

THEMATIC DISCUSSION PAPER:

Migration & Mobility in the Context of HIV and Sex Work

This paper is the product of discussions of the *Thematic Task Team on Migration and Mobility in the Context of HIV and Sex Work* in preparation for the 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12 – 15 October 2010 in Pattaya, Thailand (contact: linde@unfpa.org).

1. INTRODUCTION

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

- Empower (Thai Foundation and Sex Worker Organization)

Sex workers are highly mobile populations, moving both within and across national boundaries, as either documented or undocumented labour. However labour laws rarely, if ever, offer protection and benefits to local or migrant sex workers. Due to government's perceptions of sex work, sex workers are prohibited from using legal channels to migrate for work. Sex workers are often prevented from entering certain countries, even as tourists for short visits. In some cases immigration laws specifically prohibit entry of sex workers (Japan), while in other countries they may be admitted on a discretionary basis if they are seen to be “of good character” with verifiable means of support. Approaches to migration vary throughout the region and are important because migrant sex workers are vulnerable, especially where the migration is undocumented, where it is brokered by people smugglers or where it is forced.

Vulnerabilities

Migration and mobility are factors that can significantly increase the vulnerability of sex workers to HIV and sexually transmitted infections, in a large part due to their undocumented status including lack of work permits, poor working conditions in some cases, lack of access to health care, occupational health and safety standards, and other forms of labour protection.

Most sex workers migrate independently, whether travelling within countries or across borders. Although most migration is voluntary, it is often undertaken without the required travel documents. This provides corrupt authorities and employers with opportunities for exploitation. Migrant female sex workers are sometimes subjected to measures that limit their freedom of movement in the name of preventing trafficking. Many migrants, regardless of occupation, find themselves in circumstances that are more difficult than anticipated. In common with other migrant workers, many migrant sex workers struggle to send money to their families, and to attain basic standards of living.

Access to education, health and justice denied

Many migrant and mobile sex workers, especially those who are undocumented, are excluded from their rights to basic education, legal services and public health-care systems both in their own countries and abroad. They are vulnerable to violence and other forms of abuse, to corrupt law enforcement officials, and have little or no access to social or legal support and protection. In some countries (for example, Thailand and China) free health care and/or other services are only available in the town or province in which a person officially resides. In addition, those who have been denied their full citizenship rights have no access to services and no freedom of movement within their own country.

Many migrant sex workers face cultural and linguistic barriers that adversely impact upon their ability to access local services and support networks. Knowledge about available services and how to access them is not readily available. Many service providers discriminate against them because they are migrants, sex workers, or both. Their access to HIV prevention, treatment, care and support often depends on their status as migrant workers. In some countries, migrant sex workers found to be HIV positive are frequently arrested, placed in detention camps and deported, regardless of their legal right to be in the country.

Additionally, research has shown that indiscriminate 'rescue operations' in the form of police raids abuse the human rights of sex workers. Migrant sex workers are often endangered and have their rights further abused when they are detained and then forcibly deported after 'rescue'.

Conflation between sex work and human trafficking debates

Mobility linked to sex work has received increased attention over the last decade, and discussions are generally framed around the trafficking of unwilling women and young people for forced work in the sex industry. Feeding into wider debates about sex, immigration, labour rights and gender relations, female sex work itself is increasingly conflated with human trafficking, while mobility of men as employers, customers and sex workers is largely excluded from the analysis. When customers are included they are frequently demonized and, in an increasing number of countries, criminalized.

Although most publicity about sex work and mobility focuses on human trafficking, most migrant sex workers are not trafficked, but are independent migrants. Most sex workers are migrants for personal and practical reasons – primarily because they prefer not to work in their home towns. In addition, for those migrating in order to improve their lives, sex work is one form of employment that - according to sex workers themselves - requires the least credentials and offers the best opportunities.

Despite the above, sex work and trafficking are often conflated in the Asia and the Pacific region, including in some UN publications. Statistics on migration and trafficking are often unreliable because they tend to over represent the sex trade.¹ When the distinction between sex work and trafficking is blurred, and related laws or measures are applied indiscriminately, sex workers' rights are further eroded and their vulnerability heightened. Anti-trafficking measures and laws have led to crackdowns on brothels, detention in "rehabilitation" camps, and arrests of street-based sex workers, whether or not they are victims of trafficking. As a result, sex workers feel pressured to seek work elsewhere, within their country or across borders, which increases their vulnerability to trafficking and HIV.

Sex worker organizations in the region condemn trafficking and the commercial sexual exploitation of children. Some sex worker organizations, including Durbar Mahila Samanwaya Committee (DMSC) and Sonagachi Project, have gained international recognition for their sex worker-led response to combat trafficking and child sexual abuse.

Sex workers and undocumented migrants have suffered human rights abuses as a result of the deployment of the dominant anti-trafficking discourse which has been routinely used to control and criminalise sex workers and migrants.

2. PRIORITY ISSUES

2.1 Universal health care for ALL migrant workers (including continuity of care)

¹ Feingold D. Human Trafficking Foreign Policy; Sep/Oct 2005; 150; ProQuest Social Science Journals

Policies and interventions should be developed and implemented to reduce human rights violations and vulnerability of migrant sex workers. These should include provision of health information and services (HIV prevention, treatment, care and support, and other areas of reproductive health) and social and legal services that address the needs of migrant sex workers, with or without papers, refugees, internally displaced persons, asylum seekers and those from ethnic minorities (who have no legal entitlement). Where government service providers do not speak the same languages as migrants, cultural mediators who could provide translation and culturally sensitive counselling and support should be available to help ease these access barriers, and to assist clients to comply with treatment regimens. There should be no discrimination by service providers against sex workers because of their profession, and people without valid immigration documents should not be refused services by providers, or receive inadequate or incomplete treatment. Training should be provided to service providers to ensure their understanding of such issues.

States should provide appropriate health care, information and services for both documented and undocumented migrants with special consideration for HIV and sexual and reproductive health.

2.2 Removal of mandatory testing, detention and deportation

Sex work is not in itself an HIV risk. In places where sex work has been decriminalized, as in Australia, there has not been one single reported HIV infection contracted through buying or selling sex. HIV can be transmitted by unprotected sex regardless of the party's occupation, including sex work. HIV prevention education for all sectors of society is an essential public health approach to protecting all citizens, including migrants. There is no evidence that mandatory testing prevents HIV. On the contrary however, there *is* evidence that mandatory testing, discrimination and exclusion results in migrants avoiding health services including condom distribution, STI clinics etc.

States should repeal laws and policies that permit mandatory testing and deportation which violate basic human rights, including the right to work.

2.3 Recognise sex work is work; sex workers are workers including migrant sex workers

Sex work exists in every country in the world, and has done so for thousands of years. Millions of women, men and transgender people have engaged in sex work, raised families, contributed to the improvement of their communities, and helped build up nations. Sex work is a choice, a decision. Sex work does not interfere with the rights of others in society. In common with many other jobs, sex work entails providing specific services for a fee. As with many other jobs, it is not work that everyone can do. Recognizing sex work as work *per se*, allows governments to provide protection and services to sex workers under existing systems without the need for special legislation etc. Recognition that sex work is work, and that sex workers are workers, also allows for migrant sex workers to access the same protection and services as other migrants.

Sex work must be disassociated with trafficking as in the majority of cases there is no linkage. Current discourses linking the two have serious negative consequences, impacting on the rights of sex workers to employment and health. Any HIV intervention programs for sex workers must utilize a rights-based empowerment approach which includes recognising and including sex workers as key partners in the design, implementation and evaluation of programmes and services.

The combined impact of the criminalization of migration and criminalization of sex work force migrant sex workers to live and work in highly exploitative, insecure and often dangerous

circumstances. This affects their ability to be safe from HIV which is reflected in Public Health statistics throughout the region.

3. ACTIONS

Cross Cutting Strategies

- International donors of HIV programmes should ensure sufficient resources are provided to sex worker organizations to ensure that both domestic and foreign sex workers can be reached in their interventions.
- Governments should support sex workers organizations and their meaningful participation in existing mechanisms like GFATM CCMs (Global Fund Country Coordinating Mechanism) along with other civil society representatives, and in the development of National Strategic HIV Plans.
- Coordination and harmonized efforts within and between different government sectors and community agencies should be improved.

Immediate actions:

1. Governments should allow migrants to register to work as multi-lingual – cultural mediators in social and health services and sex work organizations.
2. Pre- and post migration education (training) should be provided for labour migrants, including sex workers, inclusive of comprehensive sexual and reproductive health information and HIV prevention.
 - The TAMPEP (European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers) model is recognised as a good practice for providing information on migration legislation and health care for sex workers.
3. Sex worker led models to address empowerment of migrant sex workers, increasing respect for human rights, reducing HIV, trafficking and the commercial sexual exploitation of children should be examined and replicated.
 - The Self Regulatory Boards of Durbar Mahila Samanwaya Committee (DMSC) and Sonagachi Project to prevent trafficking and child sexual abuse are internationally recognised as good practice.
4. The needs of migrant and mobile sex workers should be included in National Strategic Plans for HIV.
5. Donors and UN agencies should advocate with governments to develop and implement policies that commit to provision of health services for all, including documented and undocumented migrants.
6. Government services should provide access to HIV prevention and treatment services, comprehensive sexual and reproductive health services, legal information and advice, and related social services for all sex workers, including those who are migrants. To support these services, health service providers and staff of law enforcement agencies should receive training that addresses issues including stigma, discrimination and violence. Occupational health and safety standards should be developed to make sex work safer².
7. The issues of migrant sex workers should be addressed in existing cross border mechanisms like JUNIMA (Joint United Nations Initiative on Mobility and HIV/AIDS in South East Asia), an intergovernmental, UN and civil society mechanism for dialogue.
8. Research should be conducted to explore the extent to which sex work contributes to national economies, through tourism, taxation, and remittances.
9. Media campaigns should be developed that encourage the acceptance of migrants and sex work and reduction of stigma through promotion of human rights.

Long Term Actions:

² Recommendation from thematic PCB: 24th PROGRAMME COORDINATING BOARD Thematic Segment Background Paper: People on the move – forced displacement and migrant populations.

1. Cross border and regional agreements should be developed that protect the rights of sex workers to access health and social services, irrespective of their legal status (as both sex workers and as migrants).
2. Sex workers should be included in meaningful partnerships in relevant infrastructure development projects. Major development projects should include “sex worker impact studies” to obtain information when planning for associated infrastructure needs in target areas such as health services.
3. Governments should provide documentation that permits freedom of travel for sex workers, without identifying them as sex workers as that is unnecessary and would provide additional opportunities for stigmatisation. Discriminatory practices against women from developing countries applying for visas and work permits, especially migrant sex workers, should be stopped.

4. ADDITIONAL ISSUES (discussed but not prioritized in this paper)

There is a lack of knowledge of migrant PLHIV sex workers’ specific needs, and difficulty in following up with PLHIV sex workers when they return home.

5. MORE INFORMATION

Relevant reading, in addition to documents already cited in the footnotes of this paper:

- Augustin L. (2007). *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. Zed Books.
- Global Alliance Against Trafficking in Human Beings (2007). *Collateral damage; the impact of anti-trafficking measures on human rights around the world*.
- OKUP and UNDP (2009). *HIV vulnerabilities faced by women migrants: From Bangladesh to the ARAB States*.
- UNDP and SPC (2010). *Migration, Mobility and HIV. A rapid assessment of risks and vulnerabilities in the Pacific*.
- Self Regulatory Board: Ensuring Participation democracy in practice. Actionaid, India. No published date.
- DMSC (no date). *Innovative approaches to Combat Trafficking of Women in Sex Trade by Durbar Mahila Samanwaya Committee (Kolkata)*.
<http://lyris.spc.int/read/attachment/70024/1/DMSC%20approaches%20to%20trafficking.pdf>
- Paulo Longo Research Initiative: www.plri.org
- Project Avert: www.avert.org
- European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers (TAMPEP): <http://tampep.eu/>