



**Concept Paper for a SHARP/Law and Health Gathering:
*Fostering Enabling Legal and Policy Environments for
Sex Workers' Health and Human Rights***

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Background

Sex workers face a wide range of human rights abuses in all regions of the world, frequently as a result of the laws, policies, and practices of governments and state actors. Officials charged with enforcing prostitution laws routinely extort bribes, confessions, testimony, and other “favors” from sex workers. Such problems are exacerbated when police and security forces are required to meet quotas for arrests and criminal convictions. Sex workers often receive harsh punishments such as incarceration and flogging for committing prostitution-related offenses inscribed in national legislation. In the worst cases, police beat, detain, rape, and torture sex workers, and face little or no accountability for their actions because of sex workers’ relative powerlessness and social marginalization.

Police brutality may force sex workers into hiding, effectively alienating them from basic health and social care services. It is not uncommon for police to confiscate condoms from sex workers and use them as evidence of illegal prostitution, including in those areas hard hit by HIV/AIDS. Even well intentioned efforts to “rescue” women and men in the sex industry can compound human rights abuses against them, allowing officials to detain sex workers arbitrarily in the course of brothel raids or forcibly evict them from their homes and communities. Sex workers also face a wide range of abuse within health care settings, such as forced testing for HIV and other sexually transmitted infections (STIs), pressure to terminate pregnancy, verbal harassment from health care providers, and denial of basic health services.

In many countries, government policies focus on eliminating sex work through criminal laws rather than either adopting pragmatic “harm reduction” interventions that attempt to mitigate harms linked to sex work, or responding with reforms to create environments for sex worker rights promotion. A comprehensive approach to protecting sex workers’ health and human rights must confront the harms that emanate from society’s response to sex work, not simply from sex work itself. Yet efforts to do so are hampered by at least three factors:

1. Legal context: The complexity of legal, regulatory and administrative regimes governing sex work, confusion about these regimes, and the disconnect between laws “on the books” and their enforcement “on the street,” can make it difficult to advocate for effective legal frameworks which protect sex workers’ health and rights.
2. Analytic framework: While sex workers and their allies are united in their desire to reduce the harms associated with sex work, they may be divided by different political perspectives: feminists,

victims' rights groups, AIDS activists, anti-trafficking advocates, labor rights groups, and sex workers themselves bring diverse and often conflicting priorities to the challenge of protecting sex workers' rights.

3. Networking: Sex workers' marginalized social and political status often inhibits their ability to organize with other sectors in society, and also makes it more difficult to build their own advocacy capacity, gain access to resources and assert a meaningful voice in the policy process. Sex workers' issues are often misunderstood by those who do not share their experiences; even within progressive movements, sex workers can still face discrimination. In addition, sex work is a diverse profession that is highly stratified, meaning that some sex workers have more access than others to social and political power. Such stratification may inhibit or impede effective communication and organizing efforts among sex workers.

A gathering on sex workers' health and human rights

In June 2006, the Open Society Institute will convene an international gathering on the impact of laws, policies, and law enforcement practices on sex workers' health and human rights. Building on efforts by sex worker groups, researchers and advocates, the meeting will examine the ways in which legal and regulatory frameworks either support or inhibit sex workers' ability to protect their health and rights, particularly in the context of HIV/AIDS. It will examine the ways in which local advocates have used human rights arguments to change laws and regulations that negatively impact sex workers' health. It will use local law reform efforts as a lens through which to examine global issues such as the impact of police conduct on HIV prevention, the rise of health regulations governing sex work, and the policies of international donors toward sex work. The scope of the meeting does not include discussion of child prostitution or trafficking per se.

The gathering will bring together diverse constituencies of sex workers, legal and policy advocates, human rights experts, health providers, and researchers from multiple regions. While sex workers and their allies have accomplished much in the advocacy arena, it is hoped that participants will leave the seminar better equipped to advocate for legal reforms that advance sex workers health and rights, through having a concrete set of tools and models for local advocacy, a clearer analytic framework with which to understand the issues, and a stronger network of international contacts and allies. It is also anticipated that some global funding ideas for advancing sex worker health and rights will be developed out of this meeting.

The legal and regulatory context

Understanding various elements of the legal regulation of sex work is critical to conducting effective advocacy to ensure sex workers' health and human rights. Criminal laws are an important determinant of sex workers' health, but other types of laws and regulations may have an equal or greater impact, both positive and negative. Public health regulations may require sex workers to undergo regular HIV testing, to register with "social hygiene clinics" or to use condoms with their clients. Zoning laws sometimes place brothels and other "entertainment establishments" in neighborhoods that are at great distances from health services or are so isolated as to make it impossible for people to work (even where prostitution is legal). Immigration laws may effectively exclude sex workers without legal immigration or work status from protection and drive a wedge between those with differing immigration status. Social welfare laws may entitle or bar sex workers

in regard to certain benefits, including health benefits, disability benefits, or child-care grants. Each of these bodies of law, as well as others, brings sex workers into contact with state authorities who may or may not respect their basic rights of due process and privacy.

Even within the realm of criminal law, a wide (and often misunderstood) variety of national approaches exist. In some countries, such as the United States, criminal prohibition of sex for money and surrounding activities is the norm in most states (with the exception of the state of Nevada). In many countries, such as Canada, the United Kingdom and India, there are diverse regimes of prohibition or criminalization of the activities surrounding sex work, such as “living off the proceeds of prostitution” or “running a bawdy house.” Countries such as the Netherlands and Australia have decriminalized some forms of sex work and have implemented different types of local regulation. Thailand and the Philippines have maintained a criminal ban on prostitution while regulating the sex industry; both countries intermittently and inconsistently suspend prosecution. The regulation of sex work may, as in the Philippines, Senegal, and Mexico, be contingent on participation in mandatory health testing and registration with “sanitation” or “hygiene” clinics.

This complex web of national (and sometimes local and municipal) laws and policies on prostitution has been made more complicated by the recent adoption of laws against trafficking in persons. The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Trafficking Protocol”) requires governments to prohibit the coercive movement of persons into any labor or service sector for exploitation, while remaining neutral on whether states must penalize prostitution *per se*. While this should in theory have no impact on existing prostitution laws, some anti-prostitution advocates have argued that the Trafficking Protocol should be interpreted to penalize *all* forms of sex for money transactions, whether or not these activities involve the coerced movement of persons across borders or other factors commonly associated with trafficking.

Toward a common analytic framework

Even assuming the legal regime governing sex work can be clearly described, a lack of consensus exists on the appropriate framework for analyzing and evaluating these laws and regulations. Various “analytic frameworks” used by law reformers may include human rights (which assumes the inherent dignity of all persons), public health (which applies scientific research and evidence-based practice), and harm reduction (which focuses on reducing the harms associated with behaviors such as sex work rather than insisting on total abstinence). Differences of opinion determine how these approaches operate both in theory and in practice. These disagreements may stem from the diverse priorities that sex workers and their allies bring to the discussion, such as HIV prevention, women’s rights, anti-trafficking, anti-poverty, and labor rights. Even within communities, little consensus exists regarding the preferred legal and regulatory frameworks governing sex work and the appropriate method for evaluating their impact.

Advocates for sex workers frequently make appeals to “public health” in promoting legal reforms, yet consensus has not been reached on precisely what a “public health” approach means. Some advocates support public health regulations that require sex workers to register with health clinics and undergo routine testing for HIV and other sexually transmitted infections (STIs). Others, including international bodies such as the Joint United Nations Programme on HIV/AIDS (UNAIDS), oppose elements of these regulations—particularly mandatory HIV testing as a condition for legal work—as undue infringements upon human rights. This debate is further

complicated by the lack of agreement on what constitutes a “human rights” approach to sex work, an approach that has yet to be defined. While international law prohibits specific forms of violence and discrimination against men and women whose work is criminalized, it stops short of compelling any particular approach to criminal law or public health regulation of sex work. Even the concept of “harm reduction,” which enjoys a great deal of support in the context of preventing HIV and other health risks associated with injection drug use, may fail to capture the full range of needed interventions to protect the health and human rights of sex workers.

In short, despite some promising directions and linkages across communities and geographic boundaries, advocates for sex workers’ health and human rights do not work from a common framework of analysis and advocacy when engaging in legal and regulatory advocacy. Law reform efforts could be strengthened by the development of such a framework. While this cannot be accomplished in one meeting, it may be possible to reach consensus on some basic principles of public health, human rights and harm reduction, and to apply these principles to current law reform efforts. Important questions that might be resolved through an international dialogue include: What are the elements of a “good” analytic framework? What are concrete examples of participatory advocacy or other reform efforts that have been carried out using public health, human rights and/or harm reduction principles? What is unique and can be shared in useful ways? What skills and capacities are needed to apply these tools? Who should be involved? What are the key outcomes being sought?

The need for networking and alliances

Struggles to advance the health and human rights of sex workers have global resonance, but they ultimately take place at the local level. Local law reform efforts may involve opposing the establishment of a “social hygiene clinic” to conduct mandatory HIV testing of sex workers, fighting a zoning ordinance that results in the displacement of sex workers into areas that lack health services or are unsafe, or advocating for a commission on inquiry into police brutality. These efforts require a nuanced understanding of local law and practice, as well as a strategic sense of how to effect policy change in a given environment. In some cases, international attention to a local law reform struggle may distort the debate or cause policymakers to dig their heels in further. In others, it may empower local activists or shame officials into changing a policy that defies international consensus. Regular and well-coordinated communication between local and international allies is needed to ensure that the latter are engaged in a strategic and productive manner, and that they grasp the nuances of the local struggle at hand.

The ability of international advocates to assist local struggles will be strengthened by a broader global network of advocates working to advance sex workers’ health and human rights. While various local, regional and international sex work groups have been building this knowledge and capacity, their work does not always reach other actors. Building up the repository of experience on issues such as health regulations, zoning ordinances, criminal laws, and police brutality, and facilitating links and exchanges across common concerns, will facilitate joint advocacy and enable more rapid responses to policy shifts. Lessons learned from previous policy struggles can be applied to current and future ones. If certain types of struggles occur in different jurisdictions, joint campaigning and workshops to share effective strategies are likely to be useful.

International alliances can also help to ensure that sex workers enjoy a strong voice at the policy table. Sex worker self-empowerment and advocacy efforts are arising powerfully (though unevenly) in countries as diverse as Australia, Brazil, Canada, India, the United Kingdom, and the Netherlands. Sex workers can and should be at the forefront of demanding changes to the legal and health regulations that affect their lives. Yet sex workers face the reality of being criminalized as individuals and in associations, as well as being marginalized. Sex workers encounter coalitions of some feminists and right-wing “compassionate conservatives” (especially from the United States) who have exploited the global AIDS epidemic to advance a strict prohibitionist and zero-tolerance approach to prostitution. A global networking meeting on sex workers’ health and rights can help to amplify the voice of sex workers in this debate and ensure their meaningful participation in the formulation of laws and policy.