



Canadian HIV/AIDS Legal Network		Réseau juridique canadien VIH/sida
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**A Human Rights-based Commentary on
*UNAIDS Guidance Note: HIV and Sex Work (April 2007)***

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Executive summary

The April 2007 *UNAIDS Guidance Note: HIV and Sex Work* (“the Guidance Note”) is inconsistent with previous UN statements on the central importance of respecting, protecting and fulfilling the rights of sex workers in programs and policies related to sex work and HIV. The Guidance Note fails to consider seriously the precarious human rights situation of sex workers, and the way abusive and violent policing and ill-conceived national laws undermine sex workers’ rights. It also fails to discuss the human rights of sex workers as workers, including their right to work, their right to a livelihood of their choosing, and their right to workplace safety. The Guidance Note implicitly rejects UNAIDS’ earlier emphasis on improving the situation of sex workers by empowering them to take control of their work conditions, instead emphasizing alternative livelihoods (but without offering any real-life examples of successful alternative livelihood programs, or discussing the human rights pitfalls of these approaches).

The Guidance Note is generally weak on practical measures that should be implemented broadly to ensure universal access among sex workers to comprehensive HIV prevention and treatment services, including sustained access to condoms, lubricant, HIV information and peer education.

The document’s focus on reduction of demand for sex work as an HIV prevention strategy is misguided. Criminalizing or otherwise repressing the purchase of sexual services can increase the risks of HIV for sex workers by driving sex work underground and limiting the choice of working conditions and the choice of clients. Advocating for demand reduction is also stigmatizing and departs from what should be a focus on the right of sex workers to work safely and be in control of all aspects of their work.

The Guidance Note also ignores the reality of important trends in programming related to sex work, including human rights violations that have been documented in association with “100 percent condom use” programs and “raid and rescue” programs. As these programs are increasingly widespread and well funded, it is incumbent on UNAIDS to provide guidance on mitigating human rights violations linked to them. The document ignores ways in which these programs undermine HIV prevention, treatment, care and support for sex workers, including by undermining successful HIV programs run by sex workers themselves. The document also unhelpfully conflates sex work and trafficking.

In earlier documents, UNAIDS showcased as best practices many programs that demonstrated the effectiveness of sex worker empowerment and peer-based program management for HIV prevention and treatment. The Guidance Note seems to back away from a focus on those groundbreaking programs of, by and for sex worker organizations, some of which have advanced the human rights of sex workers well beyond their impact on HIV. Instead, the document takes

positions that feed into the misguided and dehumanizing idea that abolishing sex work is a useful approach to preventing HIV.

UNAIDS now indicates that the Guidance Note will be withdrawn as a public document and made “internal.” We question whether this decision responds adequately to the concerns raised by the Programme Coordinating Board (UNAIDS’ governing body) in June 2007, and we question the closed process that resulted in this document in the first place. We urge UNAIDS to ensure that the problematic human rights issues raised in the Guidance Note are the subject of discussions in which sex workers and sex worker organizations are meaningfully engaged.

Introduction

In June 2007, the Programme Coordinating Board (PCB) of UNAIDS was asked to consider a document entitled *UNAIDS Guidance Note: HIV and Sex Work*. After discussion in the PCB, including reservations raised by NGO delegates and some member states, the PCB asked that the Guidance Note be reconsidered by UNAIDS with the possibility of revision. The UNAIDS secretariat has since indicated that it intends to withdraw the Guidance Note as a public document and make it an “internal” paper while also opening up a series of consultations on HIV and sex work. This commentary is submitted for consideration by all parties, including both UNAIDS and the UN Population Fund (UNFPA, which is the focal point in UNAIDS for sex work issues) in the revision process on behalf of the organizations listed at the end of this paper.

We are concerned that the original April 2007 draft of the Guidance Note is not well grounded in human rights principles or in solid programmatic or policy experience. It also results from a process in which sex workers were not meaningfully engaged. This commentary outlines a number of concerns and makes concrete recommendations for improvements toward policy and program guidance that is truly based on human rights and evidence.

Ignoring the centrality of human rights

From the beginning of the HIV/AIDS epidemic, the United Nations system and UN member states have, in numerous official statements and documents, underscored the importance to the global AIDS response of respecting, protecting and fulfilling the human rights of persons living with HIV and those who, because of stigma, discrimination and other human rights abuses, are vulnerable to HIV and to being denied treatment, care and support. The United Nations system has also claimed a responsibility to ensure that persons whose circumstances may make them vulnerable to HIV have the opportunity to participate meaningfully in decision-making related to HIV and AIDS programs and policy. Any guidance from UNAIDS on the subject of sex work, then, should first and foremost be a guide to enhancing protection of the rights of sex workers — as women, men and transgender persons, as workers, and as persons with the right to participate meaningfully in decision-making about policies and programs affecting them. In its current form, the Guidance Note does not adequately advance a human rights-based analysis or identify measures that need to be taken to respect, protect and fulfill the rights of those engaged in sex work, including those who are living with HIV.

The CEDAW Committee, which oversees the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women, has noted that many women in prostitution are often vulnerable to violence and

should enjoy special protection from violence under the law.¹ Systematic police violence and harassment against women, men and transgender persons in sex work have been documented by human rights organizations in many settings, including shocking levels of rape of sex workers by police.² The risk of human rights violations for sex workers is deepened in most countries by criminal prohibitions of sex work or of activities associated with sex work. Criminal prohibitions not only facilitate social stigma and marginalization of sex workers but make it impossible for them to enjoy the protection of the police when they face violence or abuse. On the contrary, these provisions in the law open the door to the harassment, extortion and rape of sex workers by police,³ and they impede access by sex workers to comprehensive HIV prevention and treatment services.

It is surprising that the Guidance Note does not concern itself with the vexing and underhanded ways in which national laws compromise the human rights of sex workers in many if not most countries of the world. In many countries, prostitution is legal, but such actions as public solicitation for sexual transactions — which is often very broadly defined — essentially make sex work criminal. In some countries, living off the earnings of a sex worker is a crime, in theory criminalizing sex workers' spouses or partners and even their children, and certainly threatening the human right of sex workers to marry and found a family. Many jurisdictions limit the use of residences for sex work through antiquated “bawdy house” provisions in criminal codes, which often have the effect of forcing sex workers to work on the street, where they have less control over conditions of their work.

Criminal law provisions of these kinds have been shown to undermine the human rights and workplace safety of sex workers, as well as HIV and other health programs meant to benefit them. The impact of repressive laws and policing on sex workers' access to comprehensive HIV services cannot be overstated. Laws and policies in many countries give the police broad latitude to arrest sex workers — including allowing police to regard possession of condoms as “proof” of prostitution — as well as to displace them from safer or usual workplaces.⁴ Laws

¹ United Nations Committee on the Elimination of All Forms of Discrimination against Women. General recommendation no. 19 (11th session, 1992). Available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

² See, e.g., Human Rights Watch, *Epidemic of abuse: Police harassment of HIV/AIDS outreach workers in India*, New York, 2002; Human Rights Watch, *Lessons not learned: Human rights abuses and HIV/AIDS in the Russian Federation*, New York, 2004; Human Rights Watch, *Rhetoric and risk: Human rights abuses impeding Ukraine's fight against HIV/AIDS*, New York, 2006, all available at www.hrw.org; and Pivot Legal Society, *Voices of dignity: A call to end the harms caused by Canada's sex trade laws*, Vancouver, Canada, 2004, available at www.pivotlegal.org. See also Policy Project. *Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia*. Washington, DC: U.S. Agency for International Development, 2006.

³ See *Epidemic of abuse*, *ibid.*, and G Misra, A Mahal and R Shah. “Protecting the rights of sex workers: The Indian experience.” *Health and Human Rights* 2000; 5(1): 88–115.

⁴ The impact of criminal law provisions on sex work in Canada is detailed in G Betteridge, *Sex, work, rights: Reforming Canadian criminal laws on prostitution*, Toronto, 2005, available at

unrelated to sex work — such as laws on vagrancy and public nuisance — may also be applied in discriminatory ways such that sex workers are arrested and detained more frequently than other persons. In many countries, sex workers face very high risk of rape and other abuse, mandatory HIV testing, and interruption of antiretroviral treatment when they are in state custody.

Sex workers' human rights are regularly violated in another way — their exclusion from policy and program decision-making in areas of direct relevance to their lives and work. One of the few exceptions in this regard is 2003 legislation in New Zealand, which not only decriminalized sex work but also mandated that sex workers be represented in national policy decision-making related to sex work.⁵ Most often, sex workers are not consulted — or not consulted meaningfully — in policy and program decisions related to their work, even though they have shown themselves in many countries to be very effective in organizing themselves and managing challenging public health programs. As noted by Loff and others in the pages of *The Lancet*:

Because sex work tends to be regarded as a behaviour, not an occupation — who you are, not what you do — sex workers are often treated as the object of programmes rather than contributors to them. Yet discussions about sex work without sex worker representation result in an incomplete understanding of the social dynamics of the occupation.⁶

Sex workers' exclusion from policy and program decision-making is reinforced by the fact that in many countries there is little or no funding available to support the creation and development of sex worker organizations, and equally scarce funding for peer-based, non-judgmental HIV prevention, treatment, care and support programs.

Although sex workers face unsafe working conditions and are marginalized in policy discussions, characterizing them as victims is dehumanizing and has the effect of belittling their voice and their participation in policy and program decision-making. Rather, as it has done with respect to other populations with particular HIV risks, UNAIDS should describe and endorse best practices in programs and policies that reduce human rights violations faced by sex workers (as people and as workers), allow them to conduct their work as safely as

www.aidslaw.ca/sexwork. Other analysis of the human rights and health impact of ill-conceived laws on sex work can be found, e.g., in G Misra, A Mahal and R Shah, "Protecting the rights of sex workers: the Indian experience," *Health and Human Rights* 2000; 5(1):88–115; and Open Society Institute, Sexual Health and Rights Project. Eight working papers/case studies examining the intersections of sex work law, policy, health and rights. June 2006. Available at www.soros.org/initiatives/health/focus/sharp/articles_publications/publications.

⁵ See New Zealand Prostitutes Collective analysis and explanation of the 2003 law under "Law" at http://www.nzpc.org.nz/page.php?page_name=Law.

⁶ B Loff, C Overs and P Longo. Can health programmes lead to mistreatment of sex workers? *Lancet* 2003; 361(9373): 1982.

possible, and enable them to participate meaningfully in policy decision-making and programs that affect them. It is on these questions that guidance is most needed and would be most useful for preventing HIV among sex workers and ensuring care, treatment and support for all who need them.

These factors are recognized as central in the *International Guidelines on HIV/AIDS and Human Rights* (“the International Guidelines”) published by the Office of the UN High Commissioner for Human Rights (OHCHR) and UNAIDS: “A rights-based effective response to the HIV epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV and for those living with HIV.”⁷ With respect to sex work in particular, the International Guidelines note:

With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients.⁸

In other words, UNAIDS and OHCHR recognize

- (1) that there is sex work without victimization,
- (2) that criminal laws are a central element of risk and vulnerability for sex workers, and
- (3) that occupational health and safety is a useful framework for a human rights-based approach to HIV among sex workers.

The weakness of the Guidance Note on issues related to the power of the police over sex workers and poor application of criminal law to sex work is also curious given that UNAIDS best-practice publications on sex work have strongly emphasized these factors. The 2006 publication showcasing HIV programs for sex workers in Eastern Europe and Central Asia underscores the need for better legal frameworks and better police practices with respect to all the six programs described.⁹ This theme is also prominent in the lessons drawn from projects in Papua New Guinea, India and Bangladesh in an earlier best-practice collection.¹⁰

⁷ OHCHR and UNAIDS. *International Guidelines on HIV/AIDS and Human Rights* (2006 consolidated version; originally published in 1998, revised in 2002). United Nations doc. HR/PUB/06/09, 2006, para 8(c).

⁸ *Ibid.*, para 21(c).

⁹ UNAIDS. *HIV and sexually transmitted infection prevention among sex workers in Eastern Europe and Central Asia* (UNAIDS Best Practice Collection). Geneva, May 2006. Available at www.unaids.org.

¹⁰ UNAIDS. *Female sex worker HIV prevention projects: Lessons learnt from Papua New Guinea, India and Bangladesh* (UNAIDS Case Study). Geneva, November 2000. Available at www.unaids.org.

The Guidance Note makes little of dangerous applications of criminal law and police practices that violate the human rights of sex workers, and gives no guidance on these subjects for policy and programs; this deficiency should be rectified. It would also be very useful for the Guidance Note to recognize experiences such as the New Zealand decriminalization effort and to suggest lessons and strategies based on it.

Human rights-based and evidence-based approaches

The failure of UNAIDS to situate its guidance strongly in a human rights framework leads the document awry in a number of its recommendations. The Guidance Note states that its main goal is to “provide a unified approach by the UNAIDS Cosponsoring agencies to the reduction of HIV vulnerabilities in the context of [adult] sex work.” The document recognizes a number of the human rights challenges facing sex workers, but it loses the thread of human rights at various key points.

It proposes a “three-pillar” approach that includes “reducing vulnerabilities and addressing structural issues,” reducing risk of HIV infection in sex work, and “building supportive environments and expanding choices.”¹¹ Some elements of action proposed under these pillars are welcome, but the consistency of others, including those outlined below, with human rights and best practice is questionable.

Reduction of men’s demand for sex work

The Guidance Note sees reduction of men’s demand for sex work to be a crucial structural element of “reducing vulnerability” of women in sex work. It does not elaborate on how this can be achieved, except for a cryptic reference to the feasibility of achieving social change and influencing gender as a social and cultural “construct.”¹²

More importantly, however, this strategy is stigmatizing and undermines the human rights of sex workers. When sex workers have fewer clients to choose from, they have less capacity to reject unsafe clients. In some countries, including Canada, “john schools” use as a demand-reduction strategy the stigmatizing portrayal of sex workers as vectors of disease. Demand reduction in most settings is probably as unrealistic an HIV prevention strategy as relying on young people to abstain from sex. UNAIDS should keep its focus on the rights of sex workers to protect themselves and have a safe workplace with the clients who *are* present.

¹¹UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, Geneva, April 2007, p 3.

¹² *Guidance Note*, p 4.

Trade unions and labour organizations

The Guidance Note encourages trade unions and labour organizations to work on reducing demand for sex work rather than encouraging them to promote and protect the workers' rights of sex workers and strive toward guaranteed health services for all. Labour unions should also be encouraged and supported to promote condom use among their members.

Problematic language

The Guidance Note proposes to promote access of sex workers to “decent work,”¹³ implying that sex work is indecent, which contributes to stigma and is contrary to the idea that sex work is legitimate work and that sex workers should enjoy the same human rights protections as people in other professions. It further states, with no reference to research, that “[a]t some point most sex workers wish to leave sex work.” It is the right of anyone wishing to leave sex work to be able to do so, but the assumption of a huge unmet demand for leaving sex work should not be asserted without reference to evidence and should not be allowed to drive an excessive emphasis on “exiting” strategies in this guidance.

Alternative livelihood programs

Under two of the three pillars, the document pushes for alternative livelihood programs to give sex workers the skills to do other kinds of work and to give them access to “microcredit.” It fails to cite experience or research indicating the success of such programs, including the rate at which sex workers return to sex work after exiting.

The Guidance Note also fails to state clearly that skills training and education programs should not be based on leaving sex work; all sex workers who need education and skills training should be able to get them without discrimination. In addition, the Guidance Note should emphasize that alternative livelihood programs should

- (1) include concretely meaningful participation of sex workers in their design and implementation, and
- (2) have strong safeguards against any element of coercion, including ensuring a verifiable process of informed consent for all participants.

There should be also be consideration of the finding from some studies that microcredit for women may result in domestic violence as their spouses or

¹³ Ibid.

partners are threatened by their greater economic independence,¹⁴ especially since sex workers already face high risk of violence.

ILO workplace standards

Human rights-based guidance on HIV and sex work should include consideration of relevant aspects of workers' rights. Coordination of activities on HIV and labour is a responsibility of UNAIDS, with the International Labour Office (ILO) as the lead agency in this area. If any other category of workers were the subject of UNAIDS program guidance, the safety of their workplace and their right to organize and be protected from unfair labour practices would probably figure in that guidance. It is disappointing that the Guidance Note says nothing about the relevance of ILO workplace standards on HIV with respect to sex work.

Poverty and gender inequality

The Guidance Note emphasizes strongly the need to address poverty and gender inequality, including ensuring access to education for girls, which is of course a good idea for all women, and for protection against discrimination based on sex and gender identity. Addressing poverty and gender inequality is the mandate of many UN agencies and programs, and one of the key goals of the UNAIDS-led Global Coalition on Women and AIDS.

With what are certain to be very limited resources devoted to HIV and sex work, it is not useful to suggest that such funds be devoted in large measure to entrenched problems of poverty and gender inequality without highlighting examples of measures that have been of direct benefit to sex workers. In addition, UNAIDS should highlight ways in which promotion, protection and fulfillment of sex workers' rights can contribute to reduction of poverty and gender inequality. UNAIDS' own analysis of the Sonagachi project in Calcutta in a 2000 document concludes that poverty reduction and sustainable empowerment of women were among the profound consequences of the sex worker-led social movement in Sonagachi.¹⁵

Male and transgender sex workers

The focus of the Guidance Note is on women in sex work and their male clients. There is very little attention in the Guidance Note to the often severe human rights challenges faced by men and transgender persons in sex work.

¹⁴ See, e.g., literature review in LM Bates et al. "Socioeconomic factors and processes associated with domestic violence in rural Bangladesh." *International Family Planning Perspectives* 2004; 30(4):190–199.

¹⁵ *Female sex worker HIV prevention projects*, op.cit., p 58.

Vulnerability to HIV

The Guidance Note makes the unsupported claim that “HIV vulnerability is high for all sex workers,” rather than citing the large body of evidence that when sex workers do not live in constant fear of the police, when they work in safe conditions, and when they are empowered to control their working environment, their vulnerability to HIV is low.

Any guidance from UNAIDS on HIV and sex work should have a clearer focus on barriers to access by sex workers to comprehensive HIV prevention, treatment, care and support, including barriers to sex workers’ own control and management of HIV programs. That focus is frequently lost in the Guidance Note.

Meaningful involvement of sex workers

The Guidance Note does not adequately address the reality that relatively few donors have provided sustained funding for human rights-based programs designed and implemented by sex workers.¹⁶ A document devoted to promoting best practices in rights-based programming on HIV and sex work should be a tool for advocating for more and better programs in which sex workers participate meaningfully in the protection and promotion of their human rights. The Guidance Note fails in that respect. It should also very specifically say that national HIV/AIDS plans and policies need to address the human rights of sex workers, and that sex workers should be involved in the elaboration, implementation and evaluation of those national plans.

Failure to address the reality of sex work programs and policies

Just as the Guidance Note fails to deal with the reality of criminalization of sex work, it fails to provide guidance on important programs and policies related to sex work and HIV that are associated with human rights violations. This crucial omission limits the usefulness of the document. In particular, any such guidance note or major statement from UNAIDS on sex work should deal directly with human rights challenges associated with two kinds of increasingly widespread and well-funded programs — “100% condom use” programs and rescue or “raid and rescue” programs.

¹⁶ J Dorf. Sex worker health and rights: Where is the funding? New York: Open Society Institute, Sexual Health and Rights Project, 2006. Available at http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/where_20060719.

“100% condom use” programs

Programs called “100 percent condom use” (“100% CUP”) have gained many adherents. Many of these programs are modeled on the experience of Thailand. The Thai 100% CUP is described in an earlier UNAIDS document as follows:

[The program would] require that all [sex] establishments and sex workers . . . use condoms in every sex act. This would assure owners and managers that they would not lose business by enforcing the policies requiring condom use, since clients could not go anywhere else to obtain unprotected sex. [There was] a collaborative effort among local authorities, public health officers, sex establishment owners and sex workers to ensure that clients could not purchase sexual services without condom use¹⁷

The Thai 100% CUP also included obligatory regular medical check-ups for sex workers in regulated sex establishments. Besides the Thai experience, 100% condom use programs have been implemented in Cambodia, Laos, Mongolia, the Philippines, Vietnam, and some parts of China.¹⁸

The Guidance Note makes a reference to something resembling 100% CUP when it makes the following recommendation:

Engage police, brothel owners and managers of sex industry operations, local health authorities and sex workers and clients in introducing codes of practice in sex work settings including: condom use; prevention, diagnosis and treatment of HIV and other sexually transmitted infections and other reproductive tract infections; the elimination of gender-based violence against sex workers; and appropriate behavioural standards for clients.¹⁹

Unsurprisingly, 100% CUP in Thailand and Cambodia have been shown to result in greater condom use. But these programs have generally been designed without meaningful participation of sex workers, and most evaluations of them have failed to document sex workers’ real experiences of these programs, including human rights violations.

One exception is the USAID-funded POLICY Project’s evaluation of 100% CUP in Cambodia, which included interviews with 150 sex workers in establishments

¹⁷ UNAIDS and Thailand Ministry of Public Health. *Evaluation of the 100% condom programme in Thailand: UNAIDS case study*. July 2000, p 2.

¹⁸ UN Population Fund (UNFPA) and World Health Organization (WHO), “Joint UNFPA/WHO meeting on 100% condom use programme” (press release), 3 October 2006. Available at www.wpro.who.int.

¹⁹ *Guidance Note*, p 8.

affected by the program. Among the findings of this evaluation were the following:

- The program included obligatory registration of sex workers and monitoring of their attendance at health clinics. Many sex workers reported that they were not told for what purpose they were being registered and how the registration information would be used.
- The program was undermined by the fact that police in some cases owned the brothels or took bribes from the brothel owners. Many sex workers said police demanded free sexual services with the collusion of brothel owners. In addition, they said that police would not take action in the case of a violent client unless they were paid a bribe by sex workers. Another POLICY study in 2006 indicated that one third of a sample of sex workers in Phnom Penh were gang-raped by police in the past year and one half were beaten by police,²⁰ and this after years of 100% condom programs.
- Violations of sex workers' right to health were reported by many of those interviewed. Sex workers reported rough treatment, stigmatization, rudeness and condescension on the part of health workers at the clinics they were required to frequent. They were blamed if they were diagnosed with a sexually transmitted disease. Some said they had no choice about which health clinics they could use, and some reported being required to pay for services that should have been free.
- Because brothel owners could be paid off by clients and for other reasons, it was still necessary for sex workers to negotiate condom use in many cases.

The Network of Sex Work Projects (NSWP) reports from first-hand accounts by sex workers that the reality of 100% CUP is frequently compulsory registration of sex workers with law enforcement authorities, mandatory health examinations, including HIV tests with sex workers sometimes escorted to clinics by police, and generally greater power over sex workers in the hands of police.²¹ They also report cases where photographs of sex workers who allegedly agreed to have sex without a condom were posted in brothels for clients to see. Finally, these programs depend on adequate supplies of free condoms, which have not always been present.²²

The Guidance Note does not deal with any of these realities of 100% CUP, even as UN agencies continue to promote these programs.²³ It is a gross deficiency of

²⁰ *Violence and exposure to HIV among sex workers in Phnom Penh*, op.cit., p 5.

²¹ Loff, Overs and Longo, op.cit., p 1982.

²² Ibid.

²³ World Health Organization, Western Pacific Regional Office (WPRO) and Ministry of Health of Cambodia. *Guidelines for scaling-up 100% condom use programme*. Manila, 2003; and World

the Guidance Note that it does not consider ways in which 100% CUP undermines sex worker-controlled programs that work and that empower sex workers in HIV prevention, rather than imposing greater police scrutiny on them. It is counter-productive to recommend the engagement of police in 100% CUP without strong recommendations of protections against police abuse and without better attention to ensuring participation of sex workers in the design of these programs.

Mandatory testing in any form is something UNAIDS should roundly condemn, and it should provide guidance for the scale-up of 100% CUP to ensure rejection of the practice. At the XIV International AIDS Conference in Barcelona in 2002, the NSWP and other advocates presented concerns about 100% CUP and received a promise from UNAIDS that it would undertake a serious review of these programs. In the Guidance Note, UNAIDS has failed to live up to that promise.

Rescue or “raid and rescue” operations

The human rights-unfriendly idea that all sex work is immoral or exploitative and should be abolished is not new. It has, however, gained strength from developments in the United States that have coincided with the investment of U.S. federal funding in both anti-trafficking efforts and international AIDS programs. Even before the creation of the United States President’s Emergency Plan for AIDS Relief (PEPFAR), the Bush administration was allocating record sums — US\$91 million in 2003 alone — to anti-trafficking initiatives, many of them run by conservative Christian organizations pursuing the raiding of brothels and the “rescue” of allegedly trafficked women.²⁴

The multi-billion-dollar PEPFAR initiative was created by legislation requiring recipients of PEPFAR funds to “have a policy explicitly opposing prostitution and sex trafficking”.²⁵ (This provision of the law has since been challenged in U.S. federal courts as a violation of the freedom of expression of civil society organizations.²⁶) The law also explicitly states that the United States’ strategy is to “eradicate” prostitution.²⁷ It is not only U.S. government funds that have reinforced abolitionism with respect to sex work. In 2005, for example, the Bill &

Health Organization, WPRO. *Responding to questions about the 100% condom use programme – An aid for programme staff*. Manila, 2004. The latter document coaches program staff on how to argue against the idea that human rights violations have occurred in 100% condom use programs. Both are available at www.wpro.who.int/publications.

²⁴ G Soderlund. “Running from the rescuers: New U.S. crusade against sex trafficking and the rhetoric of abolition.” *NWSA Journal* 2005; 17(3): 64–87, p 76.

²⁵ U.S. Congress. P.L. 108-25 (S. 250, H.R. 1298), 108th Congress. United States Leadership Against Global HIV/AIDS, Tuberculosis, and Malaria Act of 2003, sec. 104A.

²⁶ E Silver. “U.S.: Courts rule anti-prostitution policy restriction on AIDS funding violates right to free speech.” *HIV/AIDS Policy & Law Review* 2006; 11(2/3): 54–55. Available at www.aidslaw.ca/review.

²⁷ U.S. Congress. P.L. 108-25, op.cit., sec. 2, para. 23.

Melinda Gates Foundation gave US\$5 million to the International Justice Mission (IJM), an evangelical Christian organization with a history of high-profile “rescues” of sex workers.²⁸

The impact of this well-funded emphasis on abolishing sex work should not be overlooked by UNAIDS. There are now numerous documented cases of successful HIV prevention programs among sex workers that have been undermined by “rescuing.” The results of such operations for sex workers have been homelessness, trauma, imprisonment and the abuses that occur in prison, increased debt and debt bondage, and other abuses. Even for trafficked women, raids and rescues are not rights-based interventions. Like sex workers, trafficked women can be put in danger by these operations.

For example, Sampada Gramin Mahila Sanstha (SANGRAM) is a women’s rights organization in Sangli, India that provides HIV services and other support to women in sex work, including through its affiliated organization, the VAMP sex worker collective. SANGRAM has been recognized by UNAIDS as embodying best practices in its HIV work and has been honoured by Human Rights Watch for its exemplary protection and promotion of the rights of sex workers.²⁹ In 2005, a person affiliated with IJM instigated a violent raid by 200 police officers of brothels in Sangli, allegedly to save trafficked children.³⁰ The raid resulted in the arrest of 13 brothel owners and the “rescue” of 35 allegedly minor girls, of whom only four were eventually determined to be minors and not engaged in sex work. Some of these persons were detained for as long as 15 days. The raid was followed by an active campaign to accuse SANGRAM of complicity in trafficking of children, a charge with no basis in fact. As Meena Seshu, SANGRAM’s founder and secretary general (and a member of the UNAIDS Reference Group on HIV and Human Rights), noted, the brothels in the area all employed many children before SANGRAM existed, but after 15 years of its work, there are few children in the brothels. SANGRAM and VAMP have always denounced all forms of sexual exploitation of children. But unfounded charges like this one can damage the reputation of the groups and undermine their HIV and human rights work.

Lotus Club, a sex-worker health and support project in Svay Pak, Cambodia, received USAID support until 2002, when it was one of eight programs accused before the U.S. Congress of being involved in trafficking.³¹ Sex workers assisted by the organization were the object of a number of “rescues” and crackdowns, and many were taken involuntarily to “rehabilitation” centres. Researchers from

²⁸ International Justice Mission. International Justice Mission receives \$5 million grant to fight sex trafficking (press release), 14 March 2006. Available at www.ijm.org.

²⁹ Human Rights Watch. “Human Rights Watch to honor leading Indian AIDS advocate” (press release), 7 November 2002. Available at www.hrw.org.

³⁰ See accounts of these events by Meena Seshu in a series of papers available at <http://www.genderhealth.org/pubs/SANGRAMStatements.pdf>.

³¹ J Busza. “Having the rug pulled from under your feet: One project’s experience of the US policy reversal on sex work.” *Health Policy and Planning* 2006; 21(4): 329–32.

the London School of Hygiene and Tropical Medicine who interviewed women affected by these actions found that very few of them wanted to be rescued, whereas many would have preferred to see working conditions in the brothels improved.³² In this case, the raids scared customers away and increased pressure on sex workers to take any clients, including those who refused condom use. They also resulted in brothel owners limiting the movements of sex workers, including denying them access to health clinics.

Numerous other such stories have been documented. Accusing sex worker organizations of abetting trafficking, including the trafficking of children, is a common feature of these stories. The Thai organization Empower Foundation, one of the most established sex worker organizations in Southeast Asia, documented a brothel raid in Chiangmai undertaken by IJM in 2003 in which women who wished to stay in brothels were unlawfully detained and told that if they refused to testify against their “traffickers” they would be further detained.³³ Even the best-known and most-evaluated HIV program among sex workers in the world, that of the Durbar Mahila Samanwaya Committee (DMSC) in the Sonagachi area of Calcutta, suffered raids in 2004 motivated by the accusation that a DMSC-affiliated group was complicit in the trafficking of minors.³⁴ Police beat sex workers and project staff when the women at the scene protested police harassment. As noted by the DMSC secretary, this incident

reveals the utter callousness of the police about our human rights and infringes on our right to livelihood. In addition, such acts of violence by “upholders” of “law and order” on sex workers only manages to marginalize us more, makes us suspicious of “mainstream” interventions and sets back by a quantum leap the gains made by DMSC in STD/HIV prevention efforts.³⁵

Targeting sex workers for rescue may drive them underground and make them that much harder to reach with comprehensive HIV prevention and treatment services. It should be of deep concern to UNAIDS that the exemplary and effective work of sex worker organizations in reducing HIV transmission and increasing community-level knowledge and awareness of HIV is undermined by these measures. The Guidance Note does not recognize these phenomena as human rights and public health threats. Rather, it wittingly or unwittingly feeds into a “rescue” mentality by its excessive focus on building alternatives to sex work and on reducing demand for sex work.

³² Ibid., p 330. See also J Buzsa, S Castle and A Diarra, “Trafficking and health,” *British Medical Journal* 2004; 328:1369–1371.

³³ Empower. “A report by Empower Chiang Mai on the human rights violations women are subjected to when ‘rescued’ by anti-trafficking groups who employ methods using deception, force and coercion.” *Network of Sex Work Projects*, June 2003. Available at www.nswp.org.

³⁴ S Gayen (secretary of DMSC). “Sex workers in Kolkata again face police attack.” *Of Veshyas, Vamps, Whores and Women*, vol. 1, no. 4. Available at www.sangram.org.

³⁵ Ibid.

What should rights-based program guidance look like?

There is no “one size fits all” approach to effective programs in the area of HIV and sex work, but there are some principles that should guide “human rights-based” programming. The Guidance Note does not reflect the main principles of good programming on HIV and sex work that have appeared in earlier UNAIDS documents. The UNAIDS’ 2000 publication of best-practice case studies related to sex work highlighted the importance of the following factors:

- Legitimizing the role of sex workers as educators and supporting them in gaining the respect of their peers;
- Providing financial incentives for peer-led work with sex workers; and
- Addressing the prejudice and stigma that sex workers face and acknowledging in programming their legal concerns.³⁶

The policy paper on intensifying HIV prevention approved by the UNAIDS governing board in 2005 highlights the importance of *reviewing and, if necessary, reforming legal frameworks* to ensure “removing barriers to evidence-based prevention, including among sex workers.”³⁷ As already noted, the International Guidelines call for decriminalizing sex workers, and removing barriers to effective HIV prevention and care for sex workers and their clients that may be created by criminal law. These key ideas are relevant to all three of the pillars proposed in the Guidance Note.

Many of the programs that UNAIDS has highlighted as best practices over the years embody human rights-based programming that has empowered sex workers to protect themselves from HIV and to be effective HIV educators in their communities. In the best cases, empowerment of sex workers and protection and promotion of their rights have gone well beyond the domain of HIV and led to positive changes in the status of sex workers in the community. Some of the examples highlighted by UNAIDS as best practices are described below.

Sonagachi Project (India)

The Sonagachi Project began as an HIV prevention project and became, in UNAIDS’ own estimation, an important social movement for women’s rights and sex workers’ rights. Reliance on sex workers’ own knowledge and professionalism has been a hallmark of all of the work. Sonagachi is renowned for well-demonstrated and sustained reductions in HIV incidence among sex workers and their clients. The program has numerous components, including actions designed to help sex workers

- protect themselves from sexually transmitted diseases;

³⁶ UNAIDS. *Innovative approaches to HIV prevention: selected case studies* (UNAIDS Best Practice Collection). Geneva, 2000, p 9.

³⁷ UNAIDS. *Intensifying HIV prevention: UNAIDS policy position paper*. Geneva, 2005, p 31.

- organize themselves to be able to have safer workplaces and neighbourhoods;
- educate their communities about the importance of sex workers' rights;
- train police; and
- ensure access to a full range of basic services.

A UNAIDS analysis in 2000 said that Sonagachi “demonstrated the great value of gradually placing the control of a community-based health intervention into the hands of the community,” among many other achievements.³⁸ UNAIDS also cited the SHAKTI Project in Bangladesh as one that succeeded in establishing an important network of peer-run services for women sex workers, borrowing some elements from the Sonagachi experience.³⁹

AMBAR (Venezuela)

A program run by the Asociación de Mujeres por el Bienestar y Asistencia Recíproca (AMBAR) in Caracas, Venezuela, in which sex workers were trainers of other sex workers and community members on human rights, self-esteem, and sexual and reproductive health. Partnerships with legal and human rights organizations enabled cases to be brought based on complaints by sex workers of a range of abuses. Some 25 000 women sex workers became part of the work, with virtually no reports of HIV infection among them in the first five years of the project. Women sex workers controlled the local market in condoms. Empowerment of sex workers resulted in dramatic decreases in police harassment.⁴⁰

Association de Lutte contre le Sida (Morocco)

Outreach to hidden and highly stigmatized male sex workers in Morocco through the Association de Lutte contre le Sida (ALCS). Achievements included regular counselling, information and condom provision for sex workers who previously had little opportunity to learn about HIV or to ask questions of counsellors. A popular hotline and drop-in centre broke new ground for reaching highly stigmatized men.⁴¹

Tais Plus (Kyrgyzstan)

Tais Plus, an organization founded by women sex workers and women brothel owners in Kyrgyzstan, which mostly through outreach by peer educators reaches over 80 percent of sex workers in the capital, Bishkek. The organization developed effective working relationships with health services, thus improving the quality and accessibility of services for sex workers. Without being judgmental, it

³⁸ *Female sex worker HIV prevention projects*, op.cit., p 86.

³⁹ *Ibid.*, p 102.

⁴⁰ *Innovative approaches to HIV prevention*, op.cit., p 40.

⁴¹ *Ibid.*, p 39.

has provided special assistance to sex workers who inject illicit drugs. Based on lessons learned from its work with women, the organization also trained men sex workers as peer educators and, in the wake of extensive police abuse of men sex workers, organized a legal service for them. Tais Plus gained credibility to be an important and welcome voice in many government meetings, a pioneering achievement in a city where sex workers historically suffered deep criminalization and police harassment.⁴²

Again, there is no magic formula or any single approach that works in all situations. But the strong human rights elements of these programs (and many others cited by UNAIDS over the years) generally highlight the centrality of sex worker-run and sex worker-managed activities as the best example of meaningful participation in HIV work. They underscore the importance of addressing the impact of criminalization and police abuse as a fundamental element of HIV programming. They show the power of programming that grapples with human rights abuses in ways that are informed by sex workers' own daily experiences of those abuses, including by addressing — at least to some degree — underlying inequalities and social marginalization. Rather than relying on finding sex workers a way out of sex work, they rely on respect, protection and fulfillment of the rights of sex workers as people and workers in real situations, and focus on ensuring universal access to condoms, lubricant, HIV information, peer education and treatment and care for those living with HIV.

⁴² *HIV and sexually transmitted infection prevention among sex workers in Eastern Europe and Central Asia*, op.cit., pp 16–26.

Conclusion and recommendations

UNAIDS' April 2007 *Guidance Note: HIV and Sex Work* begins with a strong and welcome statement about the centrality of human rights as a guiding principle for the United Nations' response to HIV and AIDS. But this stated centrality does not appear to inform much of the rest of the Guidance Note. Its emphasis is on program strategies that do not empower sex workers to assert their human rights and take control of their working conditions. Its failure to take into account important global policy trends and shifts that pose serious threats to the human rights of sex workers limits its usefulness and credibility as program guidance. The lack of meaningful participation of sex workers in the development of the Guidance Note also belies its adherence to human rights principles.

Earlier UNAIDS publications drew lessons from real experiences of sex worker organizations whose work demonstrated that protection, promotion and respect of the human rights of sex workers is the most important strategy for ensuring HIV prevention, care, treatment and support for sex workers. UNAIDS must take care to craft policy statements on HIV and sex work that are strongly grounded in human rights. To ensure that this happens, sex workers must participate meaningfully in the current revision process and any follow-up activities.

Based on the commentary above, we offer the following recommendations for those formulating guidance on HIV and sex work from UNAIDS:

- Ensure that sex workers and sex worker organizations participate meaningfully in all steps of the development of policy statements.
- Highlight the lessons of previously cited UNAIDS best practices, especially those featuring empowerment of sex workers, protection and promotion of sex workers' rights, legal services, reduction of police abuse, and reform of the legal framework regulating sex work. Use those lessons as a basis for program guidance.
- Emphasize measures that ensure universal access of sex workers to condoms, lubricant, HIV information, peer education, and treatment and care for those living with HIV.
- Delete the recommendation to reduce demand for sex work.
- Alternative livelihood programs should be recommended only if existing successful programs can be cited, and only with strong recommendations about ensuring informed consent to participate in such programs, ensuring that there is no coercive element, and ensuring participation of sex workers in the design and management of such programs. Moreover, it should be clearly stated that sex workers should enjoy access without

discrimination to educational and skills-building programs, without regard to whether they are committed to exiting sex work.

- Include in the analysis and program guidance greater consideration of the negative impact of criminalization of sex work on HIV programs, and some practical recommendations about mitigating the negative impact of the criminal law and its application on the human rights of sex workers, including reiterating the recommendation to decriminalize sex workers that was already endorsed by UNAIDS and OHCHR in the International Guidelines more than a decade ago.
- Include analysis on the importance of workers' rights for sex workers, and include concrete guidance on the application of HIV-related internationally accepted workplace safety standards to the sex industry.
- Include strong recommendations to all donors to ensure that funds are allocated to programs that have protection, promotion and fulfillment of sex workers' human rights as a central element, including sustained funding to sex worker organizations and collectives. Include human rights-based analysis of 100% condom use programs and rescue operations, including the dangers of enhanced police control over the lives of sex workers in 100% CUP and the dangers of forced detention resulting from "rescues."
- Include recommendations to UN and bilateral programs to include protection, promotion and fulfillment of sex workers' rights in existing programs that seek to reduce poverty and gender inequality.
- Include analysis and recommendations related to protection, promotion and fulfillment of the human rights of men and transgender persons in sex work.
- Any guidance should say specifically that national HIV/AIDS plans and policies need to address the human rights of sex workers, and that sex workers should be involved in the elaboration, implementation and evaluation of those national plans.

This commentary is endorsed by the following organizations:

1. Network of Sex Worker Projects
2. AIDS Committee of Toronto (Canada)
3. Russian Harm Reduction Network (Russia)
4. Canadian Aboriginal Aids Network (Canada)
5. AIDS Saint John Inc. (Canada)
6. AIDS Vancouver (Canada)
7. Women for Women's Human Rights — NEW WAYS (Turkey)
8. American Jewish World Service (U.S.A.)
9. Sexuality and Policy Watch (Brazil/U.S.A.)
10. Center for Women's Global Leadership (U.S.A.)
11. Federation for Women and Family Planning (Poland)
12. AIDS Bereavement Project of Ontario (Canada)
13. Community HIV/AIDS Mobilization Project (U.S.A.)
14. STELLA (Canada)
15. Health Global Access Project (U.S.A.)
16. International Committee on the Rights of Sex Workers in Europe (Netherlands)
17. Unity Welfare Association (Kenya)
18. Center for HIV Law and Policy (U.S.A.)
19. Positive Women's Network (Canada)
20. LEFÖ — Counselling, Education and Support for Migrant Women (Austria)
21. YouAct — European Youth Network on Sexual and Reproductive Rights (Netherlands)
22. Network of HIV/AIDS (St. Vincent & the Grenadines)
23. Girls' Power Initiative (Nigeria)
24. Interact Worldwide (U.K.) — Kate Hawkins
25. British Columbia Persons With AIDS Society (Canada)
26. Co-ordination of Action Research on AIDS and Mobility in Asia (Malaysia)
27. Act-Up Paris (France)
28. Stepping Stone (Canada)
29. Northern HIV and Health Education Society (Canada)
30. Prince George New Hope Society (Canada)
31. Scottish Prostitutes Education Project (Scotland)
32. HIVictorious, Inc. (U.S.A.)
33. HIV Edmonton (Canada)
34. AIDS Calgary (Canada)
35. Grupo Português de Activistas sobre Tratamentos de VIH/SIDA (Portugal)
36. MADRE (Global)
37. Asian-Pacific Resource & Research Centre for Women (Malaysia)
38. SANGRAM — Sampada grameen mahila sanstha (India)
39. VAMP — Veshya Anyay Mukti Parishad (India)
40. AIDS Vancouver Island (Canada)
41. AIDS Foundation East-West (The Netherlands)
42. Central and Eastern European Harm Reduction Network

43. Union Alternative Georgia (Georgia)
44. Egyptian Initiative for Personal Rights (Egypt)