Health Benefits of Legal Services for Criminalized Populations: The Case of People Who Use Drugs, Sex Workers and Sexual and Gender Minorities

Joanne Csete and Jonathan Cohen

Introduction

Criminalization is a form of social marginalization that is little appreciated as a determinant of poor health. Criminalization can be understood in at least two ways — in the narrow sense as the imposition of criminal penalties for a certain behavior, and more broadly as the conferral of a criminalized status on all individuals in the population, whether proven guilty of a specific offense or not. Both criminal penalties and criminalized status threaten the mental and physical health of these populations in many ways. Incarceration, abandonment by families and communities, social disdain, physical abuse, discrimination, and relentless fear undermine their ability to enjoy their right to the highest attainable standard of health goods and services. Understanding the social determinants of health in these populations and formulating programs to address them have rarely been high priorities in national or international policy.

The World Health Organization's (WHO) definition of health — a state of complete mental, physical, and social well-being and not merely the absence of disease or infirmity[1] — inherently asserts the breadth of determinants of human health. WHO's Commission on the Social Determinants of Health expanded on this idea, noting that promoting and safeguarding health "depends on serious attention to the underlying societal causes.... Technical solutions within the health sector are important but are not sufficient."[2] The Commission emphasized that social marginalization and exclusion from civic and political processes — common results of criminalization — are important aspects of ill health.[3]

While one solution to addressing criminalization as a determinant of health may be to "decriminalize" through reform of laws, in societies where criminalization remains a legal fact of life, access to legal counsel and representation represents a promising avenue to enabling criminalized people to be empowered to address the barriers to health that they face. The purpose of this article is to consider the health benefits that may be derived from access to legal services for drug users, sex workers, men who have sex with men (MSM), women who have sex with women (WSW), and transgender persons.[4] These populations share not only the experience of facing criminal sanctions on a regular basis, but also a resulting heightened vulnerability to human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS), as HIV is transmitted through unprotected sex and syringe-sharing by injecting drug users. The legal and human rights challenges faced by these individuals are described, some experiences of legal service provision are cited, and some lessons are drawn from these experiences on the way in which legal services can contribute to health as well as fill a gap in access to justice.

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The geographic scope of the experiences discussed in this article is global with particular attention to developing and transitional countries. We make reference to a few experiences of developed countries where those examples are pertinent.

It is important to note that three of the categories of criminal conduct described here — illicit drug use, sex work, and criminalized same-sex acts — are deeply personal and private behaviors from which, in many cases, people are either unable or unwilling to abstain. As a result, it has proven almost impossible in all societies to enforce criminal laws against these acts without violating the privacy and due process rights of those committing them. While it is beyond the scope of this article to discuss whether these acts should be criminalized in the first place, it is useful to highlight enforcement-related human rights violations in these areas for the purpose of establishing the importance of legal services. With respect to all three categories of conduct, law enforcement in practice may be most heavily applied to persons already marginalized by class, race, ethnicity, or poverty for whom legal services may be especially difficult to obtain.

Legal services for criminal defendants are an obvious way to mitigate the effects of criminalization, and thus to promote the underlying determinants of health. There is no one way of providing health-related legal services, and the way in which services are designed can have a significant effect on whether clients use them and whether the services benefit clients' health. The International Development Law Organization (IDLO) and others have identified eight different "models" of providing legal services related to HIV,[5] for example, which are relevant to health more broadly. These include stand-alone legal services; services integrated into an HIV or harm reduction NGO, a human rights NGO, or a government legal aid agency; and services provided pro bono by private lawyers, by lawyers on retainer to NGOs, or by university law clinics. Integrating legal services into an existing health service for criminalized groups may be more likely to lead to health improvements than establishing a stand-alone legal service. This "integration" model will be emphasized as the experience of health-related legal aid for drug users, sex workers, and LGBT communities is explored here.

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People Who Use Illicit Drugs

The United Nations estimates that some 30 percent of new HIV infection outside sub-Saharan Africa is associated with drug use.[6] In most of the former Soviet countries, China, and much of southeast Asia, use of contaminated injection equipment is the most important cause of HIV transmission.[7]

People who are dependent on illicit drugs and even those who are casual users of illicit drugs face steep criminal sanctions in many of the same countries where they represent a majority or growing share of those infected with HIV. The law in many countries facilitates the arrest, conviction, and incarceration of drug users even for possession of small amounts of drugs or syringes and other non-violent crimes.[8] Police routinely commit human rights abuses to enforce anti-drug laws or meet state-imposed arrest quotas, such as forcing confessions by drug users, planting evidence on them, or "entrapping" them into committing crimes they would not otherwise have committed. The law and its enforcement are so severe in some places that the vast majority of drug users find themselves in police custody at some time in their lives.[9] Particularly in places where the police are corrupt or poorly paid or both, or where accountability mechanisms such as excluding illegally obtained evidence from a trial or making a complaint against the police are non-existent or not enforced, drug users are easy targets for arrest, extortion, and false charges. Human rights organizations have documented mistreatment of drug users in police custody, including interrogation of people while they are in withdrawal from addictive drugs or plying them with the drugs they crave to coerce confessions.[10]

Many countries base their punitive drug control policies on the goals of prevention of initiation of drug use and abstinence among those already using drugs. Nonetheless, even in wealthy countries with developed health systems, if people living with drug dependency want to become abstinent, they often have no access to affordable and humane drug treatment.[11] The law thus places drug users in a Catch-22, whereby they are

exposed to criminal sanction for a medical condition for which there is no available medical care. Treatment may even be restricted by law, as in the dramatic case of Russia banning the use of opiate substitution treatments for heroin dependence.[12] In some countries, what governments label "treatment" for drug dependency in fact consists of arbitrary detention, physical abuse, invasive experimental procedures not justified by medical science, forced labor, and other practices that constitute cruel, inhuman, or degrading treatment.[13]

Harsh drug laws have led to incarceration of large numbers of drug offenders in some countries, often without their having received adequate legal assistance. In the United States, laws requiring mandatory minimum prison sentences for a wide range of drug offenses contributed to rapid growth in drug-related incarcerations. In 2003, 20 percent of the prisoners in state facilities and 55 percent of federal prisoners were serving drug-related sentences, compared to 6 percent and 25 percent respectively in 1980.[14] In Saint Petersburg, Russia, an estimated 50 percent of prisoners were incarcerated for drug offenses in 2004.[15] High rates of incarceration for drug-related offenses contribute to high rates of drug use within prisons and pre-trial detention facilities, which in turn create health risks such as overdose and infectious disease transmission through syringe sharing. Drug use is typically much higher in prison populations than in the general community: in Europe, from 2000 to 2007, up to 50% of prison inmates in some jurisdictions had used drugs while incarcerated, while 27% used drugs regularly.[16] Prisoners may also be more likely to engage in drug-related risk behaviors such as injecting and sharing injection equipment, particularly since sterile equipment is unavailable in all but a few detention facilities worldwide.

Even where countries have expanded HIV prevention measures such as needle exchange and other forms of sterile syringe provision, methadone therapy, and safe injection facilities, such programs remain challenging when policing is repressive and legal aid is unavailable. Drug users may have a well-founded fear that police will target them for arrest at needle exchange sites, for example, or that government health workers will turn them in to the police or cause them to be officially registered as drug criminals.[17] Although treatment for HIV using antiretroviral drugs (ARVs) has expanded in many countries in recent years, drug users' criminalized status contributes to their being often excluded or discouraged from using these programs.[18] Drug users who do have access to ARVs often find their treatment interrupted by arrest or incarceration.

Legal problems faced by people who use drugs are not limited to their interaction with the criminal justice system. Homelessness and family instability or abandonment by families are part of the experiences of many drug users in the world. In some countries, it is easy for the property of drug users to be appropriated by the state. Drug users may also lack official documents or, on the other hand, may be effectively branded by being named on drug user registries kept by national or local authorities. In addition, in many countries drug users who are parents must struggle to keep custody of their children.[19]

One type of legal aid that can directly benefit drug users' health is assistance with asserting their rights as patients. Violations of drug users' rights in the health system can be as pervasive — and as linked to drug users' criminalized status — as those in the law enforcement system. A 2008 report by the NGO "Aman Plus" in Kyrgyzstan is among the few to document such abuse systematically. Drug users interviewed for the report recounted insults and outright denial of care by government health workers, denial of anesthesia during surgery based on misperceptions about addiction, pressure on drug-using women not to have children, denial to respond to overdoses and other medical emergencies, and many other abuses.[20] Like most countries, Kyrgyzstan has national laws protecting the rights of patients and mechanisms (such as a human rights ombudsperson) by which patients can lodge complaints about abuses of their rights.[21]

Because drug use is often not only a socially marginalizing process but also one that impoverishes the user, drug users are often extremely unlikely to be able to afford private legal services. A 2008 assessment of legal services for drug users in Ukraine found that a mere consultation with an attorney for a simple charge of drug possession could cost more than double the average monthly wage in the country — not including the fees lawyers often add on for the cost of bribing the judge.[22] Drug users may also be rejected by lawyers as risky clients.[23] Even where cost is not a barrier, other factors that deter drug users from seeking legal services may include the stigma that they face from professional service providers and the lack of belief that legal services can help them in the face of a powerful law enforcement establishment.[24] Previous experiences with coercive or repressive authority figures may also make people who use illicit drugs reticent to seek assistance from lawyers. Drug users may also be unaware of publicly provided legal services that exist as the instability in their lives may disrupt access to information on public services.

At least some of the "legal services gap" for people who use drugs can be filled by nongovernmental

organizations (NGOs), as long as sufficient funding is available for these efforts. Some of the legal services provided by NGOs, and their implications for drug users' health, include the following:

Access to Housing, Health, and Social Services
Homelessness, lack of social assistance, and lack of identity documents can all have a profoundly negative impact on the health of people who use drugs. Legal services can thus have an important health impact by assisting in retention of stable housing for drug users (for example if they have been illegally evicted from their homes or denied public housing on a discriminatory basis), obtaining social assistance, and acquiring the official identification papers they need to obtain services, including health services (which can be especially challenging if drug users have been incarcerated and corrections authorities illegally fail to return their documents to them upon release).[25] This is the heart of the work of several NGOs providing legal assistance to drug users in Ukraine, for example.[26]

Training and Supporting Non-lawyers as Paralegals and "Accompaniers"
In some places, there are simply not enough lawyers willing or able to handle the cases of people who use illicit drugs, but non-lawyers who have established a relationship of trust with drug users can play a critical role in making the legal system more accessible. NGOs have thus trained social workers, peer educators, and other persons to accompany drug users to court or to appointments with probation officers, to make standard legal arguments, and to help the police know that the case of a drug user in detention is being professionally followed.[27] In places as diverse as Ukraine and the coast of Kenya, it has been found that the disposition of drug users' criminal charges can be made less repressive when someone seen as competent and "respectable" is by their side in an official proceeding or in contacts with the police.[28]

Training Drug Users to Know and Assert Their Rights
Health and human rights outcomes can potentially be enhanced if legal services give clients the knowledge and capability to bring about changes in their own lives and defend themselves against certain forms of abuse without having to resort to professional help. NGO programs in many countries have developed booklets and other materials with a "know your rights" theme that drug users can carry to help them if they are arrested or threatened with arrest.[29] The NGO Stigma in Indonesia was motivated to train drug users directly because drug users accompanied by a lawyer were presumed by the authorities to be rich and thus became more attractive targets for extortion and "shakedowns."[30] The organization Kolodets in Moscow has trained hundreds of drug users in their rights with respect to both health services and criminal law, including such matters as search and seizure by the police.[31] Representatives of Kolodets said this information has armed drug users to approach both police officers and medical doctors with greater confidence and ability to assert their own rights. A number of organizations have established internet-based legal services whereby drug users can post questions anonymously and receive answers from knowledgeable legal service providers.[32]

Documenting Human Rights Abuses against Drug Users and Related Advocacy
Legal services can lead to systemic changes in both law enforcement and health policy if used as a foundation for documenting abuses and advocating for change with various branches of government. A coalition of small drug user organizations in Indonesia interviewed over 1100 drug users across the country, finding, among other things, that over 60 percent had been physically abused in detention.[33] The coalition presented this information to the police as well as at national and international meetings. While the police were perturbed by the findings, the weight of the evidence led to an opening for discussion. An outstanding example of effective advocacy in this area is the work of the NGO Pivot Legal Society in Vancouver, Canada. During a period of harsh police crackdowns on drug users in Vancouver's Downtown Eastside, Pivot collected sworn affidavits alleging police abuse and harassment from over 50 drug users. The affidavits were submitted to the British Columbia provincial Police Complaints Commissioner, who called for reforms of police practices, some of which were adopted by the Vancouver Police.[34]

Legality of Health Services for Drug Users
Legal support is often needed for providers of services and to establish a supportive legal environment for needle exchange, methadone, and other services for people who inject drugs. This includes not only ensuring these services are permitted by law (as in the case of advocating for the legalization of methadone in Russia), but also that their delivery is not undermined by excessive regulation, police surveillance, or harassment of clients. Thus, an NGO program in the city of Poltava, Ukraine has supplemented direct legal services with "educational workshops for various branches of the police and prosecutors to educate them about harm reduction and antiretroviral treatment for HIV."[35] According to the director of the

program, "These workshops are so essential that we conduct them even when we do not have the funds to do so... [A]s a result of the workshops, we have succeeded in establishing constructive partnerships with the top officials of the city and regional departments of the Ministry of Internal Affairs of Ukraine."[36]

Provision of legal services to drug users holds great potential but faces many constraints. Many lawyers fear that drug users are too unstable or incoherent to assist in their own defense or are otherwise wary of having them as clients. In some countries, notably in the former Soviet Union and China, "not guilty" verdicts for drug users are very unlikely.[37] While legal services may help obtain shorter jail sentences, some lawyers may not see this result as meriting their time and efforts. In addition, many lawyers are not trained to deal with drug offenses. Lawyers providing assistance to people who use illicit drugs need expertise not only in drug law but also in medical law, privacy protections, criminal procedure, anti-discrimination law, and law related to police abuse.[38] Lawyers have to take on social work and private investigator roles in some cases, roles to which some lawyers are not accustomed. In some cases, moreover, drug users themselves may be reluctant to seek legal services, believing that there could be repercussions from fighting the criminal law system or that the struggle is simply futile.[39]

Integrating legal services with other services, including needle exchange services, in which drug users have confidence may in some circumstances may be the best solution for reaching these persons. Needle exchanges in many communities have shown to be effective gateways to other health services[40] and may similarly be a point of referral to legal services. The presence of a legal professional at a needle exchange program may additionally help to address the well-documented problem of police using needle exchange points to target drug users for arrest or surveillance.[41]

In spite of many challenges, legal services tailored to drug users have made a dramatic difference to the lives and health of some drug users, according to their anecdotally reported reactions and the evaluation reports of organizations providing such services. Drug users who benefited from legal services provided by the NGO Protect Yourself in Lviv, Ukraine, for example, reported that they were treated more respectfully by the police by virtue of the fact that they had in their pockets the phone number of a lawyer.[42] A number of people who benefited from legal services for drug users in Ukraine noted that dealing with a legal professional who treated them with respect helped them to respect themselves and take their health problems seriously for the first time.[43]

Sex Workers

Sex workers regularly face a number of health challenges. In addition to sexually transmitted diseases, physical and sexual violence is a feature of many sex workers' lives. These two challenges are linked, as violence makes condom use difficult for sex workers to negotiate. Sex work is criminalized in many countries, either overtly or through criminalization of activities linked to sex work such as brothel-keeping. A large body of literature suggests that where sex work is criminalized, law enforcement practices can undermine the health and well-being of sex workers. The criminalized status of sex workers makes it impossible for them to reasonably expect assistance from the police if they are beaten or abused by clients (or by police).[44] The practice by police of using possession of condoms as grounds for arrest on sex work charges directly undermines the health of sex workers and clients.[45] Like highly criminalized drug users, sex workers are easy targets for police extortion, and police may demand "pay-offs" in the form of money or unsafe or forcible sex. In many countries, sex workers face frequent incarceration, which can be a major health risk. The criminalized status of sex workers also contributes to abusive and judgmental treatment within the health system, which has a clearly detrimental impact on their health. Where MSM and transgender people are socially marginalized or criminalized, young MSM and transgender youth may engage in sex work in the face of limited employment options and may be doubly likely to be targeted by police.[46]

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In some countries, laws against keeping a "bawdy house," meant to discourage brothels, can force sex workers to work on the street rather than in a home where they could be safer and have greater control over their transactions.[47] Zoning rules and enforcement of

"prostitution-free zones" may compound such laws by confining sex work to remote or unsafe locations.[48] Laws against communication (solicitation) may keep sex workers from being able to share information about dangerous clients, thus compromising their ability to protect themselves from violence.[49] Laws against trafficking in persons may be over-interpreted to prohibit all forms of sex work, leading to further abuse.[50] Where sex workers fear police presence, they may not have the time to evaluate the potential risk of a client or the time they need to negotiate condom use. Men and transgender persons in the sex trade are often as much subject to discrimination, physical abuse, and police violence as women, sometimes even more so.

Police raids of brothels, sometimes conducted in collaboration with faith-based entities in the name of "rescuing" sex workers, have resulted in human rights violations against sex workers, including physical violence, mandatory HIV testing, threats of criminal charges for HIV transmission, breaches of confidentiality, and unlawful detention.[51] Raids are also sometimes justified as anti-trafficking measures, even when there is not necessarily evidence that the sex workers targeted were trafficking victims.[52]

In many countries, health services are not welcoming to sex workers and not designed to address their health needs. In heavily AIDS-affected countries of sub-Saharan Africa, sex workers face exclusion from antiretroviral treatment, care for other sexually transmitted diseases, and other basic health care.[53] They may face derision and morally judgmental attitudes by health-care providers as well as a lack of understanding of their health problems.[54] Sex workers in Kyrgyzstan report having been denied emergency care, shouted at, or called names by health workers, subjected to forced HIV testing, and threatened by health workers with arrest or deportation.[55] The undocumented status of many sex workers who migrate for work, for example in the border areas of China and Central Asia, impedes their access to mandatory health insurance schemes.[56] Transgender sex workers may face particular challenges in finding health service providers who understand their health needs.

Legal services expressly designed to assist sex workers are rare, much as they are needed, but some have been associated with significant contributions to the health of sex workers. For example, the organization Tais Plus in Bishkek, Kyrgyzstan coupled direct legal assistance with training for police, municipal officials, and judges and informing sex workers of their rights.[57] A number of organizations, including Humanitarian Action in Saint Petersburg, Russia, not only arranged legal services for individuals but also trained volunteers to accompany sex workers to court if they are charged with a crime.[58] The Asociación de Mujeres Meretrices de la Argentina (AMMAR) provides direct legal aid to sex workers, challenges local ordinances that lead to police harassment of sex workers and restrict where sex workers can work, and through their affiliation with the Central de Trabajadores Argentinos (Argentine Workers Center or CTA), assists sex workers in obtaining identity papers and securing unemployment benefits.[59] A number of organizations have noted that just being accompanied by someone with some training on due process and on rights of sex workers under the law, even if that person is not a lawyer, can help ease harsh charges or sentences. Organizations of sex workers in eastern and central Europe have also offered legal assistance through telephone hotlines and web-based materials.[60]

Ensuring access to appropriate health services for sex workers is the goal of many sex worker organizations and sometimes requires legal action. The organization Odyseus in Slovakia, for example, has helped sex workers who are turned away from health services ostensibly because they do not have the required identity papers or a medical insurance certificate.[61] Organizations in countries such as Kenya and South Africa have integrated legal support into gender-based violence recovery services in order to improve access to HIV post-exposure prophylaxis and other post-rape care. Such a service can improve health outcomes for sex workers who are victims of sexual violence, in addition to helping them navigate the legal system.[62]

Sex worker organizations have also engaged legal assistance for high-profile litigation, often again to challenge police practices. The unlawful raiding of brothels by police can push sex workers into more dangerous street-based sex work. The sex worker organization Durjoy Nari Shongho in Dhaka, Bangladesh, along with a number of human rights groups, brought a case to the Dhaka High Court alleging many human rights violations by the police in the course of a violent raid of the Tanbazar and Nimtoli brothels near Dhaka in 1999.[63] The writ petition alleged that in the course of the raid, which was meant to "rehabilitate" the sex workers, they were beaten, separated from their children, detained involuntarily in vagrant homes, and tortured in detention.[64] The High Court held that while the state may adopt measures to prevent prostitution, it is not illegal. In any case, the judgment said, sex workers have a right to legal protection under the law, as well as to privacy and their choice of livelihood.[65] Reviewing the long list of allegations of abuse associated with this raid, the Court said: "Even if a particle of the allegations against the police is found to be true..., it is a shame for the nation."[66] While this

decision was a strong assertion of the human rights of sex workers, by the time it was rendered, some 2500 sex workers in Tanbazar and Nimtoli were afraid to return to the brothels, and many took up street-based sex work.[67]

In a similar challenge, indoor sex workers in the Soho neighborhood of London in 2009 challenged in court a police closure order with respect to two apartments where sex work took place, not for activities inside the apartments but because of allegedly "anti-social behavior" that occurred outside the apartments.[68] Allegations by the police that drug-dealing occurred outside the apartments were refuted by members of the community, including the rector of the local church who lived nearby as well as a petition by 10,000 Soho residents who supported the indoor sex workers.[69] The case of the sex workers was also assisted by neighborhood residents' memory of a Soho sex worker who in 2003 was evicted from her apartment on an "anti-social behavior" charge, took up street-based sex work, and was murdered soon after.[70] Community support for indoor sex work as an alternative to street-based work was a hallmark of this case.

Challenging the refusal of police to effectively investigate violence against sex workers can also have positive health consequences, as it may lessen impunity for violence. The pioneering Montreal-based sex worker organization Stella arranged for pro bono legal aid for a street-based sex worker who was stabbed 17 times but was denied assistance under Quebec's liberal Crime Victim Compensation Act of 1971. The provincial government deemed that in choosing to be a sex worker the woman should have faced the fact that violence is part of the job. The provincial body that heard the woman's appeal said that it was not being a sex worker per se but rather being an experienced sex worker that made the woman responsible for knowing that she could be attacked on the job. After several further appeals, the sex worker finally was awarded the compensation due her under the law.[71]

Perhaps most importantly, sex workers have also attempted challenges to the constitutionality of laws criminalizing sex work, thus attempting to dismantle the legal basis for many violations of sex workers' health-related rights. SWEAT, the South African organization, supported the case *Jordan v. State* that in 2002 alleged the unconstitutionality of the 1957 Sexual Offenses Act on several grounds. Following from a conviction of a brothel owner, sex worker, and non-sex worker brothel employee in the Magistrates' Court, an appeal to the High Court argued that the "bawdy house" provisions of the law and the criminalization of prostitution itself were both unconstitutional.[72] The plaintiffs argued that the 1957 law violates the right to human dignity and economic activity and limits the right to privacy, and that the law constitutes discrimination by making the sex worker, usually a woman, the primary offender and the client at most an accomplice. The High Court upheld the brothel-related provisions of the statute but ruled that criminalizing prostitution itself was unconstitutional. A subsequent decision by the Constitutional Court, however, overturned the latter part of the High Court ruling and thus upheld the constitutionality of the 1957 law.

The organization Downtown Eastside Sex Workers United Against Violence in Vancouver, Canada, assisted by the NGO Pivot Legal Society, brought a case to the Supreme Court of British Columbia challenging the constitutionality of sex work laws in Canada, which follow the same model as in other Commonwealth countries. The argument used by the plaintiffs echoed other analyses that alleged the "communications/solicitation" (prohibiting solicitation in a public place, where public place is very broadly defined), "bawdy house" (prohibiting brothel-keeping and even conducting sex work in one's own home), and "living off the avails" (prohibiting anyone from living off earnings of a sex worker, even a family member or roommate) provisions of Canadian Criminal Code violated sex workers' freedom of expression, freedom of association, right to life, liberty and security of person, and their right to be presumed innocent until proven guilty of a crime.[73] In December 2008, the court ruled that the plaintiffs did not have standing to initiate this challenge, asserting that such a challenge must be brought by an individual active sex worker and not an organization.[74]

In spite of some progress in provision of legal services to sex workers, many challenges remain. Although some governments were willing to fund sex worker organizations and services for sex workers in the early years of the HIV epidemic, public funding for these purposes has become much rarer.[75] Social disdain for sex work influences public policy in this regard and may also make some lawyers reluctant to take cases involving sex work. Relatively few private foundations or non-profit legal aid agencies make legal services for sex workers a priority. A report of the Federation of Women Lawyers-Kenya documenting human rights violations against sex workers recommends that the Kenyan government "ensure availability of legal aid to all persons, especially marginalized groups such as sex workers"; yet legal aid remains unavailable to most of those who need it.[76] Like people who use drugs, sex workers may also be deterred from seeking legal services by mistrust of the legal profession, in some cases

born of experiences of being treated disparagingly by lawyers.

Providing legal services to sex workers who are frequently the object of abuse and extortion by the police is challenging. For some sex workers, paying off the police or otherwise colluding with the police to be able to continue their work further complicates legal action they may wish to initiate. Antagonizing the police or risking retaliation as a result of legal action may be perceived as providing only short-term gain. In addition, there are few health services or other specialized services for sex workers into which legal services might be integrated.

The deep criminalization of gay, lesbian, bisexual and transgender persons, MSM, and WSW that is formally inscribed in anti-sodomy laws in many countries makes it particularly challenging for these populations to realize their right to health. Even in wealthy countries where some specialized services may be available, many people do not have access to respectful and non-judgmental care by health professionals who have some idea of the health needs of people viewed as sexual minorities. In developing and transitional countries, the challenges are even greater.

Sexual Orientation and Gender Identity

Some 76 member states of the United Nations have national laws that criminalize consensual same-sex acts among adults.[77] Of these, 21 countries impose prison sentences of more than 10 years on people convicted of consensual same-sex acts, and five countries authorize the imposition of the death penalty in these cases. Where such laws exist, even where there are few formal prosecutions, it is not surprising that there is arbitrary persecution of men who have sex with men (MSM), women who have sex with women (WSW), and transgender persons, including by the police. This persecution may not depend strictly on proving same-sex acts but may extend to people whose bodies or presentations of themselves do not correspond to dominant gender norms or to their identity documents. Human rights organizations have documented police abuse as well as many forms of homophobic violence, discrimination, and hate speech against MSM and WSW in many countries in Africa, Latin America and the Caribbean, Asia and the former Soviet Union.[78] In Jamaica, for example, where abuses against MSM have been fueled especially by homophobic lyrics of popular songs, several MSM human rights leaders have been murdered with impunity.[79] In Nepal, a 2008 Supreme Court decision asserting the right to protection from discrimination and abuse on the grounds of sexual orientation was preceded by years of heinous violence directed at MSM.[80] Around the world, gay, lesbian and transgender organizations are prohibited from being registered and receiving funds as NGOs, from organizing peaceful marches and from other exercise of their basic rights.

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the Philippines,[85] in addition to facing harassment and violence.[86]

In some parts of the world, criminalization of homosexuality makes it nearly impossible for LGBT, MSM or WSW organizations to be formed and to establish and sustain basic organizational activities, much less to organize legal services. Many organizations have had to focus whatever legal capacity they can mobilize on protecting themselves from being shut down by the state. For example, Lambda Istanbul, a leading LGBT rights organization in Turkey, was accused by the office of the governor of Istanbul of activities that were against both the law and social values of Turkey. The governor's actions led to an order by a regional court for the organization to be dissolved.[87] Unlike many such stories around the world, this case ended in a victory for the organization in 2008 when the Supreme Court of Turkey overturned the lower court decision, explicitly recognizing the right of gay, lesbian, and transgender organizations to exist and work.[88] A 2007 survey by Funders for Lesbian and Gay Issues, a foundation group, concluded that most LGBT rights organizations in developing and transitional countries work with very little financial support — a survey of over 2000 organizations found that the average annual budget was about US $7600 — and that many of these organizations are young and struggling.[89]

In spite of many constraints, some LGBT rights organizations have made headway in the provision of legal services in their communities, some directly integrated into health services for LGBT communities. The Beijing Aizhixing Institute for Health Education, one of China's oldest HIV/AIDS organizations, has succeeded in difficult circumstances in drawing private foundation funding from outside China to support a legal services office, which has handled many cases on behalf of MSM and others affected by HIV. Aizhixing Institute complements its legal service activities with development and dissemination of well-researched materials on the rights of MSM, WSW and transgender persons, including the right to safety for HIV/AIDS educators conducting outreach in these communities.[90] One of the present authors (Csete) observed that the pocket-sized version of the Aizhixing publication, "Frequently Asked Legal and Human Rights Questions Related to Homosexuality," was widely sought after by LGBT groups in many parts of China, especially those with active HIV/AIDS outreach programs.

Similarly, the Durban, South Africa Lesbian and Gay Community and Health Centre as of 2005 provided legal advice on-site as well as written materials on the rights of LGBT persons to complement the health and social services it has been providing. In spite of South Africa's having a progressive law on protection from discrimination on the grounds of sexual orientation, the Centre found that its clients sought legal assistance in areas such as discrimination in health care and in the workplace, property rights, and adoption and child custody issues.[91] The Centre coupled legal assistance with human rights education and outreach through sports clubs, social clubs, and community organizations.

Legal services for LGBT communities that are not directly integrated into health care may nevertheless address important health issues. Several NGOs in the United States have exemplified specialized legal assistance for LGBT persons, including in both high-profile test cases and those unlikely to have much impact beyond the individuals involved. The work of Lambda Legal is known worldwide and spans direct representation and litigation, amicus interventions, and mobilization of a broad network of cooperating attorneys.[92] Cases that Lambda Legal has handled have informed its policy advocacy, including in areas such as refusal of health or reproductive services for lesbians, gays, and transgender persons and government benefits for children of gay parents.[93] The organization Gay and Lesbian Advocates and Defenders (GLAD) has also established wide-ranging legal assistance services, including in health-related areas such as the right to family leave to take care of an ailing same-sex partner and the right of same-sex partners to widow and widower benefits.[94]

Such pioneering work has recently extended to more repressive environments such as the Middle East and Africa. The Lebanese organization Helem provides free or subsidized legal services as one of the first LGBT rights NGOs in the Arab world. Legal services focus on a wide range of human rights issues, including arbitrary arrests, unlawful searches, unlawful surveillance, and failure of the police to respond to protect gay, lesbian, and transgender persons from violence.[95] The organization has also assisted persons censored by the state for circulating information for LGBT persons on the internet and in the mail.

In January 2009, the International Gay and Lesbian Human Rights Commission (IGLHRC), Global Rights, Interights, and the Kenyan section of the International Commission of Jurists (ICJ) convened advocates from over 15 African countries to develop legal strategies to promote LGBT rights on the African continent.[96] The meeting occurred in the context of a wave of state-tolerated or state-sponsored homophobia in countries as diverse as Kenya, Nigeria, Senegal, South Africa, and Uganda,[97] as well as increased consciousness of the exclusion of LGBT communities from HIV programs in Africa despite their dispropor-

tionate risk of infection.[98] Advocates shared strategies for the criminal defense of individuals detained or prosecuted on sodomy and sodomy-related charges, as well as potential constitutional challenges to sodomy laws in a number of African countries. They called for the creation of a "LGBT legal fund" for Africa and a "training and support network" for African lawyers working on LGBT rights cases.[99]

Legal services targeted to transgender communities have particular potential to improve health outcomes, as they can address medical-legal issues such as ensuring access to gender-confirming surgery and other medical treatment related to gender transition, improving the health conditions faced by transgender persons in prisons and other places of detention, and challenging the onerous pre-conditions of gender-identity change, such as surgery and sterilization, imposed by many jurisdictions.[100] Few countries have well-developed, affordable legal services for transgender persons. Organizations in the United States providing legal aid on these issues include the LGBT Project of the American Civil Liberties Union,[101] the Transgender Rights Project of Gay and Lesbian Advocates and Defenders,[102] the Sylvia Rivera Law Project (www.srlp.org), the Transgender Law Center (www.transgenderlawcenter.org), and the Transgender Legal Defense and Education Fund (www.transgenderlegal.org), among others.

In 2001, LGBT organizations in the Philippines celebrated a victory when a Metro Manila court granted the first "petition for change of status" to a male-to-female transgender person, enabling her official identification papers to note the female gender with which she identified. Only a few days later, the NGO Gay Movement for Human Rights in the Philippines (GAHUM-Philippines) brought a complaint to the Philippines Commission on Human Rights (CHR) on behalf of a male-to-female transvestite who was barred from entering a nightclub in Cebu City because of her attire, even though what she wore resembled closely the attire of women in the club.[103] In spite of the earlier court decision, the CHR dismissed the complaint, asserting the right of the club to enforce its dress code.

Some LGBT organizations not able to provide direct legal assistance have nonetheless assisted other legal service providers by documenting human rights abuses. A notable example is the Blue Diamond Society of Nepal, which for years recorded and publicized harassment of gay HIV educators and outreach workers, rapes and beatings of gay men by the police, death threats to lesbian couples, arbitrary detention of gay and transgender persons, and many other abuses.[104] In this case, as noted above, this persistent advocacy helped lay the groundwork for a new chapter in LGBT rights in Nepal ushered in by the Supreme Court decision affirming the rights of all people regardless of sexual orientation and gender preference.

Some providers of legal services to LGBT groups, as in the case of sex workers, have used their experience with individual cases to advocate for decriminalization of homosexuality and transgenderism. The Lawyers Collective of Mumbai, India, which has handled hundreds of legal cases for individuals living with or vulnerable to HIV, assisted the Naz Foundation (India) Trust, another human rights organization, in its successful application to the courts for the repeal of India's sodomy law, which was instituted during the British raj in the mid-19th century. In its landmark decision annulling the law, the Delhi High Court accepted the argument of India's National AIDS Control Organization (NACO) that the law "pushes gays and MSM underground, leaves them vulnerable to police harassment and renders them unable to access HIV prevention material and treatment."[105] In 2009, the Botswana Network on Ethics, Law and HIV/AIDS (BONELA), which runs a legal clinic for people living with and vulnerable to HIV, filed a court challenge alleging the unconstitutionality of the criminalization of homosexuality and the denial of government registration for LGBT NGOs.[106]

The reinforcement in law of discrimination on the grounds of sexual orientation and gender preference often reflects deep-seated social prejudices, which easily inhibit the flourishing of civil society efforts on behalf of LGBT health and rights. It is nonetheless clear that legal services extended to MSM, WSW, and transgender persons in hostile circumstances have provided support to marginalized individuals and in some cases set events in motion for legal and policy change. The refusal of governments to allow LGBT rights groups to register as NGOs has at times been answered by courageous public interest lawyers willing to provide legal assistance in difficult circumstances. In many countries, individual legal cases have pushed the limits of repressive laws and informed public awareness-raising.

Conclusions

The heavy burden of criminalization of people related to their status as illicit drug users, sex workers, perceived sexual minorities and gender outsiders compromises the physical and mental health of these persons under the best of circumstances. Criminal sanctions or the persistent threat of them reinforce discrimination and social disdain, constitute barriers to access to social and health services and employment, and contribute to psychological stress. Incarceration is a clear

threat to health status, contributes to social exclusion and stigma, and often impoverishes people and reduces their economic potential. Many drug users, sex workers, and persecuted sexual minorities are unable to afford legal counsel, and in many countries competent counsel is not provided to them by the state when they are arrested or detained.

Though this article discusses these three categories of criminalization discretely, it is clear that they overlap in reality, sometimes compounding the problems described here. Sex work and drug use are linked phenomena in many settings, for example.[107] Transgender persons in sex work who use illicit drugs, for instance, may be triply disadvantaged in both discrimination and lack of access to legal services. Moreover, as noted above, in all cases, race and class discrimination can magnify the negative impact of criminalization.

Legal services are not a panacea to address health problems and health service access in these populations, but they can make an important contribution to better health. As the examples above illustrate, access to competent legal counsel can have the following benefits, which in turn contribute to improved health outcomes:

- Securing access to affordable, acceptable, and quality health care to which an individual is entitled;
- Preventing unlawful or excessive incarceration, which is a direct health risk, or reducing time in detention;
- Deterring police surveillance of health services;
- Securing access to housing, welfare benefits, and other services;
- Where legal services are integrated into health services, making the latter more acceptable and satisfactory by addressing a more comprehensive range of needs;
- Motivating criminalized individuals to take better care of themselves and seek health services they may not otherwise have sought (as in the case of drug users who are more likely to frequent a needle exchange service if a lawyer is there, or who might seek drug dependency treatment if their legal problems are seen to);
- Helping people to secure legal identification and other documents (including assisting transgender people to obtain documents reflecting their gender identity), which may be necessary to obtain health and social services;
- Helping families, including dependent children, to remain together; and
- Reducing stress and increasing self-respect and self-worth.

All of these factors are elements of health, broadly defined.

On a broader level, legal services have also informed or been transformed into strategic litigation that has challenged undue criminalization or repressive practices in the enforcement of criminal law. Lessons from legal service provision have been important in policy and legislative advocacy related to decriminalization of sex work, homosexuality, and minor drug crimes. In the long term, this may represent the most substantial contribution of legal services to the health of these populations, and to public health in general.

A clear challenge in provision of legal services to these populations is reaching them, and doing so in a way that inspires their confidence and trust. Linking legal services to health services is a promising strategy, but it depends on the existence of specialized or simply appropriate health services for sex workers, MSM, WSW, and transgender persons, as well as a solid legal foundation for health and harm reduction services for drug users. Even given that all of these populations are highly affected by HIV/AIDS and HIV/AIDS programs are well funded in many parts of the world, drug users, sex workers, MSM, WSW, and transgender persons still often face barriers to HIV-related care,[108] and legal services for them are rarely built in to HIV programs. The 2008 report of the eminent Commission on AIDS in Asia highlighted that neglect of appropriate and respectful health services for sex workers, drug users, and MSM has undermined Asian countries' fight against HIV/AIDS.[109]

Increasing the accessibility of appropriate health services for these populations requires investment in training of health workers, not only in clinical aspects of the problems these persons face, but also in dealing respectfully with them and understanding something of their daily circumstances. Formal medical training frequently features little information on drug addiction and leaves doctors ill-prepared to understand the reality of patients living with addiction.[110] Exposure to human rights of marginalized persons with health problems is similarly lacking in many medical school curricula in spite of its importance to good care.[111]

An example of a well-developed collaboration between health and legal service providers is the National Center for Medical-Legal Partnership (originally the Medical-Legal Partnership for Children) in the United States. As part of this Partnership, over 100 health facilities across the country integrate legal assistance into the clinical setting with the goal of addressing those social determinants of health that are amenable to legal solutions.[112] NCMLP ensures training for health professionals in screening and referral for a

range of social and legal problems affecting health, and the lawyers and health service providers strive to work closely to assist patients with legal needs. Lawyers also conduct advocacy to change policies that violate legal rights in addition to meeting individual legal needs. Although not designed especially for criminalized persons, NCMLP representatives estimate that the low-income Americans their service targets "typically have two or three unmet legal needs," which may include criminal justice issues along with the more frequent challenges of access to government assistance programs and issues with landlords.[113] Evaluations of the NCMLP work so far indicate that a high percentage of patients receiving these services say that the services helped to reduce stress and improved their financial situation, and they felt that the services improved their families' well-being.[114]

Whether a model such as NCMLP can be transferred to developing and transitional countries with weaker health and legal service systems is worth exploring. As three pioneers of the NCMLP model in the United States write:

> To effectively introduce medical–legal collaboration in resource-poor settings, the local legal and medical professions must have matured to the point where human rights principles and legal advocacy are not just accepted but embraced. Such maturation may require targeted training or informational sessions for key lawyers, doctors, institutions and governmental entities. In addition, the medical–legal partnership team must be connected to change agents and non-formal legal structures such as councils of elders or alternative dispute resolution mechanisms. Internal pressure may be required to shift the paradigm of justice.[115]

Since 2006, the Open Society Institute Public Health Program's Law and Health Initiative (of which one of the present authors, Cohen, is director) has pursued as a strategic priority the integration of legal and parallegal aid into existing health services serving marginalized groups such as drug users, people needing palliative care, sex workers, people living with HIV, and survivors of gender-based violence.[116] This priority stemmed from the desire of many health providers to address the violations of legal and human rights that were worsening their patients' health. OSI has supported close to 40 organizations in 13 countries to integrate some form of legal support into health care for marginalized groups. While much of this work has focused on populations other than drug users, sex workers and LGBT persons, examples of interventions relevant to this article include:

The anecdotal evidence reviewed here suggests that the health of drug users, sex workers, MSM, WSW, and transgender persons in many parts of the world could be greatly enhanced by ready access to affordable legal services. More research on the impact of various models of legal service provision on health, including cost studies, would be very useful and should be a priority for those who conduct and fund research on improving the quality of either health or legal services.

- The organization Humanitarian Action in St. Petersburg, Russia is one of over a dozen organizations to receive support from OSI to integrate legal aid into its health outreach to people who use drugs.[117] One area of medical-legal collaboration in which Humanitarian Action has had particular success is in securing health care for persons in pre-trial detention and incarceration facilities. Although Russian law guarantees free prescription medications to pre-trial detainees suffering from "socially harmful diseases" such as HIV and hepatitis C, in practice, such medications are provided either insufficiently or not at all. In 2007, working with the Center for AIDS and Infectious Disease Prevention, a lawyer from Humanitarian Action obtained authorization for a medical specialist to examine several individuals detained on drug-related charges to determine their need for medication. The results of these examinations were analyzed against medical and legal standards to produce "medical examination reports" that served as the basis for linking the patients to the necessary drugs and access to medical care.
- In November 2008, police in Skopje, Macedonia executed a large-scale raid in a neighborhood with a high concentration of sex work, detaining 23 sex workers as well as a number of

clients, pimps or managers, and one outreach worker without informing them of the reason for arrest.[118] The police action, in which only the sex workers were detained overnight and then forcibly tested for HIV and hepatitis B and C in full view of television cameras, raised serious concerns about driving sex work in Skopje further underground and exposing sex workers to a greater risk of violence and HIV. In response, OSI has supported the organization Healthy Options Project Skopje (HOPS), which already provided health care to sex workers, to provide legal support as well as counselling and advocacy to change the government's approach to enforcing anti-prostitution laws.

These examples show that in countries where neither health care nor legal aid is available to many in the general population, much less marginalized groups, medical and legal professionals can collaborate to improve the health of society's most marginalized.

The anecdotal evidence reviewed here suggests that the health of drug users, sex workers, MSM, WSW, and transgender persons in many parts of the world could be greatly enhanced by ready access to affordable legal services. More research on the impact of various models of legal service provision on health, including cost studies, would be very useful and should be a priority for those who conduct and fund research on improving the quality of either health or legal services. Research should elucidate the pathways by which legal services can improve health outcomes and access to health services. In addition, we offer the following recommendations:

- Large multisectoral HIV/AIDS programs, including those funded by the Global Fund to fight AIDS, Tuberculosis and Malaria and the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) should not miss the opportunity to enhance their effectiveness by supporting legal services for criminalized people living with and vulnerable to HIV as part of a broad package of human rights interventions. Funding guidelines for these programs should encourage prospective grantees to find ways to include legal service provision in their HIV interventions for these populations and to evaluate the health impact of those services. Support for legal services should be combined with other human rights interventions such as "know your rights" campaigns, human rights training for key officials such as police and health workers, and law reform and other types of systemic advocacy.
- Conversely, donors that support legal aid efforts should consider and research the benefits of specialized legal aid services for criminalized groups, as well as locating legal aid services within health facilities that have established relationships with these groups.
- Health professionals who provide substantial services to criminalized populations, whether through the public, private or non-profit sector, should assess the feasibility of integrating legal support into the package of services they provide. Such an assessment could include a survey of the main human rights violations faced by these patients, the existence of legal resources to which patients can be referred, the capacity of existing staff to receive training on providing legal advice and referral, and the feasibility of designing an intervention that includes hiring lawyers to be part of a team of health providers.
- International agencies that establish standards for the provision of health care to criminalized groups, such as the United Nations Office on Drugs and Crime (UNODC), the United Nations Population Fund (UNFPA), the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the World Health Organization (WHO), should consider recommending legal services as an intervention that can support the health of criminalized groups, and develop technical guidance to governments and NGOs on how to establish, sustain and scale-up such services.
- Universities that train health professionals, including medical and nursing schools, should include the health problems of criminalized persons in their curricula. Similarly, law schools should give students the opportunity to understand the social determinants of health that are linked to legal problems and to understand good practices in addressing them through legal service provision.
- Access to justice through legal services for persons likely to be excluded from health services should be part of core teaching, research, and service in the growing discipline of health and human rights within public health, as well as in training of physicians and lawyers. It merits being more than an afterthought in all of these professions.

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