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Public Health Program

SEXUAL HEALTH AND RIGHTS PROJECT

Harm Reduction, Health and Human Rights, and Sex Work

Open Society Institute, 2006

This discussion paper was commissioned[1] by OSI's Sexual Health and Rights Project for an international gathering held June 2006 in Johannesburg, South Africa about the impact of laws, policies, and law enforcement practices on sex workers' health and human rights. NGOs, agencies and funders who work with people in sex work have used different frameworks, such as harm reduction and human rights, to guide their work. This document provided a basis for discussion of the pros and cons of these approaches. This was achieved by reviewing the ways harm reduction strategies and rights-based frameworks have been developed in various regions in the world, clarifying terms, noting strengths and weaknesses, and finding common ground for future work.

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"Harm reduction" and "human rights" are both useful frameworks for addressing issues within sex work, including health. They are distinct approaches with their own strengths and weaknesses. This issue paper explores the differences and connections between the frameworks. Both approaches can be broadly defined and to some degree this has opened the possibility for confusion and appropriation of the terms. This working paper seeks to set out some points for consideration about how to strategically and carefully apply these frameworks.

What is a harm reduction approach?

The term harm reduction, or harm minimization, has been used since the 1980s to describe a set of practical strategies developed to prevent the transmission of HIV and address the negative effects of substance use amongst injecting drug users (IDUs).[2] The term has no universally agreed upon definition, though harm reduction organizations have produced statements of the central principles constituting the framework.[3] The approach prioritizes the reduction of *harm* over the abolition of drug use. While harm reductionists may differ on the extent to which stopping illicit behavior should be the goal of interventions, most focus on client centered efforts, such as needle exchange and peer education, that meet clients "where they are at." Many harm reductionists take no public stance on the legalization or decriminalization of drug use and related activities and/or adopt a "neutral" stance on drug taking (i.e. that they are neither for nor against it). This perspective allows broader coalitions of people to come together to work in progressive ways about drug use and can also deflect criticism of programs that work to help people who continue to use drugs. However, some have argued that this neutrality has masked the differences between those who see harm reduction narrowly as a medical means of promoting health and a more activist group who see it as a platform for broader and more structural social change.[4]

Harm reduction, therefore, is an umbrella term that encompasses a continuum of beliefs from libertarian to strict "disease control" public health. The framework holds the potential to support transformational agendas addressing questions of social, economic and racial inequality *and* repressive conservative policies that violate the rights of drug users. In some instances, harm reduction, focused on individual patients, has been extended to include efforts to reduce *social* harms related to drug use. For example, in Britain the rhetoric of harm reduction has been deployed to justify coercive Drug Treatment and Testing Orders (DTTOs) that force drug users into treatment programs.[5]

Applying harm reduction to sex work

The term harm reduction is widely used to describe actions to promote health and safety work in sex working communities. Approaches developed with drug users have been applied to work with sex workers with relatively little discussion about the approach, the need for modification or clarification of tactics. In its most basic interpretation the "use of harm-reduction principles can help safeguard sex workers' lives and health in the same way that drug users have benefited from drug-use harm reduction."[6] It is also clear that drug use and sex work engage different actors and social issues and that the harm reduction approach to sex work encompasses a continuum of views concerning sex work specific issues.[7]

Many health service providers who wish to reduce the perceived HIV and STI risks of sex work use harm reduction to "meet sex workers where they are at." Harm reduction allows these organizations to frame their work as helping individuals live safer lives without taking any stance

on whether prostitution should be criminalized or decriminalized. Until recently this neutrality has allowed organizations to work with communities of sex workers while avoiding debates over prostitution and to protect themselves somewhat from being attacked by groups convinced that prostitution must be ended.[8] Today, those promoting a harm reduction approach to sex work may have to do so in the face of vocal opposition to prostitution which proclaims that sex work is itself a harm constituting a fundamental violation of human rights. Moral judgments about sex, sexuality, and the proper behavior of women and girls may also be used to trump efforts to promote harm reduction. Indeed, the sex work as violence argument has been used to attack service providers as enablers of sexual slavery, and has interfered with harm reduction-based public health efforts, including condom distribution.

Despite some harm reductionists claim to be neutral on prostitution, the emphasis on peer education methods which acknowledge and empower current sex workers as health educators does in practice distinguish harm reduction organizations from groups that aim to rescue women from prostitution. Furthermore, harm reduction is frequently interpreted to encompass law reform to create safer environments for sex work to occur.[9] Some organizations include protecting sex workers' rights as a condition for successful harm reduction and some call for decriminalization of prostitution and the removal of other barriers to health promotion.[10]

What is a human rights approach in the context of sex worker health and rights concerns?

Human rights work combines elements of formal treaty development with grassroots activism for rights and justice.[11] In order to outline a human rights approach to sex work we need to consider the principles and state obligations that emerge from key international agreements along with the actions of communities, such as groups of sex workers, endeavoring to create the conditions where they can enjoy their rights to health as well as other rights. Key principles include:

- the primacy of nondiscrimination and equality,
- the equal dignity of all persons;
- respecting core rights to protection against violence (bodily integrity rights) and its consequences;
- understanding that all rights – civil, cultural, economic, political and social – are interconnected and interdependent in their realization;
- building accountability between state (and increasingly non state actors) and rights holders to create rights-enabling environments; and
- the participation of individuals and groups in the determination of issues affecting them.[12]

Article 12 of *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) describes States' responsibility to "recognize the rights of everyone to the highest attainable standard of physical and mental health." The "right to health" is not a guarantee of individual healthiness, rather it is a series of steps that States must take to respect, protect and fulfill this right. General Comment 14 adds that the right to health outlined in the ICESCR "include[s] the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation." It also includes the "right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."[13] The ICESCR and related documents make no specific mention of sex workers but since this rights-based approach to health covers all in society, it is inclusive of sex workers.[14]

However, the application of these principles to sex work has been very limited. The ongoing

debate over the status of sex work/prostitution in the human rights field (some press for prostitution to be codified as a violation of women's rights; others have pushed for international recognition of prostitution as work and for its decriminalization)[15] has resulted in a standoff. Almost all references to sex work in international documents refer to the need to prevent "forced" prostitution, do not require any particular legislative response to sex work and skirt the issue of what measures would allow sex workers to fully realize their right to the highest attainable standard of health. Materials produced by the ILO have been clearest in categorizing sex work as a form of labor[16]; and General Recommendation No 19 of the UN Committee on CEDAW requires States to ensure equal protection under the law for prostitutes because they "are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them."[17] These relatively weak pronouncements lag behind the demands of organized sex workers (locally, regionally and internationally) for the application of a human rights framework when working with sex working communities. Sex workers have protested rights violations (such as unethical drug trails), have implemented programs that work to address human rights violations central to the vulnerability of sex workers to HIV (such as police brutality, corruption and gender based violence), and have challenged laws and policies that disenfranchise sex workers reducing their ability to mobilize for the defense of their health and rights.[18] In addition to sex worker-led initiatives, other international NGOs and UN agencies have adopted rights-based approaches to HIV programming.[19]

Connections and Differences between Harm Reduction and Human Rights

Advocates from the human rights and harm reduction fields have begun to explore the connections between the frameworks primarily in regards to drug use and HIV/AIDS with some attention to people in sex work. This includes noting that a human rights approach to health requires harm reduction because it allows the "fulfillment of the human right to enjoy the highest attainable standard of physical and mental health."[20] Advocates have also stressed that for harm reduction in regard to HIV/AIDS and IDUs to succeed, fundamental rights, such as protection from police abuse and arbitrary detention must be guaranteed.[21]

What new directions can advocates explore between harm reduction and rights approaches to sex work to strengthen progressive work overall?

- *Participation for Public Health Outcomes or Rights Outcomes*

Harm reduction and rights work with sex workers often overlap in terms of what programs actually do on the ground. Both kinds of programming emphasize the involvement/participation of affected communities of sex workers using, for example, the concept of "peer education" to achieve program goals. Harm reduction programs frequently tap into sex workers' skills to reduce HIV transmission amongst sex workers, and the community in general, via peer-led outreach. These kinds of programs can be successful in reducing the transmission of HIV, but the inclusion of sex workers in programming does not necessarily imply that broader rights based outcomes desired by sex workers will occur. In some instances peer education programs have become little more than cost-saving measures for public health interventions (i.e. peer educators often work for free or for small 'stipends'). Sex workers are not primary decision makers and are relegated to the lowest rungs of NGOs reinforcing discriminatory attitudes towards them and their communities. The rights based approach to peer education, an approach that exists primarily in sex worker organizations, incorporates it as part of an overall strategy for change that promotes health while challenging discrimination. This approach goes much further than ensuring that sex workers have access to condoms to prevent disease by incorporating sex workers' demands to be recognized as decision makers and actors in the process of creating the conditions that ensure their health.

- *Ongoing commitment to rights*

The prioritization of mobilization for rights distinguishes a health and human rights approach to sex work from much of what falls under the banner of harm reduction. This is not to say that harm reduction programs never advance campaigns for fundamental change. In many cases harm reduction programs do this very proactively. However, the idea of rights has not yet been developed as an *essential* element of harm reduction in regards to sex workers. Most funding bodies pressure programs to achieve "health outcomes" as opposed to "rights outcomes." This may mean that harm reduction groups who have been supportive of rights based work while the overall funding environment supported sex worker organizing, may "fall away" from rights work such as policy reform and sex-worker participation, should public health policy move in a more conservative direction.

- *Law reform, rights and health*

Discussions within the formal human rights system are stalled at an unproductive equilibrium between prohibitionist and decriminalization perspectives on sex work law reform. Some human rights NGOs follow this trend of remaining "agnostic" on sex work – neither supporting decriminalization nor rejecting it. Despite this impasse, rights approaches have been emerging from the health field that can support progressive harm reduction work *and* are consistent with many of the perspectives of sex worker rights organizations. Some harm reduction networks, for example, have clearly supported law reform as central in promoting sex workers health and rights.[22] Health and rights organizations, like the Canadian HIV/AIDS Legal Network, have documented how the criminalization of sex work undermines health and human rights.[23] This complements the work of organizations such as Sex Worker Education and Advocacy Taskforce (SWEAT) in South Africa and Scarlet Alliance in Australia to hold governments accountable for their failure to "respect, protect and fulfill the human rights of sex workers" and create safe working conditions for sex workers through comprehensive law reform and anti-discrimination efforts.[24] In these formulations sex workers' health and rights are connected to and dependent on other rights (such as right to enjoy just and favorable conditions of work, the right to organize, the right to adequate standard of living, and the right to be free from discrimination).

- *Accountability and new connections to be made*

The idea of holding States accountable is a key element of human rights work and, as discussed above, this has been expressed in very clear ways by organizations insisting on law and policy changes that enable sex workers to enjoy their health and rights. Ultimately legislative changes are achievable only via State action. Certainly prioritizing the need for reform will assist progressive work with sex workers, whether rights-based or harm reduction, to maintain integrity in the long term. However, in rights terms, accountability runs in two directions. States should be held accountable by civil society, but organizations themselves must be accountable to the communities they serve and represent. Developing this notion of accountability to sex worker populations is key to overcoming weaknesses in both harm reduction and human rights. Accountable harm reduction programs, for example, must support organizing efforts and recognize sex workers as decision-makers and organizational leaders. This would reorient organizational priorities from what funding bodies support to what sex workers demand. Rights based organizations struggling with what position to adopt in regards to sex work, could move the discussion forward by considering what importance they should place on sex worker demands for freedom and justice and what priority they should give to other debates about the morality of women's engagement in sexual commerce.

[1] Penelope Saunders authored this discussion paper with assistance from Alice Miller.
[2] Harm reduction grew out of work by activists, health service providers and policy-makers committed politically and socially to opposing the legal suppression of drug use and the oppression of drug users in the 1960s and 70s (see Vellemen, R. & Rigby, J. (1990).Harm minimization: Old wine in new bottles. *International Journal of Drug Policy,* 1, 24-27). More recently, public health interventions have incorporated harm reduction principles into smoking cessation initiatives and treatment programs for all types of substance use.
[3] See http://www.harmreduction.org/ and http://www.ukhra.org/harm_reduction_definition.html.
[4] Roe, G. (2005). Harm reduction as paradigm: Is better than bad good enough? The origins of harm reduction, *Critical Public Health*, 15(3), 243–250: p. 244.
[5] These changes occurred under the Criminal Justice and Court Services Act (2000). See Hunt, N. and Stevens, A. (2004). Whose Harm? Harm Reduction and the Shift to Coercion in UK Drug Policy, *Social Policy & Society*, 3(4), 333–342: p. 336.
[6] Rekart, M. (2005). Sex-work harm reduction, *The Lancet*, 366, 2123-2134
[7] While it is true that sexual and drug commerce are often intertwined, sex workers have been more easily able to argue that they have a right to earn a living than drug users have been able to argue for their "right to use". Drug users in certain environments, such as within the Australian drug users movement, have worked to establish more positive views of the drug using identity and of drug using itself but this movement is not as widespread internationally as the idea of sex worker rights.
[8] Donna Hughes, for example, equates prostitution with "sexual slavery." She proposes "report and rescue" along with prohibition as a "bold, new approach represents a break with the accommodationist schemes that normalize prostitution and merely try to distribute a few condoms." Hughes, Donna, 2003, Accommodation or Abolition? Solutions to the problem of sexual trafficking and slavery. *National Review*, May 3, 2003. Accessed May 15, 2006 at http://www.nationalreview.com/comment/comment-hughes050103.asp
[9] For example, recent prostitution law reform that decriminalized sex work in New Zealand was justified by its sponsor via "the concept of harm minimisation." "Comment" by Tim Barnett: NZ HERALD September 30, 2003 http://www.walnet.org/csis/news/world_2003/nzherald-030930.html accessed May 8, 2006
[10] See Central and Eastern European Harm Reduction Network (2005). Sex Work, HIV/AIDS, and Human Rights in Central and Eastern Europe and Central Asia. p. 6, accessed at www.ceehrn.org.
[11] Freedman, L. (1995). Censorship and manipulation of reproductive health information: an issue of human rights and women's health. In Coliver, S. (Ed), *The Right to Know: Human Rights and Access to Reproductive Health Information* (pp. 1-37). London: ARTICLE 19.
[12] Miller, A. (2001). Uneasy Promises: Sexuality, Health, and Human Rights, *American Journal of Public Health,* 91(6), 861-864: 862.
[13] The full text of General Comment 14 is available at: http://www1.umn.edu/humanrts/gencomm/econ.htm
[14] States should not violate rights standards, for example by coercive mandatory HIV testing or by limiting individuals' ability to safeguard their own health. States are obligated to protect individuals from the actions of others who would violate their rights –such as blocking sex workers from access to health care because of discrimination. Finally, States must also ensure that their actions, at all levels, make the enjoyment of health rights possible.
[15] Seeshu, M. and Csete, J. (2004). Still underground: searching for progress in realizing the human rights of women in prostitution. *HIV/AIDS Policy and Law Review*, 9(3), 8-14.
[16] See www.ilo.org for ILO publications
[17] The full text of General Comment 19 is available at: http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.
[18] Examples of this kind of programming include: the Sonagachi project (see Jana, S., Basu, I. Rotheram-Borus, M.J., and Newman, P.A. The Sonagachi project: A sustainable community intervention program. *AIDS Education and Prevention, 16*(5), 405-414:2004); EMPOWER in Thailand (www.empowerfoundation.org) and sex worker organizing efforts in the Dominican Republic (see Moreno, L. & Kerrigan, D. (2000). HIV prevention strategies among female sex workers in the Dominican Republic. *Research for Sex Work, 3*, 8-10).
[19] See Canadian HIV/AIDS Legal Network (2005). Sex, work, rights: Reforming Canadian criminal laws on prostitution accessed at www.aidslaw.ca.
[20] Elliott, R., Csete, J., Wood, E., and Kerr, T. (2005). Harm Reduction, HIV/AIDS, and the Human Rights Challenge to Global Drug Control Policy. *Health and Human Rights*, 8(2) 105-138: p.115.
[21] Human Rights Watch (2006). *Rhetoric and risk: Human rights abuses impeding Ukraine's fight against HIV/AIDS.* Available at: http://www.hrw.org/
[22] Central and Eastern European Harm Reduction Network, op cit.
[23] Canadian HIV Legal Network (2005), *Sex workers and international human rights*, no page number, accessed at www.aidslaw.ca.
[24] Scarlet Alliance and Australian Federation of AIDS Organizations (1999). *Unjust and counter-productive: The failure of governments to protect sex workers from discrimination.* Available at http://www.scarletalliance.org.au/pub/. Many good discussions of health and rights for sex workers can be found at SWEAT's website http://www.sweat.org.za/.