

OPEN LETTER TO THE GOVERNMENT OF KYRGYZSTAN REGARDING PROPOSAL TO AMEND THE ADMINISTRATIVE CODE TO PENALIZE SEX WORK

November 12, 2012

President of the Kyrgyz Republic, Mr. Almazbek Atambayev
Counsel on the Issues of Family, Women and Gender Development
Acting Minister of the Interior, Atakhanov Shamil Esenjanovich
Chairman, Committee on Crime Control, Bokoyev Kenzhebek Satymkulovich
Deputy Chairman of the Committee on Crime Control, Kalmamatov Baktybek Orozalievich
Deputy Chairman of the Committee on Crime Control, Bekeshev Dastan Dalabayevich
Deputy Chairman of the Committee on Crime Control, Sakebaev Erkin Abdyshevich
Member of the Committee on Crime Control, Abdykerimov Sharshenbek Shayloobekovich
Member of the Committee on Crime Control, Aitmatova Shirin Chyngyzovna
Member of the Committee on Crime Control, Sultanov Akylbek Shakirovich
Member of the Committee on Crime Control, Surakmatov Aziz Emilbekovich

The undersigned organizations and human rights experts are strongly concerned about the decision by the Ministry of Interior to introduce a draft law to penalize sex work.

We are deeply concerned that the proposed bill violates human rights protected under international law and will heighten the risk of further human rights violations, including violence, against sex workers. It is also inconsistent with sound, ethical public health practice and will likely serve to undermine efforts to protect and promote public health.

Background

On 28 September 2012 the Kyrgyz Parliament registered a draft law to penalize sex work by introducing fines of up to 1000 soms and up to 15 days in detention for a repeated offence within a year. The law was initiated by the Kyrgyz Ministry of Interior and is scheduled to be discussed at a hearing of parliamentary Committee on Crime Control.

On October 17th 2012 news outlets started reporting about this draft law. In an explanatory note, the Kyrgyz Ministry of Interior noted that the reasoning behind this initiative is the “anti-social” nature of “prostitution,” and the fact that “prostitution is often accompanied by the spread of dangerous and other sexually transmitted diseases, including HIV infection, accompanied by the spread of drug addiction and alcoholism,” and the “involvement of minors in prostitution”.¹

Human Rights Concerns

International norm-setting bodies have found that laws that criminalize or penalize sex work contribute to high levels of violence and other human rights abuses against sex workers. The International Guidelines on HIV/AIDS and Human Rights (Office of the

¹ <http://www.kp.kg/online/news/1273727/>, <http://ca-news.org/news:1045124/>

UN High Commissioner for Human Rights and UNAIDS), The Global Commission on HIV and the Law, The Joint United Nations Programme on HIV/AIDS (UNAIDS) Guidance Note on HIV and Sex Work and the Report to the United Nations Human Rights Council from the United Nations Special Rapporteur on the Right to Health *all* recommend *removing* laws that criminalize or penalize sex work.²

The UNAIDS Guidance Note on HIV and Sex Work specifies that: “There is very little evidence to suggest that any criminal laws related to sex work stop demand for sex or reduce the number of sex workers. Rather, all of them create an environment of fear and marginalization for sex workers, who often have to work in remote and unsafe locations to avoid arrest of themselves or their clients.”³

The Global Commission on HIV and the Law, tasked with making recommendations for rights-based law and policy in the context of HIV, further remarks that: “Laws [against sex work] invite police harassment and violence and push sex work underground, where it is harder to negotiate safer conditions and consistent condom use. [...] Rape and assault are difficult to report when the sex worker fears that she will be arrested. [...]”⁴

The penalization and the criminalization of sex work effectively bars sex workers from exercising basic rights to avail themselves of protection from violence and access to justice from police. This creates a climate of impunity for violence or abuse against them. As the Global Commission on HIV and the Law notes, this allows: “Criminals and clients [to] deploy the threat of criminal sanctions to control and exploit sex workers.”⁵

Punitive laws may create further opportunity for police to extort or abuse sex workers. This is of particular concern given that Tais Plus, a health and service organization for sex workers, reports that sex workers in Kyrgyzstan already experience extremely high rates of extortion, physical violence and sexual violence by police.⁶ In one study, 64.2% of sex workers reported that they had experienced physical violence and 89.4% reported that they had experienced sexual violence from police in the previous year.⁷

In 2008, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) urged Kyrgyzstan to address violence against sex workers: “The Committee is concerned about reports of discrimination and harassment against women because of

² Office of the UN High Commissioner for Human rights and UNAIDS. International Guidelines on HIV/AIDS and Human Rights, United Nations: Geneva, 2006; *UNAIDS Guidance Note on HIV and Sex Work* (2012); *Report of the Global Commission on HIV and the Law*, United Nations: Geneva, 2012; *Report of the United Nations Special Rapporteur on the Right to Health*, 14th Session of the Human Rights Council. United Nations: Geneva. May 31-June 18 2010 A/HRC/14/20

³ *UNAIDS Guidance Note on HIV and Sex Work* (2012). Annex 1 p.4

[http://www.nswp.org/sites/nswp.org/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en\[1\].pdf](http://www.nswp.org/sites/nswp.org/files/JC2306_UNAIDS-guidance-note-HIV-sex-work_en[1].pdf)

⁴ *Report of the Global Commission on HIV and the Law*, United Nations: Geneva, 2012

⁵ *Report of the Global Commission on HIV and the Law*, United Nations: Geneva, 2012

⁶ *Shadow report to the Third Periodic Report of Kyrgyzstan to the Committee on the Elimination of Discrimination Against Women* (2008). NGO ‘Tais Plus’: Bishkek; *Arrest the Violence: Human Rights Violations Against Sex Workers in Central Eastern Europe and Central Asia* (2007). SWAN: Budapest.

⁷ *Arrest the Violence: Human Rights Violations Against Sex Workers in Central Eastern Europe and Central Asia* (2007). SWAN: Budapest.

their sexuality as well as about acts of harassment against women in prostitution by police officials. The Committee urges the State party to take all appropriate measures to ensure that the Convention applies to all women without discrimination and to further take all necessary steps to protect them from all forms of discrimination and violence by public and private individuals.”⁸

Tais Plus documented widespread violence and extortion against sex workers to take place in the course of police raids.⁹ By providing a legal mandate to perform raids against sex workers, the penalization of sex work will give police the license and cover to escalate extortion and violence against sex workers. As the UNAIDS Guidance Note on HIV and Sex Work notes: “The application of criminal law to sex work is often associated with heinous abuses of the rights of sex workers. They are highly vulnerable to sexual and physical abuse in detention.”¹⁰ As such, the proposed bill conflicts directly with the Kyrgyz Republic’s responsibilities under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Lastly, explanatory note signed by the Minister of the Interior referred to sex work as “anti-social” and blamed the “spread of prostitution” for the “spread of dangerous diseases and HIV infection” and “drug addiction”. These assertions fuel the widespread stigmatization and demonization of sex workers. Such discrimination from government officials contributes to a climate that only encourages further violence and abuse.

Health Concerns

International health and human rights bodies have acknowledged that criminalizing or penalizing sex work undermines not only sex workers’ basic human rights but also public health objectives.

A 2012 United Nations (UN) study on sex work and the law in Asia and the Pacific authored by the United Nations Development Program (UNDP), United Nations Population Fund (UNFPA) and UNAIDS found that: “There is no evidence from countries of Asia and the Pacific that criminalization of sex work has prevented HIV epidemics among sex workers and their clients.”

The Global Commission on HIV and the Law found that punitive laws, such as laws that penalize or criminalize sex work contribute to higher rates of HIV and other sexually transmitted infection (STI) transmission.¹¹ UNAIDS, the United Nations Development Program (UNDP) and the Inter-Parliamentary Union have called on parliamentarians worldwide to “address the impact of criminalization and police abuse” on HIV

⁸ *Concluding Observations: Third Periodic Report of Kyrgyzstan*. 42nd Session. (November 18, 2008) United Nations Committee on the Elimination of Discrimination Against Women (CEDAW): Geneva.

⁹ *Shadow report to the Third Periodic Report of Kyrgyzstan to the Committee on the Elimination of Discrimination Against Women* (2008). NGO ‘Tais Plus’: Bishkek; *Arrest the Violence: Human Rights Violations Against Sex Workers in Central Eastern Europe and Central Asia* (2007). SWAN: Budapest.

¹⁰ *UNAIDS Guidance Note on HIV and Sex Work* (2012). Annex 1 p.5

¹¹ *Report of the Global Commission on HIV and the Law*, United Nations: Geneva, 2012

programming for sex workers and to “review criminal legislation in the area of sex work...with the aim of removing all barriers to HIV prevention, treatment, care and support for sex workers, as well as respect of their human rights.”

Penalizing or criminalizing sex work contributes to higher HIV risk in many ways. Police repression drives sex workers and clients into dangerous and isolated areas, increasing the risk of violence and decreasing sex workers’ access to health and social services. Fear of fines or imprisonment can make sex workers reluctant to carry or keep condoms if they fear these will be used as evidence to support prostitution charges. Sex workers can be forced to rush negotiations with clients which can lead to unsafe sex or compelled to accept unsafe sex demanded by clients in order to pay off fines or respond to police extortion.

In both the 2001 Declaration of Commitment on HIV/AIDS and the 2006 Political Declaration on HIV/AIDS, UN member states unanimously committed themselves to the goal of *reducing* such legal barriers to HIV prevention, treatment, care and support.

The United Nations Global Commission on HIV and Law has stated in its 2012 report that: “to ensure an effective, sustainable response to HIV that is consistent with human rights obligations: Countries must reform their approach towards sex work. Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions. [...] Countries must repeal laws that prohibit consenting adults to buy or sell sex [...].”¹²

These assertions are based on public health evidence and the recognition that all people, including sex workers, are entitled to their basic human rights, including the rights to the highest attainable standard of health and to safe and healthy working conditions (International Covenant on Economic, Social and Cultural Rights, Articles 12, 6, and 7, respectively) and that punitive laws contravene these basic rights.

Furthermore, the 2012 UN study on sex work and the law in Asia and the Pacific states that “evidence from the jurisdictions in the region that have decriminalized sex work (...) indicates that the approach of defining sex work as legitimate labor empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates.”¹³

The Kyrgyz Constitution states that: “Human rights shall determine the meaning, content and application of the laws.” (Chapter 2, section 1.16.1). The Constitution further reaffirms that: “No person shall be subject to any kind of discrimination, violation of their rights and freedoms based on (...) conditions or circumstances of private and social nature.” (Chapter 2, section 1.16.2).

We call upon the Kyrgyz Government to uphold the human rights values enshrined in the Kyrgyz Constitution and international law and:

¹² *Report of the Global Commission on HIV and the Law*, United Nations: Geneva, 2012

¹³ *Sex Work and the Law in Asia Pacific*, United Nations: Geneva, 2012

- Immediately withdraw the proposed draft law;
- Implement the CEDAW Committee Recommendation to take all appropriate measures to ensure that the Convention applies to all women without discrimination and to further take all necessary steps to protect them from all forms of discrimination and violence by public and private individuals;
- Engage with sex worker organizations in Kyrgyzstan, such as Tais Plus and organizations in the Shah-Aim Network, in developing policies to ensure that sex workers' human rights and access to health are upheld.

Sincerely,

Association for Women's Rights in Development (AWID)

Center for Women's Global Leadership, Rutgers University

Sex Workers' Rights Advocacy Network of Central and Eastern Europe and Central Asia (SWAN)

Canadian HIV/AIDS Legal Network

AWID is an international feminist membership organization working on development and human rights in all regions of the world.

The Center for Women's Global Leadership works on gender equality and women's leadership for social justice and human rights worldwide.

SWAN is a network of 19 organizations in 16 countries providing health and social services to sex workers and working towards improving the health and human rights of sex workers.

The Canadian HIV/AIDS Legal Network promotes the human rights people living with and vulnerable to HIV/AIDS internationally.