



Sex Workers Project
Statement to Global Commission on HIV and the Law
HIGH INCOME COUNTRIES DIALOGUE 2011



by Anna Forbes, Consultant
and Sienna Baskin, Co-Director of the Sex Workers Project at the Urban Justice Center

The Global Commission on HIV and the Law is a United Nations body that exists to analyze and generate evidence on rights and law in the context of HIV. The Commission hosts regional dialogues with a focus on “challenging legal and human rights issues, including criminalization of HIV transmission, behaviors and practices such as drug use, sex work, same-sex sexual relations, and issues of prisoners, migrants, children’s rights, violence against women and access to treatment”. The Commission’s goal is to “develop actionable, evidence-informed and human rights-based recommendations for effective HIV responses that protect and promote the human rights of people living with and most vulnerable to HIV.” The High Income Countries Dialogue (including the U.S.) will take place on September 16-17, 2011, in California. The following is the Sex Workers Project’s submission to this dialogue.

We work in various capacities with sex workers in the U.S. whose lives are criminalized and whose human rights are violated. In our country, sex workers live with the threat of double prosecution under one set of laws criminalizing sex work and another criminalizing HIV exposure or transmission. We present our observations here to illustrate how the criminalization of sex work – especially when overlaid with this second legal layer – promotes stigma and compromises the health of sex workers. This synergy both increases sex workers’ vulnerability to HIV and undermines the ability of those living with the virus to access to treatment, care and support.

Thirty-six U.S. states and territories have either created laws designating HIV-specific crimes or enhanced the penalties applied to HIV positive people convicted of other offenses.¹ In fifteen of these, penalties are further enhanced for those convicted of selling (and, infrequently, buying) sex while HIV positive.

The U.S. leads the world in the number of people convicted of wilfully exposing others to HIV, with 205 convictions as of 2009.² The new National HIV Prevention Strategy discourages states from adopting laws criminalizing HIV transmission but it does not call directly for their repeal.

1. Center for HIV Law and Policy. “Telebriefing: Why Should HIV Criminalization Matter to You?” 16 March 2011. Available at <http://www.hivlawandpolicy.org/posts/view/91>

2. GNP+, The Global Criminalization Scan, 200. Available at http://www.gnpplus.net/criminalisation/index.php?option=com_content&task=view&id=388&Itemid=45

Sex work is criminalized via a patchwork of laws across the U.S. except in parts of Nevada, where it is tightly regulated. Those suffering most from this state-enforced stigma are street-based sex workers. Whether female, male, or transgender, street-based sex workers are frequently impoverished people of color. They are at high risk of violence from clients and the police, as well as homelessness, addiction, and HIV. Because they can be arrested at any time, negotiations with clients regarding prices and condom use are often hastily conducted, to facilitate getting off the street before being observed and arrested. This not only leads to less enforceable agreements with clients but also reduces the time a sex worker has to “size up” the situation regarding potential violence or risk.

Since self-disclosure as a sex worker often leads to discriminatory treatment in health centers and other social services agencies, street-based sex workers also tend to experience little or no access to HIV prevention, care, and treatment services.

The lived experiences of sex workers, drug users and LGBT (lesbian, gay, bisexual and transgender) people show the impossibility of governments stigmatizing people on one hand while simultaneously actually helping to reduce their risk of HIV transmission or exposure on the other. As the Urban Justice Center’s Sex Workers Project noted in 2007, “[t]he real hypocrisy here is that people who need healthcare and services, and who need their rights protected, are being denounced by those whose mission it is to help them.”³

Some real life examples illustrate this core contradiction:

In some states, possession of condoms can be used as evidence of intent to engage in sex work. There is no legal limit to the number of condoms an individual can carry, but reports from three major cities (New York, Washington DC, and San Francisco) document that law enforcement officers routinely confiscate condoms from suspected sex workers, sometimes submitting them as “evidence” and sometimes arresting people based solely on their possession of condoms.⁴ Transgender women, homeless women of color, and others commonly profiled as doing sex work are especially targeted by this practice.

In addition to abusing the rights and safety of sex workers – most of whom are determined to protect their own health and that of their clients -- these policing practices directly undermine publicly funded HIV prevention efforts.

3. Harris L. “The Anti-Prostitution Pledge: It’s imposed, not taken, by Bush’s foreign-aid people -- with disastrous results worldwide.” 2 May 2007. Salon. Com. Available at http://www.salon.com/mwt/broadsheet/2007/05/02/prostitution_pledge/print.htm

4. Berenstein N, “Condoms = Arrest? Police policies often discourage sex workers from carrying protection”. *Ms.* Winter 2010. available at <http://www.msmagazine.com/winter2010/condomsarrest.asp>

In New York, S323/A1008 is a bill in the legislature that would provide “that possession of a condom may not be received in evidence in any trial, hearing or proceeding as evidence of prostitution.”⁵ Prior versions of this bill were introduced in each of New York’s last five legislative sessions. Each time, they remained trapped in a legislative committee and failed to reach the full legislature for debate or a vote. Sex workers’ advocates have amassed a large coalition of civil rights groups, reproductive justice groups, HIV prevention groups, and healthcare providers that is working hard to move this session’s bill forward.

The state of Louisiana took vilification of sex workers to new heights by using an 1805 law to enhance sex worker prosecutions. The law bans oral and anal sex as “crimes against nature” and *The Louisiana Weekly* reported that “sex workers convicted of breaking this law are charged with felonies, issued longer jail sentences and forced to register as sex offenders. They must also carry a driver’s license with the label ‘sex offender’ printed on it.”⁶

Sex offender registries are generally comprised almost entirely of men but, because fellatio is commonly sold by sex workers, three quarters of those on Louisiana’s registry are now women. Most (80%) of these women are African American. The HIV risk associated with receiving fellatio is microscopically small, but being convicted as a sex offender for performing consensual fellatio may substantially increase one’s HIV risk. Here’s why.

Sex offenders remain on the registry for a minimum of ten years. During this time, they are barred from certain kinds of employment and most other employers are unwilling to hire them. As felons, they do not qualify for public housing assistance or educational loans in Louisiana and are ineligible for food stamps under some circumstances. These factors combine to make it extremely difficult for women on the registry to find legal ways to support their families. This increases their likelihood of having to continue to do sex work, live in poverty, and be deprived of prevention and sexual health options, all risk factors for HIV.

A relentless coalition of civil rights and health activists called NO Justice, led by Deon Haywood of Women with a Vision, mounted a two-year public campaign that finally resulted in the 2011 passage of state legislation overturning this policy.

Twenty states in the U.S. now do mandatory HIV testing on people arrested or convicted on charges of prostitution, solicitation or pandering. In nine of these, the state is *not* required to provide any accompanying HIV counselling, education, treatment, or services for those testing HIV positive.⁷ Positive test results may be released without consent—depending on the state --

5. New York Senate. “S1289A: Prohibits possession of certain condoms as evidence.” Available at <http://open.nysenate.gov/legislation/api/1.0/html/bill/S1289A>

6. Flaherty j, “Her Crime? Sex Work in New Orleans”. *The Louisiana Weekly*, 18 January 2010, available at <http://www.louisianaweekly.com/news.php?viewStory=2282>

7. Shkordoff L., legal research conducted for the Sex Workers Project, publication pending.

to the person with whom the accused had sex, the district attorney, the Mayor (in the case of the District of Columbia), state agencies, and/or the courts.

When a sex worker in Ohio died of a drug overdose in September, 2010, local newspaper coverage of her death printed her full name under her photograph and disclosed that she had been incarcerated for two years after soliciting while HIV positive in 2003.⁸ The story was news not because of the tragedy of her suffering and untreated conditions but because “she escaped similar charges after six soliciting arrests from December 2008 to October 2009”.

The Denver Post similarly published a 2009 story under the banner, “[Defendant’s Name] Charged With Prostitution With Knowledge Of AIDS”. This former sex worker, also pictured, was charged with felony prostitution because she was HIV positive. The article noted that she had also “pleaded guilty in 2000 and 2008 to attempted prostitution with knowledge of AIDS.”⁹ Colorado is one of the states conducting HIV testing (presumably imposed on this defendant in 2000) without any accompanying counselling, education, treatment or services.

Non-consensual public disclosure of a person’s HIV status is a human rights violation. Thousands of sex workers in the U.S. are subjected to mandatory HIV testing without any kind of informed consent or appropriate medical or social supports. The fact that the women convicted in both cases above returned to sex work underscores that this practice does not enlarge people’s options.

The above are just a few of the ways in which criminalizing sex workers and doubly prosecuting them in the name of “HIV risk” flatly contradict stated governmental commitments to human rights and public health. These policies also constrain or deny sex workers’ access to appropriate medical, legal and social services. As a result, many sex workers are effectively locked into their current situations by state-enforced stigma. Despite – not because of --these policies, we are inspired by the perseverance of the sex workers we work with, who insist on condom use to protect themselves and their clients.

Human rights are violated and HIV spread is facilitated:

- every time the police take condoms away from a sex worker,
- every time a massage parlor or brothel manager refuses to have condoms on the premises for fear that they will be used as evidence,
- every time someone becomes a felon simply by engaging in consensual sex for money, and

8.The Columbus Dispatch. “Prostitute’s HIV Status Overlooked in Charges”.13 September 2010

9. The Denver Post. “[Name Here] Charged with Prostitution with Knowledge of AIDS”. 1 February 2011. Available at http://www.denverpost.com/news/ci_17262535

- every time forced HIV testing breaches the bounds of informed consent, bodily integrity, and privacy.

Criminal justice approaches to sex work and HIV are ineffective, inhumane, and wrong. These statutes and policies embody a vicious contradiction that undermines both human rights and best practices in public health.¹⁰ State and federal tax dollars are funding these prosecutions and, thus, supporting state-enforced stigma.

10. Ban Ki-moon. *Declaration of Commitment on HIV/AIDS, Report of the Secretary-General on the work of the Organization in 2007.*, available online at http://unstats.un.org/unsd/mdg/Resources/Static/Products/SGReports/62_1/a-62-1_e.pdf