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INDIA

EPIDEMIC OF ABUSE: POLICE HARASSMENT OF HIV/AIDS OUTREACH WORKERS IN INDIA [ADVANCE COPY]

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DEDICATION

During the writing of this report, Ashok Pillai, president of the Indian Network for People Living with HIV/AIDS in Chennai, died on April 19, 2002, at the age of thirty-one, one month after he graciously received a Human Rights Watch team in his office and helped us to understand the challenges faced by persons with AIDS in India. Ashok Pillai was an inspiring defender of the human rights of persons infected and affected by HIV/AIDS. His life was an example of one of his principal messages, that HIV/AIDS does not cause people to "turn into skeletons" and be written off. In the eleven years since his infection, in various forums in India and around the world, Ashok Pillai courageously raised attention to the indignity and human rights abuses suffered by people with HIV/AIDS and those around them. This report is dedicated to his memory.

I. SUMMARY

The HIV/AIDS (human immunodeficiency virus/acquired immune deficiency syndrome) epidemic in India is a rapidly escalating crisis. The government's estimate that about 4 million persons in the country are HIV-positive is widely thought to understate the true figure. Throughout the country, persons in traditionally high-risk groups, including women in prostitution, injecting drug users, and men who have sex with men, have been shown to have alarmingly high rates of infection. In several states of India, such as Maharashtra and Tamil Nadu, the epidemic has spread to the general population. Programs that provide information, condoms and HIV testing to persons in high-risk groups are crucial to preventing the further spread of the disease.

This report demonstrates that such programs, so essential to the fight against HIV/AIDS in India, are undermined by police harassment and abuse of HIV/AIDS outreach workers, particularly those who provide essential information and services to women in prostitution and men who have sex with men. Human Rights Watch's research on this subject, carried out in March and April 2002 in several states of India, indicates that these abuses are frequent and widespread. Police mistreatment of AIDS educators and outreach workers reflects underlying social stigmatization and discrimination faced regularly by women in prostitution and men who have sex with men.

In its official policies and statements, the Indian government has recognized the importance of reaching out to women in prostitution and men who have sex with men as a central element of its HIV/AIDS response. The national AIDS program, funded largely through a \$200 million World Bank loan, invests in programs that target persons in high-risk groups. But in practice, one branch of the government—the public health service—relies on the nongovernmental sector to provide condoms and information to persons at high risk, while another branch of government—the law enforcement establishment—abuses those who provide these services.

There is widespread recognition in India, as in many other countries, that the most effective and indeed in some cases the only possible AIDS educators for women in prostitution and men who have sex with men are their peers—that is, that women in prostitution who are trained and informed about HIV/AIDS are the most effective educators for raising awareness among other women in prostitution. Unfortunately, in the absence of appropriate protections from the state, these “peer educators” face the same criminalization and marginalization as the persons their life-saving work is targeting. Since the vast majority of people living with AIDS in India have no access to antiretroviral drugs, failure to prevent the disease usually means a premature and terrible death. The disruption of HIV/AIDS work by police harassment also undermines the work the government has creditably done to raise awareness of AIDS in the general population.

Nongovernmental organizations working through peer educators with women in prostitution in India have had remarkable success in raising awareness of the basic facts of HIV transmission and AIDS care, promoting condom use, and, not least, empowering marginalized women to take into their own hands the struggle against HIV/AIDS. Thousands of cases of AIDS have been prevented by this work, some of which has been supported financially or in kind by the government. Indeed, the Indian government recognizes officially the effectiveness of peer education as a strategy, the importance of condom distribution in prevention of HIV transmission, and the need to work with women in prostitution. But harassment and abuse of these peer educators by the police and by local criminal elements whose actions are ignored or abetted by the police regularly impede this essential work.

Women in prostitution in India are treated with disdain and commonly subjected to violations of their fundamental rights by the police, both at the time of their arrest and while in detention. Peer educators providing HIV/AIDS outreach to these women frequently suffer many of the same abuses. Police have beaten peer educators, claimed without basis that HIV/AIDS outreach work promotes prostitution, and brought trumped-up criminal charges against HIV/AIDS workers. Police also extort money and sex from these workers. The very possession of condoms—a key tool in the work of HIV/AIDS peer educators—often is enough to trigger police harassment, so deterring outreach that could help prevent the spread of HIV/AIDS and save thousands of lives.

In Nippani, Karnataka State, the work of SANGRAM/VAMP, an internationally respected nongovernmental organization (NGO) that has successfully promoted condom use among sex workers and their clients, was effectively halted by police abuse in early 2002. Persistent harassment of the women in the group, especially their leader, eventually resulted in the disbanding of the organization and the eviction of most of the peer educators from their homes, interrupting work that resulted previously in the distribution of 350,000 condoms per month. "Under the garb of HIV/AIDS prevention program, these women are promoting prostitution," a local political leader claimed to the press.¹ When the peer educators tried to file a police report against the persons who had attacked them, the local police chief refused to take action, saying that women in prostitution were not "normal citizens" who had the right to complain to the police. In many other ways, these women were stripped of their rights, with the disastrous consequence that HIV transmission can flourish in the absence of their work.

In Bangalore, police committed severe abuses against peer educators who work with the organization Samraksha. Police refused to recognize the identity cards issued to the peer educators in this well respected group, severely beat the women while in detention, tried to link them to false narcotics charges, and accused them of promoting prostitution. As Samraksha's director told Human Rights Watch, "Several [peer educators] have been beaten severely. . . . In some cases the police have tried to put false narcotics charges against them. They are frightened. . . . This violence disturbs our work; it prevents HIV/AIDS work from being conducted. They are targeting peer educators; they . . . accuse them of spreading prostitution. A policeman will say 'I don't accept that a sex worker can be a peer educator.'"²

In Chennai, Tamil Nadu, peer educators told Human Rights Watch of similar patterns of abuse, in some cases apparently linked to the simple possession of condoms—an essential part of peer educators' work—including abuse and extortion in detention. Peer educators said the police routinely refused to believe that they were engaged in HIV/AIDS prevention efforts. In Trichy, Tamil Nadu, four peer educators were beaten severely by a police constable whom the local authorities have apparently failed to prosecute or otherwise discipline. The director of the State AIDS Control Society of Tamil Nadu, however, characterized the problem of police harassment of sex workers and peer educators as "localized and temporary."

HIV/AIDS outreach workers who target men who have sex with men³ suffer widespread and serious abuses. The taboo in Indian society against men who have sex with men and the denial at all levels of their existence create an environment of moralistic judgmentalism against which AIDS educators battle constantly. The criminalization of homosexual practices under the pre-colonial section 377 of the Indian Penal Code on "unnatural offences" contributes to the impunity with which police harass these men and those who work with them. Organizations that conduct AIDS education activities in Lucknow, Mumbai, Chennai, Sangli, Bangalore, and New Delhi described serious incidents of police abuse that had sometimes prevented them from providing information and condoms to men who have sex with men. Common to all these accounts was the practice of police extortion of money or sex directed against a group of persons who are so marginalized in society that they have nowhere to turn for redress.

An important case of harassment of outreach workers in the MSM community involved the arrest of HIV/AIDS workers from Bharosa Trust and Naz Foundation International (NFI) in Lucknow in 2001. The police at first accused both groups of running a "sex racket" and of showing pornographic films in their offices, though eventually these allegations were dropped from the official charges. In this case, workers were detained for forty-seven days, part of that time without access to potable water, clean food, or sanitation facilities. The Lucknow case is still pending in the courts.

¹ Neil Pate, "Mobs hound CSWs engaged in anti-AIDS drive," *Times of India*, February 20, 2002.

² Human Rights Watch interview with Sanghamitra Iyengar, April 3, 2002.

³ "Men who have sex with men" is a term that includes men who may not identify themselves as "gay" or homosexual, who may also have sex with women or have regular women partners. See, e.g., Joint United Nations Programme on HIV/AIDS, "AIDS and Men who Have Sex with Men" (Geneva, 1998), pp. 2-3.

Advocates for men who have sex with men reported that the police regularly use section 377 to justify their ill treatment of HIV/AIDS outreach workers but rarely bring up formal charges under that provision. As a result, they say, the government can claim that section 377 is a benign and rarely used law. Police also accuse those doing AIDS outreach of promoting homosexuality, another kind of threat related to section 377, and have at times attempted to link them to national security offenses, narcotics offenses, or other criminal acts.

Men who have sex with men and women in prostitution are easy targets for police extortion and physical abuse. Discriminatory police practices that keep them from filing complaints or seeking redress, combined with the financial difficulties of making bail, typically mean long periods in detention facilities where they are subject to further abuse. Moreover, crackdowns on particular nongovernmental organizations engaged in HIV prevention and awareness among high-risk persons has had a chilling effect on the activities of others seeking to assist these vulnerable populations. In the case of the jailing of the NFI and Bharosa workers in Lucknow, for instance, several groups working with men who have sex with men reported that attendance at support group meetings dropped and vulnerable men were harder to reach for AIDS prevention work as word of the Lucknow incident spread and many men feared similar abuse.

In addition to arrest and detention justified by section 377, AIDS outreach workers have also been accused by police of being "threats to national security" and in one case charged under the National Security Act of 1980. The Lucknow defendants were publicly accused of spreading ideas said to be "against Indian culture" and charged with promoting homosexuality under various parts of the Indian Penal Code that have to do with abetting crimes.

Various social factors have contributed to the spread of HIV from high-risk groups in India to the general population. Societal pressures lead many men who are gay or bisexual to get married. A survey of 120 male sex workers in Mumbai (formerly Bombay) in November 2001 found, for example, that 43 percent of these men were married. Women married to men who frequent male or female sex workers are also at high risk of HIV infection, which in turn can be passed from mothers to their children *in utero*, in childbirth or during breastfeeding. Government and nongovernmental programs that work effectively and compassionately with persons in marginalized high-risk groups are essential if there is a hope of stemming the country's HIV crisis.

The leadership of India's national AIDS program has recognized harassment of HIV/AIDS outreach workers as a problem and said sensitization of the police would remain the government's principal strategy for dealing with it. National AIDS Control Organisation (NACO) officials also told Human Rights Watch that the country's NGOs need to give more attention to improving community relations and sensitization of the police. To the government's credit, 20 percent of the current national AIDS program budget is spent on "targeted interventions" among high-risk populations. NACO is named as an official respondent in the petition to repeal section 377 of the Indian Penal Code currently before the Delhi High Court.

Police abuse of HIV outreach workers parallels police abuse of other marginalized or minority populations in India. Human Rights Watch has extensively documented police abuse of Dalits or so-called untouchables, religious minorities, women, and street children, among others.⁴ The need for extensive police reform has also been documented by numerous Indian human rights groups and India's official National Human Rights Commission. The criminalization of social activism—using laws that allow for extensive periods of preventive detention in violation of international due process norms—has also been well documented.⁵

⁴ See generally Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (New York: Human Rights Watch, 1999); Human Rights Watch, "'We Have No Orders to Save You' – State Participation and Complicity in Communal Violence in Gujarat," *A Human Rights Watch Report*, vol. 14, no. 3, April 2002; Human Rights Watch, *Police Abuse and Killings of Street Children in India* (New York: Human Rights Watch, 1996); Human Rights Watch, "India: Communal Violence and the Denial of Justice," *A Human Rights Watch Report*, vol. 8, no. 2, April 1996.

⁵ See, for example, Asia Watch, "Before the Deluge: Human Rights Abuses at India's Narmada Dam," *A Human Rights Watch Report*, vol. 4, no. 15, June 1992; Human Rights Watch/Asia, "Memorandum to World Bank President James Wolfensohn from Human Rights Watch/Asia concerning World Bank projects in the Singrauli region of India," April 16, 1998, and *Broken People*, Human Rights Watch, chapter VIII.

II. RECOMMENDATIONS

To the Government of India

- Repeal section 377 of the Indian Penal Code, which effectively criminalizes sex between men and is frequently used as justification for harassment of HIV/AIDS educators working with men who have sex with men.
- Ensure that complaints by HIV/AIDS outreach organizations against law enforcement personnel are promptly and thoroughly investigated by independent, adequately trained investigatory staff of the police department or the judiciary. In particular, implement the recommendations made by the National Police Commission in 1980, specifically those that call for a mandatory judicial inquiry in cases of alleged rape, death, or grievous injury of people in police custody and the establishment of investigative bodies whose members should include civilians as well as police and judicial authorities.
- Through the Home Ministry, strengthen training of the police force at all levels on the importance of HIV/AIDS prevention and the life-saving efforts of HIV/AIDS outreach workers.
- Monitor conditions of detention particularly of women in prostitution and men who have sex with men. Ensure accountability of police officers and wardens who engage in sexual abuse, as well as other violations of national and international standards for conditions of detention. Establish a civilian review board or civilian ombudsman committee comprising judges and lawyers to monitor police stations and ensure that Supreme Court guidelines on treatment of persons in custody, as established in *D. K. Basu v. State of West Bengal*, are strictly enforced. NGO input should also be solicited.
- Parliament should conduct an inquiry into human rights violations against HIV/AIDS outreach workers with an eye toward strengthening legal protections.
- Government officials at all levels should use public events and contacts with the media to condemn police violence against HIV/AIDS workers and to reiterate the extreme importance of HIV/AIDS prevention activities for high-risk groups.
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. India signed the convention in 1997 but has yet to ratify it.
- Include information on the treatment of HIV/AIDS workers in future periodic reports to human rights treaty bodies established for the:
 - International Covenant on Civil and Political Rights (overdue as of December 31, 2001)
 - Convention on the Elimination of All Forms of Discrimination Against Women.

To the National AIDS Control Organisation

- As a respondent to the petition for repeal of section 377 of the Indian Penal Code, currently before the Delhi High Court, make a strong written statement advocating for repeal of the section on the grounds that it impedes HIV/AIDS prevention and care activities for men who have sex with men.
- Ensure that state-level AIDS Control Societies funded by NACO, in consultation with state-level home ministries, develop and implement a formal plan for a budgeted program of monitoring of and regular public reporting on violence and abuse against marginalized groups at high risk of HIV/AIDS. Project directors of the State AIDS Control Societies should be required to take effective measures to support NGOs working on HIV/AIDS prevention and information services when they are harassed by local police or other authorities

and should work with home ministries to ensure all perpetrators of harassment of AIDS workers are brought to justice.

- Require directors of the state-level AIDS Control Societies to work with the state-level home ministries to ensure that police at all levels are trained on the fundamentals of HIV transmission and care for persons with AIDS and are sensitized to the importance of HIV/AIDS prevention among high-risk groups.
- Expand access to condoms for women in prostitution and men who have sex with men through government health facilities, commercial outlets and other means. Every State AIDS Control Society director should be required regularly to demonstrate his or her society's efforts to ensure that all persons in high-risk groups have a reliable and sustainable means of obtaining condoms.
- Use the leadership role of NACO, including public statements and appearances by high-level NACO staff, to advocate forcefully for the protection of the human rights of groups vulnerable to HIV/AIDS, including sex workers (both men and women) and men who have sex with men. NACO's stated position in policy documents on the central importance of reaching out to men who have sex with men in HIV/AIDS programs should be particularly emphasized in public events and meetings, especially those covered by the media.

To the World Bank, United Nations agencies and bilateral donors supporting HIV/AIDS programs in India:

- Ensure that monitoring of police harassment of HIV/AIDS outreach workers and other HIV/AIDS-related human rights abuses is an important and regular part of World Bank project monitoring in India. Accelerate surveillance and monitoring of NGO reports of police violence through the United Nations-supported monitoring system and other means, and ensure widespread reporting of data collected on this subject. The World Bank should conduct a thorough review of NACO's monitoring of human rights violations that impede HIV/AIDS prevention.
- Strengthen monitoring of state-level allocations of national AIDS program funds, paying particular note to the adequacy of state-level support for groups working with men who have sex with men. Ensure that applications of these groups for funds are fairly considered.
- Support the repeal of section 377 of the Indian Penal Code as a violation of the prohibition against discrimination of men who have sex with men and as an impediment to the national response to the HIV/AIDS epidemic. Repeal of section 377 is consistent with the United Nations International Guidelines on HIV/AIDS and Human Rights.

III. METHODS

Human Rights Watch conducted research for this report in India in March and April 2002 and subsequently by telephone and electronic mail from New York. In India, Human Rights Watch researchers visited nineteen nongovernmental organizations (NGOs) working on some aspect of HIV/AIDS in Mumbai, New Delhi, Chennai and Sangli, Maharashtra State, and interviewed some forty HIV/AIDS outreach workers as well as a number of coordinators of outreach work. Human Rights Watch also interviewed NGO representatives in Lucknow, Hyderabad, Bangalore and Trichy, Tamil Nadu State. Interviews were generally open-ended and covered many topics. In this report, a few names of HIV/AIDS outreach workers are changed for their protection and at their request. Human Rights Watch also visited in India with representatives of the United Nations system working on HIV/AIDS and the directors of the National AIDS Control Organisation in New Delhi, spoke with one director of a state-level AIDS control society and communicated in writing with the staff of another.

Most interviews took place in NGO, government or donor agency offices. Human Rights Watch interviewed one mobile team of HIV/AIDS outreach workers at their work sites in Mumbai. Most interviews were of individuals, but some outreach workers were interviewed as a group at their request. Many of the

interviews were in English, but where that was not possible, NGO staff provided translation as necessary. One or two Human Rights Watch staff members conducted the interviews. In addition, Human Rights Watch gathered published and World Wide Web-posted information from a wide range of sources.

IV. BACKGROUND: HIV/AIDS IN INDIA

The first case of HIV in India was reported in Madras (now Chennai) in 1986.⁶ Though classified by the United Nations as a “low-prevalence” country, India has one of the most serious AIDS epidemics in the world. Official figures put the number of HIV-positive persons at 3.97 million,⁷ the second highest national total of persons with AIDS after that of the Republic of South Africa. This figure has been widely disputed, however, with some experts asserting that the actual number of persons living with HIV/AIDS in India is more than double the official figure.⁸ If the official figure is correct, then the rate of new infection in the HIV/AIDS epidemic in India is actually declining, which many experts dispute and which would contradict the course the epidemic has followed elsewhere in the world.⁹ The late Ashok Pillai, president of the Indian Network for People Living with HIV/AIDS, disputed the official figure and told Human Rights Watch that in government and United Nations meetings he had attended, various experts had urged the government to endorse a higher figure. “The government want to send the signal that they are doing well on AIDS, but the real figure they won’t let be told,” he said.¹⁰

The official prevalence rate of HIV/AIDS in the adult population is 0.7 percent. Because of the size of India’s population, each 0.1 percent increase in prevalence represents about half a million persons infected. All of India’s states have reported AIDS cases, and surveys show that the virus is spreading from higher-prevalence urban areas into rural communities.¹¹

The disease has spread beyond high-risk groups into the general population in a number of states and municipalities. The five states in which it is officially acknowledged that more than 1 percent of the adult population is infected—thus considered high-prevalence areas—are Andhra Pradesh, Karnataka, Maharashtra, Manipur, and Tamil Nadu.¹² Some districts in Goa, Gujarat and Nagaland are also high-prevalence zones.

At both central and state level, the government has sponsored mass-media and other information campaigns at various times since it launched a national anti-AIDS program in 1987. Detailed knowledge and behavior surveys conducted in Tamil Nadu, the state with the greatest number of reported cases of AIDS and the second highest HIV prevalence rate in the adult population, show that there has been progress since the late 1980s among several groups in that state with respect to certain indicators, including use of condoms and use of condoms during paid sex.¹³ Nonetheless, these surveys showed, for example, that only 39 percent of women working in factories, a group representing middle-class women, knew that condoms prevent sexually transmitted diseases, a percentage that has changed little since the mid-1990s.¹⁴ The surveys also estimated that about 35

⁶ Michael Spencer, “India’s Plague,” *New Yorker*, December 17, 2001, p. 77.

⁷ Government of India, National AIDS Control Organisation, “Estimation of HIV infection among adult population: HIV estimates for year 2001,” www.naco.nic.in/vsnaco/indianscene/update.htm (consulted April 9, 2002).

⁸ See, e.g., S. Ramasundaram, “Can India avoid being devastated by HIV?” *British Medical Journal*, vol. 324, pp. 182-183, January 26, 2002, and “India may soon have half the world’s AIDS patients,” *Hindustan Times*, July 12, 2000.

⁹ See, e.g., Kalpana Jain, “An epidemic of missing HIV patients,” *Times of India*, September 10, 2001, and Poornima Joshi, “AIDS growth rate dips,” *Hindustan Times*, July 7, 2001.

¹⁰ Human Rights Watch interview, Ashok Pillai, president, Indian Network for People Living with HIV/AIDS, Chennai, March 18, 2002. (Ashok Pillai died on April 19, 2002.)

¹¹ World Bank, “UNGASS—Regional Updates: South Asia Region (India),” June 2001, available at www.worldbank.org/ungass/India.htm (consulted April 9, 2002).

¹² NACO, “Estimation of HIV infection. . . .”

¹³ AIDS Prevention and Control Project-Voluntary Health Services, “HIV Risk Behavior Surveillance Survey in Tamil Nadu and Pondicherry,” Chennai: April 2002.

¹⁴ *Ibid.*, p. 28.

percent of young men in slums in the state understand basic prevention of HIV/AIDS “without misconception.”¹⁵ There is virtually no formal teaching of HIV/AIDS information in public schools in Tamil Nadu or the rest of the country,¹⁶ though NGOs in some states have developed short-course modules that are used in selected public and private schools.¹⁷

Antiretroviral (ARV) drugs are manufactured in India, but generic ARV drug combinations still cost from Rs. 1000 to Rs. 2000 (about U.S. \$20 to \$40) per month. No government-supported programs exist to provide antiretroviral treatment to persons with HIV/AIDS. The recently released national AIDS policy takes the position that “treatment options are still in the initial trial stage and are prohibitively expensive.”¹⁸

Persons in traditional high-risk groups—notably men who have sex with men, women in prostitution, and injecting drug users—face social marginalization and deep stigma in India.¹⁹ While the epidemic has spread to the general population in some states, these high-risk persons remain crucial to the national AIDS control strategy. Various studies have reported very high rates of HIV prevalence among these groups. A fact sheet of the Joint United Nations Programme on HIV/AIDS (UNAIDS) in January 2002 noted that in Mumbai, for example, an estimated 60 percent of women in prostitution were HIV-positive.²⁰ Survey data from Manipur in northeast India reported HIV prevalence rates ranging from 45 percent to 76 percent among injecting drug users during the 1990s.²¹ Data on HIV prevalence among men who have sex with men are scarce, which some experts attribute to the government’s denial of the fact that men have sex with men in the country.²² The only figures reported by the government are from recent surveys in Mumbai, where 23.6 percent of men who have sex with men were estimated to be HIV-positive, and Tamil Nadu, where the corresponding figure was 2.4 percent.²³

The stigma faced by women in prostitution and men who have sex with men is seen by many to be an important impediment to reaching these populations with HIV/AIDS information, condoms and other services related to prevention. Women in prostitution face the second-class citizenship that characterizes their status in many countries, and the mainstream women’s movement in India has not generally embraced the rights of women in prostitution as a high-priority cause.²⁴ Many observers have noted widespread denial of the existence of sex between men in India. As Siddharth Dube, an internationally recognized expert on HIV/AIDS in India, put it:

... [B]oth because men cannot mix with women and because so many of them are single migrants, very many Indian men have sex with other men, male sex workers and *hijras*.²⁵ ... But despite their numbers and being drawn from every background, in India men who have sex with men are almost invisible. This is partly because the powerful prejudice against homosexuality and the family pressures to get married force many homosexual or bisexual men to get married, have children and lead apparently heterosexual lives. ... Overall, because India’s population of

¹⁵ Ibid., p. 29.

¹⁶ Sunder Lai, “Editorial: Reaching Adolescents for Health and Development,” *Indian Journal of Community Medicine*, vol. 26, no. 4, October – December 2001, pp. 169-170.

¹⁷ Human Rights Watch interview, Dr. Suniti Solomon, director, YRG-Care, Chennai, March 18, 2002.

¹⁸ Government of India, National AIDS Control Organisation, “National AIDS Prevention and Control Policy,” paragraph 1.2.

¹⁹ Siddharth Dube, *Sex, Lies and AIDS* (New Delhi: Harper Collins, 2000).

²⁰ UNAIDS, “Vulnerable Populations (fact sheet),” January 2002, available at <http://www.unaids.org/partnership/pdf/INDIAvulnerable.pdf> (consulted April 6, 2002).

²¹ Khondom Lisam, “Drug Abuse and HIV/AIDS in India,” presentation to South and Southeast Asia Regional Meeting on Drug Use/HIV Dual Epidemics, Chiang Mai, December 12, 2001, available at http://www.undcp.un.or.th/SE_Meeting_Drug_HIV/Lisam%20Drug%20Abuse%20and%20HIV%20in%20India.pdf (consulted April 4, 2002).

²² Dube, *Sex, Lies and AIDS*, p. 54.

²³ NACO, “Estimation of HIV infection...,” table entitled “HIV Prevalence Levels State-wise: 2001.”

²⁴ Human Rights Watch interview with Suneeta Dar, UNIFEM-India, New Delhi, April 2, 2002.

²⁵ *Hijras* are transgender people and people with intersex conditions, many of them men who undergo castration. (Definitions from International Gay and Lesbian Human Rights Commission, see www.iglhrc.org/world/s_asia/India2002Apr.html (consulted April 9, 2002).

men who have sex with men is so large and so much a part of "heterosexual" society, . . . the rising level of HIV infection amongst these men has fueled the mainstream epidemic in just the same way as the spread of HIV amongst female sex workers.²⁶

In addition to the stigma and discrimination faced by high-risk persons, a wide range of human rights abuses associated with HIV/AIDS have been reported in India, many of which were discussed in a national consultation on human rights and HIV/AIDS organized by the National Human Rights Commission in November 2000.²⁷ Such abuses include discrimination against HIV-positive persons in employment and in access to health care, education, housing, and legal services; mandatory HIV testing, especially in some health care facilities, and violation of the confidentiality of testing; disinheritance, abandonment, violence and other abuses faced by wives and widows of men with HIV/AIDS; and denial of the right to information on HIV/AIDS, particularly for young people.

A National AIDS Control Programme was established in 1987, and the National AIDS Control Organization (NACO), which currently oversees the government's anti-AIDS efforts, was founded in 1992. The national program to combat HIV/AIDS of the government of India is funded largely by a World Bank loan of about U.S. \$200 million, the second such HIV/AIDS loan for the country. The first project, which ran from 1992 to 1999 and had a budget of about U.S. \$100 million, helped to establish NACO and state-level AIDS coordinating bodies (the State AIDS Control Societies), developed capacity for surveys of HIV prevalence, and helped India to expand its program of preventive activities and improve blood screening.²⁸ In the second project, about 23 percent of the budget is meant to support "targeted interventions" with high-risk groups, of which women in prostitution, men who have sex with men, and injecting drug users are explicitly named along with truck drivers and migrant laborers. (These groups together are estimated to constitute 5 percent of the country's population.²⁹) As the World Bank project appraisal document notes,

Global experience . . . demonstrates that the most effective strategy to prevent an epidemic is to intervene quickly among the groups at high risk for contracting and spreading HIV. The project would provide effective interventions such as counseling, condoms, treatment of sexually transmitted infections (STIs), client information and treatment to marginalized groups at high risk.³⁰

The national AIDS policy that was approved by the Union Cabinet in April 2002 also mentions these populations as groups exhibiting high-risk behavior, particularly in the urban environment.³¹ The strategy of the program for reaching high-risk groups is "partnering with NGOs and CBOs [community based organizations]—organizations that have a long history of addressing the needs of marginalized populations," combined with measures to "decentralize planning, encourage participation of beneficiaries, and build capacity among NGOs in order to maximize the effectiveness of targeted interventions."³²

The current World Bank-funded program recognizes explicitly the importance of protection of human rights related to HIV/AIDS in India. The program "supports the protection of human rights by discouraging mandatory testing for HIV and places special emphasis on voluntary testing and counseling Furthermore,

²⁶ Dube, *Sex, Lies and AIDS*, pp. 53-54.

²⁷ National Human Rights Commission with National AIDS Control Organisation, Lawyers Collective, United Nations Children's Fund, and United Nations Joint Programme on HIV/AIDS, "National Conference on Human Rights and HIV/AIDS (New Delhi, 24-25 November 2000): Report," 2001.

²⁸ The World Bank, Regional Update: South Asia—India, available at www.worldbank.org/html/extdr/pb/pbaid_sar_india.htm (consulted April 9, 2002).

²⁹ The World Bank, Project Appraisal Document on a proposed credit in the amount of SDR 140.82 to India for a Second National HIV/AIDS Control Project (Report No. 18918-IN), May 13, 1999.

³⁰ *Ibid.*, p. 2.

³¹ Government of India, National AIDS Control Programme, "National AIDS Prevention and Control Policy," April 2002, paragraph 5.1.2.

³² World Bank, Project Appraisal Document, p. 12.

stigmatized groups (HIV-positive people; people living with AIDS or PLWAs; and groups at high risk of infection) would be represented on AIDS Control Societies [at state level].”³³

V. ABUSES AGAINST HIV/AIDS OUTREACH WORKERS

Human rights abuses linked to HIV/AIDS outreach to women in prostitution

As in many countries, women in prostitution in India are traditionally reviled by those in power and by the wider public. Yet, in spite of this severe stigmatization, some courageous organizations and individuals have a distinguished record of extending services to and working for the protection of the rights of women in prostitution, including several whose work predated the first AIDS cases in the country and the establishment of NACO. A number of Indian NGOs have received international attention and acclaim for work that has resulted in increased capacity of women in prostitution to negotiate condom use with their clients.³⁴

The AIDS outreach work of SANGRAM (an abbreviation of Sampada Grameen Mahila Sanstha), an NGO based in Sangli, Maharashtra State, has been recognized internationally, particularly the group’s success in empowering women in prostitution to require their clients to use condoms.³⁵ The principle of a collective of women in prostitution—a group strong enough so that some women do not go off on their own and operate without condoms—is a key to this success. SANGRAM has conducted HIV/AIDS education and awareness with both high-risk groups and the general population since its founding in 1992 and estimates that it distributes 350,000 condoms per month in twelve districts of Maharashtra and Karnataka states,³⁶ an activity that translates into the prevention of a great deal of HIV transmission.

SANGRAM’s success in HIV/AIDS prevention activities was based on training and mobilizing a large team of “peer educators”—that is, women in prostitution who, as “insiders,” could relate to and make contact with women in prostitution more effectively than other kinds of educators would be able to do.³⁷ Reliance on peer educators to work with high-risk populations has been found by HIV/AIDS education and prevention practitioners to be an essential strategy in many parts of the world.³⁸ In SANGRAM’s case, the peer education program proved successful not only in terms of condoms and information provided to women in prostitution, their clients and the surrounding communities, but also in the solidarity and management capacity built among peer educators themselves. In 1996, peer educators supported by SANGRAM formed a collective called VAMP (Veshya AIDS Muqabla Parishad, a collective of women in prostitution working against AIDS) that is registered separately as an organization with its own board of directors drawn from peer educators and other women in prostitution.³⁹

In January 2002, the VAMP collective purchased a house and the property on which it sat in Nippani, a small town in Karnataka State, Belgaum District, near the Maharashtra border. VAMP intended to use the house for office and meeting space as well as to provide hospice services for women with AIDS and for supplementary education activities for the children of women with AIDS.⁴⁰ Taking on the practice in SANGRAM of regular weekly meetings to coordinate the work of peer education, VAMP held its first meeting in its new home in

³³ Ibid.

³⁴ See, e.g., Celia Dugger, “Going Brothel to Brothel, Prostitutes Preach About Using Condoms,” *New York Times*, January 4, 1999.

³⁵ Meena Menon, “An NGO Gets Sex Workers to Enforce Condom Use,” *InterPress News Service*, August 20, 1997.

³⁶ SANGRAM, “Of Veshyas, Vamps, Whores and Women” (a summary of ten years of SANGRAM’s work), Sangli, 2001, p. 6.

³⁷ Ibid., pp. 6-7.

³⁸ Population Council, “Peer Education and HIV/AIDS: Past Experience, Future Directions,” New York, 2001.

³⁹ SANGRAM, “Of Veshyas, Vamps, Whores and Women,” p. 23.

⁴⁰ Human Rights Watch interview with Meena Seshu, general secretary, SANGRAM, March 24, 2002, Sangli.

Nippani at the end of January.⁴¹ At that time, the local residents of Nippani “were friendly and were in fact helping us by allowing us to use their telephones to give messages” to staff members of VAMP.⁴²

After the second weekly meeting at the new site in early February, however, the local leader of Shiv Sena, Babasheba Khambe, told the VAMP general secretary, Shabana Kazi, that the residents of Nippani objected to the organization’s meetings and the women would have to stop holding them.⁴³ According to Kazi, Khambe told her that if the meetings continued, “we will make you to get out and will not keep you alive.”⁴⁴ In the following days, from about February 5 to February 11, local boys and young men stoned the VAMP house, in which Kazi was living, and threatened or beat women and clients who attempted to approach the house.⁴⁵ On February 6 and 7, Kazi attempted to file a police report on the violence around the house, but the police *hawaldar* (constable) refused to take her complaint and told her to go instead to Khambe. On February 11, when the collective was to have a regular meeting and was joined by Meena Seshu of SANGRAM who had come from Sangli to be at the meeting, Kazi said the local Nippani VAMP members were prohibited from attending by Khambe.

In response to this action, Shabana Kazi and Meena Seshu went to see Vijay Shetge, the corporator (a local official) of Nippani, who told them that the meetings should either be stopped or that they should be held in the open sun behind the building—that is, not on the side facing the street—and that the VAMP members should only enter their building through the back with their heads covered so as not to offend the respectability of the upper-caste women.⁴⁶ By February 17, attacks on Kazi escalated to the point where more than seventy local youths appeared at the VAMP house, threatened the life of Kazi and her daughter, and nearly broke down the door until her landlord intervened.⁴⁷ Shabana Kazi and the other VAMP members present were forced to leave their homes and take up residence in other districts. “The problem is they never thought that women in prostitution would collectivize—that’s the one thing that really surprised everyone. People are threatened by women in prostitution coming together; women will tell their stories, and things come out,” Seshu said.⁴⁸

Accompanied by Seshu, Kazi and several other VAMP members attempted to register a complaint to the Nippani Circle Inspector of Police Satish Khot on February 18. According to the depositions of three persons present at this meeting with Inspector Khot, including Neil Pate, a reporter from the *Times of India*, Khot refused to accept the complaint of the women of VAMP, describing them as “bloody *veshyas* (prostitutes) and not normal citizens.”⁴⁹ He went on to shout abusive and obscene language at the VAMP representatives, threatening them with bodily harm.⁵⁰ When Neil Pate asked Khot to define “normal citizen,” Khot accused him of being “a bloody agent of the *veshyas*” and said that he would “strip all the sex workers in the public square and beat them black and blue” or would charge them all under the “immoral traffic” law.⁵¹ He also threatened Pate with repercussions

⁴¹ Report submitted by Meena Seshu to the official state inquiry of the Nippani incidents, March 2002.

⁴² Deposition of Meena Seshu in the official inquiry of the State of Karnataka into the events in Nippani in January and February 2002.

⁴³ Deposition of Shabana Kazi, March 12, 2002.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Deposition of Meena Seshu.

⁴⁷ Deposition of Shabana Kazi, and Meena Menon, “Small-town Indian sex workers put up a big fight,” *Asia Times*, March 7, 2002.

⁴⁸ Ibid.

⁴⁹ See depositions of Meena Seshu, Shabana Kazi and Neil Pate, and also Neil Pate, “Mobs hound CSWs engaged in anti-AIDS drive,” *Times of India*, February 20, 2002.

⁵⁰ Meena Seshu told Human Rights Watch that the terms used by the police inspector were difficult to translate in English but rendered part of his tirade directed at Shabana Kazi as follows: “You prostitute, today you have come with this woman [referring to Seshu] and are creating this drama.... Tomorrow I will personally come and pull out your pubic hair. I will enter your vagina and tear it apart, and do not forget that my penis has the strength of my police job and power.”

⁵¹ Deposition of Neil Pate (journalist, *Times of India*), March 9, 2002; Human Rights Watch interview with Neil Pate, March 24, 2002; and Pate, *Times of India*, February 20, 2002. According to witnesses, Inspector Khot cited Suppression of Immoral Traffic in Women and Girls Act of 1956, colloquially known as SITA. The two principal Indian laws that address prostitution are the Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA), and the Immoral Traffic in Persons Prevention Act of 1986, colloquially called PITA, an amendment to SITA. Neither law prohibits prostitution per se; Human Rights Watch

if he were to publish an article on the Nippani events. According to all the witnesses who gave depositions in the subsequent inquiry, Inspector Khot abruptly ended the meeting by locking the circle office and driving away, continuing all the while to shout abusive language at the peer educators.

"Under the garb of HIV/AIDS prevention program, these women are promoting prostitution," Khambe told the press.⁵² According to Meena Seshu, Khambe was behind the attacks by the youths on the VAMP house as the youths were local boys to whom he gave religious instruction and whom he fired up to "clean up the town" by ridding it of sex workers.⁵³ Khambe also directed personal attacks against Seshu, accusing her of using HIV/AIDS as a front to running a brothel. "The accusations on me—there is deep anger about an upper-class woman working with sex workers. They don't know how to deal with that, so they have to make me a sex worker."⁵⁴

The government has provided condoms for the HIV prevention work of SANGRAM and VAMP since the early 1990s and has officially recognized the importance of the HIV prevention work of the organization.⁵⁵ Shabana Kazi said, "Before the police were sensitized and were even helpful in some ways. . . . But all this is gone. Ten years of work was undone in one day. . . . These politicians and police are now responsible for us being unsafe, forcing everyone to have sex with no condoms."⁵⁶ The dispersion of the VAMP collective from Nippani halted the work of condom distribution, though VAMP and SANGRAM continued to try to reach as many of the peer educators as possible despite this dispersion and without the benefit of the usual weekly meetings.⁵⁷

SANGRAM, VAMP and their allies were able to mobilize support from many quarters for an official inquiry of the Nippani incidents. The chief minister of Karnataka State ordered an official inquiry into the matter and expressed his regret over the events.⁵⁸ The National Human Rights Commission issued a statement on March 6 giving notice to the chief secretaries and directors-general of police in Maharashtra and Karnataka to explain the actions of their officials and directing the relevant district officials "to provide necessary protection to the members of the organisation [VAMP/SANGRAM] and all those persons carrying on the HIV/AIDS prevention programme."⁵⁹ J.V.R. Prasada Rao, director of NACO, also wrote a letter to the authorities encouraging a thorough investigation and expressing his outrage at the treatment of the peer educators, though he later told Human Rights Watch that he felt he was not completely informed of the Nippani events at the time he wrote the

rather they target commercialized vice and forbid soliciting. SITA, a penal law, had as its stated goal "to inhibit or abolish commercialised vice, namely the traffic in persons for the purpose of prostitution as an organised means of living." Prostitution was defined as the act of a female who offers her body for promiscuous sexual intercourse for hire. Thus, the engagement by a woman in individual, voluntary, and independent prostitution was not an offense. SITA's chief drawback was its criminalization of the female practitioner of prostitution. The language of the law defined the prostitute as female, thereby exempting males in prostitution from criminalization. Even the sentencing procedures discriminated against the woman: a woman arrested for soliciting under SITA could be imprisoned for up to a year, but a pimp for only three months. The Immoral Traffic in Persons Prevention Act of 1986 (PITA)⁵¹ amended SITA in important ways, but its basic goals and premises remain much the same. Although prostitution as such is not prohibited under PITA, the act contains nine punishable conditions, including brothel keeping, abetting in brothel keeping, living off brothel earnings, procuring, detaining, activity in vicinity of public places, seducing or soliciting.⁵¹ PITA includes new categories of offenses and punishments, making it easier to prosecute brothel-keepers and others involved in trafficking.

⁵² Pate, *Times of India*, February 20, 2002.

⁵³ Human Rights Watch interview with Meena Seshu, March 24, 2002.

⁵⁴ Ibid.

⁵⁵ See, e.g., letter from Director, Family Welfare and Maternal and Child Health of the Government of Karnataka to the District Health and Family Welfare Officer, Belgaum/Bijapur, August 7, 1993.

⁵⁶ Human Rights Watch interview with Shabana Kazi, March 24, 2002, Sangli.

⁵⁷ Human Rights Watch interview with Meena Seshu.

⁵⁸ Electronic mail message from S.M. Krishna, Chief Minister of Karnataka, to Meena Seshu, March 1, 2002, reprinted in *Of Veshyas, Vamps, Whores and Women* (a newsletter produced by SANGRAM, VAMP, and Point of View, a Mumbai-based NGO), vol. 1, no. 1, March 2002.

⁵⁹ National Human Rights Commission (Law Division) Notice on Case No. 629/10/2001-2002, March 6, 2002.

letter.⁶⁰ In particular, he said he was only later informed that the VAMP collective was seeking to conduct not just meetings but also "processions in the street" in Nippani, which he saw as something that the local residents might be justified in resisting. Human Rights Watch uncovered no plan for street processions on the part of VAMP, and street processions are not against the law.

At the time of Human Rights Watch's visit to Sangli in March 2002, SANGRAM received word that both Khambe and Khot were making overtures to the group seeking forgiveness and were willing to discuss the group's reinstatement in Nippani. The outcome of the official inquiry into the matter was unknown. On April 9 and 10, more than a thousand persons representing women's groups and sex workers' organizations held rallies in both Sangli, the headquarters of SANGRAM, and Nippani to protest violence against women. "It's been more than a month, and the enquiry against . . . Mr. Khot continues at a snail's pace, while the 30-odd sex workers linger homeless even today," said Meena Seshu at the rally.⁶¹ As of June 2002, the inquiry was reportedly complete, but no further action had been taken. One VAMP member who tried returning to her home in Nippani had her home broken into. VAMP resumed its weekly meetings but continued to call for protection to allow all the women to return to their homes.⁶²

Samraksha (Bangalore)

A prominent NGO that conducts HIV/AIDS outreach with women in prostitution in Bangalore reported to Human Rights Watch a spate of police abuse beginning in late 2001. Samraksha is a nongovernmental organization that has been working to combat HIV/AIDS in Bangalore since 1993. (Its parent organization, Samuha, has worked on economic development in Karnataka State since 1986.) Samraksha's work has been recognized internationally,⁶³ and its outreach work with women sex workers is supported financially by the government through the Karnataka State AIDS Control Society.⁶⁴ In addition to AIDS outreach to women in prostitution, which includes provision of condoms and information, Samraksha facilitates hospital and home-based care for persons living with AIDS, works to reduce stigma in health facilities, provides information and promotes awareness among the general public.

Unlike Mumbai and Calcutta, which have designated red-light districts in which women in prostitution work based in brothels, sex workers in Bangalore generally live in their homes and operate from various ill-defined locations, and members of their families do not always know the nature of their work.⁶⁵ This clandestine element of the work poses challenges for women who might wish to bring formal complaints against police or clients who harass them.

According to Sanghamitra Iyengar, director of Samraksha, police abuse of peer educators working with women in prostitution in Bangalore intensified from December 2001 to April 2002.⁶⁶ Samraksha logged twenty separate incidents of police violence against twenty-seven peer educators during this period and others against women in prostitution not conducting HIV/AIDS work.⁶⁷ The vast majority of these incidents included severe beating of women in detention and extortion of money. On March 25 and 26, two peer educators were arrested and beaten, and chili powder was rubbed into their eyes and mouths and into the vagina of one of them. In several cases, police extorted money by threatening women with drug charges. In one case, a sub-inspector affiliated with the Commercial Street Police Station in Bangalore reportedly said he would not permit peer educators to operate in his jurisdiction.⁶⁸

⁶⁰ Human Rights Interview with J.V.R. Prasada Rao, special secretary and project director, NACO, April 3, 2002, New Delhi.

⁶¹ "Huge rally carried out in Sangli and Belgaum to mark protest against the 'violence against women,'" *Times News Network*, April 11, 2002.

⁶² Electronic mail correspondence from Meena Seshu to Human Rights Watch, June 25, 2002.

⁶³ See, e.g., Gaetane Prinselaar, *Appropriate Technology*, June 1996.

⁶⁴ Human Rights Watch telephone interview with Sanghamitra Iyengar, director, Samraksha, April 2, 2002.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Electronic mail correspondence from Samraksha to Human Rights Watch, May 4, 2002.

⁶⁸ Ibid.

On April 1, Samraksha summarized this abuse in a letter to the director of NACO:

For the past four months, there has been serious obstruction to our work. Our peer educators have been severely beaten up. They have been harassed and publicly humiliated on the streets. Their bags have been snatched and all condoms thrown out in front of the public. Their educational material has been torn up and their identity cards destroyed. Their diaries which keep records of meetings with other sex workers are confiscated. In addition, the police officials at various police stations have accused the peer educators of encouraging sex work, promoting sex and spreading AIDS. . . . They have questioned the role of peer educators and threatened to arrest them if they take on the educational role.⁶⁹

Samraksha noted that "violence against peer educators is not new—it's been going on for the past eight years,"⁷⁰ but the increased severity of the harassment suffered by HIV/AIDS workers in Samraksha had seemed to coincide with the appointment of a new chief of police for Samraksha's zone of work. She noted that the peer educators themselves had also begun in this period to be more assertive—"they dare to say 'how can you arrest me?' when they are being unjustly harassed"—but this assertiveness had provoked more harassment.⁷¹

Samraksha elaborated on recent abuses in a meeting with the commissioner of police of Bangalore, H.T. Sangliana, on March 2, 2002; the following account is part of the minutes of that meeting:

The peer educators shared their experiences one by one and raised issues of violence, demand for money and free service [i.e. free sex] by the police on a regular basis. They spoke about obstruction of HIV/AIDS prevention work, harassment when they are talking to other workers, just taking a bus or going somewhere with their children or family members. They spoke about public humiliation in the form of being dragged by the hair, insulted and verbally abused in public and beaten both by hand and with batons in public. Then they shared the physical abuse in the police stations where they are sometimes handcuffed and beaten on their palms and feet; at other times they are kicked in the face by policemen wearing boots or just beaten severely on the breasts and back. . . . Another issue that was raised was being arrested, taken to the police station, beaten up and left overnight at the State Home for Women. In the morning they would be brought back to the station and released after being beaten up again. When the injuries were severe, they were often not being produced before the court at all.⁷²

Samraksha elaborated on other abuses, which were also discussed with the police commissioner at the March meeting:

[W]ith them [identification cards], peer workers have a kind of legitimacy, but this has led to increased violence. Several have been beaten severely, not produced before the magistrate [i.e., not afforded due process]. In some cases the police have tried to put false narcotics charges against them. They are frightened. . . . This violence disturbs our work; it prevents HIV/AIDS work from being conducted. They are targeting peer educators; they . . . accuse them of spreading prostitution. A policeman will say "I don't accept that a sex worker can be a peer educator. A woman in prostitution has no right to do peer education." . . . The other disturbing thing is that they tried to force the women to implicate everyone in the organization as being in the sex trade. They said if they did that, they would let them go. In our organization, we all

⁶⁹ Letter from Sanghamitra Iyengar, director, Samraksha (Bangalore), to J.V. R. Prasada Rao, special secretary and project director, National AIDS Control Organisation (New Delhi), March 31, 2002.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Samraksha, Minutes of the meeting with H.T. Sangliana, commissioner of police, Bangalore City, Undisclosed venue, Bangalore City, March 2, 2002. Samuha transmitted these minutes to Sangliana for his approval on April 5, 2002 in a letter from T. Pradeep, director and secretary of Samuha.

come from different professions; it is completely false to say we are in the sex trade. Somehow some courage came over the women and they refused to do this.⁷³

At the meeting, Samraksha also presented the case of a peer educator who had been attacked by assailants who threw acid at her, disfiguring her face in a way that affected her speech. The local police had refused to register her complaint. The police commissioner said he would look into the matter.⁷⁴

By end May 2002, Samraksha had received no responses to its letters to state and central-level officials.⁷⁵ An inquiry promised by the police commissioner at the March meeting had not yet begun. In April, the Karnataka legislative assembly considered briefly the question of violence against women, including sex workers, and endorsed the idea of further official inquiry into these incidents. Sanghamitra Iyengar noted that following the organization's complaints, police violence against peer educators had subsided somewhat.⁷⁶

Tamil Nadu

Peer educators working with women in prostitution in Chennai (formerly Madras), capital of Tamil Nadu State, told Human Rights Watch that police harassment is a consistent part of their work. In Chennai, prostitution is mostly street-based without designated red-light districts, though there are some brothels. Peer educators working with the Community Health Education Society (CHES) in Chennai, one of Tamil Nadu's largest HIV/AIDS NGOs, reported to Human Rights Watch that they are frequently arrested and detained by the police.⁷⁷ CHES reaches with HIV/AIDS education an estimated 60 percent of women in prostitution in Chennai.⁷⁸ Since 1997, CHES has received several grants for its HIV/AIDS outreach work from the Tamil Nadu State AIDS Control Society.⁷⁹

CHES peer educators interviewed by Human Rights Watch in Chennai said the police accuse them of being engaged in sex work and ignore protestations that they are HIV/AIDS outreach workers. "For the police, if we have a condom in hand, they will arrest us," said Suneeta M., an experienced peer educator.⁸⁰ Several peer educators noted that possession of condoms, rather than protecting the peer educators from arrest, often led the police to accuse them of being engaged in solicitation for sex. "If a woman carries a condom, she can say 'it's not for me', but usually just carrying a condom means [to the police] you're a sex worker," said Dr. R. Lakshmi Bai, program associate with the AIDS Prevention and Control (APAC), a private organization that supports CHES.⁸¹ "We have expected protection from the government [for our education and condom distribution programs] but not got it," said Dr. P. Manorama, director of CHES.⁸²

Another peer educator described the conditions in the women's remand homes to which peer educators are sent after arrest:

No one believes us about peer education; we are always accused of being sex workers. The police don't listen. They beat us in the street itself. We are sent to the remand home and have to pay Rs. 1000 [about U.S. \$20] every time. Even if we pay, we have to stay in remand for one week. The conditions are terrible. They don't allow us to use the toilet at night, only in the morning. The food is not edible; there's no coffee or tea. We have to sleep on the floor. We

⁷³ Human Rights Watch interview with Sanghamitra Iyengar, April 3, 2002.

⁷⁴ Ibid.

⁷⁵ Human Rights Watch telephone interview with Sanghamitra Iyengar, April 22, 2002.

⁷⁶ Ibid.

⁷⁷ Human Rights Watch interview with twelve peer educators and outreach workers supported by CHES, Chennai, March 20, 2002.

⁷⁸ Human Rights Watch interview with Dr. P. Manorama, founder and director of CHES, Chennai, March 20, 2002.

⁷⁹ See "HIV Care and Prevention: An Indian NGO's Seamless Approach," *Impact on HIV*, vol. 1, no. 1, October 1998. Also available at www.fhi.org/en/aids/impact/iohiv/ioh11/ioh11.html.

⁸⁰ Human Rights Watch interview, March 20, 2002.

⁸¹ Human Rights Watch interview, Dr. R. Lakshmi Bai, APAC Project, Chennai, March 19, 2002.

⁸² Human Rights Watch interview with Dr. P. Manorama, March 20, 2002

can't take a bath; there's no water. . . . For punishment they make us kneel on the hard floor. Sometimes they beat us on the feet with sticks.⁸³

Peer educators and their supervisors both said that police harassment was often motivated by extortion of money. "This is all about getting a bribe," said Mala S., a peer educator. "Sometimes the police will say they don't want a bribe, but later, if we're arrested and need to make a phone call, then they'll take a bribe."⁸⁴ Dr. Lakshmi Bai noted that in addition to extorting money—"sex workers generally allot some money to take care of the police [every month]," she noted—fulfilling arrest quotas and getting free sex are also motivations. "If the policeman hasn't met his quota for arrests, he makes arrests. Peer educators are arrested often. . . . Police regularly have free sex with them; they can't say no to the police," she said.⁸⁵

Unlike some peer educators, the outreach workers in CHES do not have identification cards that explain their affiliation with an HIV/AIDS organization; several of the peer educators interviewed thought they would be better off with such cards. The president of the peer educators group of CHES suggested that the cards could be valid for use during certain hours when the peer educators do their outreach work, and then after those hours, when the peer educators might be doing sex work, the police would be able to treat them as such.⁸⁶ However, Dr. Manorama said that CHES had not received authorization from APAC, its current major funder, to issue identification cards for the peer educators and that the peer educators, while the "backbone" of the HIV/AIDS program, were not staff members receiving salaries but rather a small allowance for their expenses.⁸⁷

All those who spoke to Human Rights Watch agreed on the need to train and sensitize the police and that this could be effective. "CHES has done sensitization of police in three districts [of Tamil Nadu State]. Most policemen say they are not aware that NGOs distribute condoms through peer educators," said Dr. Manorama.⁸⁸ Dr. Lakshmi Bai noted that the high turnover in the police force made it difficult to maintain police awareness of HIV/AIDS issues.

Harassment of CHES' peer educators is an important impediment to the maintenance of HIV/AIDS prevention work, which has a proven track record of success. Dr. Manorama's records dating from CHES' early work in 1993 indicate among people seen in the CHES-supported care center a significant increase in condom usage, a significant decline in the average number of sex partners per adult, and greater knowledge of HIV transmission and the symptoms of AIDS.⁸⁹ Dr. Lakshmi Bai's published surveys on HIV/AIDS knowledge and behavior in Tamil Nadu estimate that 98 percent of women in prostitution in the state understand methods of preventing STDs, including HIV, as opposed to 57 percent of women in the general population, and that condom usage with non-regular partners among women in prostitution has increased from about 58 percent to 88 percent in the last five years, results she attributes in large part to CHES.⁹⁰

The population of sex workers served by CHES has few other options for obtaining an adequate supply of condoms. Government centers distribute condoms, said Dr. Manorama, but they give only one or two at a time. An experiment with vending machines in Chennai was ended by the government some time ago. She continued:

There is demand for condoms, but there is stigma and criminalization. There is the awareness and willingness, but the stigma is powerful. A woman won't go to a shop for condoms because of cultural taboos. We had women go to shops and ask for condoms as an exercise in our training program. We were trying to train pharmacists to look at the customer in a different way. We

⁸³ Human Rights Watch interview with Geeta R., CHES peer educator, Chennai, March 20, 2002.

⁸⁴ Human Rights Watch interview, Chennai, March 20, 2002.

⁸⁵ Human Rights Watch interview with Dr. R. Lakshmi Bai.

⁸⁶ Human Rights Watch interview with Puja L., Chennai, March 20, 2002.

⁸⁷ Human Rights Watch interview with Dr. P. Manorama, Chennai.

⁸⁸ Ibid.

⁸⁹ Human Rights Watch interview with Dr. P. Manorama, Chennai.

⁹⁰ Human Rights Watch interview with Dr. R. Lakshmi Bai, and AIDS Prevention and Control Project-Voluntary Health Services, "HIV Risk Behavior Surveillance Survey in Tamil Nadu and Pondicherry," Chennai: April 2002, pp. 27, 32.

noticed the shopkeeper looked the woman up and down, laughed, waited for other customers to leave. . . . Some shopkeepers say they are not willing to stock condoms; they don't want them displayed in front of children.⁹¹

In Tamil Nadu, harassment of HIV/AIDS peer educators is apparently not confined to big cities. In late February 2002, an HIV/AIDS peer educator employed by the Sakthi Women Peer Educators Society in Trichy (Tiruchirappalli District), Tamil Nadu, was reportedly beaten by a local police constable without apparent provocation as she was waiting for a bus. (This peer educator group works under the auspices of a Trichy-based NGO called Anbalayam.) According to the organization's report to the Tamil Nadu State Human Rights Commission and local authorities, the head police constable beat the outreach worker around the thighs with a *lathi* (baton) and threatened to beat her "on her private parts."⁹² Three other peer educators witnessed the attack. The woman who was beaten was treated as an out-patient at a local hospital.⁹³

After helping her get home, the three peer educators who had witnessed the attack returned to the bus stand at about 7:30 p.m. to make their way home. According to the women, the head police constable appeared there again, "got wild" and beat them indiscriminately, also cursing them in "filthy language".⁹⁴ All three were injured and went to the hospital, but the constable reportedly followed them and told the hospital staff not to treat them. One of the three was so severely injured that she was admitted to the hospital overnight. When the peer educators group subsequently made a complaint to the sub-inspector of police in Trichy, she referred the case to the acting head constable, who then refused to receive the complaint as long as it named the head constable.⁹⁵ The organization prepared another complaint omitting his name, but, according to their president, no action was taken. In its official complaint, Anbalayam noted that the difficulties faced by the peer educators had disrupted "a conducive atmosphere for the HIV/AIDS prevention programme."⁹⁶

By mid-April, the head police constable was transferred to another district, but Anbalayam was never informed whether this had anything to do with the beatings. "We had no proper reply from any officials," Senthil Kumar, the director of Anbalayam, told Human Rights Watch in April.⁹⁷ Kumar remained concerned of continuing police harassment. "Even today four of our peer educators were arrested," he said.⁹⁸

Senthil Kumar believed that the recent beatings of peer educators were part of a wider crackdown on women in prostitution and peer educators that had also seen peer educators arrested and charged falsely with cannabis possession, ensuring long prison stays. "Under the law, they are only supposed to arrest the women when they are soliciting, but now they are arresting sex workers and peer educators while they are waiting for the bus and when they go to temple with their families," he said.⁹⁹ He feared that further crackdowns would disrupt their HIV/AIDS work in two ways—by incapacitating peer educators and by driving women in prostitution to conduct their business in more remote areas where peer educators would not be able to reach them with condoms. The condoms distributed by the peer educators in Trichy are provided by the government.¹⁰⁰

⁹¹ Human Rights Watch Interview with Dr. P. Manorama.

⁹² Letter from K. Megala, president, Sakthi Women Peer Educators Society, Trichy, to Chairperson, Tamil Nadu State Human Rights Commission, March 3, 2002, forwarded by Senthil Kumar, Anbalayam, to the district collector, police commissioner and police inspector of Trichy, March 7, 2002.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Letter from Senthil Kumar, founder secretary and chief functionary of Anbalayam, to the District Collect

⁹⁷ Human Rights Watch telephone interview with Senthil Kumar, founder secretary of Anbalayam, Trichy, April 22, 2002.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

Human rights abuses linked to HIV/AIDS outreach to men who have sex with men

Lucknow (Uttar Pradesh)

In July 2001, the arrest of four staff members from two organizations working against HIV/AIDS among men who have sex with men in Lucknow, Uttar Pradesh State, drew international attention. Staff members of Naz Foundation International (NFI)'s Lucknow office and of Bharosa Trust were imprisoned for forty-seven days following a police raid of their offices.¹⁰¹ Spurred apparently by the testimony of an informer, the police raided the offices of both organizations and accused both of running a gay "sex racket." They also pronounced the HIV/AIDS-related information materials seized in the raided offices as legally "obscene." The four were charged under several sections of the Indian Penal Code—377 ("unnatural offences"),¹⁰² 120B (criminal conspiracy to commit a serious offense), 107 and 109 (aiding and abetting a crime), 292 (sale of obscene materials) and the Indecent Representation of Women Act.¹⁰³ The offices of both organizations were sealed at the time of the arrests, and the NFI office remained so until mid-September 2001.¹⁰⁴

Initial press reports of the arrests cited allegations by the police that a man they had arrested under a sexual assault charge had revealed under questioning the existence of a "sex racket" being run by Bharosa Trust, and that their investigations of Bharosa led them to NFI.¹⁰⁵ Both organizations issued immediate denials of these charges, but these were not noted in early press reports. "We have always had tremendous support from the local people and our neighbors," said Arif Jafar, the director of NFI-Lucknow and one of the persons arrested. "We were transparent from the beginning—they all knew we were working with sexual minorities. The police framed their own story."¹⁰⁶ The police originally reported that in the offices of the organizations they found seventeen men watching a pornographic movie, but no such film was included among the goods seized and inventoried by the police.

Both NFI and Bharosa Trust are registered NGOs, and both were recognized by the Uttar Pradesh State AIDS Control Society for their HIV/AIDS prevention work with men who have sex with men. Bharosa Trust provided a range of services, including information on HIV/AIDS and other sexually transmitted diseases, literacy training, and a drop-in center. NFI-Lucknow ran and still runs a reference library and conducts training on HIV/AIDS prevention for local groups. According to Arif Jafar, NFI's activities had largely recovered from the arrests and detentions by April 2002, but the education and other services provided by Bharosa had suffered greatly.

The detained staff members made two formal appeals in July for release on bail. The chief judicial magistrate in Lucknow denied both, the first time noting that "a group of persons indulging in these activities . . . [is] polluting the entire society by encouraging the young persons and abating [sic] them to committing the offence of sodomy."¹⁰⁷ The prosecutor in the case stated in court that the homosexuality being encouraged by the

¹⁰¹ The Lucknow case was recounted in a number of national and international press reports, including, for example, T.K. Rajalakshmi, "Targeting NGOS," *Frontline*, vol. 18, no. 18, September 2001. See also Naz Foundation International press release, July 9, 2001.

¹⁰² Section 377 of the Indian Penal Code, entitled "Of Unnatural Offences," prohibits "carnal intercourse against the order of nature with any man, woman or animal" and is widely interpreted to criminalize sex between men. See Legal Background, part VII.

¹⁰³ Indian Penal Code references are to *Ratanlal & Dhirajlal's The Indian Penal Code*, 27th edition, Nagpur: Wadhwa and Company, 1996. The Indecent Representation of Women (Prohibition) Act of 1986 prohibits indecent or "derogatory" depictions of women in books, photographs, paintings, films, pamphlets, packages, and other media and carries a minimum sentence of two years in prison.

¹⁰⁴ Letter from Shivananda Khan and Arif Jafar, Naz Foundation International, to NFI supporters, November 2001. Reprinted in International Gay and Lesbian Human Rights Commission (IGLHRC) Action Alert Update, December 18, 2001. Available at http://www.iglhrc.org/world/s_asia/India2001Dec.html (consulted April 9, 2002).

¹⁰⁵ T.K. Rajalakshmi, "Targeting NGOS."

¹⁰⁶ Human Rights Watch interview with Arif Jafar, director, Naz Foundation International-Lucknow, April 2, 2002.

¹⁰⁷ International Gay and Lesbian Human Rights Commission, Action Alert, July 25, 2001. Available at www.iglhrc.org/world/s_asia/India2001Jul_2.html (consulted April 10, 2002).

defendants was "against Indian culture," a remark echoed by the senior superintendent of police in Lucknow.¹⁰⁸ Bail was finally granted the four HIV/AIDS workers in late August in a decision of a higher court. Another defendant not affiliated with either of the organizations who was arrested and charged at the same time under section 377 was held until January 2002.¹⁰⁹

The conditions faced by the AIDS outreach workers in detention were deplorable. Arif Jafar told Human Rights Watch:

For the first ten days, they provided nothing for us, not even clean water. We were not provided utensils for eating, and we couldn't take baths. We were cleaning drains and toilets with the same utensils that were all we had for eating. Even for going to the toilet, we had to use dirty drain water. We were harassed. The first news reports that came out about our arrest said that we ran a "gay den" and had made 70 lakh [700,000] rupees [about U.S. \$1450], so the police had the impression that we had money, and that combined with their idea that we were doing "unnatural" things made them harass us. We were abused and beaten and threatened. . . . I have kidney stones, and in prison they would not allow me to have medication. I was in terrible pain. It was so painful—at that time, I wished to die.¹¹⁰

Arif Jafar is Muslim, and he said this fact was used to try to link him with the Pakistan's Inter-Services Intelligence (ISI) agency and with Kashmiri militants. He said that the police told him that he was "trying to destroy our country by promoting homosexuality" and that "Hindus don't have these practices—these are all perversions of the Muslims."¹¹¹

Persons close to Arif Jafar were also harassed during his detention. "My parents received threatening calls from the police. My brother and father were threatened with arrest and imprisonment. They said, 'You have such a bad son; we're coming to arrest you.' For the first twenty-five days, my family was on the run. . . . They had to find a new place to stay almost every night." Aditya Bondyopadhyay, the lawyer for the defendants, was also harassed and pursued by the police. He told Human Rights Watch: "I was constantly followed from early July to mid-August by two people in uniform, members of the Local Intelligence Unit, and one always carried a carbine."¹¹² Bondyopadhyay said both his telephone and electronic mail correspondences were under surveillance because the police and the prosecutors were aware of developments that he had only discussed with others on the phone or in electronic mail. In addition, the commercial internet outlet that he used during the Lucknow proceedings was visited by the superintendent of police with twenty-five policemen one day when he was using it.

The disposition of the Lucknow case is apparently stalled. The police have filed their charges, and the magistrate in Lucknow is required to hear the arguments of the prosecution and the defense to decide which charges to "frame" and which to dismiss. Arif Jafar and his co-defendants are required to appear in court every fifteen days to register their presence, but others not affiliated with either NFI or Bharosa who were arrested and

¹⁰⁸ Human Rights Watch interview with Aditya Bondyopadhyay, New Delhi, March 29, 2002.

¹⁰⁹ Ibid.

¹¹⁰ Human Rights Watch interview with Arif Jafar, April 2, 2002.

¹¹¹ Ibid. Hindu nationalist groups consistently stigmatize Muslims as foreign and corrupting influences, while government officials prosecute them as "terrorists" and label them as agents of Pakistan. See Human Rights Watch, *World Report 2002: Events of 2001* (New York, Human Rights Watch, 2001), p. 225. The Students Islamic Movement of India (SIMI) was banned after September 11, casting the group as terrorists and anti-nationalists, while the activities of Hindu nationalist groups implicated in widespread violence against minorities remained unaffected by the new law. See also Human Rights Watch, "We Have No Orders to Save You." Muslims arrested following the massacre of fifty-eight people, including Hindu activists, when a train was torched in Godhra, Gujarat, were initially charged with crimes under the Prevention of Terrorism Ordinance, now Prevention of Terrorism Act. The state government filed ordinary criminal charges against Hindus who carried out revenge attacks against Muslims. Muslim survivors of the communal violence in Gujarat in March 2002 and beyond were also told to "go back to Pakistan."

¹¹² Human Rights Watch interview with Aditya Bondyopadhyay, March 29, 2002.

charged under section 377 at the same time have not appeared before the court, and the case reportedly cannot proceed until they do so.¹¹³

The long detention of the Lucknow defendants and the attempt to portray Arif Jafar as an enemy of the state are reminiscent of the arrest and detention in 2000, also in Uttar Pradesh, of staff members from the NGO Sahayog in Almora. Sahayog is an NGO working on sustainable development and human rights issues, including HIV/AIDS education, especially for marginalized communities. In April 2000, eleven persons working for Sahayog were arrested because of a pamphlet entitled "AIDS and Us" that the organization published.¹¹⁴ The pamphlet was sexually explicit and contained descriptions of local sexual practices to which many people in the region took exception. In this case, the detainees were charged not only under obscenity statutes but also as enemies of the state under the National Security Act of 1980, which gives the government wide powers of detention to prevent a person "from acting in any manner prejudicial to the security of the state."¹¹⁵ The National Security Act of 1980 allows for a person to be detained for up to twelve months in order to prevent him or her from acting in any manner that is prejudicial to the security of the state government or to the maintenance of public order.¹¹⁶ The invocation of this act made it very difficult for the Sahayog defendants to succeed in their petition for bail. In addition, they were "handcuffed and paraded with medieval cruelty through the market," an exceptional procedure apparently linked to the security charges.¹¹⁷

Bangalore

Human Rights Watch also learned of abuses of staff of an NGO in Bangalore in March 2002. Sangama is a two-year-old organization working with men who have sex with men, particularly those living in poverty, in Bangalore. HIV/AIDS information and counselling are part of its work, though it does not do condom distribution, which is undertaken by other groups in Bangalore.¹¹⁸ It regards its principal work on human rights to be an integral part of HIV/AIDS prevention in the sense that if men who have sex with men are consistently denied their rights and self-respect, they will not be motivated to practice safe sex.¹¹⁹ Elavarthi Manohar of Sangama noted that among the men the organization works with, there were many who had attempted suicide several times, a response to the deep stigma and social ostracization faced by these men.

Like other NGOs in India that work with men who have sex with men, an important part of Sangama's work is providing a drop-in "safe space" for men to meet, receive counseling, and discuss their concerns, including HIV/AIDS-related issues. Sangama's office is in an apartment block in Bangalore in which two of the sixteen units are residential. It hosts meetings for men who have sex with men on Sundays when most of the units are not used. According to Elavarthi Manohar of Sangama, others in the apartment building were aware of the organization's activities, and the owner of the Sangama apartment is very supportive of the organization.

On Sunday, March 17, 2002, one of the residents of the apartment block, a former state-level official, asked that a Sangama staff member come to see him at his house. At the time, Sangama was holding one of its regular meetings. The ex-official told the Sangama staff member that since families were present in the building,

¹¹³ Ibid.

¹¹⁴ Rajeev Dhavan, "The Sahayog affair," *Hindu* (Chennai), May 19, 2000.

¹¹⁵ Government of India, National Security Act (Act No. 65 of 1980), December 27, 1980. The National Security Act grants the government power to detain anyone if the detection prevents him or her from "acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India" or "acting in any manner prejudicial to the maintenance of public order." The act allows for a first detention not to exceed three months, but subsequent three-month extensions up to twelve months are allowed as the state deems necessary.

¹¹⁶ Ibid.

¹¹⁷ Dhavan, "The Sahayog affair." In the face of public protest, the national security-related charges against the Sahayog workers were eventually dropped. The last defendants were released after forty days in prison.

¹¹⁸ Human Rights Watch interview with Elavarthi Manohar, program coordinator, Sangama, by telephone from New Delhi, March 27, 2002.

¹¹⁹ Ibid.

Sangama should not bring *hijras*¹²⁰ on the premises and made other complaints.¹²¹ The staff member who spoke to the ex-official returned to the Sangama office and recounted the allegations.

At 5:00 p.m. the same day, three policemen in plain clothes walked into Sangama's office and demanded to know the nature of the organization's work.¹²² They left fifteen minutes later with copies of the documents confirming Sangama's government registration and a list of its governing board members. They were followed soon after by a police sub-inspector and three other plain clothes policemen who again noted the details of Sangama's government registration and proceeded to search the office thoroughly though they did not produce a search warrant. They also inspected software on CD-ROMs in the office and asked staff members to run the CDs on the computer. They claimed that local residents were complaining about the meeting in progress and had asked that it be closed down.¹²³ The sub-inspector told the Sangama staff that *hijras* should not assemble in a residential area because it "humiliated" the local people, and he advised them to conduct meetings with such people only outside the Bangalore city limits. The meeting continued until its usual time of adjournment, and the officers left. As it happened, members of the People's Union for Civil Liberties of Karnataka (PUCL-K) and a number of other human rights and development organizations were also at the meeting that day. The next day, Sangama staff and members of colleague organizations, including the PUCL-K, met with the deputy commissioner of police in Bangalore. The deputy commissioner called the police who had searched Sangama's office and told them to discontinue this harassment.

In spite of this intervention, on Sunday, March 31, three police officers appeared at Sangama's office and prevented a number of *hijra* and *kothi*¹²⁴ community members and NGO colleagues from entering the office for the regular meeting. Following this incident, Sangama staff and a lawyer from the Alternative Law Forum of Bangalore went to the office of the circle inspector of police. The circle inspector told them that the *hijras* would not be allowed to meet at Sangama's office and could only meet "outside Bangalore city."¹²⁵ He would not engage the complainants in a discussion of the legality of the police action, referring them to higher-level officials. More recent meetings, however, have been allowed to take place without disruption. At the regular meeting on Sunday, April 21, a police officer came and stayed a while but eventually left without incident.¹²⁶

Chennai

Sahodaran is an organization that does outreach and provides a drop-in center for men who have sex with men in Chennai. It fields a team of ten outreach workers who attempt to cover about twenty "cruising sites," where men who have sex with men meet each other, to provide HIV/AIDS information and condoms. UNAIDS includes as part of its "Best Practice Digest" a recognition of the work of Sahodaran, noting the organization "has contributed strongly to national advocacy and networking around policy and technical issues related to sexually transmitted diseases, HIV and male-to-male sex."¹²⁷ Several of Sahodaran's outreach workers told Human Rights Watch of experiences of police harassment and detention.

¹²⁰ *Hijras* are transgender people and people with intersex conditions, many of them men who undergo castration. (Definitions from International Gay and Lesbian Human Rights Commission, see www.iglhrc.org/world/s_asia/India2002Apr.html, consulted April 9, 2002). Sangama staff reported that the ex-official made no distinction between *hijras* and other men who have sex with men.

¹²¹ Electronic mail from Elavarthi Manohar to Sangama network, March 23, 2002, and Human Rights Watch interview with Manohar, March 27, 2002.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ *Kothis* are men who have sex with men and who identify themselves as feminine in sexual relationships. See International Gay and Lesbian Human Rights Commission Action Alert, "Stop police brutality against *hijras* and *kothis* in Bangalore," available at http://www.iglhrc.org/world/s_asia/India2002Apr.html (consulted April 10, 2002).

¹²⁵ Electronic mail message to Sangama network from Elavarthi Manohar and the Sangama staff, April 2, 2002.

¹²⁶ Human Rights Watch telephone interview with M. Nithin, Sangama staff member, April 22, 2002.

¹²⁷ UNAIDS, "Sexual health of males who have sex with males in South Asia," Best Practices Digest, available at <http://www.unaids.org/bestpractice/digest/files/sexualhealth.html> (consulted April 10, 2002).

Harassment of Sahodaran's workers as well as of men who have sex with men more generally is "all about money extraction or free blow jobs," said Sunil Menon, director of Sahodaran. "If the *kothi* has no money on his person, they [police officers] extract sex."¹²⁸ In January 2002, James K., age twenty-eight, an HIV/AIDS peer educator working with men who have sex with men, was returning from his outreach work on the train when, he said, a railroad policeman "got friendly" with him but then got off the train and turned him in to the regular police.¹²⁹ He said he would not have been returning on that late train except for having had to do his AIDS outreach work. "There was a statewide *bandh* [public strike or protest action], and they were picking up anyone who was suspicious. I was cross-examined, grilled. I sat separately because I am transgender. I did a kind of overly camp routine. They bullied me, told me they knew someone was murdered near my house, anything to rattle me. . . . The whole night they had me there—they said 'sing for us, dance for us'."¹³⁰ In James K.'s case, he was eventually let go because the police in the station nearest his home knew him and pronounced him harmless.

Sunil Menon said Sahodaran's attempt to issue identification cards to its AIDS outreach workers had been unsuccessful as a way of safeguarding them from police harassment or abuse. "These boys get a beating and are harassed even before they can pull out the ID card. The policeman catch them by the collar and won't even look at an ID card," he said. Menon said that in Chennai the police were likely to be most brutal when patrolling the beach because the authorities wish to preserve it as a tourist destination, and they see the presence of men who have sex with men on the beach as a barrier to tourism.

Sahodaran offers training for police on HIV/AIDS and the importance of AIDS prevention work with the MSM community; Sunil Menon noted that there were senior persons in the police hierarchy who were sensitized to these issues:

The problem is with the grassroots-level cops. We have to raise awareness at that level. The biggest step, of course, would be legalizing prostitution. But short of that, we need to sensitize the police, especially asking, "why the need for violence? There is a law, we know you have to book them, but there are more civil and humanized ways to do it." Then there's corruption, and you won't get over that. We need to say to the police, "we need your help; we need to do this together" and to tell them that they are in danger, too [because of the police having sex with those they arrest and harass].¹³¹

New Delhi and other locations

Naz Foundation (India) Trust (NFIT)¹³² is an organization located in New Delhi that is known internationally for its AIDS prevention efforts among men who have sex with men.¹³³ Shaleen Rakesh, coordinator of the organization's work with men who have sex with men, supervises a team of outreach workers who provide condoms and HIV/AIDS information to vulnerable men in numerous "cruising" locations around the Indian capital. NFIT outreach workers described to Human Rights Watch the challenge of maintaining HIV/AIDS work in the face of constant police harassment. Rakesh said of this harassment: "They [the police] never press charges. All the police are interested in is harassing and extorting money. They hold them [the outreach workers] a while and then say 'get lost, get the hell out,' and maybe sometimes ask for a blow job."¹³⁴

¹²⁸ Human Rights Watch interview with Sunil Menon, director, Sahodaran, Chennai, March 19, 2002.

¹²⁹ Human Rights Watch interview, Chennai, March 19, 2001.

¹³⁰ Human Rights Watch interview, March 19, 2001.

¹³¹ Ibid.

¹³² Naz Foundation (India) Trust is not affiliated with Naz Foundation International, the group whose regional office for South Asia is located in Lucknow.

¹³³ See, for example, a summary of Naz's work by the Infinity Foundation of Princeton, New Jersey (USA) available at <http://www.infinityfoundation.com/naz.htm> (consulted April 5, 2002), and the description of Naz's work by the AIDS Alliance of Brighton, UK, at www.aidsalliance.org (consulted April 6, 2002).

¹³⁴ Human Rights Watch interview with Shaleen Rakesh, Naz Foundation (India) Trust, New Delhi, March 15, 2002.

NFIT's outreach workers reported a somewhat intensified level of harassment by police and by local hoodlums (*goondas*) in early 2002 which they attributed to several factors. Since the December 13, 2001 attack on the India Parliament building in the center of the capital, there had been a greater police presence in the city, with some of these police new to street-based work and exposed for the first time to cruising areas for men who have sex with men.¹³⁵ Also, in the wake of the Lucknow incident of July 2001 and other media coverage of gay rights issues, men who have sex with men were more visible, leading local hoodlums in New Delhi to seek out men in cruising areas to entrap and blackmail, harass or harm. Shaleen Rakesh said calls received by the NFIT telephone help-line indicated there had been an analogous increase in the frequency of internet-based entrapment in the same period.¹³⁶ Also, the public confusion between Naz Foundation International in Lucknow and Naz Foundation (India) Trust (NFIT), two distinct organizations, had caused NFIT to be targeted by the police and thugs. NFIT's outreach workers told Human Rights Watch that they heard frequently from the police department and others at the outreach site that "oh, first you screwed it up in Lucknow, now you've come to Delhi," and that they were "running a sex racket," and this was "like your branch in Delhi."¹³⁷ Attendance at support group meetings for men who have sex with men in New Delhi dropped dramatically after the Lucknow detentions, Rakesh noted, as there was the fear that NFIT in New Delhi could be raided as well.

Even before the Lucknow incident, NFIT was forced to close a drop-in center that it had established for men who have sex with men, which included a sexually transmitted diseases clinic, because of violence against men who came to the center. In June 2001, some days before the Lucknow detentions, *kothis* who had attended a meeting at the drop-in center were severely beaten by local hoodlums armed with sticks and metal batons while waiting for a bus. Two of the *kothis* were badly enough beaten, including around the head, to require hospitalization.¹³⁸ Staff of the center also received threats regularly. "I used to get phone calls from people almost on a daily basis, saying 'what kind of club are you running?' and 'I'm going to come there and burn this whole establishment down'," said Rakesh. NFIT took the decision to close the center after about six months of operation but has maintained its other activities.

NFIT coordinator Shaleen Rakesh emphasized the important role of section 377 (criminalizing "unnatural offenses") in contributing to police harassment of AIDS workers targeting men who have sex with men. NFIT conducts regular training sessions with the Delhi police and maintains close relations with a number of senior police, but section 377 effectively enables lower-level police to act with impunity. "As long as section 377 exists, they will always have it in their power to harass us," Rakesh said,¹³⁹ adding that NFIT will continue to pursue the repeal of section 377 even if its current petition for repeal is not successful in the Delhi High Court.

Local activists expressed frustration at the lack of financial support by the Delhi State AIDS Control Society for outreach among men who have sex with men for HIV/AIDS prevention. The Delhi State AIDS Control Society reported to Human Rights Watch that 35 percent of its budget for "targeted interventions" goes to the category of "sex workers/injecting drug users/men who have sex with men" but did not break that category down further.¹⁴⁰ Aditya Bondyopadhyay, an attorney in the Lucknow case, recently conducted an informal survey of groups working with sexual minorities, and many of them reported to him that they were unable to receive funding for their HIV/AIDS prevention work from the state governments.¹⁴¹

According to the World Bank, of the 680 NGOs that have received funding to work with high-risk groups as part of the national AIDS program, 147 have received assistance for work with women in prostitution and

¹³⁵ Human Rights Watch group interview with outreach workers of MSM Project, Naz Foundation (India) Trust, New Delhi, April 2, 2002.

¹³⁶ Human Rights Watch interview with Shaleen Rakesh, April 2, 2002.

¹³⁷ Human Rights Watch group interview with NFIT outreach workers, April 2, 2002.

¹³⁸ Human Rights Watch interview with Shaleen Rakesh, April 2, 2002.

¹³⁹ Ibid.

¹⁴⁰ Letter to Human Rights Watch from Aslam Naved, NGO Advisor, Delhi States AIDS Control Society, May 9, 2002.

¹⁴¹ Human Rights Watch telephone interview with Aditya Bondyopadhyay, April 10, 2002.

twenty-five have received assistance for work with men who have sex with men.¹⁴² J.V.R. Prasada Rao, special secretary and project director of the National AIDS Control Organisation (NACO), emphasized that in financial terms about 20 percent of the five-year World Bank-funded national AIDS control program is for "targeted groups" including sex workers, men who have sex with men, drug users, truck drivers and refugees.¹⁴³ The AIDS Control Society of the state of Tamil Nadu, which has far more reported cases of AIDS than any other state, supports twenty groups that do outreach with women in prostitution and one group that works with men who have sex with men of the 106 NGOs it funds.¹⁴⁴

Asked about funding from the government AIDS program to groups working with men who have sex with men, Rao said that this was a state-level decision and that NACO has not tried to establish quotas or limits for any particular category of work.¹⁴⁵ Neelam Kapur, then joint director of NACO, noted that with the exception of a group such as Udaan in Mumbai, there were relatively few organizations working with men who have sex with men that had the skills and capacity to carry out high-quality HIV/AIDS efforts. Christodas Gandhi in Tamil Nadu said there was relatively little homosexuality in his state, which explained the small allocation of funds in this area. "Here homosexuality is not a crippling problem. Police don't go after homosexuals. It's a subdued problem; the numbers are not large. We perceive this problem in cosmopolitan areas only."¹⁴⁶

Staff members of the organization Mithrudu in Hyderabad also informed Human Rights Watch that on February 19, 2002, five of their outreach workers were arrested by the police while they were doing their outreach work. According to Mithrudu staff, the workers attempted to explain to the police that they were doing HIV/AIDS outreach work, but the police pushed them into the police van, constantly insulting them with "vulgar and filthy" terms.¹⁴⁷ The police continued to insult the workers through the night, and it was more than three hours before the workers were allowed to call the head of Mithrudu who assisted in getting them released.

Muskan, an organization that has been conducting HIV/AIDS outreach with men who have sex with men in the Sangli area for about two years, has an affiliation with SANGRAM. Six HIV/AIDS outreach workers of Muskan told Human Rights Watch that they felt they were able to maintain their work only because of that affiliation and because they had identification cards that mentioned HIV/AIDS and SANGRAM.¹⁴⁸ The police have been sensitized by SANGRAM and know its work in the Sangli area. When Muskan tried to field outreach workers without cards, the workers were harassed by the police; several recounted several incidents of being taken to the police station and forced to have sex with police officers before being released. They also face regular attacks from local thugs as they try to conduct their HIV/AIDS work. "We can't report these to the police because of section 377," said one outreach worker.¹⁴⁹ The outreach workers noted that in a smaller town like Sangli, counseling and providing services to men who have sex with men is particularly challenging because men who are "out" regularly lose their jobs. "We do condom distribution, but there are a lot of men with STDs [sexually transmitted diseases], and it's hard to get them to go to any clinic [because of stigma]," said one staff member.¹⁵⁰

Aditya Bondyopadhyay summed up the situation for HIV/AIDS work among men who have sex with men, observing, "small Lucknows are happening every day." Bondyopadhyay, who has been involved with the Lucknow case and other efforts to defend the rights of sexual minorities, testified on abuses against sexual minorities before the U.N. Commission on Human Rights in Geneva at its 2002 session in April. Referring to

¹⁴² Information provided to Human Rights Watch by electronic mail by Dr. K. Sudhakar, World Bank New Delhi office, May 3, 2002.

¹⁴³ Human Rights Watch interview with J.V.R. Prasada Rao, NACO, New Delhi, April 4, 2002.

¹⁴⁴ Human Rights Watch interview with Christodas Gandhi, project director, Tamil Nadu State AIDS Control Society, Chennai, March 19, 2002.

¹⁴⁵ Human Rights Watch interview, April 4, 2002.

¹⁴⁶ Human Rights Watch interview, March 19, 2002.

¹⁴⁷ Letter to Human Rights Watch from M. Krishna, program coordinator, Mithrudu, Hyderabad, April 4, 2002.

¹⁴⁸ Human Rights Watch interview with HIV/AIDS outreach workers from Muskan, Sangli, March 24, 2002.

¹⁴⁹ Human Rights Watch interview, Sangli, March 24, 2002.

¹⁵⁰ Ibid.

violent beatings, blackmail, extortion, sexual assault and rape by the police against sexual minorities in India, Bondyopadhyay said, "The state and especially the apex agency NACO are aware of this conduct of the beat constabulary. . . . Yet they choose to turn a blind eye to such activities and to do nothing. They do so because ultimately the state does not recognize MSM [men who have sex with men] as humans with human rights—even as thousands more continue to fall victim to HIV every month."¹⁵¹

Section 377

Section 377 of the IPC, entitled "Of Unnatural Offences," states that "[w]hoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence. . . ."¹⁵² The comment on this section in the IPC notes that the intent of the section is "to punish the offence of sodomy, buggery and bestiality." The Lawyers Collective, an NGO based in Mumbai and New Delhi that has handled many HIV/AIDS-related cases in India, notes that there is no crime for the status of being homosexual per se, though section 377 effectively criminalizes male homosexual sex.¹⁵³

Human Rights Watch opposes laws, regulations and systematic government practices that discrimination on the basis of sexual orientation. All groups working on HIV/AIDS outreach that were interviewed by Human Rights Watch considered it hypocritical of the government to keep section 377 on the books, with its inevitable consequences for outreach work targeting men who have sex with men, while ostensibly recognizing the importance of HIV/AIDS outreach to this population. Many said that official charges under 377 are rarely brought, but the threat of its use, particularly after the Lucknow events, is effective. Noting that Lucknow demonstrated that a charge under 377 could mean a long delay in getting released from detention on bail, Aditya Bondyopadhyay noted:

Policemen take advantage of this fear of the judicial process to threaten sexual minorities with section 377. They employ such threats to blackmail, extort, rape, and physically abuse their victims. And because obtaining rapid redress is a virtual impossibility, members of sexual minorities usually pay up or accede to the abuse. This also means that the police records never reflect the fact that the threat of 377 was used, for no case is ever registered. The lack of a paper trail—of records of the prosecution of consensual sexual acts between adult males—is in turn used by the police to claim that section 377 is a benign provision chiefly enforced, as they falsely claim, to deal with cases of male rape. . . . Today the issue of section 377 . . . is a question of corruption, simply because it is one of the lucrative and easy sources of supplemental income for a venal police. Their real objection to its repeal is the fear of losing this easy money.¹⁵⁴

On December 7, 2001, the Delhi High Court admitted a petition from the Naz Foundation (India) Trust challenging the constitutional validity of section 377.¹⁵⁵ The petition argues this unconstitutionality on several grounds, including that (1) the prohibition of private, consensual relations violates the right to privacy, which is guaranteed "within the ambit of the right to liberty" in the Indian Constitution; (2) a distinction between procreative and non-procreative sex is unreasonable and arbitrary and undermines the equal protection provision

¹⁵¹ Aditya Bondyopadhyay, "State-supported oppression and persecution of sexual minorities in India: Statement to NGO briefing," United Nations Commission on Human Rights, April 8, 2002.

¹⁵² Ibid.

¹⁵³ Lawyers Collective, "Men Who Have Sex with Men and the Law," available at www.hri.ca/partners/lc/unit/homosexuality.shtml (accessed April 7, 2002). Section 377 has been used to charge males engaging in homosexual sex. The Lawyers Collective notes that in the case of anal sex, charges under 377 are made against the insertive partner while the passive partner is considered an abettor and may be charged under section 114 of the Penal Code. According to the Lawyers Collective, in recent years formal charges under section 377 have been filed largely in cases involving sexual assaults on minors.

¹⁵⁴ Ibid.

¹⁵⁵ "Gay activists get court to examine Article 377," *Hindustan Times*, December 7, 2001, and Human Rights Watch interview with Shaleen Rakesh, coordinator of MSM Project, Naz Foundation (India) Trust, New Delhi, March 15, 2002.

of the Constitution; (3) the punishments prescribed in 377 are grossly disproportionate to the prohibited activity; (4) 377 effectively violates the prohibition of discrimination on the grounds of sex because it criminalizes predominantly homosexual activity; and (5) the right to life guaranteed in the Constitution is violated by 377's jeopardization of HIV/AIDS prevention efforts, by the denial that sexual preferences are an inalienable component of the right to life, and by the social stigma and police abuse that the section perpetuates.¹⁵⁶ The petition elaborates on the HIV/AIDS point, noting that section 377 "provides a tangible threat to individuals and NGOs who wish to target the MSM or gay community as part of HIV interventions."¹⁵⁷

NACO is formally named as a respondent in the Naz Foundation (India) Trust petition before the Delhi High Court for the repeal of section 377 of the Penal Code. Asked whether NACO would support the repeal of 377 in its response, Rao said: "We will say we cannot criminalize this behavior; it is better to recognize it as a social aberration and deal with it. I can't say whether decriminalization comes from repeal or amendment [or another strategy], but we have to protect minors—this is the main thing. Most often one partner is a young boy; this is who we need to protect."¹⁵⁸ The report of the national conference on HIV/AIDS and human rights, published under the names of all the convenors—the government's National Human Rights Commission, NACO, the United Nations Children's Fund (UNICEF), UNAIDS, and the Lawyers Collective—includes a recommendation to "revise and reformulate" section 377 and another recommendation to legalize "any sexual activities undertaken with consent between adults."¹⁵⁹

Human rights abuses linked to HIV/AIDS outreach to male sex workers

Male sex workers are a group at once reviled and invisible in India, and they are at very high risk of HIV/AIDS. Few studies have been done of their situation, but in November 2001 the Samabhavana Society in Mumbai, an organization registered with the municipality of Mumbai, surveyed 120 male sex workers and *malishwalas* or masseurs to get some idea of their concerns, HIV/AIDS knowledge and behavior.¹⁶⁰ In this sample, 43 percent of the sex workers were married, highlighting the overlap of these men with the general population. The average number of sex partners reported by this group was eleven male partners per month and two female partners per month, another indication of the degree to which this population is integrated with a wider population not normally considered at high risk.¹⁶¹ Jasmir Thakur, the secretary of Samabhavana Society, noted that it is difficult to estimate the number of male sex workers in any Indian city since the population is so hidden, but it is thought that between 5000 and 10,000 work in Mumbai.¹⁶²

Samabhavana trains male sex workers as peer educators for HIV/AIDS prevention, including dissemination of basic information and distribution of condoms. It receives condoms for its HIV/AIDS activities from a private organization, dktINDIA Ltd., rather than from the government.¹⁶³

According to Thakur, police harassment is a frequent experience for all male sex workers encountered by Samabhavana in Mumbai. "They are threatened just to get money; they are kept in jail and have to have sex with the police and other inmates," he said. Male sex workers who are peer educators face the same treatment. "If they carry condoms, they are beaten up. Sometimes if they give money [to the police officer], they are let go," he noted, adding that the amounts that peer educators have to pay police officers vary greatly with the "whim of the

¹⁵⁶ Petition from Naz Foundation (New Delhi) to the High Court of Delhi at New Delhi (Extraordinary Original Writ Jurisdiction), Writ Petition (case) no. 7455/2001, December 2001.

¹⁵⁷ Ibid., paragraph 53.

¹⁵⁸ Human Rights Watch interview, April 4, 2002.

¹⁵⁹ National Human Rights Commission, National AIDS Control Organisation, Lawyers Collective, UN Children's Fund, and UN Joint Programme on HIV/AIDS, "National Conference on Human Rights and HIV/AIDS (24-25 November 2000, New Delhi): Report," August 2001.

¹⁶⁰ Samabhavana Society (Mumbai) in collaboration with People's Participatory Programme, "Knowledge, attitude, behaviour and perception towards HIV/AIDS—A study among the male sex workers and the masseur community in Mumbai," November 2001.

¹⁶¹ Ibid., p. 4.

¹⁶² Human Rights Watch interview with Jasmir Thakur, secretary, Samabhavana Society, March 26, 2002.

¹⁶³ Ibid.

police.”¹⁶⁴ In addition, he noted, both peer educators and the sex workers to whom they attempt to provide HIV/AIDS services are subject to frequent arrest and detention by the police, he said. In the experience of sex workers with whom his organization works, most detentions are from three to seven days with a maximum of fifteen days, again apparently subject not to fixed rules but to whatever the police officer demands.¹⁶⁵

Thakur noted that in Mumbai many of the male sex workers come from rural areas that have not been reached by HIV/AIDS information campaigns, including knowledge of safe sex. In the Samabhavana survey of November 2001, for example, only 13 percent of the sample reported coming from Mumbai.¹⁶⁶ Men who are newer to sex work are particularly vulnerable to being forced into group sex, often with older, richer or more powerful men, or being raped, thus making it practically impossible to negotiate condom use—all difficult challenges for HIV/AIDS prevention.

VI. GOVERNMENT RESPONSE

J.V.R. Prasada Rao, special secretary and project director of the National AIDS Control Organisation (NACO), acknowledged to Human Rights Watch that there is a problem of police abuse of outreach workers in some cases and that this harassment “is to extract money from sex workers, and some policemen are afraid that this source of money will dry up.”¹⁶⁷ He said, however, that when police are trained and sensitized, they generally cooperate with the HIV/AIDS work. “This is not a universal problem but is localized. . . . These are not organized human rights violations.” Christodas Gandhi, director of the Tamil Nadu State AIDS Control Society, echoed this view with respect to his jurisdiction, asserting that police abuse against women in prostitution is “localized and temporary” in Tamil Nadu. “The problem may be with the lower-level constable—we can’t help this. The police have a duty to pick up sex workers. I have heard about an incident where the sex worker was picked up because she had a condom in hand, but we don’t have that here.”¹⁶⁸

NACO is an office of the Ministry of Public Health and Family Welfare. Human Rights Watch asked J.V.R.P. Rao if it would be useful for the central government to include formally the Union Ministry of Home Affairs and the state-level home ministries, which together oversee the police force, in the administration of the national AIDS program. He said that at the state level, the AIDS Control Societies were already multisectoral with respect to the various social sectors—education, rural development, and so on—and that the formal inclusion of police commissioners at that level or home ministries at the state or central level was not necessary. “It’s a question of the outlook of these [police] commissioners,” he said, noting that if the higher-ups in the police hierarchy were sensitized, there will be improvements. Neelam Kapur, then joint director of NACO, said that NGOs supported by the national program funds are always given sufficient funds to include police training and sensitization in their work.¹⁶⁹ Rao said that nongovernmental organizations, particularly those with international funding, could reduce impediments to their work by giving more attention to community relations and involvement of community members in their work.¹⁷⁰

Dr. Swarup Sarkar, the regional director of UNAIDS for South Asia, recognized the severity of the problem of police abuse of high-risk groups and the need for constant sensitization of police to help create an “enabling environment” for HIV/AIDS prevention work.¹⁷¹ He emphasized that 110 of 170 countries affected by HIV/AIDS are still classified as “low-prevalence,” and in these countries, prevention among high-priority groups, such as women in prostitution and men who have sex with men, is the most essential work. Sarkar said the

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Samabhavana Society, “Knowledge, attitude, behaviour, . . .,” p. 3.

¹⁶⁷ Human Rights Watch interview with J.V.R. Prasada Rao, April 4, 2002.

¹⁶⁸ Human Rights Watch interview with Christodas Gandhi, March 19, 2002.

¹⁶⁹ Human Rights Watch interview with Neelam Kapur, Joint Director (Information, Education, Communication), NACO, New Delhi, April 4, 2002. (Kapur has since left NACO.)

¹⁷⁰ Human Rights Watch interview with J.V.P. Rao, April 4, 2002.

¹⁷¹ Human Rights Watch interview with Dr. Swarup Sarkar, UNAIDS Regional Office, New Delhi, April 1, 2002.

United Nations agencies were vulnerable to the charge that their human rights focus with respect to HIV/AIDS had shifted somewhat from the rights of traditional high-risk groups to the rights of persons with HIV/AIDS.

One response by the United Nations agencies to a concern about harassment of HIV/AIDS workers in India is their support for the development of a monitoring system that will collect data on whether persons and organizations working on HIV/AIDS face "any obstruction from the police or local power structure in implementing NACO guidelines."¹⁷² This effort will be part of a nationwide collection of data on a variety of non-clinical indicators to assist program evaluation and planning. Data collection began only in early 2002 so no results were available. Sarkar said this monitoring system in India would be unique in the world.

The terms of the World Bank's loan that supports the national AIDS program in India includes the government's adherence to a "national policy letter" that includes "unequivocal support" for the human rights principles articulated in major United Nations statements on HIV/AIDS.¹⁷³ Dr. Salim Habayeb, lead public health specialist for South Asia of the World Bank, said the Bank recognizes its responsibility to monitor and respond to human rights violations that risk undermining the work funded by its HIV/AIDS lending.¹⁷⁴ He noted that monitoring of the human rights component of the national program has been "unfortunately spotty" and has relied on reports made to the United Nations Theme Group on HIV/AIDS in India, a group that includes U.N. agencies, major donors, and government and NGO representatives. He welcomed information from human rights organizations that would guide further consideration of AIDS-related abuses.

VII. INTERNATIONAL LAW

Actions taken by the police and other officials against HIV/AIDS outreach workers and their organizations raise important concerns under international human rights law. Indian law and practice discriminate against outreach workers and their organizations because of gender and sexual orientation and limit their ability to exchange information and ideas. Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, protects all persons from discrimination on the basis of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" for the rights recognized in the Covenant.¹⁷⁵ This article has been widely interpreted by the U.N. Commission on Human Rights and other U.N. bodies to include both sexual orientation and HIV status as factors on the basis of which discrimination is prohibited.¹⁷⁶ Article 26 of the ICCPR guarantees equal protection of the law and non-discrimination before the law on the same grounds as those noted in article 2. ICCPR Article 19 guarantees the

¹⁷² Ibid.

¹⁷³ The World Bank. Project appraisal document on a proposed credit in the amount of SDR 140.82 million to India for a Second National HIV/AIDS Control Project. Report no. 18918-IN, May 13, 1999, Annex 3, Second National HIV/AIDS Control Project, National Policy Letter, pp. 23-24. The policy commitment here refers to a World Health Assembly resolution on avoidance of discrimination against persons with HIV/AIDS and to the Commission on Human Rights Resolution 1997/33, which also contains strong anti-discrimination language with respect to persons "infected or affected" by HIV/AIDS and enjoins states to "take all necessary steps to ensure the respect, protection and fulfilment of HIV-related human rights as contained in the Guidelines on HIV/AIDS and Human Rights," including to "develop and support appropriate mechanisms to monitor and enforce HIV/AIDS-related human rights."

¹⁷⁴ Human Rights Watch interview with Dr. Salim Habayeb, World Bank, Washington, DC, April 22, 2002.

¹⁷⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, article 2(1). India ratified the ICCPR in 1979.

¹⁷⁶ See Commission on Human Rights, "The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS)" (Resolution 1995/44, adopted without a vote, March 3, 1995). The United Nations Human Rights Committee, the body charged with monitoring compliance with the ICCPR, determined in a 1994 case, *Toonen v. Australia*, that a law in Australia banning sexual contact between consenting adult men was a violation of Australia's obligations as a party to the ICCPR. This decision concluded that the discrimination provision of the ICCPR should be understood to prohibit discrimination on the basis of sexual orientation. See *Toonen vs. Australia*, U.N. Human Rights Committee, CCPR/C/50/D/488/1992, April 4, 1994.

right to freedom of expression, including “freedom to seek, receive and impart information and ideas of all kinds.”¹⁷⁷

Outreach workers are frequently subject to unlawful arrest and detention and mistreatment, including torture, in violation of international law. Article 9 of the ICCPR guarantees the right to “liberty and security of person” and to be free from “arbitrary arrest or detention”. The article further specifies that anyone arrested or detained on a criminal charge has a right to be brought promptly before a judge within a reasonable time.¹⁷⁸ The ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which convention India is a signatory but not a party, both prohibit torture and cruel, inhuman or degrading treatment or punishment, without exception or derogation.¹⁷⁹

Although they do not have the force of international law, the United Nations Guidelines on HIV/AIDS and Human Rights are frequently used as a guide to policy and law related to HIV/AIDS. Provisions that are most relevant to the abuses documented in this report include the following:

Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV/AIDS prevention and care services. . . . With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV/AIDS prevention and care services to sex workers and their clients.¹⁸⁰

Guideline 5 on anti-discrimination concerns related to HIV/AIDS has the following provisions:

Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men, including in the context of HIV/AIDS, in order, inter alia, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV/AIDS. . . . Laws and regulations that provide for restrictions on the movement of association of members of vulnerable groups [including sex workers and MSM] should be removed in both law (decriminalized) and law enforcement.¹⁸¹

VIII. CONCLUSION

The World Wide Web site of the National AIDS Control Organisation of India has a message that crawls continuously and prominently across the page, saying “People with HIV infections or AIDS need our care, love and support.” This investigation indicates that many persons whose work is prevention of AIDS and those, such as women in prostitution and men who have sex with men, who are at high risk of becoming infected, are far from enjoying the care and support of local authorities in their jurisdictions or adequate support from other agents of the state who might protect them from police abuse.

The government recognizes that education and condom distribution for marginalized high-risk groups is essential front-line work in the fight against HIV/AIDS in India. Outreach workers are appropriately targeting

¹⁷⁷ ICCPR, article 19(2).

¹⁷⁸ ICCPR, article 9(3).

¹⁷⁹ ICCPR, article 7, and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 [etc.]

¹⁸⁰ Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, “HIV/AIDS and Human Rights—International Guidelines (from the second international consultation on HIV/AIDS and human rights, 23-25 September 1996, Geneva), U.N. Doc. HR/PUB/98/1, Geneva, 1998, paragraph 29(b-c).

¹⁸¹ *Ibid.*, paragraph 30(h-i).

communities that have faced and will continue to face high rates of disease and death due to AIDS. In addition to the catastrophic consequences of HIV/AIDS for women in prostitution and men who have sex with men, it is clear that high rates of transmission in these populations facilitate the rapid spread of the disease beyond traditional high-risk groups. Nonetheless, women in prostitution and men who have sex with men, as well as those who provide life-saving AIDS prevention services to them, are treated in India like second-class citizens or worse. The only winner in this story of abuse and harassment is the HIV/AIDS epidemic which, in the face of these abuses, will continue to kill millions in India.

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