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Sex, Rights and the Law in a World with AIDS

Meeting Report and Recommendations

July 2009

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The Global Coalition on Women and AIDS

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Executive Summary

Nearly three decades after the identification of the first AIDS cases, it is clear that the AIDS epidemic will be with us for generations to come. While both the desired outcomes and the problems that need to be addressed are clear, there is still much that remains unknown about *how* to influence human practices and social norms for an effective long-term response to AIDS. This is particularly true of sexual practices, despite the fact that the majority of HIV transmissions have continued to occur during sexual interactions.

A meeting, *Sex, Rights and the Law in a World with AIDS,* was convened by several organizations to explore *why* the AIDS response has made relatively little progress on the prevention of sexually transmitted HIV, and *what* should be done to ensure a more effective long-term response. The meeting was organized for aids2031, a two-year initiative that is exploring what must be done *now* to change the face of AIDS in the year 2031, 50 years after the discovery of the first cases of AIDS. The meeting was designed to generate innovative thinking and develop recommendations to address:

- The complex social, legal and political obstacles to the successful prevention of sexually transmitted HIV; and
- The barriers to effective, gender-transformative and human rights-based approaches to treatment, care and support.

Based on the presentations and discussions at the meeting, we recommend the following ***shifts in emphasis*** in the response to the AIDS pandemic:

1. Adopt a new framework for analysis and action that expands the focus from individual knowledge, behaviors and practices to one that encompasses the interpersonal and societal factors that shape those outcomes.
2. Shift the focus from the AIDS-related *effects* of social injustice to a focus on addressing the *root causes* of these injustices. This will require a new temporal perspective—from seeing AIDS as a short-term emergency to viewing AIDS epidemics as "long-wave" events that will evolve over generations.
3. Shift from the delivery of standardized messages promoting specific, predetermined HIV prevention *outcomes* to a more nuanced approach that addresses and responds to sexualities and sexual interests as actually experienced by individuals in different social and cultural contexts. This will require investment in social science research capacity in order to generate the data on which to base this approach.
4. This shift will, in turn, require a corresponding shift in programmatic timelines. The usual funding cycle of two to three years is inadequate for most structural approaches, which take longer to implement and produce HIV outcomes. While the appropriate time frame will vary according to the context, a range of five to 15 years will be more suitable for monitoring change and measuring the impact of structural approaches.

Based on the presentations and discussions at the meeting, we recommend the following ***actions*** *:*

1. Strive for greater precision in use of terminology.
   - Advocate for greater precision in use of terms and challenge the stereotypic formulations of gender and sexuality.
   - Invest in new social science research to generate new knowledge about sexual interests, identities and how these interact with vulnerability in different settings.
2. Establish minimum legal standards to reduce vulnerability and enable the development of AIDS resilience.
   - Decriminalize HIV status, transmission and exposure.
   - Decriminalize sex work.
   - Decriminalize prohibitions on same-sex relationships/sexual practices.
   - Guarantee equal rights of people living with HIV and AIDS.
3. Increase investments in catalyzing and building social capital.
   - Identify influential power brokers /gatekeepers (i.e., those who set and monitor norms that increase vulnerability and/or those with necessary connections for helping affected communities achieve greater resilience) for different vulnerable populations and proactively engage them as positive partners in the creation of AIDS resilient-communities.
   - Strengthen civil society representation at the national AIDS response level.
   - Foster leadership among affected communities to create the conditions for local social movements to emerge.
   - Create new coalitions between AIDS response groups and those not typically engaged in the response.
   - Demand accountability from those in power. The AIDS response has tended to place the burden of creating change on vulnerable and affected communities themselves. Mechanisms need to be put in place for communities and vulnerable groups to demand accountability from those in power to follow through on commitments and for making the changes in laws and services that are required to reduce vulnerability and foster resilience.
4. Prioritize structural approaches within the context of national responses.
   - Include assessments (conducted by trained social scientists) of social dynamics in a country's efforts to "know its epidemic." See Annex IV for a hypothetical case study outlining what programmers would need to learn and do to understand and address the social dynamics affecting sexual transmission in a particular epidemic setting.
5. Invest in systematic evaluations of structural approaches. National programs and international funding mechanisms that support AIDS programming and policy-making must increase investment in two broad domains of research and evaluation:
   - Formative and etiological research exploring the contexts and meanings of sex, sexuality and sexual interests; and
   - Longitudinal and cross-sectional research to collect evaluation data on the impacts at all levels of structural efforts to reduce HIV vulnerability and to create resilience.

Background

Nearly three decades after the identification of the first AIDS cases, it is clear that the AIDS epidemic will be with us for generations to come. While both the problems we are seeking to change and the outcomes we are seeking to realize are clear, there is still much that remains unknown about *how* to influence human practices and social norms for an effective long-term response to preventing sexually transmitted HIV. This is particularly, if curiously, true of *sexual* practices, despite the fact that over these decades the majority of HIV transmissions have continued to occur during sexual interactions.

To date, the AIDS response has been characterized by a classical public health approach to disease control. This approach has largely focused on changing or controlling individual behavior to reduce risk[2] of exposure and prevent individual HIV transmissions. Behavioral approaches to HIV prevention have historically been based on "cognitive behavioral approaches, communications theory, peer education or diffusion of innovation"[i] and have stressed behavior change communication. This type of programming, which has dominated HIV prevention over the last 10 to 15 years, focuses on providing information about HIV and programs to the public at large; encouraging people to abstain from penetrative sexual intercourse, to be faithful to one uninfected partner or, if none of these options is possible, to use condoms. This approach is based on the assumption that human beings act rationally when it comes to their health, and that they will tend to act in the interest of disease prevention when the risks and alternatives are understood and accepted. However, we know that sexuality is far more complex and variable than these assumptions suggest—it is shaped by a range of inputs, from individual desire to external structural factors.

A meeting, *Sex, Rights and the Law in a World with AIDS,* was organized by several international organizations to address some of these issues. Held in Cuernavaca, Mexico from February 23-25, 2009, its goal was to advance long-term thinking and action on the prevention of sexually transmitted HIV. Both this meeting and *Mobilizing Social Capital in a World with AIDS,* held in Salzburg, Austria in March 2009, were organized for aids2031, an initiative that is exploring what must be done now to change the face of the pandemic by the year 2031, 50 years after the discovery of the first cases of AIDS.[3]

2 Risk is an epidemiological concept that describes the likelihood that an individual will be exposed to HIV in any given encounter. HIV-related risk has historically been most directly addressed by efforts to change individual behavior, to ensure that prevention technologies are used, or that individuals no longer engage in behaviors that expose them to infection.

3 See www.aids2031.org for more information.

Sex, Rights and the Law in a World with AIDS explored the social and structural barriers to the successful prevention of sexually transmitted HIV and to effective, gender-transformative and human rights-based approaches to treatment, care and support. Specifically, the meeting explored strategies for ensuring that the AIDS response is addressing human rights and social justice issues, and considered conceptual and practical approaches for making AIDS prevention more responsive to the realities of people's everyday lives. By inviting contributions from program experts, researchers, lawyers and policy-makers from around the world, the meeting focused on creating pragmatic solutions and developing concrete recommendations for programs, policies and research. This document synthesizes the presentations[4] and discussions, offers a broad framework for understanding and addressing sexuality- and gender-related HIV vulnerability,[5] and provides recommendations on priority actions to be taken to reduce those vulnerabilities and foster resilience[6] in the context of a long-term response to AIDS.

4 Participants selected to present papers were identified through an open, competitive solicitation for abstracts. Further details about the abstract selection process and the structure of the meeting can be found in Annex I.

5 The concept of vulnerability, as we use it here, is a sociological concept that refers to the extent to which the risk of transmission is affected by factors in the broader social and/or physical environment, which may be beyond the control of any or all individuals involved. Specifically, the concept has been used to explain why individuals fail to respond rationally (that is, in ways that would seem to protect their own best interest) to HIV prevention programming focused on individual risk reduction. Actions to reduce vulnerability will need to make strategic changes in the social-structural environment to make it more likely that any given sexual encounter will be free of risk—either because the infectious agent is less likely to be present, or because the people involved are more able and willing to practice prevention.

6 We define resilience as the following:

At the individual level: AIDS resilience is in place when individuals and consenting partners are able to manage the risks that are present in their environment. When individuals are AIDS-resilient, they are more equipped to increase the safety of their individual practices (e.g. choosing to use condoms, getting circumcised, etc. and/or reducing the number of concurrent sexual partners), access appropriate testing and treatment services, assert their own desires and preferences, and claim their rights without threat to themselves or their partners.

At the community level: AIDS resilience is enhanced by an enabling social, economic, legal and political environment. In an AIDS-resilient community, an enabling environment exists that supports the enjoyment of human rights by all, fosters respect for differences, and treats those living with HIV as equal members of the community. Stigma and discrimination based on HIV status or lifestyle choice do not exist. Prevention, treatment, and care services are equally available to all, and there is no gender-based exploitation or violence.

Summary of Issues Presented at Meeting[7]

Presentations at the meeting explored the many factors in everyday life that can radically affect the ability and/or willingness of individuals to change their sexual practices, even once they come to understand the mechanics of HIV prevention. Sexual practices, like all human interactions, are fundamentally social. As Boyce, et al. put it, sexuality is both an *embodied practice* and a social-cultural construction.[ii] Participants agreed that at the individual level, sexual practices are shaped by fluid and dynamic interactions among biological drives, social expectations and "the endless unfolding of categories of desire."[iii] The role of pleasure, its many meanings, forms and interpretations, is also a critical, if poorly understood and inadequately conceptualized, component of sexuality. Sexuality and sexual interests are also mutable. They change according to circumstances and over the course of a person's life. For example, in more and more circumstances researchers are finding that the crude categories of "heterosexual" and "homosexual" are obsolete because in reality sexual lives are more fluid than these categories suggest (Gary Dowsett, personal communication, April 2009).

Discussions explored the fact that the ability and willingness of individuals to respond to standard HIV prevention messages are affected by the ways in which sexuality and sexual practices interact with such factors as gender, race, citizenship, religion and socio-economic status in different contexts and situations, often in ways that render one partner less able to exert control over the adoption—or not—of HIV prevention practices than the other. Other critical interactions discussed were those that take place within and among sexual networks and the gendered contexts in and through which these interactions take shape.

It was pointed out that sexual practices, identities and interests are highly complex, mutable, and socially and culturally bounded. Therefore, it is necessary to understand how these formulations affect and are affected by a number of critical factors in wider social and cultural environments. Understanding these relationships can also help in formulating an HIV prevention response that incorporates an understanding of sexuality and sexual identities as actually lived and experienced by people during the course of their everyday lives. Of all the factors that affect sexual interests, identities and practices, those stressed during the meeting included legal frameworks, human rights, economic conditions, and norms concerning gender and age.

The papers presented at the meeting were divided into three panels: Linking Sexuality and Gender in Theory and Practice; Fostering Enabling Legal and Policy Environments; and Mobilizing and Empowering Affected Communities.

7 Abstracts for all papers are available in Annex II, and full versions of most papers will be available at www.aids2031.org.

Panel I: Linking Sexuality and Gender in Theory and Practice

The papers in the first panel highlighted the need for "careful thinking" in the development of programs and actions to promote the prevention of sexual HIV transmission. They pointed out the fact that the concepts and terms that are used regularly to talk, think and act on gendered relationships, sexuality and sexual interests are no longer up to the task and require revision. Rajeev Colaço's (University of North Carolina) study in India demonstrated many of the shortcomings of the term "gender" in the AIDS response. In two Northern Indian states, the study found that men's gender-inequitable attitudes are associated with high-risk sex. These findings reveal that the AIDS response, like many other fields, has too often equated "gender" with women and has thus failed to address the ways that gender inequality can also put men and transgendered persons at risk. The author emphasized the need to focus on men and masculinities within the broader gender context. The session facilitator, Professor Peter Aggleton (University of London), suggested that it may be time to stop looking at gender and sexuality as distinct concepts and to investigate the gendered nature of all relationships, sexual and non-sexual.

Another presentation highlighted the weakness of the phrase "men who have sex with men," a phrase originally adopted to help prevention efforts focus on HIV risk behaviors, rather than personal, social or cultural identity issues. However, this term has become over-generalized as it has come into common usage, and has become unhelpfully stereotyping, thereby more likely to mask complexity than take it into account. Getnet Tadele's (University of Addis Ababa) paper described the presence and importance of male-to-male sexual interests and practices in urban Ethiopia, highlighting a number of failures of HIV prevention. In this context, where "homosexuality" is highly stigmatized and never discussed outside of same-sex practicing communities themselves, HIV prevention efforts fail to reach individuals in these communities. Many men who have sex with men do not perceive themselves to be at risk for HIV, and hence do not practice prevention. Tadele also highlighted the repressive role that the state can play in inhibiting sexual expression and access to appropriate information and services.

In his presentation of a rights-based approach to street children and sexual health in India, Meindert Schaap (APSA-Sexual Health Intervention Program) raised the importance of intimacy and meaning in sexual relationships and the central role that sexuality plays in the lives of individuals throughout their lives, including childhood. This paper reminded us that children are sexual beings, and that for children who exist on the margins of society, sex can serve as both a commodity and a welcome escape from a painful and often cruel reality. Schaap also highlights the failure of mainstream HIV prevention and sexual health programs—including those under the "orphans and vulnerable children" (OVC) programming portfolio—to reach the large, diverse and extremely vulnerable population of street children.

Another important issue highlighted through this panel was that sexual realities are affected by structures and institutions, which in turn can affect HIV outcomes. To change the outcomes, it will be necessary to change those structures and institutions. For example, Mubasher Saeed (Rahnuma, Family Planning Association Pakistan, who was not present at the meeting) examined the social context of marriage in Pakistan, where a highly gender-inequitable and heteronormative context denies women their sexual agency and autonomy, with important consequences in terms of their ability to practice safer sex with their spouses. Saeed's paper discussed the relationships between women's empowerment and their sexual and reproductive rights, and argued that programs seeking to empower women and reduce their HIV risk must address their desires and advance their rights.

Panel II: Fostering Enabling Legal and Policy Environments

Laws and policies can create a coordinated, organized state response to respect, protect, and fulfill fundamental human rights. They have the potential to protect and uphold human dignity, empower marginalized groups, and foster accountability. Unfortunately, progress in HIV prevention, care and treatment has been hampered by the unfounded presumption that effective public health campaigns can—and often must—compromise the human rights of individuals living with or affected by HIV. In the early days of the AIDS pandemic, some governments undertook coercive measures to identify and isolate HIV positive-individuals.[iv] However, as both demands from affected populations and evidence that these measures deterred people from seeking testing or treatment mounted, many governments changed their laws and regulations.[v] While coercive measures might appear to serve immediate public health objectives, in the long run they diminish individuals' rights *and* public health outcomes.

This panel illustrated clearly that laws and policies can be mechanisms for change and levers of success for HIV prevention. They can also be significant barriers to change and prevention. In her presentation, Aziza Ahmed (International Community of Women Living with HIV/AIDS) noted that the law has both "the ability to define (what is normal and not normal) and injure (e.g., define HIV-positive people as dangerous)." The law, therefore, has both a protective and a punitive role to play in society. As a tool for HIV prevention, the law must be used with care, sensitivity and always through the lens of human rights. While a number of papers illustrated, for example, the dangers of laws that criminalize the transmission of HIV, others highlighted the role of the law as a mechanism for promoting equality and access to services as well as for fighting stigma and discrimination against sexual minorities and those living with HIV.

Ahmed's paper analyzed laws that criminalize the transmission of HIV and the impact on women. Although the intent of this legislation was to assist in HIV prevention, in fact it has had the opposite effect in many countries, leading to increased stigma and discrimination against those living with HIV and discouraging people from getting tested. Criminalization laws can disproportionately affect women. Women are often tested for HIV during pregnancy, and can be prosecuted for transmitting HIV to their unborn children. Sex workers are also placed in jeopardy under the law, as are sexual minorities and people who use injection drugs. Similarly, Carlos Cáceres' (Universidad Peruana Cayetano Heredia) presentation showed that legal systems that repress sexual diversity and punish same-sex practices and/or transgendered identities create obstacles to human rights and the realization of health.

Although the law can be used negatively as an instrument for creating marginalization and discrimination against people with HIV and others, it can also be used as a powerful deterrent against harmful actions. Laws and policies that promote equality and access to services can and must become a critical part of the enabling environment for resilience. Alison Symington (Canadian HIV/AIDS Legal Network) and Eszter Kismödi (World Health Organization) both presented tools for influencing governments to adopt human rights practices and harmonize laws to promote rights. Margo Kaplan (Center for HIV Law and Policy) presented an example of a program that provides comprehensive sexual health services to "multiply marginalized" groups: lesbian, gay, bi-sexual and transgender youth in prisons in the United States. This program illustrates a commitment to the inalienable human rights of all individuals, and it demonstrates important social benefits that arise when access to sexual health care and information is guaranteed for at-risk populations.

Panel III: Empowering and Mobilizing Affected Communities

Panel III focused on the ways in which social change that is informed and led by affected communities can contribute to HIV prevention goals. It provided examples of programs that ensure that communities have the capacities and resources they need to act as agents of change in their own right. Slyvia Chirawu (Women and Law in Southern Africa Research and Education Trust, Zimbabwe) discussed the need for coordination of both legal reform and broader development efforts in order for vulnerable communities to claim their rights. Zimbabwe has progressive HIV laws, but they are not adequate for promoting individual or community-level AIDS resilience. Chirawu emphasized the need for rights-based programs to help women, in particular, address poverty and gender inequalities, and to demand the rights available to them according to the legal frameworks of the country. A paper and video[vi] from the Asia Pacific Network of Sex Workers called attention to the human rights abuses against sex workers that have occurred as the result of anti-trafficking policies adopted in Cambodia, and underscored the importance of including affected communities in policy formulation and implementation.

Monica Biradavolu (Duke University) described a program in one Indian province that sought to foster capability among affected communities. This program worked with sex workers to enable them to bring about changes in the behavior of law enforcement officers, who regularly beat and exploited them and abused their legal and human rights. The paper illustrated vividly how an otherwise powerless group of marginalized and stigmatized women were able to leverage the combined forces of community empowerment and collective action to regulate a powerful state actor.

Finally, Paul Perchal (Engender Health) explored the vulnerabilities of HIV-positive women and girls in three countries at different levels–the individual, the interpersonal, societal and structural–and highlighted many of the shortcomings in sexual and reproductive health services for HIV-positive women and girls. He underscored the fact that without appropriate services and a more supportive social environment, the ability of HIV-positive women and girls to be resilient to risk, live up to their full potential and claim their rights will be constrained. It is critical that programs designed to assist and support HIV-positive women and girls are not predicated on assumptions, but rather on an analysis of the actual desires, ambitions and opportunities that different individuals face in the context of their everyday lives.

Summary of Main Points

Throughout the meeting, participants reiterated three key directions for overcoming the weaknesses of the past and moving forward:

1. The AIDS response needs to account for the myriad ways in which gender, sexualities, sexual subjectivities, and sexual interests affect sexual practices, and how these, in turn, support—or obfuscate—adoption of HIV prevention practices.
2. Although there is a long-standing precedent in the AIDS response for addressing the root causes of vulnerability, programs must begin to tackle these root causes directly, rather than continue to focus primarily on their effects (as expressed in HIV outcomes).
3. Despite repeated demands by activist groups and verbal and written commitments by policy-makers, meaningful involvement of affected communities in decision-making on the nature of programming and the use of AIDS resources is still not the norm. An investment is required in building the capacity of affected communities and networks to provide leadership and participate fully in developing the AIDS response. This investment will ensure the creation of an effective program that appropriately addresses many of the real life situations that can interfere with HIV prevention goals.

In summary, meeting participants agreed that changing the trajectory of the AIDS epidemic over the next 25 years will require increased investments in careful thinking and structural actions that can act to reduce gender- and sexuality-related HIV vulnerability. The only way to achieve sustainable reductions in HIV risk is to invest in efforts to address the root causes of vulnerability and tackle the *causes* of social injustice, not just their effects. These efforts need to be informed by a deep respect for and understanding of the roles played by social context and everyday life in shaping sexuality, sexual practices and sexual interests and in affecting the ability and willingness of individuals to engage in sex safely.

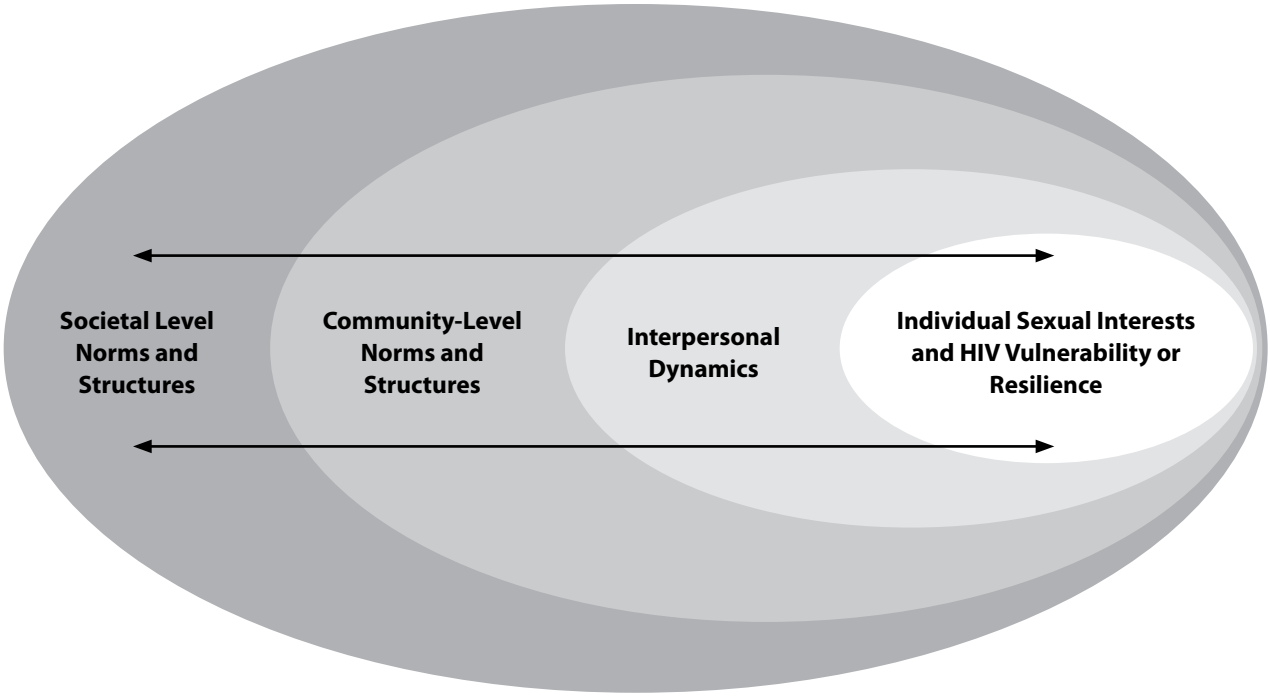
Framework for Understanding and Creating Gender- and Sexuality-Related HIV Resilience

To make operational a response that effectively addresses gender- and sexuality-related HIV vulnerability, we advocate for a framework that embeds individual agency, desire and ability to act within a complex social environment. The adoption of this framework requires expanding our focus from individual knowledge, behaviors and practices to a broader perspective that encompasses the interpersonal and societal factors that shape those outcomes.

The Social-Ecological Model has been used increasingly in public health, and it is considered particularly useful in informing prevention programming[8] because it illustrates the importance of the interrelationship between various levels of influence in the production of health outcomes. The model is usually presented with individual experience or health at the center of a number of concentric rings, each representing a different societal level or layer. For our purposes, one may assume that the sexuality- and gender-related vulnerabilities and resilience will be shaped (though not necessarily determined) by the interplay between individual, interpersonal and social-structural layers of experience, expectation, constraint and opportunity in particular epidemic contexts (see Figure 1). These layers interact in the development of sexualities and sexual interests and are likewise implicated in the production and maintenance of HIV vulnerabilities and resilience. The model suggests that to effectively act on HIV vulnerability (or to enable resilience), it is necessary to take action on the core elements that make up the outer most, social-structural layer, in addition to whatever interventions may be deemed appropriate at the individual and interpersonal levels. Addressing these structural layers of social life to reduce HIV vulnerability is referred to as taking a structural approach.[vii]

8 For example, see Centers for Disease Control and Prevention. "The Social-Ecological Model for Violence Prevention." http://www.cdc.gov/ncipc/dvp/Social-Ecological-Model_DVP.htm.

Figure 1: Framework for Understanding the Social Construction of Sexuality



As Auerbach and colleagues[viii] explain, the core elements of social life that make up these outer layers of the social-ecological model are often referred to by social scientists as "norms" and "values," "networks," "structures" and "institutions."[9] Participants focused on how these core elements can interact with individual agency and differing HIV epidemics to produce HIV vulnerabilities in different settings, and presented and discussed a number of structural approaches for overcoming them.[10]

9 *Norms* are rules about behavior that reflect and embody prevailing cultural values and are usually backed by social sanctions (formal and informal). *Values* are ideas held by individuals and groups about what is desirable and proper, good, or bad. *Networks* are the webs of human relationships (including dyadic, familial, social, sexual, and drug-using) through which social (including sexual) exchanges occur and social norms are played out. *Structures and institutions* are the material and operational manifestations of social norms and networks, such as family units, organized religion, legislative and policy apparatus, educational systems, military and industrial organizations, etc., in which social interaction is patterned and, often, controlled (Giddens 2001, cited in Auerbach et al., forthcoming).

10 Note that the Social Capital meeting, held in March in Salzburg, likewise addressed these core elements, focusing on how they can be harnessed in a positive way to produce resilience. For more information on that workshop, see www.aids2031.org.

Figure 2: Framework for Understanding and Enabling Sexuality- and Gender-Related HIV Resilience

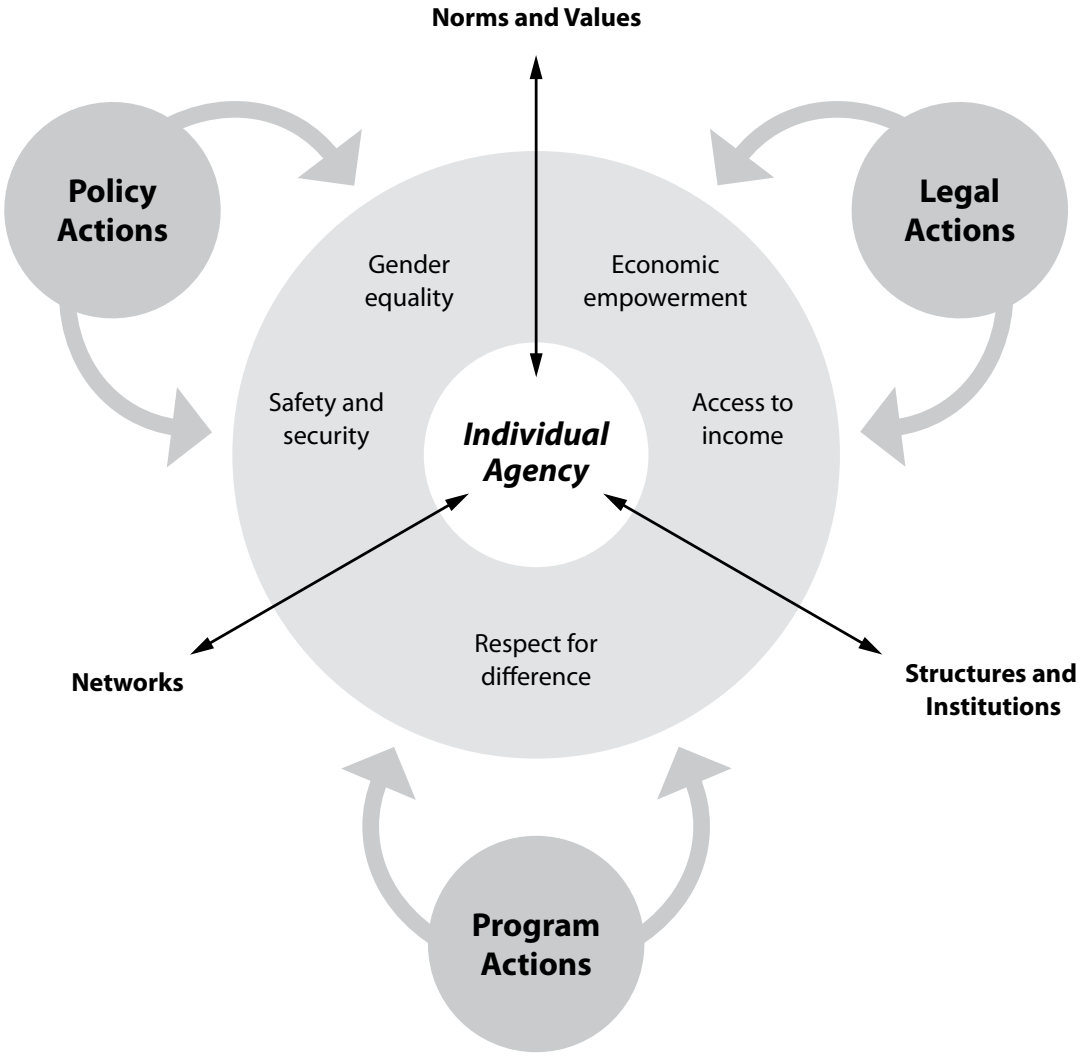


Figure 2 represents a proposed adaptation of the social-ecological framework, developed on the basis of discussions at the meeting. This model puts individual agency at the center, nesting it within an environment that fosters AIDS resilience through key levers of success, such as gender equality, economic empowerment and others. The subsequent ring represents layers of broader social-structural experience and their core elements (networks, norms and values, structures and institutions), which can affect, and be affected by, individual agency, as indicated by the use of bi-directional arrows. Beyond this layer are three broad categories of action—policy, program and legal action. These actions operate on the core elements to foster agency and resilience. The following recommendations outline a number of specific actions to be taken to facilitate a shift from conditions of vulnerability to conditions for resilience.

Recommendations

An overarching conclusion of the *Sex, Rights & the Law in a World with AIDS* meeting was that effectively addressing sexuality- and gender-related HIV vulnerability will require shifting focus from the AIDS-related *effects* of social injustice to a focus on addressing the *root causes* of these injustices. It will likewise require a shift from the delivery of standardized messages promoting specific, predetermined HIV prevention *outcomes* to a more nuanced approach that addresses and responds to sexuality and sexual interests as actually experienced by individuals in different social and cultural contexts. This will require a new temporal perspective—from a short-term emergency mode—to understanding AIDS epidemics as "long-wave" events that evolve over generations. The recommendations outlined below, developed on the basis of discussions that took place during and after the meeting, provide guidance for creating a policy and program environment that facilitates the reduction of vulnerability and the promotion of resilience within communities and among individuals.

1) Strive for Greater Precision in Use of Terminology and Invest in Critical Sexuality Research

Many of the concepts that continue to frame HIV policy and programming were developed in the mid-to-late 1980s, when very little was known or understood about HIV or about how the complexity and variability of human sexuality might be interacting with the virus in different settings. Assumptions were made about the prevalence and nature of the sexual practices that put individuals at risk of HIV in different settings, and broad, generalized categories were used to refer to and define different risk groups, based upon these assumptions. This has led to the development of almost stereotypic formulations of various forms of sexuality, and a somewhat reckless application of risk behavior categorizations in the form of terminology, such as men who have sex with men, commercial sex workers, gender-based violence and gender. Such terms were applied across social, cultural and epidemic contexts, despite likely variations in the ways in which sexualities and sexual interests are produced, experienced and contested in different settings. These categories, and the concepts and terms developed to encapsulate them, continue to inform prevention programming globally, despite the fact that their veracity has not been systematically verified through rigorous social science research. In other words, we have been programming to stereotyped assumptions about behavior, rather than programming to address sexuality-related agency and vulnerability as actually lived and experienced in different cultural and epidemic settings.

The time has come to advocate for *greater precision* in the use of key terms and concepts, and invest in a process that seeks to "explode closed loops" in our understanding; that is, radically problematize taken-for-granted "truths" that may no longer hold true, but which we continue to use because the work for updating and upgrading them has not been done. Greater precision requires being more explicit in the use of terminology to ensure that the terms are being appropriately applied. For example, when using the phrase "men who have sex with men" it is critical to be clear about the

nature of the relationships being explored. For example, do the men being referred to self-identify as "gay"? How likely are they to also be having sex with women? It is critical to make these distinctions to ensure that programming is appropriate. The phrase is not adequately nuanced to account for subtleties of experience and feeling within or indeed between these categories, so its use in any context should be carefully considered.

As we endeavor to be more explicit in the use of terms and to promote the establishment and consistent use of more clearly defined terminology, it will become increasingly evident that new research is necessary to fully understand the nature of sexual interests and their interactions with the virus in different contexts. Critical issues around which new research should focus include the following:[11]

- *Exploring the meanings of sex, sexual interests and sexual practices in different contexts.* The complex and variable meanings of sex and of sexual relationships have been overlooked by the mainstream response to AIDS. New research should explore these meanings and look for ways to use the meaningfulness of sex as a key lever for effective prevention programming.
- *Understanding the complexity of sexual interests.* Evidence from many parts of the world suggests that the binary categories of "homo-" and "hetero-" sexual no longer (if they ever did) fully capture the true nature of most of human sexuality. What are the implications of this complexity for the epidemic, and how can it be effectively addressed in programming?
- *Understanding the mutability of sexualities and sexual interests.* Sexualities and sexual interests shift over the course of person's life, and according to circumstance and opportunity. Research is needed on the role played by sexual opportunity in shaping sexual interests, practices and vulnerability to HIV.
- *Repositioning of men within HIV and AIDS:* Current thinking in the gender power discourse generally stereotypes male sexuality as violent and exploitative. Men are largely represented as perpetrators, not partners. New work should explore the domain of men's *legitimate sexual interests* in different cultures and settings to open up new ways of thinking about gender and power, and new ways of positioning men in the prevention of sexually transmitted HIV.

Specific Recommendations on Terminology and Research:

- Advocate for greater precision in use of terms, and continually challenge the misuse of gender and sexuality terminology in policies and programs.
- Invest in new social science research to generate new knowledge about sexual interests, identities and their interactions with vulnerability, in different settings.

2) Establish a Set of Minimum Legal Standards to Reduce Vulnerability and Enable the Development of AIDS Resilience

Laws and policies can help support the development of AIDS resilient individuals and communities by creating a coordinated, formalized state framework for the respect, protection and fulfillment of human rights. They can protect and uphold human dignity, promote health and security, empower marginalized groups, and foster accountability. The recommendations listed below constitute *minimum legal standards* that we consider to be non-negotiable in any state endeavoring to create AIDS resilience over the long term.[12]

11 This list of research questions was developed on the basis of conversations with Gary Dowsett and Peter Aggleton following the Cuernavaca meeting.

12 This section of the paper is taken from a longer white paper, "Fostering an Enabling Legal and Policy Environment for the Effective Prevention, Care and Treatment of Sexually Transmitted HIV," authored by Aziza Ahmed, Margo Kaplan, Eszter Kismödi, Alison Symington and Ann Warner. The full version will be available at www.aids2031.org.

A. Decriminalize HIV Status, Transmission and Exposure

Criminalization of HIV refers to the use of HIV-specific criminal law or non-HIV-specific criminal law against transmission or exposure to HIV.[ix] More than 31 countries have laws that specifically criminalize the transmission of HIV.[x,xi] Many more use general criminal law provisions to prosecute individuals for transmitting HIV. Still others are considering developing criminal laws specific to HIV and AIDS.[xii] Austria, Sweden and Switzerland have each had more than 30 prosecutions respectively for the transmission of HIV.[xiii] Canada has charged more than 90 people with intentional HIV transmission since 1998.[xiv] Laws that criminalize HIV transmission and exposure are largely found in national HIV/AIDS laws;[xv] however, provisions criminalizing HIV transmission are often included under the guise of sexual offenses laws.[xvi]

The criminalization of HIV transmission interferes with access to health services, often by the groups that are most at risk for HIV transmission. It also serves to further deepen stigmatization among groups that are already criminalized, including sex workers, injection drug users and people from sexually diverse populations. It drives these activities underground and makes it more difficult for health workers to reach these populations with testing, treatment and prevention services. Moreover, there is no data to show that broad application of criminal law to HIV transmission achieves criminal justice objectives.[xvii] Most intentional HIV transmissions—a rare occurrence—can be dealt with under existing general criminal law statutes, making it unnecessary to adopt HIV-specific criminal law.

Specific Recommendations

- Countries should eliminate all HIV-specific criminal laws for HIV transmission and exposure. Existing criminal laws provide sufficient protection against harm.
- Prosecutions under existing criminal laws must be informed by scientific and medical evidence that an HIV-positive individual knew his or her HIV status, acted with the intention to transmit HIV and did in fact transmit HIV.
- The design and implementation of new laws pertaining to HIV and AIDS should explicitly incorporate a human rights perspective. This includes empowering people living with HIV and AIDS to participate in the design process for laws. If HIV laws are to be adopted, they should be aimed at protecting the rights of people living with or affected by HIV (see below), not punishing HIV exposure or transmission.
- Repeal all laws that criminalize mother-to-child transmission of HIV. Governments should instead direct their resources toward protecting women's reproductive and sexual rights, increasing access to HIV testing and sexual rights, increasing access to HIV testing and treatment, as well as laws that protect women from violence.
- Rather than pursuing criminalization, governments should direct their HIV prevention resources toward providing information, support and resources to populations at risk that uphold and protect their human rights. These would include access to voluntary and confidential HIV testing and counseling and prevention for people living with HIV.

B. Decriminalize Sex Work

The criminalization of sex work has rendered many sex workers unable to access necessary HIV/AIDS prevention, care, treatment and support services, and programs.[xviii] In contexts where sex work is criminalized, fear, stigma and discrimination on the part of service providers reduce both the quantity and quality of services that sex workers receive. When sex work is driven underground, sex workers have less freedom to refuse clients and less protection from abusive clients and

employers.[xix] Law enforcement officials have also used the classification of sex work as a criminal behavior to target sex workers for arrest and mistreatment.[xx] This makes sex workers particularly vulnerable by exposing them to further violence and decreasing their ability to negotiate for safer working conditions. Laws that criminalize the clients of sex workers, rather than sex workers themselves, are ineffective because they drive sex work into hidden locales, increasing sex workers' vulnerability to violence, mistreatment and exposure to HIV.[xxi]

Specific Recommendations

- Remove provisions of the law that make prostitution and related activities (e.g., solicitation, running a brothel, etc.) a crime.
- Decriminalize buying sex.
- Ensure that laws addressing trafficking are developed within a human rights framework and ensure that sex work and trafficking are not conflated in laws intended to address trafficking specifically.
- Formally recognize sex work as a legitimate profession. This will enable sex workers to seek and maintain benefits derived by workers, including the ability to unionize and access insurance and pension schemes.
- Create laws and policies giving sex workers access to legal recourse in the event of discrimination, harassment or violence.
- Create laws and policies entitling sex workers to equal rights to health care and to safe and fair working conditions and access to education for their children.
- Ensure that other laws (e.g., "nuisance laws") are not used to harass or exploit sex workers.

C. Decriminalize Prohibitions on Same-Sex Relationships/Sexual Practices

Laws that criminalize sexual diversity using various terms such as "sodomy," "unnatural acts," "buggery" and "acts of indecency" have long been used to penalize and prosecute individuals who engage in same-sex practices and relationships. Like laws that criminalize sex work, laws that criminalize same-sex practices impede access to health services by increasing stigma and discrimination, fueling fear of stigma and discrimination, and blocking health providers from delivering services for fear of prosecution.[xxii] Mistrust of the government and fear of discrimination are often amplified by raids and prosecutions of sexual minorities. Effective HIV prevention services cannot be delivered to sexually diverse communities in an environment where people (including public health service providers) are being rounded up, prosecuted and imprisoned.[xxiii] The decriminalization of same-sex sexual practices is a minimal standard for the promotion of HIV resilience.

Specific Recommendation

- Eliminate laws that criminalize consensual sexual activity among adults.
- Protect sexual diversity in domestic human rights/anti-discrimination legislation.
- Ensure the needs of sexually diverse populations are explicitly addressed in national HIV plans.

D. Guarantee Equal Rights of People Living with HIV and AIDS

Human rights are universal, and the needs and aspirations of HIV-positive people are no different from those who are not infected with HIV. However, people living with HIV have important, specific needs that should be protected through laws. In biological terms, people living with HIV are

more vulnerable to specific health problems, and there are social and structural factors of unique relevance to them. Furthermore, people living with HIV are subject to stigma and discrimination in the community, workplace, schools, health care systems, prisons and court systems. States must ensure that their legal and regulatory frameworks are in line with international, regional and human rights standards so that people living with HIV can enjoy their rights to non-discrimination, human dignity, privacy, confidentiality and health. The legal precedents for the protection of human rights of people who live with HIV/AIDS vary from state to state. These rights can be protected though national constitutions, human rights laws, health care laws or HIV-specific laws.

Specific Recommendations

- Provide an enabling environment to eliminate all forms of discrimination against people living with HIV/AIDS by ensuring access to education, inheritance, employment, health care, social and health services, prevention, support and treatment, information, and legal protection while respecting privacy and confidentiality.
  - Statutory and regulatory frameworks should prohibit discrimination based on actual or suspected HIV status, or on association with persons living with HIV. Such statutes may be HIV-specific or be integrated into broader legislation, such as a disability-rights framework.[13]
  - Anti-discrimination statutes should prohibit discrimination in health care, employment, housing, and all public benefits and public accommodations.
  - Discrimination by federal, state and local agencies, as well as by private employers and public accommodations, should be prohibited.
- Create special protections for vulnerable women.
  - Enshrine and protect the right of all women to decide freely and responsibly on matters related to their sexuality and reproduction and their ability to protect themselves from HIV infection.
  - Provide legal protection and remedies related to all forms of violence against women and girls, including harmful traditional and customary practices, abuse and rape.
- Create legal guarantees to protect vulnerable children, especially children separated from family or public care, by providing public education, access to shelters, nutrition, health care and social services on an equal basis with other children.
  - Criminalize all forms of abuse, violence, exploitation and discrimination against vulnerable, AIDS-affected children.

The above recommendations should be understood as necessary but insufficient for promoting an enabling legal and policy framework for the prevention, care and treatment of HIV and AIDS and for fostering resilience. However, law and policy are necessarily limited in their capacity to promote social change. Legislation drafted in the service of public health must not undermine individual human rights, and all laws must be properly enforced to have the desired impact. Legal reform efforts, therefore, must work in conjunction with other movements for social change and be led by both state and non-state actors. Careful and consistent implementation of these laws, which includes participation and leadership by affected communities and collaboration with actors in the criminal justice field, is critical.

13 For examples of a disability rights framework, see Americans With Disabilities Act (ADA), 42 USCA §§ 12101 et seq. and Section 504 of the U.S. Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

3) Increase Investments in Social Capital

Both this meeting and the *Mobilizing Social Capital* meeting in Salzburg confirmed the importance of social capital in developing AIDS resilience in individuals and communities. Both meetings also touched on the role of social capital in addressing the power imbalances and gaps that continue to cripple the response. Three types of social capital—bonding, bridging and linking—articulated most clearly at the Salzburg meeting,[14] are required to overcome these gaps. Bonding social capital creates solidarity within groups of like-status individuals (in this case, often marginalized social groupings), and establishes a common purpose among them. Bridging social capital establishes affective and material connections between groups within a community to synergize interests and share resources. Although these forms of social capital are critical, they may still leave communities without linkages to sources of power and influence outside of themselves that may be required to meaningfully influence the AIDS agenda. This is why linking social capital is also critical. It is built when community-level groups establish links with external organizations (such as public-sector departments or civil society groups) that have access to resources and connections that can remove obstacles to change and help the local networks reach their goals. All three types of social capital are required to create the foundation for AIDS resilience.

Meeting participants agreed that "linking" social capital can be strengthened by *targeting and enlisting power brokers and gatekeepers as levers for change* can be a critical component in the development of AIDS resilience. The power brokers referred to here, such as local leaders, law enforcement officials, religious leaders, teachers, politicians and celebrities, are those who set and monitor norms that increase vulnerability as well as those that create resilience. Power brokers are often thought of within AIDS programming as potential or actual *obstacles* to effective programming, but if enlisted in the right ways, they can be powerful levers of success. They have access to power and resources and can either facilitate or obfuscate access to those resources for vulnerable groups. Meaningfully engaging power brokers will require working with powerful groups themselves, as well as working with the institutional and structural environment that monitors, compensates and rewards their work. One example of how to engage power brokers was offered by Monica Biradavolu at the meeting and elucidated further in a subsequent article:

> *Police were sensitized to the issues of concern, and sex workers were empowered through collective action and legal literacy to confront police action they considered improper. In addition, a rapid response mechanism was instituted to mobilize a diverse array of actors to influence the police; and, sex workers were encouraged to file court cases, if arrested, fined, or forced to pay bribes.*[xxiv]

Specific Recommendations

- Identify influential power brokers /gatekeepers (i.e., those who set and monitor norms that increase vulnerability and/or those with necessary connections for helping affected communities achieve greater resilience) for different vulnerable populations and proactively engage them as positive partners in the creation of AIDS resilient communities. Strengthen civil society representation at the national AIDS response level.
- Foster leadership among affected communities to create the conditions for local social movements to emerge.
- Create new coalitions between AIDS response groups and those not generally engaged in the response (e.g., women's rights groups, child welfare advocates and labor unions).

14 For conclusions and recommendations on social capital developed at the Salzburg meeting, see the meeting report, which will be available at www.aids2031.org.

- Demand accountability from those in power. The AIDS response has tended to place the burden of creating change on vulnerable and affected communities themselves. Mechanisms need to be put in place for communities and vulnerable groups to demand accountability from those in power to follow through on commitments and for making the changes in laws and services that are required to reduce vulnerability and foster resilience.

4) Prioritize Structural Approaches within the Context of a National Response

Structural approaches are thought to mitigate HIV vulnerability, thereby indirectly reducing HIV *risk,* but operating also in ways that promote social justice overall. In congruence with the framework for understanding and enabling resilience presented above, specific legal, policy and program actions are required to act on the social-structural factors that shape vulnerability and can facilitate resilience. Some of these actions fit comfortably within the realm of the AIDS response, and others fit more comfortably within what has generally been considered a related but distinct domain—the development response. The challenge is to identify critical overlaps between these domains, and to create a response that strategically builds on them over time, according to the epidemic context. At the national level, there must be a willingness to take on this shift in perspective and overcome past obstacles to funding certain development efforts with AIDS resources. The evidence is now clear that many development efforts, such as poverty reduction, strengthening of civil society and education are critical components of an effective, long-term response to AIDS.

Specific Recommendation

- Include assessments (conducted by trained social scientists) of social dynamics in a country's efforts to "know its epidemic." See Annex IV for a hypothetical case study outlining what programmers would need to learn and do to understand and address the social dynamics affecting sexual transmission in one epidemic setting.

5) Invest in Systematic Evaluation of Structural Approaches

As the AIDS response shifts its perspective from an emergency response to a more long-term effort, and national governments take on the task of adopting structural approaches as suggested above, there will be an immediate and ongoing need for new and different forms of evidence. Existing research mechanisms are not well positioned to take on this shift, nor are they adequately equipped or resourced to undertake rigorous social science research. This will need to change to ensure that the language of a long-term approach to AIDS turns into effective action.

Specific Recommendations

- National programs and international funding mechanisms that support AIDS programming and policy-making must increase investment in two broad domains of research and evaluation:
  - Formative and etiological research exploring the contexts and meanings of sex, sexuality and sexual interests as outlined above; and
  - Longitudinal and cross-sectional research to collect evaluation data on the impacts at all levels of structural efforts to reduce HIV vulnerability and create resilience.

Conclusions

Sex, Rights and the Law in a World with AIDS was convened to inform a long-term response to the sexual transmission of HIV. To date the response has been dogged by conceptual failures, ideological blinders, and a fundamental lack of faith and investment in the types of structural approaches required to make a real difference over time. The response also has been shackled by its own near-sightedness in terms of the causal factors it has addressed, the time horizons it has applied and the insistence on limiting effort to only the most proximal factors, with immediate and measurable impact in terms of AIDS outcomes alone.

However, our discussions also made plain that we have come a long way over the last 25 years, and many critical lessons have been learned. We stand at a turning point in the response—a critical moment when we can learn from ineffective approaches of the past, which focused almost solely on the individual, to an approach that takes a broader view, encompassing the role of social structures, institutions, and community as well as individual agency in shaping both vulnerability and resilience. We are committed to applying these lessons learned and to ensuring that by the year 2031, the conditions in which people can remain healthy and free from AIDS are firmly in place.

Endnotes

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ii Boyce P, Huang Soo Lee M, Jenkins C, Mohamed S, Overs C, Paiva V, Reid E, Tan M, Aggleton P. "Putting sexuality (back) into HIV/AIDS: issues, theory and practice." *Global Public Health*. 2007; 2(1):1-34.

iii Dowsett, G. "Some Considerations on Sexuality and Gender in the Context of AIDS." *Reproductive Health Matters* 2003;11(22):21-29. Dowsett (2003) encourages us to be less mechanistic in our formulations of sexualities, and to be open to more fluid and interpretive approaches. He suggests "there are other ways to understand sexuality as a structure of ideas, an array of discourses and sensations, as the embodiment of pleasures and the forming of sex object choices…" as well as the "endless unfolding of desire." It may be instructive here to consider how art and popular culture frame and shape sexualities as they shift and change over the life-course.

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vi "Caught between the tiger and the crocodile," Blip.tv. http://blip.tv/file/1159149/ .

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x International Planned Parenthood Federation. "Verdict on a Virus." November 2008. http://www.ippf.org/en/What-we-do/AIDS+and+HIV/Verdict+on+a+virus.htm (accessed April 4, 2009).

xi See the Global Criminalisation Scan (http://www.gnpplus.net/criminalisation/) for up-to-date information on criminalization.

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xvii UNAIDS. "Criminalization of HIV Transmission Policy Brief," August 2008. http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf (accessed June 1, 2009).

xviii Network of Sex Work Projects"Meena Seshu speaks out against India's Immoral Trafficking Prevention Amendment." http://www.nswp.org/rights/india/itpa/meena-seshu-speaks-out.html. Soros Foundation. "Spotlight on Meena Seshu, SANGRAM: Sex Workers Rights in Rural India." http://www.soros.org/initiatives/health/focus/sharp/articles_publications/articles/seshu_20060726

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xx Sex Workers' Rights Advocacy Network, "Cards of 'big men' with sex workers—Police can't grab offenders," http://swannet.org/node/1496 (accessed June 30, 2009)**.**

xxi Network of Sex Work Projects, "Meena Seshu speaks out against India's Immoral Trafficking Prevention Amendment." http://www.nswp.org/rights/india/itpa/meena-seshu-speaks-out.html

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Annex I: Further information regarding *Sex, Rights and the Law in a World with AIDS* Meeting

Meeting participants were identified through an open Request for Abstracts (RFA) that was first launched at the XVII International AIDS Conference in Mexico City in July 2008, and also distributed through a range of professional networks and list serves. The RFA process sought abstracts of published or unpublished papers that captured research, programming, and advocacy experience on sexual behavior, sexual identity, human rights, and the law, as they relate to a long-term response to the AIDS epidemic. Each submission was read by representatives of the convening organizations, and assessed according to the following criteria:

- Relevance to the overall theme and key questions
- Orientation toward shaping the long-term response to the AIDS epidemic
- Representation of new (or marginalized) voices in the public dialogue on HIV and sexuality
- Practicality for application of proposed solutions
- An innovative perspective in proposed solutions

A total of thirteen papers were selected, and these were assembled into three panel sessions. Each panel was moderated by an invited expert in the subject area under discussion, and an additional one or two experts were invited to act as discussants for each panel. The 32 participants also included representatives of the convening and funding organizations. In addition to the panel sessions, which were held in Plenary, a number of concurrent break-out sessions were convened. These sessions considered the topic in more depth and/or developed recommendations for policy, programming and research within the topic areas.

Panel I: Linking Sexuality and Gender in Theory and Practice

Moderator: Peter Aggleton, University of London

1. *Safe and Consensual Sex: Are Women Empowered Enough to Negotiate?* Mubasher Saeed, Rahnuma Pakistan[1]
2. *Gender Inequality as a Predictor of High-Risk Sex among Men in Northern India.* Rajeev Colaço, University of North Carolina
3. *Sexual Health Intervention Program: a rights-based approach to street children and sexual health.* Meindert Schaap, Association for Promoting Social Action, Bangalore, India
4. *Ethiopian by Birth, Gay by Nature, Proud by Choice: sexuality, sexual health and rights among men who have sex with men in Addis Ababa.* Getnet Tedele, University of Addis Ababa.

Discussants

- Barbara de Zalduondo, UNAIDS
- Ricardo Baruch, Global Youth Coalition on HIV/AIDS

1 Unfortunately Mr. Saeed was unable to attend the conference due to logistical difficulties, but his paper was distributed to participants.

Panel II: Fostering Enabling Legal and Policy Environments

Moderator: Mandeep Dhaliwal, UNDP

1. *Legislating for Women's Rights in the Context of the HIV/AIDS Pandemic: family and property law issues.* Alison Symington, Canadian HIV/AIDS Legal Network
2. *Just Blame the Women: laws criminalizing the transmission of HIV.* Aziza Ahmed, International Community of Women Living with HIV
3. *A Tool for Advancing Sexual and Reproductive Health and Human Rights: strengthening laws, regulation, policies and their implementation.* Ezster Kismodi, World Health Organization
4. *Review of Legal Frameworks and the Situation of Human Rights Related to Sexual Diversity in Low and Middle Income Countries.* Carlos Caceres, Universidad Peruana Cayetano Heredia
5. *Comprehensive LGBT-Inclusive Sexual Health Care for Youth in State Custody as a Human Right: The Teen SENSE Initiative.* Margo Kaplan, Center for HIV Law and Policy

Discussants

- Sumit Baudh, South and Southeast Asia Resource Center on Sexuality, TARSHI
- Ana Luisa Liguori, Ford Foundation

Panel III: Empowerment and Mobilization of Affected Communities

Moderator: Ernest Massiah, Commonwealth Secretariat

1. *Enrolling NGOs to Regulate Police: learning from an HIV prevention project for sex workers in Southern India,* Monica Biradavolu. Duke University
2. *Challenging the Status Quo—Gender, HIV/AIDS and the Law in Zimbabwe: A rights-based approach.* Slyvia Chirawu, Women and the Law in Southern Africa
3. *Socio-cultural Constructs of Sexuality and Fertility Influencing the Sexual and Reproductive Health of HIV-positive Women: findings of qualitative research from Brazil, Ethiopia and the Ukraine.* Paul Perchal, EngenderHealth
4. *VIDEO: "Caught between the tiger and the crocodile: Cambodian sex workers and the campaign to suppress human trafficking and sexual exploitation."* Cheryl Overs & Asia-Pacific Network of Sex Workers.

Discussants

- Mandeep Dhaliwal, UNDP
- Beri Hull, ICW

Annex II: Abstracts of Papers Prepared and Presented at *Sex, Rights and the Law in a World with AIDS*

Just Blame the Women: Laws Criminalizing the Transmission of HIV

Aziza Ahmed and Beri Hull, International Community of Women Living with HIV/AIDS

Criminalization of HIV transmission provisions are often written to protect women. However in practice, due to women's overall lack of equal power in society, women are typically blamed for introducing HIV/AIDS into families and relationships. Moreover, women are more likely to be tested for and thus know their HIV status, either through routine gynecological exams or antenatal care. Consequently, women are more likely to be accused of "knowing" transmission, whereas their male partners can escape prosecution simply for ignorance of their status. This could result in disproportionate targeting and prosecuting of women for the spread of HIV/AIDS. In extreme cases countries have criminalized the mother to child transmission of HIV/AIDS.

Criminalization of transmission furthers the notion that women are to blame for the spread of the epidemic entrenching gender norms that have historically allowed for fault to be placed and women to be punished for wrong doing in sexual relationships, families, and homes. The International Community of Women Living with HIV/AIDS (ICW) has embarked on research and international and national level advocacy to better understand the impact of criminalization of HIV transmission on the lives of women and girls. ICW is focusing on three main areas: building the capacity of HIV positive women to address law related issues, legal research on criminal law and its impact on women, and international and national level advocacy. ICW's three-pronged approach is geared towards ending the criminalization of HIV transmission.

Enrolling NGOs to Regulate Police: Learning from an HIV Prevention Project for Sex Workers in Southern India

Monica Biradavolu (Duke University), Scott Burris (Temple University), Annie George (International Center for Research on Women), Asima Jena (University of Hyderabad), and Kim M. Blankenship (Duke University)

Policing practices exacerbate HIV risk particularly for female sex workers. Interventions that mobilize sex workers to seek change in laws and law enforcement practices have been prominent in India and have received considerable scholarly attention. Yet, there are few studies on the strategies sex worker advocates use to modify police behavior or the struggles they face in challenging state institutions. This paper draws upon contemporary socio-legal theories of non-state regulation to analyze the evolving strategies of an HIV prevention non-governmental organization (NGO) and a sex worker community based organization (CBO) to reform law enforcement practices in southern India. The authors show how a powerless group of marginalized and stigmatized women were able to leverage the combined forces of community empowerment, collective action and network-based punishment to regulate a powerful state actor.

Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries

Carlos F. Cáceres (Cayetano Heredia University), Mario Pecheny (University of Buenos Aires and CONICET), Tim Frasca, Roger Raupp Rios and Fernando Pocahy

Legal frameworks and the situation of human rights of populations most vulnerable to HIV can facilitate or hamper the path to universal access to prevention and care. This paper analyzes legal frameworks, the situation of human rights and stigma and discrimination in relation to sexual

diversity and gender non-conformity in low and middle income countries (LMIC). A review on this topic was commissioned by UNAIDS to inform their staff and the international community. Of 153 country legal systems, 90 were classified as highly- (49) or moderately (31) repressive of sexual diversity; 46 as neutral and only 27 as protective (12) or as including recognition measures (15). Repressive systems were more frequent within the Common Law tradition. A human rights matrix delineated regional perspectives of states that violate, respect or fulfill a broad selection of human rights when dealing with sexually diverse populations, suggesting that in most of LMIC at least some violations still occur, although their frequency and severity varied importantly. Various kinds of data on stigma and discrimination per region were systematized. Despite limited data and regional heterogeneity, the situation was worse, even dramatic, in parts of Middle East/North Africa and Sub-Saharan Africa, and better in parts of Latin America and Eastern Europe/Central Asia. Substantial information gaps exist on these topics, especially in some regions. Nevertheless, data available suggest that legal frameworks or State practices against sexually diverse populations may represent severe obstacles to universal access to HIV prevention and care in many LMIC around the world with epidemics concentrated on men who have sex with men.

Gender, HIV/AIDS and the Law in Zimbabwe

Slyvia Chirawu, Women and Law in Southern Africa, Zimbabwe

From November 2001 to December 2006, WLSA embarked on research with the following objectives: (1) To assess lived realities in relation to current prevention, control and mitigation of HIV and AIDS strategies (2) To determine whether the law has a place in the prevention, control and mitigation of the HIV and AIDS pandemic (3) to assess the efficacy of current laws and policies in the prevention, control and mitigation of the HIV and AIDS pandemic (4) to make recommendations for law and policy change and to contribute to the already existing literature on HIV and AIDS. The law alone cannot fight HIV and AIDS. There is a need to address gender inequalities that put women at risk. Women engage in transactional sex or risky behavior due to lack of economic opportunities. The rights-based approach will enhance the capacity of duty bearers and rights holders to act accordingly. Political will should be improved so that laws and policies are implemented. The Constitution, which is the supreme law of the land, should be expanded in the declaration of rights to cover issues such as right to health, housing and shelter. Progressive international instruments should be domesticated so that women benefit. Policies should be accompanied by full implementation plans. Adequate resources should be allocated to all sectors, and the multi-sectoral approach should be maintained.

Men's Gender Inequality Perceptions Influence their Higher-risk Sex in Northern India

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Objective(s): To explore whether men's attitudes toward gender equality influence their higher-risk sexual behaviors.

Design: Men's data from the north Indian states of Uttar Pradesh and Uttarakhand (n=12,240) from the National Family Health Survey (NFHS-3) were used to identify risk factors for men's reported higher-risk sexual behaviors. Key explanatory variables were based on gender equality constructs: men's attitudes to wife-beating, family violence history, views on whether women had the right to refuse having sex with their partners, and views on whether women had the right to make household decisions and have financial autonomy.

Methods: Descriptive analyses were conducted to explore the relationship between higher-risk sex and each of the gender equality and socio-demographic variables. Logistic regression models were then fit to explore the independent influence of men's gender equality factors on higher-risk sex.

Results: After controlling for socio-demographic factors, gender equality factors were significantly and independently associated with men's higher-risk sex. Men who were significantly more likely to engage in higher-risk sex were those who had a history of family violence [OR=1.87 (1.43-2.44)], viewed wife-abuse favorably [OR=1.30 (1.01-1.68)] and felt that women did not have the right to refuse having sex with their husbands [OR=1.52 (1.03-2.25)]. To reduce Indian men's higher-risk sex, HIV/STI prevention efforts must promote gender equality acceptance men, including an emphasis on the need to eliminate violence against women.

Using Human Rights to Improve Sexual and Reproductive Health: Rhetoric or Reality?

Jane Cottingham, Eszter Kismodi, Adriane Martin Hilber, Ornella Lincetto, and Sofia Gruskin

The initiative described in this paper shows how human rights have been used to strengthen government efforts to improve sexual and reproductive health with a focus on the improvement of relevant laws, regulations and policies. Use of the Tool described here contributes to understanding states' obligations to promote and protect human rights, creating a method for systematically examining the status of vulnerable groups, involving non-health sectors, fostering a genuine process of civil society participation, and developing recommendations for addressing regulatory and policy barriers to sexual and reproductive health with a clear assignment of responsibility. This requires strong leadership from the ministry of health, and serious engagement by different actors committed to forging the links between human rights and sexual and reproductive health, and to achieving the highest attainable standard of health.

Comprehensive LGBTQ-Inclusive Sexual Health Care for Youth in State Custody as a Human Right: The Teen SENSE Initiative

Margo Kaplan and Catherine Hanssens, Center for HIV Law and Policy

Adolescents institutionalized in foster care and juvenile justice facilities are overwhelmingly members of the communities most affected by, and at risk for, HIV/AIDS—low-income youth; Black and Latino youth; lesbian, gay, bisexual, or transgender youth; and survivors of violence and other abuse. While these youth, across the spectrum of sexual orientation and gender, are at great risk of HIV and other STIs, they are overwhelmingly denied access to appropriate and effective HIV prevention, sexual health education, and sexual and reproductive health care. Where care is provided, it too often ignores or isolates LGBT youth and their health needs. To address this crisis, the Center for HIV Law and Policy (CHLP) launched the Teen SENSE (Sexual health and Education Now in State Environments) initiative, a sexual health and HIV prevention initiative grounded in the rights of youth to these services. Teen SENSE provides a new strategy to addressing sexual health care by acknowledging that sexual health care requires not only appropriate medical services, but also counseling, education, and a safe, inclusive environment for youth of all sexual orientations and gender identities. Teen SENSE has created a legal foundation for the right of youth in state custody to comprehensive sexual health care, and created model standards that reflect the best practices to ensure state custody facilities respect, protect, and fulfill these rights. Moreover, Teen SENSE is founded on a principle of local ownership, with CHLP adopting a principle of "leading from behind." Despite the enormous obstacles inherent in a project of this magnitude, Teen SENSE has made significant gains by adhering to these principles.

Caught Between the Tiger and the Crocodile : Cambodian Sex Workers and the Campaign to Suppress Human Trafficking and Sexual Exploitation.

Chutchai Kongmont,and Cheryl Overs, Asia Pacific Network of Sex Workers (APNSW Thailand). Ly Pisay and Leng Nay Heng, Women's Network for Unity (WNU Cambodia)

A new law and a campaign aimed at eliminating sexual exploitation and trafficking of women and girls have been introduced in Cambodia. The law abolishes the distinction between prostitution and sexual exploitation and makes almost all aspects of buying and selling sex and associating with sex workers illegal. A wave of crackdowns on commercial sex venues and street sex workers has been taking place across the country since early 2008. The impact on sex workers livelihoods and human rights has been sudden and marked. Sex workers organisations have made, and proven, allegations of serious abuses including rape, violence and unlawful detention by police, prison guards and NGO staff. The main HIV prevention program for sex workers operated by the Cambodian government can no longer operate and community based HIV prevention projects are also reporting serious constraints and reductions in numbers of sex workers accessing STI services. The local sex workers organisations and the Asia Pacific Network of Sex Workers have undertaken an advocacy campaign against the law and crackdowns by police. Although the law has not been repealed, the response of a stigmatized community has raised awareness of the unsatisfactory law and resulted in some mitigation of its impact.

Safe and Consensual Sex: Are Women Empowered Enough to Negotiate?

Mubasher Saeed, Rahnuma—Family Planning Association, Pakistan

Pakistan is a society struggling for women's rights and empowerment. Nevertheless, discourse on mainstreaming gender equality and women's socio-economic empowerment often neglects the 'sexual' aspect. Rahnuma—Family Planning Association, as a protagonist for realizing SRH rights, initiated a small-scale training-cum-research project with married women of Lahore city. The purpose of this pilot project was to analyze empowerment of women from the perspective of sexual safety and rights. Another important aim of the project was also to test the theoretical intersections between sexualities and AIDS at grassroots level, and understand how the HIV phenomenon facilitated the debate on sexuality and rights. The study used both qualitative and quantitative approaches for analysis. A group of 30 women were selected and a base-line, mid-term and end line survey was conducted. The study highlighted the need for empowerment of women vis-à-vis their sexual lives, in a society that suppresses the needs and desires in the name of culture and traditions. Findings of the study can be useful in understanding negotiating skills of women on safe and consensual sex practices and how interventions can be developed to strengthen their skills.

"This Life Is Different" Street Children's Realities and the APSA Sexual Health Intervention Program (SHIP)

Meindert Schaap and Sonia J. Cheruvillil, Association for Promoting Social Action—Sexual Health Intervention Program (APSA-SHIP, Bangalore, India)

Street and slum children are often the face of poverty and vulnerability in a society. Numerous studies have shown that street and slum children start engaging in 'high-risk' sexual activity at a young age. Despite this reality, there are a very limited number of NGOs that seriously tackle issues of sexual health and street children. An in-depth 2001-2003 research study into the correlates of sexual risk-taking in street children forms the foundation for the *Sexual Health Intervention Program's (APSA-SHIP)* toolkit on HIV intervention, and sexual health and sexual rights for street and slum children. In partnership with APSA—a leading child rights NGO based in Bangalore and Hyderabad—the development of a comprehensive sexual health program for street children is almost complete. Based on the evidence and realities of street and slum children, the 35 half-day

session program frames the intervention through sex positive messages. It acknowledges the sexual realities of street youth without moralistic or value-laden messaging, and explicitly places same-sex identities and behaviors as part of normal sexual expression. The paper describes the evidence-based strategies, methodologies and framework for developing the program.

Legislating for Women's Rights in the Context of the HIV/ AIDS Pandemic: Family and Property Law Issues

Alison Symington, Alana Klein, Joanne Csete, Richard Elliott, Richard Pearshouse, Sandra Chu, Canadian HIV/AIDS Legal Network

Legislation can play a significant role in impeding or promoting initiatives to address HIV/AIDS, yet there continues to be a dearth of progressive, rights protecting laws on key issues that impact on women's vulnerability to HIV infection and the rights of women living with HIV. In order to address this fundamental gap, the Canadian HIV/AIDS Legal Network is producing draft legislation on property law (including marital property and inheritance rights) and family law (i.e., marriage and divorce). (A separate volume on rape, sexual assault and domestic violence is also being produced.) This project draws together international human rights law and examples of "best practice" national legislation as the basis for developing a draft legal framework to respect, protect and fulfill women's rights in the context of HIV/AIDS. The resulting resource includes draft legislative provisions that can be adapted to the particular circumstances of a particular country. The draft legislation resource is intended as an advocacy tool for developing countries and countries in transition. The project involves extensive strategic partnerships with grassroots civil society activists in Africa. In conjunction with the resource, the Canadian HIV/AIDS Legal Network is able to provide external commentary and technical support to national organizations engaged in law reform advocacy on these critical women's rights issues. It is hoped that this collaboration will generate the momentum required to push for concrete law reform to empower women in the context of the pandemic and beyond.

"Ethiopian by birth, Gay by nature and PROUD by choice": Sexuality, Sexual Health and Rights among Men who have sex with Men (MSM) in Addis Ababa

Getnet Tadele, University of Addis Ababa

A body of literature on African sexuality has established the presence of homosexuality in about fifty African societies, although widespread public and religious discourse claims homosexuality is not African (Parker et al. 1998; Niang et al. 2003; Murray and Roscoe 1998). This paper is a product of an investigation that explored the sexual lives of men who have sex with men in Addis Ababa, within a societal context where homosexuality is illegal. The result of 24 in-depth interviews and one focus group discussion (FGD) with six MSM suggests that there is a flourishing underground commercial sex trade. Most of those interviewed, however, suffer from internalized and externalized stigma and discrimination. The results also highlight that current efforts aimed at preventing the spread of HIV are not addressing some "high risk behaviours" and argues that interventions aimed at preventing the spread of HIV could benefit from an approach that addresses different types of sexual practices and identities. Using a (sexual) citizenship and rights framework, this paper argues for the need to create space for the discussion of the different forms of sexual relationships that take place in the country.

Annex III: Recommendation 4

Example of Approach to Assessing Relevant Social Dynamics/Identifying Appropriate Structural Response in an Epidemic Concentrated around Sex Work

This table has been adapted from the original, developed by Auerbach, Parkhurst, Keller and Cáceres (forthcoming)

Step	Information Needed	Evidence Sources or Tools
1 Identify the target populations and/ or locations for intervention	**Step 1:** Epidemiological data of key affected populations: **SEX WORKERS**	Epidemiological surveys Surveillance Data
2 Identify the key behavioral patterns and drivers of behavioral patterns for the target population	**Step 2:** What is the structural context of sex work? What are the primary causal pathways to risk and vulnerability? Key Questions to ask: ■ what forms of sex work prevail (e.g. street-based? Brothel based? Combination of both?) ■ assess variations in risk, vulnerability & HIV prevalence ■ What are the primary motivations for women and girls to become involved in sex work? ■ How is the business of sex work conducted? ■ What is the nature of the legal frameworks affecting sex work? ■ Who are the critical power-brokers shaping the business? ■ What is role of law enforcement in creating or reducing vulnerabilities?	■ Focus groups or small case studies with sex workers to determine motivating factors, dimensions of risk and vulnerability, etc. ■ Focus groups with clients and gate-keepers ■ Ethnographic studies ■ Surveys of policy and law enforcement interactions with sex workers

3 Chose level of structural intervention	**Step 3:** Key Questions to ask: ■ Which of the structural elements identified in Step 2 have the greatest impact on your epidemic? For example: ■ Legal frameworks require revision to decriminalize sex work ■ Police violence is a critical factor shaping vulnerability ■ Sex workers lack power to organize themselves and to insist on condoms Of these, which can be changed? ■ Each of those identified can be changed through structural actions at programmatic level	Historical data/analysis of structural changes in similar contexts Evaluations of past structural intervention efforts Your own assessments conducted under Step 2.
4 Describe planned and potential changes and outcomes	**Step 4:** Predict potential outcomes arising from structural change: e.g. Sex worker Vulnerability Reduced: ■ sex workers empowered (indicators = increase in condom use with clients; sex worker networks and support groups formed; sex workers advocating for rights) ■ violence against sex workers by police, pimps and clients reduced, and offenders punished by law (indicators = reductions in reported violence) ■ Police and other officials more aware of and sensitive to sex worker vulnerabilities (indicators = attitudes of police, etc) Possible negative outcomes: ■ Push-back by police in form of crackdowns on sex workers and/or clients (indicators = increased violence and arrests) ■ Resistance from communities (indicators= attitudes of community members; voting behavior of representatives, etc)	Modeling estimations and predictions; Comparison with other areas of similar context; Analysis of relevant public health and social science research.

5 Design the intervention	**Step 5:** For example: ■ Create opportunities and support for sex workers to organize for problem solving and self-help; ■ Provide condoms and treatment for sexual infections to sex workers and clients; ■ Anti-violence programs with police and develop linkages of mutual assistance between police and sex worker communities; ■ Create mechanisms for legal recourse for sex workers experiencing violence; ■ Rights-based enforcement of existing protective laws; ■ Advocate for decriminalization and/or enforcement of existing laws; ■ Create income-generating alternatives for older sex workers; ■ Vocational training programs for sex workers.	Project planning tools Consultation of those experienced with actions of these kinds Consultation with affected communities (sex workers, police, clients)
6 Implement, monitor, evaluate and feedback	**Step 6:** Description and measurement (if appropriate) of: ■ How the is program affecting sex workers and power brokers; ■ Changes in context of sex work that might be affecting effectiveness; ■ How these changes are occurring and who are they affecting most; ■ Is the vulnerability of sex workers reduced?	Multiple methods and tools, such as longitudinal ethnographic research, focus groups, observation, surveys, evaluations (i.e. process, operational and outcome evaluation).

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