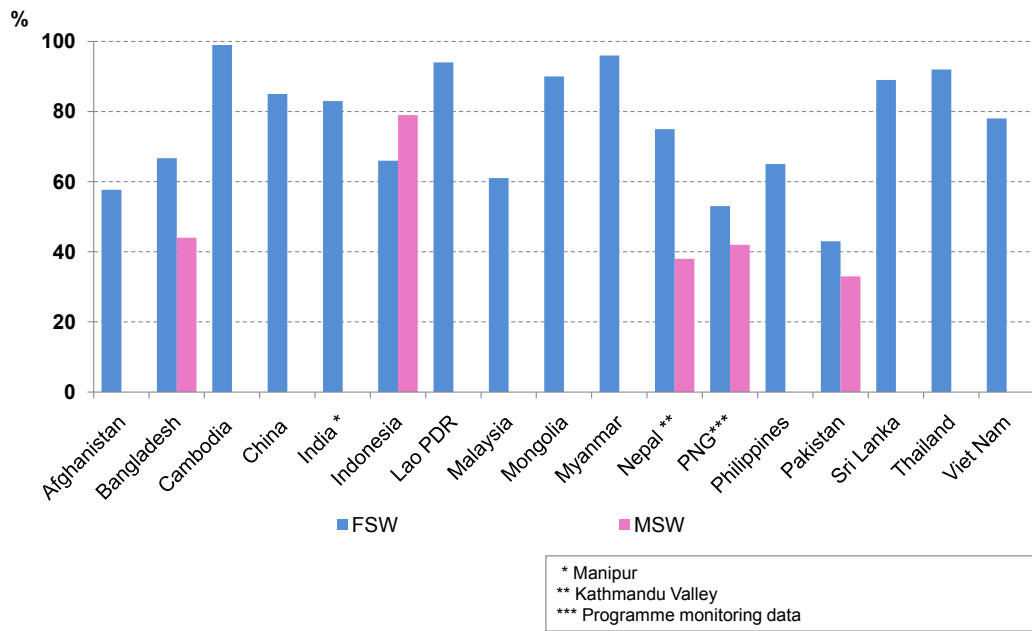
There seems to be a disconnect between coverage and behavior, which needs to be analysed and addressed at the country level to reflect a more accurate situation. Insufficient programme coverage carries the danger of resurgent epidemics even where current condom use is good.

A stocktaking exercise (see Annex 2) conducted among partners (including governments, civil society, network of sex workers, UN partners and others) from the eight participating countries in the consultation indicates that less than 50 per cent have a comprehensive package for sex work interventions. In countries

FIGURE THREE

Condom use at last sex among sex workers, Asia Pacific, 2007-2009

Source: UNGASS Country Progress Reports 2008 & 2010



where such package exists, it only includes condom programmes and STI treatment – far less than is recommended in the *UNAIDS global guidance note on HIV and sex work*.

1.1.4 Funding spent for HIV prevention programmes among sex workers and their clients

Evidence shows that focus on high-impact programmes for key affected population can reverse the epidemic and is cost effective. According to estimates made by the report of the Commission on AIDS in Asia, the cost for comprehensive interventions for sex workers is 100USD/year/sex worker.

According to *UNGASS Country Progress Reports 2008 and 2010*, in most countries, except for Myanmar with no data since 2009, funding for sex work programming has continued to decrease since 2007. Despite the evidence that there have been greater results for lower investments, the total AIDS spending on sex work programmes has dramatically decreased in most countries. In Cambodia, for example, total AIDS spending on HIV prevention among sex workers in 2008 was 5%; in 2009 it was only 2.2%. In Thailand, spending on HIV prevention is only 14% of the total AIDS spending. The proportion of national expenditure on sex work, whether out of HIV prevention or total AIDS spending, has not only been less than 1% since 2007 but has decreased over the years. Both in 2007 and 2008, the total spending on sex workers and clients was only

around US\$ 300,000 out of over US\$ 200 million AIDS spending; in 2009, only US\$ 100,000 was spent out of US\$ 230 million (ibid).

1.2 REGIONAL CONSULTATION ON HIV AND SEX WORK

To increase the momentum and effectiveness of the HIV response in Asia and the Pacific, UNFPA, UNAIDS and the Asia Pacific Network of Sex Workers (APNSW) joined hands to organize the first Asia and the Pacific Regional Consultation on HIV and Sex Work, held in October 2010 in Pattaya, Thailand, in collaboration with governments, UN agencies, national and local sex worker organizations, and civil society organizations.

The goal of the Regional Consultation on HIV and Sex Work was to position sex work as central to the response to the HIV epidemic in Asia and the Pacific, providing a platform for consensus building between stakeholders. The specific objectives of the Regional Consultation were to:

- Strengthen meaningful participation of female, male and transgender sex workers in the HIV response;
- Promote a human rights based approach in the response to HIV and sex work;
- Review the implementation of relevant recommendations from the reports from the Commission on AIDS in Asia and the Commission on AIDS in the Pacific; and
- Agree on a process for implementation of priority actions and inclusion in national responses including in National AIDS Strategies, Global Fund grants development, implementation, and structures, and other bilateral programmes.

The Regional Consultation brought together some 140 participants from eight countries in the region as well as selected national, regional and global resource persons that have experience or influence in the area of HIV and sex work. These resource persons included representatives from regional community networks, sex worker organizations, non-governmental organizations (NGOs), researchers, government organizations, and UN agencies. Country teams comprising representatives from national AIDS authorities, Ministries of Health, Ministries of Justice or police, sex workers, and UN officials participated from Cambodia, China, Fiji, Indonesia, Myanmar, Pakistan, Papua New Guinea, and Thailand.

The Regional Consultation ensured participation of female, male, and transgender sex workers and sex workers living with HIV. Over one third of all meeting participants were sex workers and/or representatives of sex worker organizations and networks. Sex worker experiences and leadership were incorporated into all plenary sessions and sex workers constituted a large portion of the participants in the group work sessions. Sex worker representatives were selected by their sex worker peers in their own country prior to the consultation. Community-friendly whisper translations were provided in seven languages, allowing the best sex worker representatives – regardless of their (English) language competency – to be selected and to be able to participate actively throughout the programme.

To support the consultation, a comprehensive communications and media strategy was developed and implemented. Media coverage of the event can be found in Annex 6.

1.3 PROCESS LEADING UP TO THE REGIONAL CONSULTATION

The Regional Consultation was the result of an extensive and participatory process spanning more than a year. Building and strengthening partnerships and developing trust between stakeholders at different levels was an integral part of the preparation process and the Regional Consultation itself.

An international organizing committee, comprising of UN agencies, sex worker representatives and civil society members was established in 2009 and met several times in order to prepare for the Regional Consultation. The organizing committee made the main decisions in relation to the scope of the meeting in terms of content and criteria for participant selection as well as providing valuable contributions in relation to effectiveness of methodologies, relevance, and potential follow-up strategies. Four core thematic areas of focus were identified:

- Creating an enabling legal and policy environment;
- Sexual and reproductive health and rights;
- Eliminating violence against sex workers; and
- Migration and mobility in the context of HIV and sex work.

For each thematic area, thematic task teams were established at the regional level comprising of representatives of UN agencies, sex workers and other experts who jointly drafted thematic discussion papers highlighting the priority issues that need to be addressed and suggestions for possible actions for the short and longer term. The thematic discussion papers were validated by selected external experts and the organizing committee and shared with participants in preparation for the Regional Consultation. Many of the thematic discussion papers were translated into local languages and community friendly versions to make them more accessible to all participants. These thematic papers form an important basis for the key messages captured in this report.

A stocktaking of the status of the implementation of sex work-related recommendations from the Commission on AIDS in Asia and the Commission on AIDS in the Pacific was conducted for the eight participating countries of the Regional Consultation. A survey questionnaire was developed by UNAIDS Regional Support Team (RST) for Asia and the Pacific in collaboration with UNFPA and APNSW and distributed among counterparts from UN, government and sex work organizations and networks in the selected countries. The main findings were presented at the Regional Consultation as a basis for further discussion and priority setting at country level. A summary of findings is included as Annex 2.

At country level, APNSW supported their counterparts to organize national consultation processes of sex workers to precede the Regional Consultation and support a nationally owned process of participant selection and preparation. UNFPA and UNAIDS counterparts in the countries worked together with the country teams and the national or local network or organization of sex workers to support the selection and preparation of NGO, government and UN delegates.

To support meaningful participation of sex workers in the Regional Consultation and to strengthen sex worker's capacity in relation to the thematic prioritized areas, APNSW organized a two-day preparatory meeting for sex work participants.

1.4 FOCUS AND STRUCTURE OF THIS REPORT

This report does not intend to reproduce *verbatim* the full discussions and process of the Regional Consultation. Instead, it aims to capture the larger consensus achieved through the process through the emphasis of the 'key messages' drawn from the consultation. The chapters do not follow the chronology of the meeting but are organized around the four main thematic areas that were the focus of discussion.

Chapter two captures key 'overarching' or cross-cutting messages that emerged from the consultation, focusing on the importance of sex worker participation, the challenges of stigma and discrimination and the realities of sex workers living with HIV. Chapter three addresses the broad area of 'creating an enabling legal and policy environment'. Sexual and reproductive health and rights, including condom programming, are the focus of Chapter four, while Chapter five captures the main messages around the thematic focus on violence against sex workers. Chapter six highlights the key messages related to migration and mobility in the context of HIV and sex work. The concluding chapter attempts to tie all core messages from the previous thematic chapters together and highlights the agreed actions at regional and country levels for follow up.

Throughout the thematic chapters, concrete suggestions for actions and existing good practices from the region are highlighted to inform effective programming and scaling up of interventions on HIV and sex work in the region. These examples are reproduced with the understanding that 'one size does not fit all' and that "best practice" programmes and practices would need to be adjusted according to local circumstances and context. The key messages communicated in this report provide concrete guidance to ensure any adjustment of good practice embraces the fundamental importance of a human rights-based approach and the need for strengthening of partnerships to address HIV in the context of sex work.



Zi Teng, Hong Kong. Sex Work Is Work!



Sex workers are often critical of the role of police in obstructing HIV programmes. Here “Offter” Sachumi from Empower in Thailand highlights police powers in a game developed to educate people about the complexities of the sex industry.

Critical components of the HIV and sex work response

This chapter outlines the fundamental principles that need to be addressed in any intervention on HIV and sex work. They cut across the four thematic areas that were focused upon during the Regional Consultation. These overarching messages concern the importance of meaningful sex worker participation, the challenges of stigma and discrimination and the realities of sex workers living with HIV.

2.1 'NOTHING ABOUT US WITHOUT US'

2.1.1 Successful programmes to make sex work safer and prevent HIV must include sex workers as equal partners

Sex worker engagement needs to be accepted as an essential component of any HIV and sex work programme strategy. Policy makers and health providers don't always understand the realities of sex workers. It is therefore essential to ensure that local experiences and realities are heard and addressed. HIV interventions in the sex industry are more effective when sex workers themselves are directly involved and have ownership in designing, implementing and monitoring programmes and services.

“We cannot sustain sex worker interventions if [these are] not led by the sex workers”

- Dr. Swarup Sarkar, Unit Director Asia, Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM)

2.1.2 “Self-organizing” by sex workers is crucial to the HIV response in Asia and the Pacific

Evidence shows that “self-organizing” – the process by which space and support is available to allow specific communities to come together to develop common approaches to key issues that affect them – is one of the most effective ways to address risk, vulnerability and inequality facing sex workers. Self organizing promotes solidarity and increases self esteem as well as provides an opportunity to learn from within the community about the realities of sex workers and raise awareness amongst each other about topics such as human rights and HIV. Self organizing by sex workers is complicated in many countries by regulations that limit formal registration as an association or NGO to people of ‘good character’ or through other barriers to NGO registration.

Programmes must build the capacity of sex workers to organize themselves and engage in advocacy with policy makers to ensure protection of their fundamental rights. Sex workers need to be provided with the opportunity to bridge and build social capital by working to strengthen relationships with powerful external groups that can be beneficial in their struggle to protect their human rights and address the daily obstacles they face.

PRACTICAL ACTION SUGGESTIONS

- Involve trained 'key population consultants' (sex workers) for data collection, training local community facilitators, and mentoring local organizations.
- Involve sex workers as experts in the programme, for example when training health care providers.

“Sex workers are still mostly seen as ‘disease spreaders’ instead of being accepted as workers who make their own healthy choices as long as we get the opportunity. We have moved from being seen merely as ‘the problem’ to becoming ‘an indicator’ in programmes, but programmes still don’t believe sex workers themselves can prevent HIV.”

- Sex worker from Thailand

2.2 STIGMA AND DISCRIMINATION

2.2.1 Sex workers and their families face multiple forms of stigma and discrimination that impede on their human rights and increase their vulnerability to HIV

Stigma and discrimination by society, law enforcement officers, and health workers towards sex workers is an impediment to the successful control of HIV through sexual transmission. The idea that sex workers are somehow 'less human' or at least not entitled to the same human rights as others is reported as a common reality. Attitudes that sex workers 'deserve what they get' when they face violence makes it difficult for sex workers to obtain protection, support, and justice. This stigma is also internalized by sex workers, who may consider violence 'part of the job' and are therefore less likely to report incidences of violence such as molestations and rape to the authorities.

“Stigma and discrimination by society and by healthcare providers towards sex workers is an impediment to the successful control of HIV through sexual transmission... Stigma limits sex workers’ access to preventive and legal services.”

- Dr. Fonny Silfanus, Deputy Secretary of the National AIDS Commission of Indonesia

Sex workers in different countries and circumstances face many forms of stigma and discrimination, including being:

- Denied the right to vote;
- Denied the right to enter contracts and leases;
- Denied birth certificates or admission into schools;
- Arbitrarily (and non arbitrarily) arrested and held in detention;
- Made to pay bribes or be raped in order to be released from detention;
- Harassed and abused by police, other officials and NGOs; and
- Denied health care.

“We were taught to be funny in order to get accepted in the community to do our occupation. We try to forget the pain and tiredness behind our smiles... Please understand us, accept us.”

- Transgender sex worker from Thailand

A particular concern for many sex workers is the effect of stigma and discrimination on their children. Sex workers report that due to their occupation, their children are sometimes simply taken away or prohibited from going to school.

**PRACTICAL
ACTION
SUGGESTION**

- Programmes should promote acceptance of sex workers and people living with HIV/AIDS through media campaigns and health care services.



Sex workers from VAMP in India protest against forced rescue and rehabilitation programmes

2.2.2 Influential people in society need to be involved and leverage their influence to tackle stigma and discrimination related to sex work and HIV

Influential people in local communities and the larger society, such as religious leaders, media, teachers, trade union and labour officials, law enforcement officers and parliamentarians, play an important role in setting local norms about how sex workers are viewed and treated. When included in the right ways, these 'influencers' can effectively leverage change in a community. Their meaningful engagement will help address the ways in which sex workers are treated and tackle stigma and discrimination related to sex work and HIV.

“Change won't happen automatically, it needs facilitation.”

- Meena Seshu, General Secretary of SANGRAM

PRACTICAL ACTION SUGGESTION

- Provide opportunities for dialogue between stakeholders, including sex workers and influential people in society.

2.3 SEX WORKERS LIVING WITH HIV

Sex workers living with HIV face double stigma, for being a sex worker and for being HIV positive. In many cases, they are rejected by their family, face abuse and imprisonment from police and lack access to antiretroviral therapy (ART) and related sexual and reproductive health services and counselling. Imprisoned sex workers are regularly refused access to ART. Sex workers often face additional stigma and discrimination related to drug use, HIV status, ethnic and migrant status, and gender identity. For migrant sex workers, their HIV status can be grounds for deportation.

“HIV positive sex workers want to take care of their health and want to avoid transmitting HIV to others but we don't have information, condoms, and a supportive environment.”

- Sex worker from Indonesia

PRACTICAL ACTION SUGGESTIONS

- Increase awareness among sex workers living with HIV about their human rights.
- Support the collective organization of sex workers living with HIV to demand their rights.

Creating an enabling legal and policy environment

“In countries without laws to protect sex workers, drug users, and men who have sex with men, only a fraction of the population has access to prevention. Conversely, in countries with legal protection and the protection of human rights for these people, many more have access to services. As a result, there are fewer infections, less demand for antiretroviral treatment, and fewer deaths. Not only is it unethical not to protect these groups: it makes no sense from a health perspective.”

- Ban Ki-moon, Secretary-General of the United Nations, address to the International AIDS Conference, Mexico City, August 2008

Creating an enabling legal and policy environment for HIV and sex work is a broad subject that incorporates not only the law and related policies, but also ‘practice’ on the ground and access to justice for sex workers. It links to all other thematic areas highlighted in this report and provides an essential basis for any effective intervention addressing HIV and sex work.

I stand with you in addressing the over-reach of the law and the need for widespread legal and attitudinal change. But how is this change to be secured? In my opinion, it will only be achieved by attending to the ten commandments⁵ which I will now proclaim... They should be taken up by us and by the United Nations. Great movements have to start with a single step. That step begins here in Pattaya.

- Hon. Michael Kirby AC CMG

⁵ See Annex 5: HIV and sex work: The “Ten Commandments of Pattaya”

3.1 THEMATIC INTRODUCTION

Countries around the world have committed to the right of all people to the enjoyment of the highest attainable standard of health, including sexual and reproductive health, HIV prevention and access to treatment for HIV/AIDS⁶. Human rights apply to all people, including female, male, and transgender people who sell sex and people living with HIV. Governments have a responsibility to promote, protect and fulfill these rights by putting in place relevant laws, policies and programmes. In reality, sex workers are one of the social groups least protected by law, most harassed by law enforcement agencies and most seriously discriminated against within their communities⁷.

Within its 2012-2015 strategy: Getting to zero, UNAIDS and its Cosponsors have agreed on ten priority areas on which to focus their HIV work, which include empowerment of sex workers and the removal of punitive laws, policies, practices, stigma and discrimination that block effective HIV responses⁸. In May 2010, member states of the Economic and Social Commission for Asia and the Pacific unanimously agreed to put in place “measures to address stigma and discrimination, as well as policy and legal barriers to effective HIV responses, in particular with regard to key affected populations”⁹. Key affected populations refer to male, female and transgender sex workers, men who have sex with men, and people who use drugs.

Almost all countries in Asia and the Pacific criminalize aspects of sex work. Experience in the region shows that punitive laws, policies and practices around sex work do not reduce the number of people buying and selling sex but they do form barriers to sex workers’ access to services and they change the shape (venue, methods) of the sex industry in ways that increase vulnerability. Laws, policies and practices against sex

“We will insist on human rights for all, including for sex workers. Nothing else is acceptable as a matter of true public morality. Nothing else is sensible from the standpoint of responding to the urgent, ongoing global challenge of HIV and AIDS.”

- Hon. Michael Kirby AC CMG

workers limit their access to education, health care, housing, banking facilities, inheritance, property and legal services¹⁰. As a result of the criminalization of sex work, the locales where sex work takes place are surrounded by other forms of criminality such as criminal gangs, gambling, large scale corruption and extortion. Criminalisation of brothels leads to the growth of more disguised sex work venues and ways of selling sex, including through internet, telephone, massage parlours, streets, and parks. This has been shown to negatively impact HIV programmes and services for sex workers¹¹.

The forced participation of women in sex work has long been a legal concern. Now generally subsumed under the label of trafficking, it is illegal and subject

6 See the International Covenant on Economic, Social and Cultural Rights (1966), International Conference on Population and Development (ICPD) Programme of Action, 1994, and the Millennium Declaration (2000)

7 UNDP (2004). *Law, Ethics and HIV/AIDS in South Asia. A Study of the legal and social environment of the epidemic in Bangladesh, India, Nepal and Sri Lanka*

8 UNAIDS (2011). *UNAIDS 2011-2015 Strategy: Getting to zero.*

9 ESCAP Resolution 66/10

10 Aids2031 (2009). *Sex, Rights and the Law in a World with AIDS (2009)*. <http://www.aids2031.org/pdfs/sex%20rights%20and%20the%20law%20in%20a%20world%20of%20aids%20-%20meeting%20report.pdf>

11 *ibid*

to domestic laws, for example against kidnapping and rape, and to specific international agreements. These agreements define human trafficking and limit it to “threat or use of force or other forms of coercion, abduction, or fraud, of deception, of abuse of power... or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.”¹² However, contemporary laws meant to address trafficking are increasingly being used – or mis-used – to suppress sex work. This has resulted in substantial abuses of sex workers’ human rights and erosion of HIV prevention and care programmes.

3.2 KEY MESSAGES

3.2.1 Universal rights for sex workers must be insisted upon

Sex workers may lack citizenship or legal status resulting from migration or unfavourable regulations, and may face stigma and discrimination. Sex workers say that this leads them to be viewed as being without dignity and somehow less deserving of the same human rights as others. In some countries, sex workers cannot register the birth of their children. The core matter of law that countries must consider in their response to sex work is the International Covenant on Civil and Political Rights (ICCPR), article 16: “Everyone shall have the right to recognition everywhere as a person before the law”.

3.2.2 Removing criminal laws against sex workers is essential, but not sufficient

Decriminalization of sex work is essential to improve the health of sex workers, as recommended by the United Nations Special Rapporteur on the Right to Health, Anand Grover¹³. According to multiple studies, laws against sex worker and activities associated with sex work increase vulnerability to HIV by fuelling stigma and discrimination, limiting access to health services and condoms and generally impacting negatively on sex workers’ self-esteem and ability to make informed choices. They keep the sex industry ‘hidden’. Whilst removing criminal laws is essential, it is not sufficient to address all the legal and policy issues that lead to sex workers being arrested, abused and mistreated by law enforcement¹⁴.

“Because I did not have the amount of money the police officers requested at the time [of my arrest], I was given an option of being released if I provided sex to the police officers. I was not understanding on what grounds they had arrested me. For free sex? Or because I was a sex worker? I believe this is a common situation for Indonesian sex workers.”
- Sex worker from Indonesia

¹² United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (2000) Convention against Transnational Organized Crime.

¹³ Grover A. (2010). Report of the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health (2010), Human Rights Council.

¹⁴ Aids2031 (2009). Sex, Rights and the Law in a World with AIDS (2009). <http://www.aids2031.org/pdfs/sex%20rights%20and%20the%20law%20in%20a%20world%20of%20aids%20-%20meeting%20report.pdf>; Jenkins C. And Sarkar S. (2007). Creating Environments that Care: Interventions for HIV Prevention and Support for Vulnerable Populations. Focus on Asia and the Pacific (2007)

Legal environments differ per country and even within countries. Sex workers are affected by numerous laws and policies aimed at preventing or regulating sex work. This may include:

- Criminal or punitive laws that make all or some activities related to sex work illegal, such as anti-prostitution and anti-trafficking laws;
- Regulations, civil and administrative regulations, decrees, executive orders, and local ordinances and policies (including loitering, public offenses, indecency);
- Laws or traditional practices around the 'protection' of morality, culture, and religion (including sharia laws and laws against 'sodomy', 'sex against the order of nature' and adultery); and
- Public health laws.

“Laws and policies are essential to establish human rights benchmarks for society but they are not enough. Laws and policies alone do not change reality.”

- Dame Carol Kidu, Minister of Community Development, Papua New Guinea

Across the region, sex workers face very similar issues regardless of their culture or the legal status of sex work due to the practices on the ground by law enforcement and others. There is generally a disconnect between actual laws and policies, and practices of law enforcement and health officials. In numerous countries in the region the mere possession of condoms or money is assumed by police to be evidence of sex work related activities. Sometimes police use laws that no longer exist as a basis to arrest sex workers. In some countries, health service providers and outreach workers are harassed or jailed when reaching out to sex workers.

Global Commission on HIV and the Law

“Here we have an opportunity that we have never had before: To move the agenda forward, and create an enabling environment to work, live, and love safely.”

- Ruth Morgan Thomas, Global Coordinator NSWP

The Global Commission on HIV and the Law was launched in June 2010 “to develop actionable, evidence-based recommendations for effective HIV responses that promote and protect the human rights of people living with and most vulnerable to HIV”. The Commission will have until December 2011 to fulfill its task and will be supported by two interlinked processes: Regional Dialogues and a Technical Advisory Group. The Asia Pacific Regional Dialogue on HIV and the Law took place in February 2011 in Bangkok, Thailand. The Global Commission on HIV and the Law initiative is led by UNDP, on behalf of UNAIDS, working in close collaboration with a range of partners. www.hivlawcommission.org

GOOD PRACTICE

Police Law Booklet

Presented by Meena Seshu, General Secretary of SANGRAM, and Durga Pujari, President of Veshya AIDS Mukabala Parishad (VAMP) in India

In India, just like in other countries in the region, there is no law allowing police officers to beat sex workers but nonetheless this is the reality that sex workers face. In order to address this rights violation, the sex worker organization VAMP developed a booklet with pictures and text for the police about what the police can and cannot do according to the law. Sex workers carry the booklet around in their purse and show it to the police to remind them of the law.

VAMP takes a proactive approach by personally welcoming any new senior police officer joining the station and providing them with a copy of the booklet. Sex workers feel more confident with the booklet and the collaboration with the police has improved through the introduction of the booklet.

Sex workers from many countries at the consultation voiced concern that they are regularly targeted for arrest and prosecution, and that this results in them being less likely to access health services, including condoms. In these instances, HIV testing tends to be lower.

PRACTICAL ACTION SUGGESTIONS

- Stop using condoms as 'evidence' to arrest people.
- Remove criminal laws against sex workers either through the political process or through public litigation (which was recently successful in Canada).
- Document how different laws, regulations, policies and their enforcement impact on the rights of sex workers. Use this information and sex workers' expertise to educate the police and public officials about HIV, the law, and their conduct.

“When sex workers are arrested and go to court, there are no lawyers to represent them. In the civil court there are some voluntary lawyers, but there are no Sharia lawyers available. Sex workers are looked down upon by the legal fraternity.”

- Sex worker from Malaysia

3.2.3 Access to justice for sex workers is critically important to address and prevent rights violations

Sex workers face many forms of abuse by police officers criminals and sometimes their own communities and families as a result of lack access to the justice system. This lack of legal protection makes them vulnerable to violence, extortion and other forms of abuse. Enforcement of laws against sex workers usually takes place without formal charges, legal counsel or access to a court. When there are charges it is often for offenses

such as 'public indecency', 'disturbance', or 'loitering' rather than through prostitution laws. Few legal support groups and lawyers are resourced to advocate for the rights of sex workers.

PRACTICAL ACTION SUGGESTIONS

- Ensure access to legal services and redress mechanisms for sex workers.
- Strengthen legal literacy and awareness of human rights among sex workers.
- Engage and support legal advisors, lawyers, and judges to advocate for the rights of sex workers.

GOOD PRACTICE

Access to legal services for sex workers

Presented by Pisey Ly, Women's Network for Unity (WNU), Cambodia

“Is it my fault that I don't understand the law, or is it that you don't want us to know it?”

- Sex worker from Cambodia

Sex workers across the region lack access to legal services. Many sex workers lack knowledge about the law and their human rights and may not be literate. To address these gaps in access to legal services for sex workers, WNU has initiated a legal project that provides sex workers with community friendly information about rights and laws and how to use them to defend themselves. In time, the project aims to provide lawyers to defend sex workers when needed, which has never happened before in Cambodia.

3.2.4 Sex work is work

Sex work has existed for thousands of years, in every country in the world. Millions of women, men and transgender people have engaged in sex work, raised families, contributed to the improvement of their communities, and helped build up nations. Sex work does not interfere with the rights of others in society.

“We use our bodies to do business and we are not doing any wrong thing. Why do our governments keep saying that we are criminals?”

- Sex worker from Myanmar

In common with many other jobs, sex work entails providing specific services for a fee. Recognizing sex work as work allows governments to provide protection and services to sex workers under existing systems without the need for special legislation. It allows for migrant sex workers to access the same protection and services as other migrant workers.

Criminalization of sex work and related practices forms a significant barrier to the mechanisms that protect other workers such as occupational health and safety standards and labour rights. Poor working conditions for sex workers increase their HIV risk and vulnerability. Lack of access to water, rest, security, safety equipment, and sick leave means that many sex workers are exposed to violence and other threats to their health in their workplace.

PRACTICAL ACTION SUGGESTIONS

- Sex workers should collectively participate in trade unions and federations.
- Trade unions should provide a platform from which sex workers can advocate and campaign for improved workplace conditions.

“Sex workers earn their living and often support their family members with income they earn from providing sexual services... Sex work is an income-generating activity or a form of employment. As such it can be considered along with other forms of economic activity. An employment or labour perspective is a necessary, if not sufficient, condition for making sex work and human rights real at local, national, and international levels.”

- Dr. Siriwat Tiptaradol, Deputy Permanent Secretary, Ministry of Public Health

Rights of (Sex) Workers

The new ILO labour standard, *Recommendation 200 concerning HIV and AIDS and the World of Work*, adopted in June 2010 by governments, employers and workers from around the world, identifies sex work as work and sex workers as entitled to the same rights to HIV prevention and care and occupational safety as any other workers.

This recommendation can be used to advocate for access to condoms, work place safety, confidentiality of HIV status, and health insurance, among other things.



Sex workers argue that only by granting them labour rights and human rights can we begin to address the problems that may exist in the sex industry

Ensuring sexual and reproductive health and rights

The AIDS epidemic is integrally linked to sexual and reproductive health (SRH), as the majority of HIV infections are sexually transmitted. Sexual and reproductive health includes HIV prevention, treatment and care but also addresses broader aspects of health related to having a satisfying, responsible and safe sex life and the freedom to decide if, when, and how many children to have.

4.1 THEMATIC INTRODUCTION

There is an urgent need to improve both the effectiveness and coverage of prevention programmes in order to tackle the new HIV infections among sex workers and their clients. At the same time, there are major gaps in provision of sexual and reproductive health services for female sex workers, while male and transgender sex workers are often ignored.

In Cambodia and Thailand, 100% Condom Use Programmes (CUP), which aim to increase condom use to 100% of the time, in 100% of risky sexual relations, in 100% of sexual acts taking place within sex entertainment establishments, have been successful in reducing new HIV and STI infections¹⁵. However, sex workers have raised human rights concerns and criticized the programme for not adequately including sex workers in the design and implementation, leading to compulsory testing, deprivation of income and health care, and police harassment.

Sexual and reproductive health services for sex workers are very limited. As many STIs are asymptomatic, both sex workers and providers often do not recognize the need for examination and treatment. Many providers are not able, or are unwilling, to diagnose oral and ano-rectal STIs in female, male and transgender sex workers. In some countries, STI and HIV testing is mandatory for sex workers and confidentiality is not assured. This has led to discrimination, loss of livelihood and even violence¹⁶. High rates of abortion in sex workers indicate that sex workers are generally not receiving adequate contraceptive services¹⁷. Providers should offer sex workers advice on the range of contraceptive methods available, including back-up methods such as emergency contraception.

¹⁵ WHO (2004). *Experiences of 100% Condom Use Programme in Selected Countries of Asia*.

¹⁶ APNSW (2010). *Caused By The Refraction*. Film available on <http://sexworkerspresent.blip.tv/file/3977331/>

¹⁷ Morineau G, Neilsen G, Sopheab H, Chansy P, Mustikawati DE. *Falling through the cracks: addressing the reproductive health needs of female sex workers*. IXth International Conference on AIDS in Asia and the Pacific, 9-13 August 2009, Bali, Indonesia (TuSY07).

A human rights based approach should be applied to any HIV and SRH program or service targeting sex workers and their clients. The illegality of sex work in most countries in the region creates an environment that facilitates harassment and hinders the delivery of quality prevention and care. Judgmental attitudes can be seen to result in either poor service or refusal of services. Partly as a result of these negative attitudes, many sex workers only seek healthcare when they are symptomatic, and this can lead to longer term reproductive health problems and increased vulnerability to HIV infection. In a number of countries, sex workers are required to carry a 'health card' (a card which gives sex workers access to health services but at the same time labels them as sex workers and has been reported to have been used to enforce mandatory HIV testing), which sex workers report provide law enforcement officers with additional 'justification' to harass and abuse workers.

4.2 KEY MESSAGES

4.2.1 Focusing HIV prevention on sex work is the most cost-effective investment in Asia and the Pacific

Epidemic modelling shows that sex work will be the main driver of the epidemic in the region for the next twenty years (see Figure 4). While injecting drug use and sex between men may kick start the epidemic, the final shape of the epidemic is determined by the number of clients per sex worker per day.

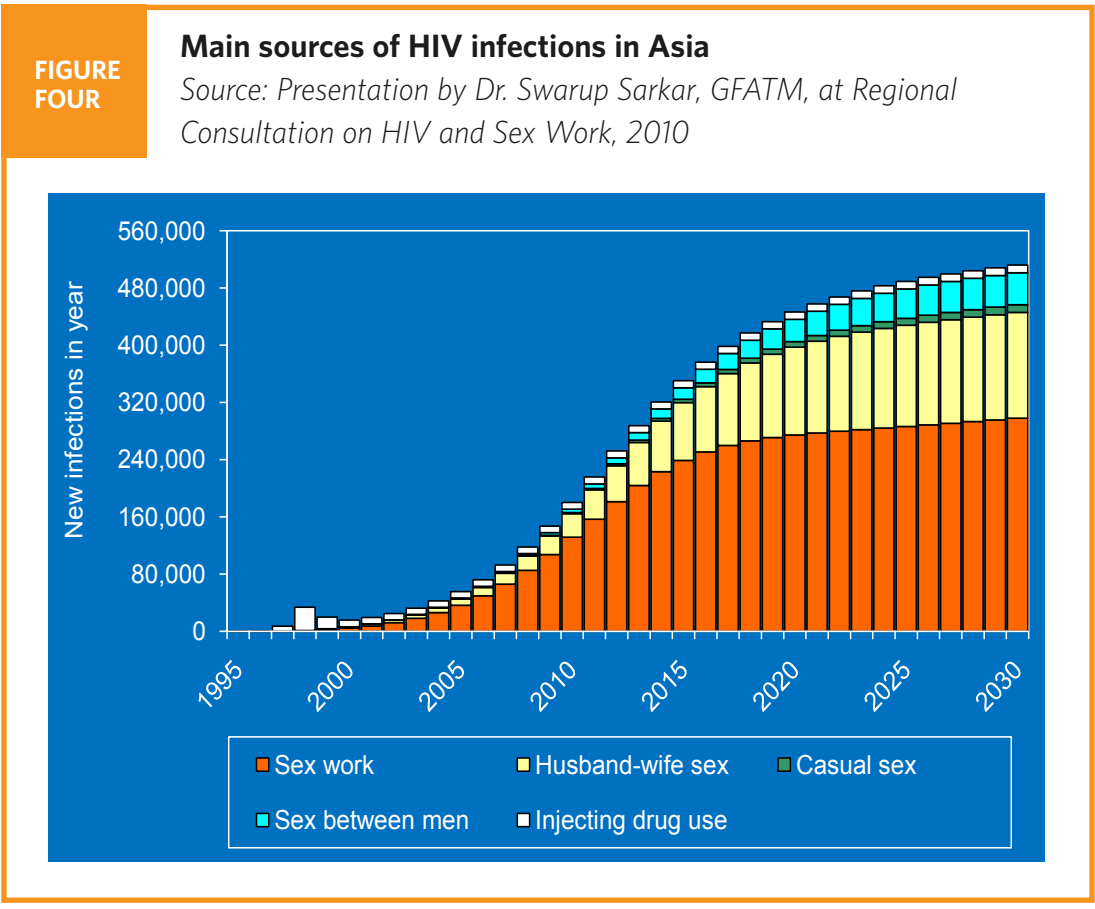
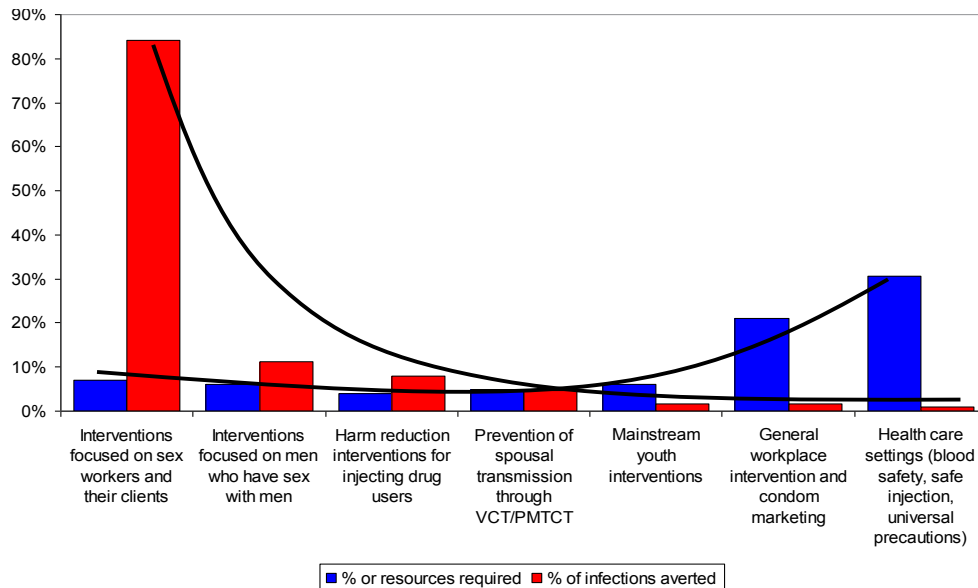


FIGURE FIVE

Comparison of prevention interventions, according to distribution of resources and percentage of new infections averted, 2007-2020

Source: *Redefining AIDS in Asia, Crafting an Effective Response. Report of the Commission on AIDS in Asia, 2008, page 88* HIV and Sex Work, 2010



Analysis by the Commission on AIDS in Asia has indicated that sex work interventions are the most cost-effective interventions for the region in order to address the AIDS epidemic. Figure 5 demonstrates the cost-effectiveness of sex work interventions compared to other common but less cost-effective HIV interventions for this region including focusing on men who have sex with men, harm reduction, mainstream youth, and health care settings. Evidence from Thailand, Cambodia and Tamil Nadu (India) demonstrates that early interventions targeted at sex workers and their clients can even reverse the epidemic.

Sex work interventions receive very limited support in most countries thus far. For example, out of the one billion US dollar investment by the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) to date, only 10% goes to sex work programming¹⁸. UNAIDS estimates that less than one percent of all global funding for HIV prevention has been allocated to prevention among sex workers¹⁹. Only a small portion of that money actually reaches community organizations of sex workers.

PRACTICAL ACTION SUGGESTION

- Reallocate HIV funds to focus on sex work.

¹⁸ Presentation by Dr. Swarup Sarkar at the Asia and the Pacific Regional Consultation on HIV and Sex Work, 12 October 2010, in Pattaya, Thailand

¹⁹ Global Fund to fight AIDS, Tuberculosis and Malaria (March 2010). *The Global Fund, HIV and Sexual Orientation/ Gender Identities*. <http://www.theglobalfund.org/documents/replenishment/2010/The%20Global%20FUND%20SOGI%20Strategy%20Update.pdf>

4.2.2 Condom programmes must address all aspects of supply, demand and environment within a rights-based approach

Access to good quality condoms and water-based lubricants is essential for HIV prevention. Policy and programmes must focus on making condoms and lubricants accessible and affordable to all sex workers and their clients. Laws, regulations and practices that penalize possession of condoms should be revised and the reported common law enforcement practice where condoms are used as 'evidence' to arrest people must be stopped. Cultural and other barriers that limit access to and use of condoms by sex workers and their clients need to be addressed.

While many countries have put in place condom distribution programmes, adequate supply remains a challenge. Failure to include sex worker organizations and sex workers in the design, implementation and evaluation of programmes is reported to further diminish access and use of the condoms that are available.

Effective and sustainable approaches to condom programming and sex work need to utilize a rights-based and participatory approach and address the power differentials which often exist between sex workers and clients, police, government officials, health authorities, and entertainment establishment (brothels and others) owners.

PRACTICAL ACTION SUGGESTIONS

- End compulsory testing.
- Ensure access to male and female condoms and lubricants.
- Include sex workers in condom programming.

4.2.3 A comprehensive set of sexual and reproductive health and HIV services must be provided to sex workers to address the whole spectrum of prevention, treatment, care and support from a rights-based approach

Sexual and reproductive health services for sex workers should be tailored to their needs and delivered in a friendly and non-judgmental manner. Confidentiality must be guaranteed. A comprehensive rights-based set of services for female, male and transgender sex workers should be developed and implemented in partnership with sex workers and should include at a minimum:

- Sex worker-driven prevention efforts including peer education and access to male and female condoms and water-based lubricants;
 - Sex worker-friendly health information and services including STI management, VCT, and reproductive health (including contraception, maternal health care, abortion and post abortion care, and cervical cancer prevention);
 - Appropriate counselling and services for HIV-positive sex workers on contraception and pregnancy (including antenatal care, prevention of parent-to-child transmission, and treatment, care and support);
 - Services that address the sexual health needs of transgender sex workers (including hormone treatment);
- and

- Referrals and access to a range of related services including harm reduction (clean needles and syringes), drug and alcohol programs, mental health services, legal services (for example to address violence faced by sex workers), and social support services (including sex worker community groups).

Services for sex workers need to be accessible (appropriate locations and timings), acceptable, and affordable to all sex workers. In some contexts, these services may be integrated into regular public health services, while in other circumstances separate, targeted services will be required. Sexual and reproductive health services should always be closely linked to peer education programmes and other interventions to ensure that they are well promoted. Specific outreach should take place to reach non-brothel based sex workers, minority sex workers and others more vulnerable including younger sex workers. Complementary programmes must be established for clients of sex workers to promote safer sexual practices and to reduce gender based violence²⁰.

PRACTICAL ACTION SUGGESTIONS

- Address stigma and discrimination against sex workers by health and social service providers, including through pre-service training of nurses and doctors.
- Make condoms (including female condoms) and water-based lubricants available, accessible, and affordable to all sex workers and their clients.

GOOD PRACTICE

Sex worker led services in Myanmar

Presented by Kay Thi Win, Targeted Outreach Programme (TOP), Myanmar

HIV and STI rates among sex workers and men having sex with men (MSM) in Myanmar are high. Population Services International's Targeted Outreach Programme (TOP) works with sex workers and MSM since 2004 to decrease high-risk sexual behaviours and increase access to sexual health services and ART. In less than 6 years, TOP has established 18 drop-in centres across the country and employs 350 staff and peer workers. In the first eight months of 2010 alone, TOP reached over 42,000 female sex workers and had over 14,000 individual female sex workers visiting a drop-in centre.

TOP is considered a good practice for its strong peer component, involving sex workers in all activities including:

- Direct implementation as peer workers;
- Building sex worker capacity to take on other responsibilities (data entry, managing services, etc). Almost all field and core staff members are drawn from target communities;
- Setting up and running drop-in centres where sex workers can rest and meet;
- Establishing clinical services (often linked to drop-in centres) with free HIV, STI and reproductive health services, or referrals to existing services as relevant;
- Providing HIV care and support for positive sex workers; and
- Conducting advocacy (with health authorities and others).

²⁰ According to the Commission on AIDS in Asia, HIV prevention programmes are more successful "when interventions also target the clients of sex workers" (p. 201)

4.2.4 The ethical principles of voluntarism and confidentiality must be incorporated into the design, implementation and monitoring and evaluation of all sexual and reproductive health and HIV programmes

All condom programming and sexual and reproductive health and HIV services must respect the ethical principles of voluntarism and confidentiality for all their clients, including sex workers. Many condom programmes in the region have been criticized by sex workers for leading to compulsory testing of sex workers and disclosure of HIV status without consent to their employers and others. Voluntary Counselling and Testing (VCT) indicators required for donor reporting may drive implementers to forced testing in order to reach the agreed targets.

PRACTICAL ACTION SUGGESTION

- Stop HIV testing (also called “mandatory” or “routine” testing) of sex workers without informed consent.



Sex Workers run the VCT programmes in the TOP program in Myanmar

Eliminating violence against sex workers

Gender-based violence, whether conducted by an intimate partner, a client, or the police, is a human rights violation that has been shown to increase vulnerability to HIV and sexually transmitted infections²¹. It is still a relatively new area of focus in HIV prevention work but urgently requires attention. It is closely linked to law and law enforcement and the lack of quality services available to sex workers.

5.1 THEMATIC INTRODUCTION

In their work and lives, sex workers experience disproportionate levels of violence including police abuse, sexual assault, rape, harassment, extortion, and abuse from clients, agents (pimps), sex establishment owners, intimate partners, local residents, and public authorities. Violence against sex workers is a violation of their human rights, and increases sex workers' vulnerability to HIV.

Violence against sex workers must be understood beyond the individual incidents and in a wider context of gender and stigma. Violence is often directed against women because they are female and have unequal power in relationships with men and low status in society in general. This lack of power and status make women, including female sex workers, vulnerable to acts of violence. This is also referred to as gender-based violence (GBV). Male and transgender sex workers also often lack power and status and are vulnerable to homophobic and gender based violence.

Violence is an important factor affecting the vulnerability of sex workers to HIV and sexually transmitted infections. Studies around the world show that women living with HIV are more likely to have experienced

“We say to the police: You are also our customer, why are you arresting us? If we don’t have money we have to pay with our bodies. It is painful for me because it is rape to have someone having sex with me without paying. Why are we not treated fairly in our country? We also get violence from our pimps; some force us to have sex with clients even when we are menstruating.”

- Sex worker from Indonesia

²¹ Presentation by Swarup Sarkar, Asia Director, GFATM, at the Regional Consultation on HIV and Sex Work, Pattaya (2010)

“To make citizens believe and to prove to them that police are taking action, we usually beat and hurt these sex workers in public places.”

- Police official in documentary by Sex Workers Forum Kerala

violence, and women who have experienced violence are more likely to have HIV. Injury caused by physical violence during sexual activity or rape can increase risk to HIV infection. Violence associated with stigma and discrimination against sex workers and people living with HIV also increases their vulnerability to HIV. Being labelled “vectors of HIV”, blamed for the violence inflicted upon them, verbally abused, and living under the constant threat of violence damages self-esteem. This results in poor health-seeking

behaviour and exposure to risky behaviours. Some sex workers resort to alcohol or drug use, which may result in increased risky sexual behaviour and violence. Avoiding HIV by using a condom becomes less of a priority – or even practically impossible – when a person has the immediate need to protect themselves from violence²².

Like many people, especially women, sex workers face violence perpetrated at intimate levels, from their intimate partners and other family members. But some sources of violence are quite different for sex workers than they are for other people. Sex workers face violence specific to their workplace, for example by agents (pimps) and sex work establishment owners. Violence from clients is often triggered by the refusal of a sex worker to comply with a demand for unprotected sex²³.

Not only do criminals often operate in red-light areas, but violence perpetrated by the State, such as rape by police officers, is reportedly a routine source of violence for sex workers in most countries in Asia and the Pacific²⁴. Examples of violent actions of street ‘clean-up’ operations, police-led brothel closures or so-called ‘rescue operations’ are known to have been carried out en masse by law enforcers. This is reportedly often done in the name of upholding decency and sexual morality, and is known to often have been combined with sex workers being beaten and raped. In China, public shaming programmes have been used on arrested sex workers²⁵.

While anti-trafficking laws and policies are put in place to protect people from violence and exploitation, there is a growing concern that trafficking is often equated with sex work and anti-trafficking laws are used to arrest sex workers or demolish sex work establishments. In Cambodia, legislation intended to tackle human trafficking has led to arbitrary detention of anyone carrying a condom and other human rights abuses²⁶. Arrested sex workers are sent to ‘rehabilitation’ centres that are like prisons where women are held in communal cells without sufficient food or clean water and without access to ART if they are HIV-positive²⁷.

According to some schools of thought, sex work is seen as a form of violence and exploitation. Even the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), in article six, understands sex work in itself as a form of violence against women, regardless of the decision making

22 *ibid*

23 <http://www.whatworksforwomen.org/chapters/7/sections/9>. See also Lowe D. (2002), *Documenting the Experiences of Sex Workers. Draft report to the POLICY Project*.

Accessed through: <http://plone.nswp.org/resources/content/documenting-the-experiences-of-sex-workers-draft-report-to-the-policy-project/view>. And recommendations from the Sex Worker Community Forum, 8 August 2009, at ICAAP in Bali, Indonesia which highlight the need for client education in relation to HIV.

24 WHO (2005). *Violence against Women and HIV/AIDS: Critical Intersections: Violence Against Sex Workers and HIV Prevention*. WHO Information Bulletin Series, Number 3.

25 WHO, UNAIDS (2010). *Addressing Violence against Women and HIV/AIDS: What Works?*

26 http://www.sexworkereurope.org/site/index.php?option=com_content&task=view&id=218&Itemid=1

27 <http://www.groundreport.com/World/Cambodia-Sex-workers-100-Condom-Use-and-Human-Rights>

involved by the women themselves. The global sex workers' rights movement has consistently argued that while there is violence within the sex industry, the exchange of sexual services for money is not in and of itself violence. In other words, consensual adult sex work does not constitute violence per se. The sex workers rights movement argues that, because of this overall positioning of sex work as sexual exploitation and violence, the everyday violence that sex workers face is largely overlooked, ignored or even accepted.

5.2 KEY MESSAGES

5.2.1 Violence against sex workers, including by State actors, are human rights violations that should be taken up by human rights institutions

It is the State's responsibility to uphold human rights through making laws and policies and ensuring proper implementation and enforcement. But in reality, police and law enforcement authorities are often given a free rein in exercising their powers in illegitimate ways when dealing with sex workers, threatening or committing violence if sex workers do not comply with their demands. Police and other law enforcement authorities often harass and abuse sex workers, refuse to report cases of violence against sex workers, or do not follow-up on the cases.

“We can and must stop gender based violence”

- Jane Wilson, Regional Programme Advisor at UNAIDS RST

Various human rights bodies exist in Asia and the Pacific, at national level and at regional levels, to address human rights violations. These institutions currently lack experience addressing rights violations against sex workers specifically, but are in a position to take up such cases. Sex workers need to be informed of the structure and responsibilities of these institutions so they can make use of them. Sex workers can partner with civil society human rights advocacy initiatives to get their message across to human rights institutions.

PRACTICAL ACTION SUGGESTION

- National and regional human rights institutions should welcome sex worker organizations in a dialogue as a first step towards a partnership to support the rights of sex workers.

5.2.2 All HIV programmes targeting sex workers and their clients should address violence and violence prevention

In addition to his or her occupation, gender identity, physical and mental ability, location, age, drug and alcohol use, ethnicity and legal status impact on a sex worker's vulnerability to violence and therefore their vulnerability to HIV infection. Yet few HIV programmes targeting sex workers or their clients address violence and violence prevention. Similarly, existing violence prevention programmes often do not reach sex workers or address the specific concerns and circumstances faced by female, male and transgender sex workers. The illegal status of sex work in most countries, and the associated stigma and discrimination, make it difficult and risky for sex workers to seek protection, health care or legal support to address violence they have faced.

- Include violence prevention interventions in proposals to, among others, the Global Fund.
- Set up violence response mechanisms to ensure rights of sex workers are protected (see, for example, the good practice below from Ashodaya, India).
- Train law enforcement officers on human rights of sex workers and violence prevention and how to better document and process cases of violence, in order to transform officers into “agents of change” who protect sex workers from violence.

**GOOD
PRACTICE**

Rapid Response Teams

Presented by Akram Anwar of Ashodaya, India

From a situation where sex workers in Mysore were scattered all over the city and violence against them was common, the sex worker organization Ashodaya was formed to foster solidarity and support of sex workers. To address the violence faced by sex workers, they established Rapid Response Teams (RRT), made up of sex workers, and developed a safety mechanism which was promoted among the members. In order to prevent violence, street patrolling was added to the activities. By claiming social space, sex workers' issues were brought to the public arena and sex workers' self esteem increased. Statistics show that the number of incidents of violence against sex workers by law enforcement bodies has decreased significantly between 2004 and 2008.

**SIGNS OF
SUCCESS**

Sensitization Trainings for Police

Presented by David Kila, Chief Inspector of the Royal PNG Constabulary and Janet Kilei, Project Officer Poro Sapot in Papua New Guinea (PNG)

The Summary Offences Act (1977: Part VII, Section 55) makes it illegal for anyone in PNG to live on the earnings of prostitution. Sex workers face much stigma and discrimination and are blamed for “killing people” by spreading HIV. Police in PNG are reported to rob, abuse, and publicly humiliate sex workers.

The Poro Sapot Project of Save the Children has conducted sensitization trainings and activities with police from 18 stations in three provinces to prevent violence against sex workers and increase the police's understanding of sex workers, HIV, and human rights. The project directly involves sex workers, MSM and people living with HIV. Since January 2010, 500 police officers have attended such sensitization trainings. Police officers are found to now sympathize more with sex workers and attend to their complaints. “Through trainings we were made aware about safe sex. Many times sex workers are the victims,” said the Chief Inspector. Janet Kilei of Poro Sapot said it is reported that violence against female sex workers has reduced and more sex workers now report their cases to the police. But more work needs to be done to concretely assess in detail the impact of the project.

5.2.3 Safe working spaces are needed for sex workers

Sex workers often find themselves in situations that put them at increased risk of violence. Sex workers who are not part of any group and work in isolated or hidden areas, such as most street-based sex workers, are more vulnerable to violence. They are also less likely to be reached by HIV or violence prevention programmes and health services and less likely to report incidences of violence. This situation is exacerbated because sex work in many countries in the region is an illegal activity or is perceived as illegal. As a result, the 'sex industry' often takes place in more or less hidden locations and is often associated with other forms of criminal activities. In countries with legislation that criminalizes sex work or specific sexual activities, such as homosexuality, there is a greater risk of targeted violence, by police, health service providers, and the general public, against people associated with those behaviours.

PRACTICAL ACTION SUGGESTION

- Introduce health and safety standards for sex work, according to the ILO's *Recommendation Concerning HIV and AIDS and the World of Work*.



Laxmi Narayan Tripathi. APNSW's Bad Girl Ambassador



Sachumi and Kumjing from Empower, Thailand. "Kumjing" is the star of Labour Sans Frontiers – an Empower art project to highlight issues for migrant sex workers

Addressing migration and mobility in the context of HIV and sex work

Migration (across state borders) and mobility (within state borders) of people is common in the region and can take many different forms. Migration and mobility of sex workers is strongly associated with the lack of an enabling legal and policy environment in relation to HIV and sex work, high levels of stigma and discrimination and it has important implications for service delivery.

“Most documented or partially documented migrants, at least initially after they arrive, will be limited to working in the most dangerous and exploitative sectors of every industry; be that construction, agriculture, domestic work and/or sex work.”

- Empower, Thailand

6.1 THEMATIC INTRODUCTION

Sex workers are highly mobile populations, moving both within and across national boundaries, as either documented or undocumented labour. Labour laws rarely, if ever, offer protection and benefits to local or migrant sex workers. Due to government's perceptions of sex work, sex workers are prohibited from using legal channels to migrate for work. Sex workers are often prevented from entering certain countries, even as tourists. In some cases immigration laws specifically prohibit entry of sex workers, while in other countries they may be admitted on a discretionary basis if they are seen to be “of good character” with verifiable means of support.

Approaches to migration vary throughout the region and are important because migrant sex workers are vulnerable, especially where the migration is undocumented, where it is brokered by people smugglers or where it is forced.

According to Empower, a sex work organization based in Thailand, the combined impact of the criminalization of illegal migration and criminalization of sex work force migrant sex workers to live and work in highly exploitative, insecure and often dangerous circumstances. This affects their ability to be safe from HIV which is reflected in public health statistics throughout the region.

“Work in Thailand is better than living at home where there is no school, no hospital or jobs. We are the bread winners of our families. We send our brother to military services, our uncle to ordain as a monk, our children to school, and our father to the hospital when he gets ill. We have harmed no one but we are labelled as illegal migrants, drug traffickers, body-sellers, and spreaders of diseases such as HIV/AIDS.”

- Two migrant sex workers in Thailand

6.2 KEY MESSAGES

6.2.1 Mobility provides opportunities but increases vulnerability

Migration and mobility can significantly increase the vulnerability of sex workers to HIV and sexually transmitted infections, in a large part due to their often undocumented status, poor working conditions, lack of knowledge about and access to health care, and lack of social support network. Language is another potential barrier for mobile sex workers. Migrant sex worker may change location regularly to avoid police and may avoid health services for fear of being reported.

As indicated by the stocktaking exercise (see Annex 2), sex workers are a highly mobile population. Sex worker organizations report that most sex workers migrate independently, whether travelling within

countries or across borders. Although most migration is voluntary, it is often undertaken without the required travel documents.

PRACTICAL ACTION SUGGESTION

- Initiate dialogue between government sectors, including immigration and police, and civil society organizations (particularly sex workers) in order to increase understanding of the implications of migration and mobility of sex workers on HIV vulnerability.

6.2.2 Anonymous health and social services for migrants, including migrant sex workers, need to be provided

Existing health and social services and programmes are not sufficiently reaching migrant and mobile sex workers. Lack of identity papers, fees, discrimination by health workers, and fear of being reported are barriers to migrant workers' access to health services. As a result, migrant sex workers in countries such as China seek health services of poor quality through cheaper but unqualified private providers. Many migrant sex workers face cultural and linguistic barriers that adversely impact upon their ability to access local services and support networks. Knowledge about available services and how to access them is not readily available. Many service providers discriminate against them because they are migrants, sex workers, or both. Their access to HIV prevention, treatment, care and support often depends on their status as migrant workers. In some countries, migrant sex workers found to be HIV positive are arrested, placed in detention camps and deported, regardless of their legal status.

Policies and interventions should be developed and implemented to reduce human rights violations and vulnerability of migrant sex workers. These should include provision of health information and services (HIV prevention, treatment, care and support, and other areas of reproductive health) and social and legal services that address the needs of migrant sex workers, with or without papers, refugees, internally displaced persons, asylum seekers and those from ethnic minorities (who have no legal entitlement).

PRACTICAL ACTION SUGGESTIONS

- Service providers need to be trained on human rights of migrants and sex workers and to understand that people without valid immigration documents, regardless of their occupation, should not be refused services by providers or receive inadequate services;
- Cultural mediators can be contracted to provide translation and culturally sensitive counseling; and
- Provide pre- and post-migration education for labour migrants, including sex workers, on human rights and sexual and reproductive health information and HIV prevention.

“We can’t tell our names and where we are from. To improve our quality of life, we go to towns and cities to get a higher income... We are stigmatized in the healthcare setting, for example when seeking treatment for STIs they require us to disclose our identity and our occupation and health care workers discriminate against us. The cost of receiving healthcare in the city is high so sex workers opt for private clinics where they are unsure of the credibility of the doctors who treat them.”

- Sex worker from China

GOOD PRACTICE

Services for migrant sex workers from Viet Nam in Cambodia

Presented by Keo Tha, Coordinator of Women’s Network for Unity (WNU), Cambodia

Since 2005, 720 Vietnamese female sex workers have been mobilized in three provinces of Cambodia through the “Empowering Vietnamese Sex Workers” project by WNU, and Cambodian Women Crisis Centre with support from ActionAid Viet Nam and Cambodia. The project, run by sex workers, provides migrant sex workers with support for themselves and their children to access existing HIV, SRH and other health services. Services and referrals are also provided in relation to legal assistance, shelter, and education and skills building.

6.2.3 Anti-trafficking laws should not impede on the human rights of sex workers

Countries in the region are under significant international pressure to pass anti-trafficking laws and announce the numbers of arrests, but these laws usually misinterpret sex work and lead to abuses of human rights of sex workers. Someone forced (trafficked or otherwise) to provide sexual services for a fee is sexually exploited. Anti-trafficking laws have changed how migration is viewed in the world today, with the current global debate focusing on sex and labour trafficking instead of on labour rights, xenophobia, culture and gender.

“The underlying assumption in anti-trafficking laws is that no person would ever choose to become a sex worker and that they must have been forced in some way into the profession, which is not the case for most sex workers. Forced ‘rescue and rehabilitation’ are regularly considered the only redress, regardless of the human rights violations this poses to many sex workers.”

- Dr. Bebe Loff, Director of the Michael Kirby Centre for Public Health and Human Rights

Statistics on migration and trafficking are often unreliable because they tend to over represent the sex trade²⁸. Although most publicity about sex work and mobility focuses on human trafficking, sex work organizations say that most migrant sex workers are not trafficked. According to Empower, most sex workers are migrants for personal and practical reasons – primarily because they prefer not to work in their home towns. In addition, for those migrating in order to improve their lives, sex work is one form of employment that requires the least credentials and offers the best opportunities.

Anti-trafficking measures and laws have led to crackdowns on brothels, detention in “rehabilitation” camps, and arrests of street-based sex workers, whether or not they are victims of trafficking. As a result, sex workers report that they feel pressured to seek work elsewhere, within their country or across borders, which increases their vulnerability to trafficking and HIV.

“When workers seek employment in another country, it is labelled “export labour”. However, when female sex workers travel to another country, it is regularly labelled trafficking even if it was by choice.”

- Chantawipa Apisuk, Director of EMPOWER Foundation in Thailand

PRACTICAL ACTION SUGGESTIONS

- Document the negative impact of anti-trafficking laws in order to raise awareness and stop the development, adoption and implementation of such laws.
- Support sex worker led models to address trafficking and other forms of exploitation and empower migrant sex workers (like the good practice below by DMSC, India).

28 Feingold D. Human Trafficking Foreign Policy; Sep/Oct 2005; 150; ProQuest Social Science Journals

Self Regulatory Boards

Presented by Dr Smarajit Jana, Chief Advisor of Durbar Mahila Samanwaya Committee (DMSC) in India

The sex worker organization DMSC was established in 1995 in one of the largest red-light districts in Southeast Asia, called Sonagachi. It currently represents over 60,000 female, male and transgender sex workers.

In order to address violence against sex workers and trafficking, DMSC, established Self Regulatory Boards (SRB) which: 1) control the exploitative practices within the sex industry; 2) actively engage in addressing issues of violence; and 3) prevent the entry of minors and trafficked women in the sex industry in addition to slavery and slavery like practices. SRB consists of 10-12 members: at least half of the members representing the sex workers' community and the other members coming from local government and the Ministry of Women and Social Welfare, as well as a medical doctor, local advocate/ lawyer and a women's rights activist.

What does the SRB do?

New entrants are identified by a peer programme and brought to SRB for an interview. If it concerns a willing adult, information and services are provided as needed. If the new sex worker is unwilling or underage, steps are taken to remove the person from this situation. Such steps may include returning home, going to a Short Stay Home or boarding school, starting vocational training or getting placement in another occupation. In cases of police violence against sex workers, a multitude of strategies is implemented including lodging a report at the police station; submitting protest letters to women's and human rights organizations; engaging lawyers; mobilizing sex workers in a demonstration; and mobilizing media.

What is the result?

This approach has significantly reduced the number of underage sex workers (from 25% in 1992 to 2% in 2008) and incidence of police raids (for example from 162 in 2003 to 22 in 2009 in Sonagachi). The government and police have recognized the success of the mechanism and are up-scaling it to other states.



Sex workers are often seen as being outside of national culture or morality. Sex workers in Cambodia organised a Bon Pkar (solidarity) ceremony with a temple in Phnom Penh. Sex workers, their children and parents participated.

Taking action: Ending HIV in the context of sex work

At the Asia and the Pacific Regional Consultation on HIV and Sex Work, October 2010 in Pattaya, Thailand, 140 representatives of UN agencies, governments, civil society organizations and sex work organizations and networks jointly committed to move forward in the response to HIV and sex work, based on the key messages shared in this report and the country specific action plans and regional recommendations highlighted in this chapter.

7.1 REGIONAL RECOMMENDATIONS

The following key regional recommendations for action were agreed on by representatives from government, civil society, sex worker organizations and UN representatives at the Regional Consultation.

Recommendation one

That the collaborative process commenced at the Regional Consultation on HIV and Sex Work continues. Specifically, that the regional partners involved in the organizing committee for this consultation meet on a regular basis and that they monitor the progress of implementation of the outcomes of this meeting. It is encouraged that similar processes are put in place at the country level.

Recommendation two

The UNAIDS guidance note on HIV and sex work, March 2009, and its annexes, is an important basis for policy directions and should now be implemented.

Recommendation three

That UNAIDS and Cosponsors will work with sex work networks to support the active engagement of organizations of sex workers at the national level in the development of new National Strategic Plans and Operations Plans to ensure they will promote and protect the human rights of sex workers and prioritise HIV prevention, treatment, care and support in the context of commercial sex – in line with the concept of better “knowing your epidemic” and the evidence provided through the Commission on AIDS in Asia Report.

Recommendation four

That we develop a more proactive approach to the development and implementation of National Strategic Plans (NSPs) and Global Fund grants: resulting in more sex work consortia and organizations as Principal Recipients and Sub Recipients of GFATM grants and represented on the CCMs; advocacy for inclusion of people with technical expertise on sex work and human rights on the Technical Review Panel (TRP); more active engagement of UN country and regional level staff in the development of NSPs and grant proposals and monitoring of their implementation; audits of current funding allocations by the Global Fund for sex work, including the proportion directly allocated to rights based sex worker-led programmes and services. All GFATM processes must only fund evidence based approaches.

Recommendation five

That funds are prioritized and increased for HIV and sex work, which corresponds to the epidemic need in the region. The current underfunding of HIV and sex work programmes is unacceptable as evidenced by the Report of the Commissions on AIDS in Asia and the Pacific which demonstrate that sex workers and their clients determine the course of the HIV epidemic in the region. Sustainable funding for APNSW at the regional level (regional responsibility) and the country level (country level responsibility) is a priority.

Recommendation six

That we identify mechanisms to address enabling and disabling standards, protocols, legislation and other instruments including:

- A more appropriate interpretation of the CEDAW Article 6;
- Active promotion of the International Covenant of Civil and Political Rights Article 16 – which addresses the recognition of persons before the law;
- Active promotion of the rights of sex workers enshrined within the ESCAP Resolution 66/10;
- Active participation in the Commission of the Law, particularly the Asia and Pacific Regional Hearings on 16- 17 February 2011;
- Active promotion of the new ILO HIV Standard and the rights afforded sex workers and advocacy with key partners to push for a convention on sex work as work;
- Development of a policy and advocacy strategy to end the conflation of sex work and trafficking in persons for the purposes of commercial sexual exploitation to redress the harmful impacts of anti-trafficking legislation; and
- Monitoring of the implementation of the UNAIDS 2011-2015 Strategy and the UNAIDS Agenda for Women and Girls in the Asia Pacific Region to ensure it includes actions responding to the needs of sex workers.

Recommendation seven

That we work to ensure that sex work related technical assistance in the region makes use of the experiences, knowledge and technical expertise within sex worker organizations.

Recommendation eight

That a regional approach to condom programming be developed collaboratively that is human rights based, evidence-informed, and includes the lived experience of sex workers.

Recommendation nine

Identify mechanisms for involving law enforcement, the judiciary and National Human Rights Institutions in discussions to ensure equality before the law, access to justice and the elimination of violence against sex workers be developed. These mechanisms will include instituting active collaboration and partnership with regional and sub-regional intergovernmental organizations such as ASEAN, SAARC and PIF.

Recommendation ten

That a comprehensive set of interventions be collaboratively developed for sex work including:

- Legal reform;
- Recognition of sex work as an occupation;
- Meaningful and active participation of sex workers;
- Access to HIV prevention, treatment, care and support; and
- Economic empowerment.



APNSW member groups at the AIDS2004 conference in Bangkok. "Don't Talk to Me About Sewing Machines. Talk to Me About Worker's Rights".

7.2 COUNTRY ACTIONS

Eight country teams, consisting of representatives from government, UN, civil society and sex worker organizations, participated in the Regional Consultation on HIV and Sex Work in October 2010 in Pattaya, Thailand. The countries are Cambodia, China, Fiji, Indonesia, Myanmar, Pakistan, Papua New Guinea, and Thailand. Each country developed its own action plan based on substantive daily discussions together. The analysis below of the country action plans as presented at the Regional Consultation on HIV and Sex Work highlights the commonalities of priority actions identified by the countries as well as some specific or innovative suggested actions. More details of the action plans per country are included in Annex 3.

Enabling legal and policy environment

- Sensitize and train police (including to end stigma and discrimination, violence, and arrests for carrying a condom)
- Advocate for 'sex work is work' using ILO's international labour standard
- Empower sex workers on laws and legal systems

Thailand will train and employ sex workers to provide sexual and reproductive health services

Violence against sex workers

- Set up a reporting and complaint mechanism on violence and abuse (including rapid response mechanisms)
- Conduct research on violence against sex workers
- Build capacity of sex workers (including to be legal assistants)
- Train and sensitize law enforcers, other areas of government and NGOs on rights of sex workers and violence prevention

Myanmar plans set up cross-border interventions for service delivery for migrant and mobile sex workers, including ART

Indonesia plans to map relevant laws and policies that affect sex workers and conduct public dialogues on human rights, sex work and trafficking

Sexual and reproductive health and rights

- Improve services for sex workers (including through training of health care workers)
- Raise funds (including through GFATM)
- Increase sex worker participation and support capacity building of sex workers
- Set up drop in centres for sex workers and/or train peer educators

China wants to work with media to stop violence and discrimination

Migration and mobility

- Conduct research (including by sex workers themselves)
- Raise awareness on rights of migrant sex workers and effects of anti-trafficking laws
- Reach out to and build capacity of migrant sex workers

7.3 CONCLUDING REMARKS

The broad consensus achieved through this consultation process highlights the relevance of addressing HIV and sex work from a human rights perspective with a focus on addressing stigma and discrimination and creating an enabling environment. Sex workers need access to services that go beyond merely condom distribution and demand comprehensive and quality sexual and reproductive health services, including for migrant sex workers regardless of their legal status. All interventions addressing HIV and sex work need to take into account the reality of violence faced by sex workers that needs to be tackled in order to address sex worker's vulnerability to HIV. The rights and realities of sex workers need to be addressed in order to halt the HIV epidemic in Asia and the Pacific. The only way to effectively programme for HIV and sex work is to ensure meaningful participation of sex workers and include sex workers as partners in the programme right from the beginning.

Taking these messages forward will require strong partnerships and collaboration between the different stakeholders involved, and looking beyond the 'usual suspects' in the HIV and public health sectors by reaching out to potential partners in other sectors of government and civil society including human rights experts, religious leaders, and women's organizations. Collection and sharing of strategic information on HIV and sex work is essential, as well as documenting sex workers' realities. Good practices and evidence of successful programming in the area of HIV and sex work exist and need to be used (in their local adaptations) and scaled up in order to slow or stop the spread of HIV and protect the rights of sex workers.

The consultation process is merely the starting point to improving the lives of sex workers and HIV programming in Asia and the Pacific.

“We need to listen more and we need to act rapidly as we are not moving forward fast enough.”

- Ms. Purnima Mane, Deputy Executive Director of UNFPA

“The Consultation has set new, higher standards for partnerships.”

- Ms. Jan Beagle, Deputy Executive Director of UNAIDS

“This consultation process sets an example for local sex worker networks as they can now go back and organize similar processes in their own countries”.

- Mr. Andrew Hunter, Programme and Policy Director of APNSW

UNAIDS Strategy 2011-2015: Getting to zero – at a glance

GLOBAL COMMITMENTS

Achieve universal access to HIV prevention, treatment, care and support

Halt and reverse the spread of HIV and contribute to the achievement of the Millennium Development Goals

STRATEGIC DIRECTIONS

Revolutionize HIV prevention

More than 7000 people are newly infected with HIV every day. A revolution in prevention politics, policies and practices is critically needed. This can be achieved by fostering political incentives for commitment and catalysing transformative social movements regarding sexuality, drug use and HIV education for all, led by people living with HIV and affected communities, women and young people. It is also critical to target epidemic hot spots, particularly in megacities, and to ensure equitable access to high-quality, cost-effective HIV prevention programmes that include rapid adoption of scientific breakthroughs.

Catalyse the next phase of treatment, care and support

A total of 1.8 million people died from AIDS-related causes in 2009. Access to treatment for all who need it can come about through simpler, more affordable and more effective drug regimens and delivery systems. Greater links between antiretroviral therapy services and primary health, maternal and child health, TB and sexual and reproductive health services will further reduce costs and contribute to greater efficiencies. Enhanced capacity for rapid registration will increase access to medicines, as will countries' abilities to make use of TRIPS flexibilities. Nutritional support and social protection services must be strengthened for people living with and affected by HIV, including orphans and vulnerable children, through the use of social and cash transfers and the expansion of social insurance schemes.

VISION AND GOALS

Vision: To get to **Zero New Infections**

Goals for 2015:

- Sexual transmission of HIV reduced by half, including among young people, men who have sex with men and transmission in the context of sex work
- Vertical transmission of HIV eliminated and AIDS-related maternal mortality reduced by half
- All new HIV infections prevented among people who use drugs

Vision: To get to **Zero AIDS-related Deaths**

Goals for 2015:

- Universal access to antiretroviral therapy for people living with HIV who are eligible for treatment
- TB deaths among people living with HIV reduced by half
- People living with HIV and households affected by HIV are addressed in all national social protection strategies and have access to essential care and support

STRATEGIC DIRECTIONS

Advance human rights and gender equality for the HIV response

Social and legal environments that fail to protect against stigma and discrimination or to facilitate access to HIV programmes continue to block universal access. Countries must make greater efforts: to realize and protect HIV-related human rights, including the rights of women and girls; to implement protective legal environments for people living with HIV and populations at higher risk of HIV infection; and to ensure HIV coverage for the most underserved and vulnerable communities. People living with and at higher risk of HIV should know their HIV-related rights and be supported to mobilize around them. Much greater investment should be made to address the intersections between HIV vulnerability, gender inequality and violence against women and girls.

VISION AND GOALS

Vision: To get to **Zero Discrimination** Goals for 2015:

- Countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses reduced by half
- HIV-related restrictions on entry, stay and residence eliminated in half of the countries that have such restrictions
- HIV-specific needs of women and girls are addressed in at least half of all national HIV responses
- Zero tolerance for gender-based violence

CORE THEMES



People

Inclusive responses reach the most vulnerable, communities mobilized, human rights protected



Countries

Nationally owned sustainable responses, financing diversified, systems strengthened



Synergies

Movements united, services integrated, efficiencies secured across Millennium Development Goals

Summary of the main findings from the stocktaking report

Source: UNAIDS (2010)²⁹. Stocktaking on the implementation of recommendations from the Commission on AIDS in Asia (CAA) and Commission on AIDS in the Pacific (CAP) related to HIV and sex work. A review of eight countries in Asia and the Pacific.

INTRODUCTION

The organizing committee of the Regional Consultation on HIV and Sex Work undertook a rapid stocktaking of the status of the implementation of HIV and sex work-related recommendations from the Commission on AIDS in Asia (CAA) in 2008 and the Pacific in 2009. The stocktaking was undertaken to situate and measure the levels of efforts being undertaken on sex work in country vis-à-vis a 'baseline' provided by relevant commission recommendations, and at regional level, and provide a basis for discussion at the Consultation on priority actions to be followed-up.

UNAIDS, UNFPA and APNSW developed a set of questionnaires that were completed through a consultative and consensus building processes in eight countries (Cambodia, China, Fiji, Indonesia, Myanmar, Pakistan, Papua New Guinea, and Thailand) by a group of relevant partners including government officials, civil society and the network of sex workers as well as the UN agencies and other partners. With the exception of Thailand (where there were no responses from the sex worker organizations on the questionnaire), the rest of the countries used a two-pronged approach in collecting feedback: through consultative process with government counterparts, NGOs, UN and other relevant partners and separately through the national network of sex workers including community led organizations.

The summary of data analysis presented here is based on the response received from the 15 stocktaking questionnaires completed by participants from the eight countries and has been analyzed based on the overall framework used in both, the data collection and analysis. Questions followed the key recommendations of the Commission on AIDS in Asia report with specific focus on the following areas:

- Strengthening evidence base
- Accelerating prevention efforts
- Enabling legal and policy environment
- Community systems strengthening

²⁹ The overall analysis of the stocktaking exercise was conducted by Smriti Aryal and Mona Sheikh Mahmud.

SUMMARY OF ANALYSIS ACCORDING TO KEY AREA OF RECOMMENDATIONS

1 Strengthening evidence base

In their 2008 report, the Commission on AIDS in Asia recommended that countries need to better understand their epidemics and tailor the response accordingly. The recommendations detail that each country needs to strengthen its epidemiological and behavioral information systems to achieve the best possible, up-to-date understanding of its epidemic. According to the commission, each country should conduct a biennial HIV Impact Assessment and Analysis through a high-level Government body to review the latest epidemiological evidence; identify new HIV 'hot-spots'; analyze factors (including rapid economic and social changes) that can increase HIV transmission and hinder effective responses; and assess the current HIV response (across various sectors).

All countries participating in the stocktaking exercise reported that strategic information on sex workers is still inadequate. Papua New Guinea, Fiji and Indonesia reported that specific information on the type of sex work (i.e. entertainment based, brothel-based, etc.) according to the categories identified are currently unavailable. In all except three countries (Myanmar, Cambodia and Pakistan) where there were differing views on availability of data on mobility and sex work, all the other countries reported unavailability of such data. All countries noted increasing patterns in mobility of sex workers. However, mobile and diffused sex workers, who are often hardest-to reach are not covered by assessments and surveys.

Additionally, countries reported that the in-country surveillance, assessments and surveys does not generally include migrant, male, transgender, and internet sex workers. However, all countries agreed that there was a changing pattern in the nature and profile of people engaging in sex work and there needs to be a better understanding about their risk and vulnerabilities to HIV.

At large, the current system of surveillance and monitoring and evaluation does not reflect and monitor changing trends in epidemics and/or behaviors in order to apply a sound evidence-based approach for targeted interventions among sex workers. Clearly, as new trends and patterns in sex work arise, there is a need to understand these in greater details in order to adapt programmatic approaches to ensure quality, coverage and comprehensive services.

2 Accelerating prevention efforts

The Commission on AIDS in Asia report provides three broad recommendations for accelerating prevention efforts:

- High-impact interventions, such as prevention focused on populations at risk and antiretroviral treatment should constitute the core of the HIV response;
- Increase consistent use of condoms during paid sex: More sex work interventions based on peer education should be introduced and scaled up. Government has a key responsibility to ensure that condoms are available, accessible, and affordable to sex workers and their clients. Female condoms (especially in paid sex) should be encouraged as an empowering measure for women and should be introduced where the operational feasibility of so doing has been demonstrate; and

- In order to scale-up HIV programmes and ensure their sustainability, donors and governments must ensure that community organizations receive adequate technical and financial support to assist in programme design and implementation. Prevention services for most-at-risk populations should be entrusted to community-based and other civil society organizations, with strong administrative and financial support from the government or other institutions and should be directly implemented by them. Resources should be earmarked to build the capacity of these organizations.

Although this exercise indicated high mobility of sex workers, only one country out of eight stated that it implements interventions specifically for diffused/mobile populations. In most countries mobile-diffused sex workers were covered under interventions for street based sex workers. Lack of targeted programmes for mobile sex workers has been noted as one of the reasons for limited access to health care and HIV services when needed.

The UNAIDS global guidance on HIV and sex work (2010) recommends that comprehensive, accessible, acceptable, sustainable, high-quality, user-friendly HIV prevention, treatment, care and support be urgently scaled up and adapted to different local contexts and individual needs of sex workers as part of any national strategic and operational plans in countries with concentrated epidemics among sex workers. The essential package should include interventions that address structural barriers, reliable and affordable access to commodities including preventive services, VCCT, harm reduction programs as well as interventions targeted to address social protection of sex workers and their families.

However, the stocktaking exercise shows that in most countries, the range of services included in the “comprehensive or minimum package for HIV and sex work interventions” are far less than the recommendations of UNAIDS global guidance. Firstly, there were varying perceptions on the existence of comprehensive package of HIV and sex work interventions at the country level. Moreover, perceptions expressed in the set of questionnaire filled by the government/NGOs/UN were not aligned with how sex workers reported (four countries had contradictory views on the existence of minimum package). Fewer sex worker organizations felt that there was a minimum/comprehensive package for sex work interventions compared to the response from governments, NGOs and the UN.

This indicates that there appears to be lack of awareness and/or confusion about the concept of “a comprehensive package” in general. In instances where a comprehensive package is thought to exist within a country but where sex workers say they are not aware, this seemingly indicates minimum or lack of involvement of sex worker organizations in developing the packages and a lack of standard operation procedures.

According to the stocktaking report, the minimum package, in most countries where it exists, only included condom distribution, peer-education and minimal STI services.

All countries except for Indonesia reported having a national policy on condoms. Despite such policies, the implementation, particularly related to availability, accessibility and affordability of condoms and lubricants was noted as critical challenges in most countries (except for Thailand where finding, accessing and buying condoms was not seen as a problem). Five out of three countries report that female condoms are not

available. Condom accessibility is reported as a critical barrier in seven out of eight countries. In Indonesia, affordability of condoms was also considered a major issue by the sex workers. Particularly, buying condoms in entertainment industry venues was reported to be expensive, almost 4-5 times more expensive than the national price for condoms. In China, it was reported that there were not enough condoms available.

While evidence in the region has shown that condoms and lubricants are the most effective method of reducing HIV prevalence in context of sex work (CAA, 2008), 20 years into the response, the countries and communities of sex workers still report that both availability and accessibility of condoms are critical barriers to HIV and STI prevention.

Some 88% of the respondents felt that the network of sex workers do not have adequate capacity to implement high-quality scaled-up sex work interventions. 50% of the respondents reported affirmatively that they do not have high-quality peer-outreach programme. Even those countries that responded having implemented peer-outreach programmes, indicated lack of quality measurement standards and procedures.

Barriers to scaling up an effective sex work interventions as reported by the respondents

Key Issues	% of Responses
Insufficient allocation of resources	53%
Criminalization of sex work	47%
Inadequate strategic information	20%
Lack of enabling environment — social, healthcare service provision, legal and policy environment	100%
Mobility of sex workers	20%

Other issues:

- Stigma and discrimination
- Poor coordination and partnership among sex work organizations and/or with civil society partners
- AIDS Funding Architecture and Procedures for accessing funds complicated for sex work organizations

While nearly 50% of the respondents agree that the criminalization of sex work is one of the critical barriers to scaling-up, all countries including the government agrees that structural issues such as law enforcement, poor legal environment, arbitrary arrest, limited access to health care services, as impediments for scaling up.

3 Creating an enabling legal and policy environment

The Commission on AIDS in Asia recommended that governments should remove legislative, policy, and other barriers to strengthen access to services. They may also issue legislative and/or administrative directives to the police, correctional, and judicial services to facilitate the provision of HIV-related services to people most at risk. Countries should not implement programs that accentuate AIDS-related stigma and can be counterproductive. Such programs may include 'crack-downs on red-light areas and arrest of sex workers. It also recommends that the donors must remove conditionality or policies that prevent their partners from supporting organizations that work with sex worker organizations.

75% of the respondents reported that sex workers do not have access to legal rights protection, although there were contradictions between responses from the government/UN/NGO groups and groups of sex work organizations. With the exception of Papua New Guinea, all sex work network organizations reported that there are no programmes on prevention of gender based violence.

Responses collected from the sex worker organizations showed that the national AIDS funding architect was perceived to be unfavorable to the community groups. There are noted bureaucratic hurdles to access the funds including many that are required not only by the national AIDS programs but also donors, resulting in limited support for community based organizations to effectively response to community needs. In addition, it was perceived, especially by the responding sex worker organizations that the funding architecture, as supported by the donors was not decentralized enough for CBOs to access funds easily. And even when they existed, it often involved many bureaucratic hurdles, requirements and conditions that CBOs often cannot fulfill.

4 Community system strengthening

The Commission on AIDS in Asia recommended that communities of sex workers and other civil society partners working on sex work must become more accountable for their conduct and performance. Networks of sex workers should establish systems and structures that support their effective participation in the HIV response (including the selection of their representatives to participate in HIV structures) through an open and transparent selection process. Community organizations need to develop procedures and policies to inform collaborative processes, including the selection of representatives and accountability procedures.

Within the stocktaking exercise, there were varying perceptions and contradictions regarding the existence of sex worker networks and their functionality. Within the individual countries, while the responses from the groups of government/UN/NGOs often did not perceive that there was a national network of sex worker organizations, the sex workers themselves perceived that it existed.

The respondents reported that multiple barriers to the establishment of the sex worker network, and or carrying out functional activities of the network. As sex work is illegal in many countries, a network of sex workers is often not able to be established. Even when they are established, there is inadequate financial resources and limited technical know-how on network operation and management. Thirdly, it was felt that the competition, particularly for resources, among various sex work organizations, where existed, resulted into lack of harmony and partnership.

The respondents reported that there are challenges with respect to coordination and partnership between civil society organizations (NGOs which implement sex work programmes) and sex worker organizations. Whether at the national or state or local level, there was notable dissatisfaction expressed through the stocktaking responses with the limited involvement of sex work organizations in the national planning process.

The respondents also felt that while civil society organizations (CSOs), particularly the network of sex workers played critical roles in implementation of sex work interventions in all countries, only limited resources are allocated to CSOs.

When responding to the stocktaking questionnaire on the *Priority Actions for Strengthening Sex Work and HIV Programming*, the two groups of respondents reported as below:

Government/UN/NGOs	Network of Sex Workers
<ul style="list-style-type: none"> ▪ Law reform ▪ Strategic information ▪ Strengthen health service delivery ▪ Coordination and partnership ▪ Support creation of an enabling environment ▪ Quality assurance ▪ Sustainable funding 	<ul style="list-style-type: none"> ▪ Advocacy ▪ Peer outreach ▪ Treatment, care and support ▪ Capacity building ▪ Strengthen national networks of sex workers ▪ Public/private partnership ▪ Adequate allocation of resources and sustainable funding

Key points from Country Action Plans³⁰

	Sexual and Reproductive Health and Rights	Migration Mobility	Enabling Legal and Policy Environment	Violence Against Sex Workers
CAMBODIA	<ul style="list-style-type: none"> Implement STI and HIV management for sex workers Raise funds especially through GFATM round 11 Motivate health care workers for quality services 	<ul style="list-style-type: none"> Research and advocacy on cross border interventions Pre-departure education 	<ul style="list-style-type: none"> Introduce concept of enabling environment to relevant staff Develop curriculum and standard of practices Training national and sub-national staff 	<ul style="list-style-type: none"> Research on violence against sex workers, MSM and transgender Document cases for advocacy Training of law enforcers including on violence.
CHINA	<ul style="list-style-type: none"> Ensure participation of sex worker organizations Sex worker friendly services (including standardize STI guidelines, unify costs, rights-based) Capacity building of sex workers 	<ul style="list-style-type: none"> Support networks of sex workers Include health needs of sex workers, including ART, in National Strategy 	<ul style="list-style-type: none"> Advocacy for reduction of prosecution of sex workers Trainings for media, police recruits to end stigma and discrimination Ministry of Public Security stop using condoms as 'evidence' Support legal aid for sex workers 	<ul style="list-style-type: none"> Work with media Set up complaint mechanism for sex workers to report violence Build capacity of sex workers on protection against violence

³⁰ Based on the country presentations at the Regional Consultation on HIV and Sex Work in Pattaya, October 2010.

	Sexual and Reproductive Health and Rights	Migration Mobility	Enabling Legal and Policy Environment	Violence Against Sex Workers
FIJI	<ul style="list-style-type: none"> Sex worker friendly SRH services Train health care workers Sensitize police on sex work and condoms 	<ul style="list-style-type: none"> Conduct size estimation Provide information for mobile and migrant sex workers Reach out to migrant sex workers 	<ul style="list-style-type: none"> Dialogue between sex workers, government and civil society Seek legal assistance to explore decriminalization Strengthen sex worker networks to protect rights 	<ul style="list-style-type: none"> Empower sex workers to report violence and follow up on the abuses Train sex workers on their rights Train uniformed forces Set up rapid response process
INDONESIA	<ul style="list-style-type: none"> Advocacy for improved SRHR information and services and required budget Improve coverage and quality SRH information and services 	<ul style="list-style-type: none"> Improve coordination between sectors Collect data and advocate for migrant sex workers' rights Provide info on services for migrant sex workers Capacity building of Mission to protect sex workers Learn from other countries 	<ul style="list-style-type: none"> Mapping and review of laws and policies Public dialogues on human rights, sex work, trafficking Concept note on sex work is work Positive roles of stake holders Empower sex workers to access services 	<ul style="list-style-type: none"> Awareness of government, sex workers and NGO on human rights Set up reporting mechanism on rights violations Set up counselling and legal aid for sex workers Advocacy for effective law enforcement
MYANMAR	<ul style="list-style-type: none"> Train peer workers and service providers Access to essential drugs Resources for sex worker programs and organizations Sex worker participation in CCM Training on ART in prisons 	<ul style="list-style-type: none"> ART for migrant sex workers Set up cross border services Set up telephone help centre Raise awareness on effects of anti-trafficking laws 	<ul style="list-style-type: none"> Promote ILO labour standard Study and change harmful laws, policy and practice Stop using condoms as evidence to arrest sex workers Stop arresting sex workers to fill quota 	<ul style="list-style-type: none"> Study violence against sex workers Include ending violence in HIV programmes National dialogue on violence and sex work

	Sexual and Reproductive Health and Rights	Migration Mobility	Enabling Legal and Policy Environment	Violence Against Sex Workers
PAKISTAN	<ul style="list-style-type: none"> Comprehensive package of SRH services Resources for SRH services for sex workers Build capacity of health workers Advocacy for health reform 	<ul style="list-style-type: none"> Challenge stigma and discrimination Build capacity of sex workers about their rights Skills development opportunities for sex workers Protect sex workers from anti-trafficking laws 	<ul style="list-style-type: none"> Advocacy for sex worker labour laws and enforcement Sex worker participation in programmes Work with trade union 	<ul style="list-style-type: none"> Empower sex workers on their rights Strengthen human rights organizations Accountability of law enforcement agencies Public awareness raising
PAPUA NEW GUINEA	<ul style="list-style-type: none"> Set up safe spaces for sex workers Train health workers on friendly services Build capacity of affected communities Sexuality curriculum in schools 	<ul style="list-style-type: none"> Raise awareness to accept migrant sex workers Research on sex worker migration and mobility Set up guidelines against discrimination of sex workers 	<ul style="list-style-type: none"> Train police on HIV Raise awareness on sex work through media and storytelling Legal action to claim damages Remove criminal records for un-convicted sex workers 	<ul style="list-style-type: none"> Set up complaint system on violence and harassment Strengthen networks of sex workers Workshops on violence against sex workers for government Training on human rights for Constabulary
THAILAND	<ul style="list-style-type: none"> Review priority use of benefit packages in the Universal Coverage Scheme Develop friendly, quality services with sex workers Train and employ sex workers to provide SRH services Reposition condoms as sexual health tool for all, not only sex workers 	<ul style="list-style-type: none"> Set up working group on immigration and health Awareness on laws for migrant sex workers Build capacity law enforcers on human rights of migrant sex workers 	<ul style="list-style-type: none"> Promote 'sex work is work' Develop minimum regulations on occupation safety of sex work Amend 1996 Prostitution Prevention and Suppression Act Awareness with sex workers and law enforcers that condom use is not against the law 	<ul style="list-style-type: none"> Rapid action team for sex workers (RAT-SW) Train sex workers as legal assistants Change policy (including information for Human Rights commission; awareness among sex workers; and public education for positive attitudes towards sex workers)

Strengthening meaningful participation of sex workers in the HIV response

Accounts and reflections of sex workers on the process leading up to the Regional Consultation on HIV and Sex Work³¹

How can one convince policy-makers and other powerbrokers, generally allergic to the 's*#' word, to discuss contentious issues such as recognising sex work as a labour issue or looking at immigration related issues around sex work? By bringing them face to face with sex workers who are able to articulate their own needs and concerns.

The Regional Consultation on HIV and Sex Work organized by UNFPA, UNAIDS and APNSW brought together some 140 participants. More than one-third of the participants were sex workers and/or representatives of sex worker organizations and networks. Sex workers were identified by in-country processes led by APNSW through its member organizations at the country level in Cambodia, Fiji, Indonesia, Myanmar and Pakistan. Participants from Papua New Guinea, China and Thailand were identified through processes either led by UNFPA and UNAIDS country offices or by other sex worker networks. This document provides a brief account of the process led by sex workers that resulted in the meaningful participation of sex workers on a regional platform where they could express their concerns first-hand and that paved the way for their involvement in future policy discussions both at the national and regional levels.

APNSW requested member networks, in July 2010, to organise consultations at the country level to identify four sex workers that would be able to represent and articulate the diversity of sex workers' experiences at the regional consultation. Networks were requested

“This was the first time ever we met as a community of sex workers, with other organizations representing sex worker issues, to discuss our issues...we never had the opportunity before to do this at the country level. It brought us together.”

- Sheena, Survival Advocacy Network, Fiji

³¹ Vijaya Nidadavolu in close collaboration with APNSW prepared this documentation on the lesson learnt and reflects of sex workers on their process leading up to the Regional Consultation.

to identify female, male and trans-gendered sex workers who had an understanding of specific issues facing the community of sex workers and were articulate enough to present them in front of a big audience. Member networks were also encouraged to consult UN organizations and governments to identify key people from government departments, such as police and justice, who would be invited to the consultation and who would in future be able to liaise with sex workers on key issues facing the community. Sex workers were also involved at the country level in identifying other civil society organizations, such as community based HIV organizations, networks of people living with HIV and others that have supported sex workers and understood the issues facing the community.

With a small grant of \$2000, during August and September 2011, member networks of APNSW, organized country level consultations with sex workers, UN representatives, members of the police departments, the justice departments and highly placed policy makers from national AIDS planning bodies. This was possible in some countries and not possible in others.

Apart from identifying participants for the regional meeting, the country level consultation was an opportunity to hold discussions on the key themes that were to guide the regional consultation and arrive at key messages (refer to main document for the themes).

THE STRENGTHS OF A CONSULTATIVE APPROACH

1 Finding allies in government

The national consultation became a key opportunity for sex workers to meet with concerned government officials and policy makers and present the issues facing them as a community. This was easy in some countries and harder in others. In some country contexts it was easier to engage key people in positions of power and this was done in a deliberate manner to nurture an association whereby sex workers could be integrated into future national planning processes that affect them. In Fiji, during a post-consultation meeting at the country level, attended by members of the UN, the church and the military, the government invitee who attended the regional consultation talked about creating an enabling environment at the country level. In some other contexts, however, it was a challenge to encourage governments to send representatives that had real decision-making powers. Through the process of the consultation a dialogue has been initiated in such contexts and governments have shown willingness to engage on these issues.

“We chose the police department and the attorney general’s office (for participation in the regional consultation). It was crucial that we made the right choice as we did not want people to come to Pattaya for a holiday and not follow-up. We were keen to get people we could work with in the future.”

- Rani, Survival Advocacy Network, Fiji

“I was a sex worker...I had never attended a government meeting. I have been invited by the UNFPA and the National AIDS Planning body... and I am going to talk about sex workers’ perspective and I think people will listen.”

- Kay Thi, APNSW, Myanmar

2 Charting new territory

The process of engaging in the consultations has given some sex workers, with limited prior exposure to international forums, enormous confidence and voice on a regional platform. This has empowered them at a personal level while giving them the confidence to represent their own issues in policy level platforms.

In some countries where sex workers have not been previously organized, the consultation process has helped to galvanize the community. In Pakistan for example, the consultation resulted in the formation of two sex worker networks, one representing female sex workers and another representing trans-gendered sex workers.

3 Learning to dialogue

The process leading up to the consultation provided networks working with sex workers an opportunity to map at the national level various organizations working on sex work. The process also highlighted that greater exposure at the regional or international forum will help the networks mature and do more effective advocacy work on the ground. Sex workers felt that a positive element of the process leading up to the consultation was the democratic and fair manner in which sex worker representatives were chosen to attend the consultation.

“This consultation bound us... sex workers...together. We shared our issues and this has given us some power. The challenge is to go back and work together at the country level with the various stakeholders.”

- Sheena, Survival Advocacy Network, Fiji

HIV and sex work: The “Ten Commandments of Pattaya”

Address given by Hon. Michael Kirby AC CMG at the Consultation dinner
14 October 2010

1 Empowering sex workers

The first commandment is to listen to the voices of those who are most affected. This includes empowering and listening to the voices of sex workers, their clients, supporters, doctors, families and friends. In the context of the global epidemic of HIV, advances are not produced by imposing rules from the top down. Good results require attention to the voices of those who are on the front line.

In this conference, during the presentation by Dame Carol Kidu (PNG), the sole woman member of the Parliament of Papua New Guinea, in a dramatic moment, the participants from that country cried out one by one: “Who will speak for us?” In the face of restrictive rules of morality, who will speak for the sex workers? Who will speak for their safety and power to control their own bodies? Who will speak for the repeal of ineffective laws? Who will speak for a true public morality that respects the conduct of these workers and their need to be empowered, so as to avoid transmission of the virus to them and their families and clients?

From the beginning of the global response to HIV, the agencies of the United Nations, have reached out to engage with the communities most affected. Great leadership was given here by the inaugural director of the Global Programme on AIDS (GPA) of the World Health Organisation (WHO), Dr. Jonathan Mann. He always insisted upon participation of speakers for the vulnerable and those at greatest risk. He always involved homosexuals and people living with HIV and AIDS. So have his successors at UNAIDS, Peter Piot and Michel Sidibé. We must continue to draw strength from their instruction and example. Progress is made not by speaking at people, but by talking with them. And listening and learning from them. Who will speak for the voiceless? We must all do so.

2 Law as friend not foe

The second commandment is that we must maximise the capacity of law to be of help in dealing with HIV; and minimise the obstructive and damaging effects of the law.

Law can be of support in the struggle of HIV and AIDS. Anti-discrimination laws, and giving full effect to constitutional protections of equality, privacy and citizenship can reduce the operative barriers of law to spreading the messages about safer conduct and self-protection. Law can remove the sources of stigma. Law can encourage a new, supportive public morality. It can do this through wise legislative action and informed judicial opinions, such as the recent decision of the Delhi High Court in India in *Naz Foundation v Union of India*³². The corrosive effect of stigma upon the outreach of public health campaigns was recounted to this conference by a male sex worker from India. Likewise, other participants have explained the damaging consequences of naming sex workers in the media, and thereby casting shame and stigma upon them and their families and children.

Law does not have to be part of the problem. It can be part of the solution.

3 Law is not enough

The third commandment is that we must all appreciate that reforming the letter of the law is not itself enough to change social attitudes.

Dr. Cheryl Overs (Australia) explained to the conference the way policy and societal conduct can impede the safer conduct messages, although they may have no foundation in the letter of law. Harassing sex workers because they do not have the 'right papers' is one of many oppressive strategies that impact on the global struggle against HIV. Several participants described oppressive police conduct, extending even to instances of rape and other unconsensual sexual liberties imposed on arrested sex workers before they are freed. One lesson of the conference is the importance of educating police and public officials everywhere in the realities of HIV. And how it is in the interests of everyone in society that sex workers should be empowered to insist upon the use of condoms, especially for every insertive sexual act.

4 Dialogue amongst sex workers

The fourth commandment is that sex workers must themselves engage as part of a "team effort" to respond to the spread of HIV. Dame Carol Kidu cautioned that they should avoid attacking each other or other vulnerable groups. To raise their voices in society, they must make common ground with supporters and with other vulnerable communities, including men who have sex with men (MSM) and injecting drug users (IDUs).

Sex workers must also engage, individually and through their representative associations, with police and other public officials. They must explain that one consequence of utilising the presence of condoms as evidence that an accused person is engaged in prohibited sex work will be the temptation not to have condoms on the person. This will lead on to unacceptable risks of unprotected sexual conduct. This, in turn, can only escalate the spread of HIV to the great danger not only of sex workers and their families but also their clients, the clients' sexual partners and other groups in society.

32 [2009] 4 Law Reports of the Commonwealth 838 (Shah CJ and Muralidhar J).

Likewise, closing brothels will not generally eliminate the existence of paid sex work. Such work has been present in virtually all societies, ancient and modern for millennia. If sex workers are driven from brothels, where they may be empowered and supported in safer sex practices, the result will often be their transfer to work on the streets, in riskier and often dangerous environments and with less prospect of self- and client protection.

5 Limiting over-reach of trafficking law

There can be no contest about the unacceptable character of international human trafficking for sex or other work. In many lands, particularly in developing countries, documented evidence demonstrates many cases where young people (mostly girls) are sold into a modern form of slavery and forced against their will to engage in sex work. The trans-national features of such activity have resulted in a series of international treaties designed to suppress such wrongs³³ and the enactment of local laws designed to give effect to such international treaties and to suppress forms of sexual servitude akin to slavery³⁴.

Sex workers, at this conference and elsewhere, did not contest the operation of such conventions, as such, and the local laws that give them effect. Indeed, their insistence upon their own adult rights to self-determination, work safety and protection are entirely consistent with the provision of such rights to those who are involuntarily, or at an immature age, forced into work in the sex or other industries or into debt bondage or activities akin to slavery.

Still, there are groups in the world today who seek the press such international and local laws beyond their legitimate and proper reach. For some governments and people, the very notion of voluntary sex work is intolerable. They assert that it is a contradiction in terms. In part, this attitude derives from conceptions of sexual morality grounded in religious understandings. Many religions deny the entitlement, even of an adult individual, acting in private, to have sexual contact outside the bonds of heterosexual marriage. Today, this attitude to the expression of human sexuality is no longer universally supported. Diverse opinions exist, including amongst adherents to all the world's religious traditions. The same prohibition on adult consensual sex work formerly (and still in 80 countries) prohibited homosexual activities because, by definition, this occurred outside hetero-normative married sexual relations.

Some feminist advocates denounce any attempts to de-criminalise (still more to legalise) the consenting adult activities of commercial sex workers. They insist on adoption of the so-called "Swedish model" to criminalise the clients of sex workers on the footing that, necessarily, they denigrate the human dignity of women. Such attitudes too are not universal. Moreover, based on the centuries of human experience, they appear futile, disproportionate and inconsistent with individual control over adult, private, intimate conduct.

Amongst some sex workers, attempts are sometimes made to avoid this debate by defining 'sex work' as restricted to legal activities falling outside international and national laws. Still, as Meena Saraswathi

33 Convention to Suppress the Slave Trade and Slavery (1926 Slavery Convention) (1927) 212 UNTS 17; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices akin to Slavery (the 1956 Supplementary Convention) (1958) 226 UNTS 3; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Trans-national Organised Crime (Palermo Protocol, 2000), Arts.3(a), (b), (c), 5.1. The Palermo Protocol was adopted in 2000 at Palermo, Italy. It entered into force on 25 December 2003. By October 2009, it had been signed by 117 countries and there were 133 parties. The United Nations Office on Drugs & Crime (UNODC) is responsible for implementing the Protocol. Signature commits ratifying states to prevent and combat trafficking in persons and that expression is defined by reference to forms of "coercion" and "sexual exploitation". It renders "the consent of a victim of trafficking in persons to the intended exploitation ... irrelevant where any of the [forbidden] means ... have been used". But it is not, in terms, an international prohibition against all forms of sex work (prostitution).

34 See e.g. Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Aust); Crimes Act 1961 (NZ), s98(1).

Sesu (General Secretary of Sangram in India) has pointed out, international agencies and some national governments with large influence, frequently attempt to utilise the treaties and laws on trafficking to suppress every form of adult, voluntary, consenting sex work. To the extent that this is done or attempted, it constitutes an over-reach in the operation of international treaty and local law³⁵. As a matter of law, public policy, HIV containment and respect for individual human rights, it is essential to insist on confining these treaty and local laws against human trafficking to their proper sphere.

That sphere rests upon protection against unconsensual and under-age involvement in the sex industry. It does not, as such, demand total suppression or elimination of that industry, contrary to the informed choices exercised by adult sex workers, their clients and others. The over-reach of such laws is not only oppressive and itself contrary to fundamental human rights. It is doomed to fail. It is likely to damage the legitimate but specific operation of anti-trafficking measures. Those who want to turn anti-trafficking laws and treaties into a moral or religious crusade must be bluntly told that this is not sustained by the language of the treaties, international and national law, universal human rights and, most importantly, the strategies essential to contain the HIV epidemic.

6 Re-visiting international law

Sometimes the vagueness and ambiguity of law can be a cause of difficulties for those who are subject to it. That is because of the different religions, cultures and traditions that exist in the world. Ambiguity is even more common in international than in national law. To secure common agreement over the language of a treaty, it is often necessary to resort to vague and ambiguous language. Whilst this sometimes secures a step forward in the achievement of understandings of universal human rights, it can also lead to the use of international law for unintended purposes. Or to pressing treaties into use for particular agendas.

In the matter of human sexuality, there is plenty of evidence, including in international practice, to demonstrate the over-reach of the law. Putting it bluntly, law has quite frequently been invoked to suppress adult, private, consenting sexual activity in the fields of:

- Commercial sex work;
- Homosexual adult activity;
- Trans-sexual identity;
- Access to erotic materials.

The truth is that some religions, and some others in society, are extremely uncomfortable with the realities and variety of human sexual expression. Proportionality in the role of the law and regulation by society, has increasingly emphasised the legitimacy of demanding limitations on the excessive intrusions of the state upon such matters. As Pierre Trudeau, one-time Prime Minister of Canada, put it: “The state has no place in the bedrooms of the nation”.

³⁵ See e.g. *The Queen v Wei Tang* (2008) 237 *Commonwealth Law Reports* 1 at 28-29 [66]-[70]. See also Sandhya Rao and Catu Sluggett, *Who Stole the Tarts? Sex Work and Human Rights*, Center for Advocacy on Stigma and Marginalisation (CASAM), September 1, 2009.

Where the bedrooms are those of adults who consent together in their expressive sexual conduct, there was great truth in Trudeau's advice.

In international law, the *International Covenant on Civil and Political Rights (ICCPR)*³⁶ provides many restrictions on involuntary slavery, servitude or unlawful imprisonment³⁷. Nevertheless, it insists that "everyone shall have the right to recognition everywhere as a person before the law"³⁸. And that requirement, self-evidently, extends to sex workers.

This provision has to be reconciled with measures in the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*³⁹. By that Convention, it is provided in Art.6 that: "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

This provision does not address similar activities involving men or children. Nor does it define "traffic", "exploitation" or "prostitution". The last word, prostitution, in particular, is burdened with many negative connotations dating back to biblical times.

There is a risk that provisions such as Art.6 of CEDAW and the definition of "trafficking" in the *Polermo Protocol on Human Trafficking* will be utilised to promote national legal measures contrary to the informed consenting choices of adults, acting in private. It is such over-reaching measures that organisations representing sex workers seek to prevent. Once international treaties are adopted, it is often difficult to recapture the consensus necessary to produce amendments deemed necessary to limit their unexpected over-reach. Nevertheless, in international practice, steps can be taken to restrict the excessive operation of international treaties, viewed according to their letter.

Thus, the UNDP Global Commission on HIV and the Law now has before it consideration of the interpretation and application of the TRIPS Agreement as relevant to the patenting of pharmaceutical drugs necessary to an effective HIV response. Likewise, UNODC and other agencies involved in the implementation of Art.6 of CEDAW and the *Polermo Protocol* need to co-ordinate their policies. Such policies should be rendered consistent with the global strategies to respond effectively to the HIV epidemic, as policies are promoted by UNAIDS, UNDP, UNFPA and other agencies. This can and should be done.

Attempts to divert international treaty law into a total suppression of commercial sex work (prostitution) would not only amount to a distortion of the language and true purpose of such treaties. It would constitute a particularly damaging development for the effectiveness of the global HIV response.

7 Speaking frankly with religion

As this conference has shown, people, including sex workers and their friends, feel sensitive and protective of their own religious traditions. The world's religions contribute in many ways to understandings of public morality as such understandings exist in most countries. Religions commonly have, at their core, variations

³⁶ Entered into force 23 March 1976, Art.6.

³⁷ ICCPR, Arts.8, 11.

³⁸ ICCPR, Art.16.

³⁹ Entered into force 3 September 1981.

of the 'golden rule'. This requires respect and love for one another. That consideration also underpins the advance in understanding of the diversity of universal human rights.

Sometimes, in practical terms, religions claim the "high moral ground". They oppose legal and other reforms, even when these are designed to support the HIV response. Those engaged in the HIV response must open a dialogue with religious leaders. The right to life and to access to essential health care is normally an avenue that can be deployed to promote religious tolerance and acceptance of diverse views in society, including over sexual matters. In the golden rule and in saving and caring for human lives, much common ground can be found to help promote effective HIV strategies.

In Australia, despite the formal positions of the Roman Catholic Church on sexual morality, great practical leadership has been provided by particular religious orders in supporting the treatment of people living with HIV; in outreach to CSWs; and in establishing and maintaining programmes for the protection of injecting drug users (IDUs). The seventh commandment requires an outreach to, and dialogue with, religion.

8 Utilising courts and parliaments

Whilst most of the important measures relevant to proscribed sexual conduct will derive from elected legislatures, courts and judges also have important parts to play in upholding sensible laws and invalidating laws and policies that exceed their proper bounds and restrict effective AIDS strategies.

Thus, in India, the *Naz Foundation Case*⁴⁰ limited the operation of the anti-homosexual provisions of s377 of the *Indian Penal Code* 1860 so that it would apply only to minors. In Bangladesh, the Supreme Court, in the absence of any prohibitory legislation, held that its duty was to protect the rights of sex workers, as citizens, to maintain their livelihood and their right to work without being unreasonably harassed by the local administration⁴¹.

A few days before this meeting convened in Pattaya, a Canadian judge of the Superior Court in Ontario held that three provisions of the *Criminal Code of Canada*, penalising aspects of prostitution, were contrary to the requirements of the *Canadian Charter of Rights and Freedoms* and therefore invalid⁴². Even those who criticised that decision commonly acknowledged that "parliament must ensure prostitutes are protected from harm"⁴³. In Pakistan, the Supreme Court has defended the right to equal treatment of trans-gender citizens.

Sometimes, where local politics or institutional religious pressures make it difficult or impossible for legislators to agree on enactments deemed necessary for an effective HIV response, courts may properly be able to afford wise decisions. The main importance of the *Naz Foundation Case* in India may well lie in the 41 countries of the 54 member organisation of the Commonwealth of Nations which still criminalise consenting adult private homosexual acts. Because of the commonality of the constitutional protections invoked in *Naz* by the Delhi High Court, its reasoning may well be applicable in many other lands where legislative steps to repeal such laws have so far failed to achieve success. We should be alert to these possibilities.

40 [2009] 4 Law Reports of the Commonwealth 838.

41 BSEHR v Bangladesh (2001) 53 Dhaka Law Reports 1 (Karim J).

42 *Bedford v Canada (Attorney-General)* [2010] OJ No.4057 (Susan Himel J). The decision is under appeal and has attracted a mixed reaction. *Globe & Mail* 30 September 2010, pA18 ("The Weighing of Complex Harms"). See also *Globe & Mail*, 2 October 2010, f9 ("Forget Legalisation - Just Turn a Blind Eye").

43 *Pacific Newspaper Group, Editorial Page*, 1 October 2010, pA14.

9 Vigilance against new oppressions

Throughout this conference, attention has been drawn to risky new actions that may, however well intentioned, serve only to oppress adult sex workers and their clients. Amongst the laws mentioned in debates have been:

- The introduction of mandatory testing regimes, without proper guarantees of follow-up and access to essential therapies and without consenting participation of those who are tested;
- The introduction and enforcement of new criminal and regulatory laws against those who indirectly benefit from sex work, such as landlords or related businesses; and
- The revived efforts in some countries to suppress erotic material. The internet itself an illustration of the seemingly irrepressible desire of human beings to have access to such material as an attribute of their adult sexual expression. Whilst particular forms and contents of such erotica may warrant special attention and regulation, the access of adults to adult images appears a fairly universal, and generally harmless desire. What goes on in peoples' heads is ordinarily their own business. For that reason, attempts by the state to intrude into and control adult fantasies will normally fail. Attempts to suppress consenting adult private sexual conduct are rarely effective, certainly according to the letter of the law. And this fact gives rise to potential corruption, oppression and impediments to an effective response to HIV.

10 Universal rights for sex workers

This brings me to the last commandment. Universal human rights extend to all people. Sex workers are not exempted or excluded. They enjoy all the rights guaranteed to human beings by international law. Those rights include "the right to work" which is defined⁴⁴ to include "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". See also *Universal Declaration of Human Rights*, Art.23.1.

Likewise, workers are guaranteed by international treaty law, the "enjoyment of just and favourable conditions of work". These include "safe and healthy working conditions"⁴⁵. It is the duty of the law in every nation to support the achievement of these global attributes belonging to every human being everywhere. And this includes sex workers⁴⁶.

⁴⁴ *International Covenant on Economic Social and Cultural Rights, ICESCR, Art.6.1.*

⁴⁵ *ICESCR, Arts.7 and 7(b).*

⁴⁶ *Emily Maguire, "Body Politic - Scarlet Alliance (Australian Sex Workers Association)", The Monthly (Australia), September 2010, p36.*

Further information

A number of additional links and information is available to complement this report. Please see these suggested links here below:

MEDIA COVERAGE

Following the implementation of a media strategy for the Consultation, a number of articles focusing on various aspects of the consultation appeared in a number of high-profile media outlets. Clippings can be accessed at the following links:

- **The Economist, UK** - Street life, street death, http://www.economist.com/node/17414944?story_id=17414944
- **The Economist, UK** - HIV/AIDS and sex work in Asia (Audio). Interview posted in the audio and video section: <http://audiovideo.economist.com/>. To find the interview, go to the 'All audio' link and find the item called: HIV/AIDS and sex work in Asia.
- **ABC/Australia Network TV (Newsline)** - Battling HIV (Video), <http://australianetwork.com/newsline/archives.htm>
- **Reuters AlertNet** - Asia HIV prevention programmes fail to reach sex workers, http://www.alertnet.org/db/an_art/52132/2010/09/15-130557-1.htm
- **IRIN** - ASIA: Laws driving HIV prevention underground, <http://www.irinnews.org/Report.aspx?ReportID=90782>
- **Kaiser** - Government Officials, U.N. Staff Meet With Sex Workers In Asia To Examine Access To HIV Services, <http://globalhealth.kff.org/Daily-Reports/2010/October/18/GH-101810-HIV-Asia.aspx>
- **Radio Australia (Pacific Beat)** - PNG minister pushes for sex worker law reform (Audio), <http://www.radioaustralia.net.au/pacbeat/stories/201010/s3037924.htm>
- **PACNEWS** - PNG minister seeks better laws for sex workers, <http://www.pina.com.fj/?p=pacnews&m=read&o=21167214104cb7ac8fcfbb1a56c59e>
- **Radio Australia (Asia connect)** - Interview with Michael Kirby (Audio), <http://www.radioaustralia.net.au/asiapac/stories/201010/s3038824.htm>

- **RH Reality Check** - Criminalization of Sex Work in Cambodia Undermines HIV Prevention Efforts, <http://www.rhrealitycheck.org/blog/2010/10/15/criminalization-work-cambodia-undermines-prevention-efforts>
- **IRIN** - BANGLADESH: Mixed messages on sex work undermine HIV prevention, <http://www.irinnews.org/Report.aspx?ReportId=90747>
- **UNAIDS global web site** - Asia-Pacific drive for increased focus on HIV and sex work, <http://www.unaids.org/en/resources/presscentre/featurestories/2010/october/20101020fssw/>

ADDITIONAL LINKS

- **UNAIDS** - www.unaids.org
- **UNFPA** - www.unfpa.org
- **APNSW** - www.sexwork.asia
- **NSWP** - www.nswp.org
- **The Michael Kirby Centre for Public Health and Human Rights** - <http://www.med.monash.edu.au/michael-kirby/>
- **Paulo Longo Research Initiative** - www.plri.org
- **The Evidence to Action HIV and AIDS Data Hub** - <http://www.aidsdatahub.org>

Asia Pacific Network of Sex Workers (**APNSW**), a health and human rights network, focuses on facilitating sex worker participation and information sharing on technical and policy issues, sex work advocacy and building leadership among male, female and transgender sex workers.

UNFPA, the United Nations Population Fund, is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV, and every girl and woman is treated with dignity and respect. UNFPA - because everyone counts.

UNAIDS, the Joint United Nations Program on HIV/AIDS, is an innovative United Nations partnership that leads and inspires the world in achieving universal access to HIV prevention, treatment, care and support.

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