GLOBAL COMMISSION ON
HIV and the LAW

Selected Bibliography
RISK + STIGMA: SEX WORKERS
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Risk + Stigma:  
SEX WORKERS

HIV and the Law: Risks, Rights & Health

September 2012
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The legal study of prostitution cannot be separated from the social and historical backgrounds that surround this phenomenon. Even though the legal system tries to establish the rules and desired goals for society, it is closely linked to the surrounding social and ethical systems. Prostitution is perhaps the most criminalized behaviour in society. This emphasis is based on a model previously determined by society expressing how an individual should behave.

Prostitution, as famous historian Herodotus mentioned, was a sacred practice in the ancient world as every girl was obliged, once in her life, to sit in front of the temple to practice sacred sex with a passer by. This type of worship was established in all the ancient civilizations such as Babylon, Assyria, Athens, Rome and Egypt. However, King Augustine annulled this practice in 325 B.C. to combat the spread of disease.

Prostitution steadily lost its sanctity and it gradually became a source of stigma, especially in the light of successive monotheistic religions that criminalized it, and positivist laws that consolidated its punishment. Perhaps the importance of this study stems from the attempt made to identify the role of legislation in combating this phenomenon and the alternatives that Arab countries may use to limit such behaviour.

This paper examines prostitution in the legislation of Arab states in general, and provides a study on public prostitution in Tunisia: the only Arab country that possesses a special legislation organizing public prostitution.


The dominant understanding of prostitution within governments and international policy organizations is based on the conceptual conflation of “human trafficking” with “prostitution” and “sexual exploitation.” Unfortunately, this conflation has ultimately served to undermine efforts to address both trafficking and sexual commerce, while inadvertently contributing to the harm that people working in sexual commerce face. Furthermore, this set of confluations is undermining efforts to control HIV among sex workers.

History
The conflation of prostitution with notions of ‘trafficking’ and ‘sexual exploitation’ is a relatively recent historical phenomenon, beginning in earnest with the industrial revolution. During this era, social crusaders attempted to make a distinction between ‘innocent’ women who were seen to be selling sexual services against their will, and ‘willful’ or ‘fallen’ women who were not being compelled into prostitution by a third party. Ultimately however, creating separate moral classes of sex workers served to sustain the mainstream idea that all prostitution is morally fraught, and should be abolished. In the 1980s, a branch of liberal feminism in some Western countries began the call for the banning of pornography by their governments. The ‘porn wars’ shared rhetoric with the anti-prostitution movements of the industrial revolution. These strategies included dismissing the perspectives of
women working in pornography who did not feel exploited, abused, or the victims of violence and the dominance of perspectives from feminists who had never worked in pornography themselves. The rhetoric which produced some feminists as able to ‘save’ women of a lower economic or social status recurs in the contemporary moment as well. The synergy between anti-pornography/anti-prostitution feminism and non-feminist law makers who shared the belief that prostitution is wrong was powerful, and has led to the promotion of the idea that prostitution is equivalent to trafficking worldwide.

Borders
There is no data supporting the theory that tighter border controls serve to prevent women from engaging in sex work, either by their consent or against their will, although this is the ostensible rationale for heightened restrictions on cross-border migration for women in some countries.

The Palermo Protocol
The focal point of the international trafficking/prostitution debate has been the definition of trafficking in the ‘Palermo Protocol,’ which was drafted in 2000. According to this treaty, ‘trafficking’ requires: 1) recruitment, 2) force/power/deceit, and 3) exploitation. If all of these criteria are present in an individual case, then the consent of the ‘trafficked’ person is irrelevant. In this definition, there is no prostitution that is not definable as ‘sexual exploitation,’ although the research and advocacy on sexual commerce paints a much different, and more complex, picture.

Criminalization
Unfortunately, the conflation of ‘prostitution’ and ‘trafficking’ under the legal rubric of ‘exploitation’ in the dominant discourse on sexual commerce has served to obscure the distinctions between the various lived experiences of poverty and economic migration. Conflating prostitution and trafficking has resulted in further criminalizing prostitution, and in making the institutionalization of other approaches to sex work more difficult to pursue. The problem with criminalization of sexual commerce is twofold. First, the rationale that criminalization of sexual commerce curbs prostitution is based on an ideology that abhors prostitution, rather than on data that supports or disputes criminalization as policy. Second, criminalization of sexual commerce renders sex workers more vulnerable to violent clients, to police and to unsafe working conditions. In the face of criminalization, the significance of macro and microeconomic contexts for sexual commerce, or the significance of data, ultimately fades in favour of stereotypes.

Data
In addition to the inherent problems of data collection in quantifying the magnitude of trafficking worldwide, the discourse on sex trafficking has become extremely polarized and politicized with respect to governmental laws and policies regarding cross-border migration. Thus, it has become even more difficult to discern actual information about who is trafficked, where, and how.

HIV Prevention
Despite the numerous problems embedded within the anti-trafficking framework, the framework is hugely influential, especially in its detrimental effects in preventing HIV infection among people who sell sexual services. It has reduced the options of people selling sexual services to either being ‘rescued’ from their livelihood, or to going ‘underground,’ that is, to becoming even less traceable by official entities that provide health and HIV-prevention services.

Poverty and Exploitation
Discourses on human trafficking that have focused on prostitution and “sexual exploitation” have had a vexed relationship with the question of poverty; it is sometimes difficult to assess to what, exactly, ‘sexual exploitation’ refers. The language of ‘sexual exploitation’ ironically obscures the meaning of ‘exploitation’ as linked with material deprivation - poverty, in other words. It renders poverty less a structure, and more an individual
characteristic of individual persons. The discourse that seems to be emerging among various governmental and non-governmental actors concerned with the issue of trafficking is one in which poverty, exploitation, and trafficking are theorized in relation to each other in the relative absence of a discussion about structural concerns regarding poverty, and the ways in which poor people navigate or negotiate livelihood options which may include prostitution.

The Anti-Prostitution Pledge
One of the ways that governments around the world are being impelled toward an understanding of prostitution as trafficking has been through the implementation of the U.S. government’s Anti-Prostitution Pledge. The Pledge proves that the anti-trafficking agenda is an anti-prostitution agenda. This is clear from its language and in the ways in which the Pledge has been operationalized. The Prostitution Pledge makes HIV prevention work more difficult or, in some cases, impossible among sex workers, primarily because the Pledge renders organizations working with sex workers who are not categorized as ‘trafficked’ as ineligible for funds that would be used to promote HIV prevention and care among these people.

Other Impacts of Anti-Trafficking/Anti-Prostitution Laws and Policies Around the World
A consensus is emerging among scholars that, while criminalization may be an effective way of controlling the visibility of some groups of people, it is not an effective way of monitoring and controlling HIV. This scholarship references work on the criminalization of sex workers under different laws, including archaic anti-sodomy and new anti-homosexuality laws around the world. Criminalization ultimately renders anyone selling sexual services more vulnerable to HIV, and may be driving the HIV epidemic.

Conclusions
The impacts of the conflation of prostitution and human trafficking are far-reaching, and have a profoundly negative impact on efforts to contain and control the HIV epidemic among those who are most vulnerable to seroconversion. A comprehensive strategy that addresses the problems inherent within the current framework would:

- Assess what local impacts of laws will be on police and policing practices prior to implementation. In some cases, sex workers can “leverage the combined forces of community empowerment, collective action and network-based governance to regulate…” police.
- Consider the possibility of economic migration in laws and policies that govern sex work, while avoiding legislation that frames ‘trafficking’ as the only way to understand sexual commerce and HIV.
- Include MSMs and transgender people in sex work policy; consider all laws that may impact sexual minorities and sexual marginalized or stigmatized groups.
- Tie policy frameworks on sex work with those that assess and intervene in informal sectors more broadly.
- Include economic empowerment more centrally as a platform for easing the legal, social and physical vulnerabilities of selling sexual services.


The impact of expanding spheres of illegality tends to push conduct and economies underground, rather than eradicating them, leaving people within them and connected to them in situations of greater vulnerability. This paper analyzes the regulation of sex work through that lens – looking not just at the operation of criminal law, but also administrative law and labour regulation – to understand how it might intersect with HIV policy, while being attentive to the human rights of sex workers, and problems of discrimination, stigma and social exclusion.
Sex work in the context of HIV policy

Sex work often involves having sexual intercourse in situations of secrecy, facing the constant fear of exposure or violence. Rape by police, clients, or strangers emboldened by the atmosphere of impunity for those who attack sex workers, in many countries, increases the risk of contracting HIV. Sex workers may find it difficult to secure appropriate state health care services related to HIV prevention and treatment, due to social stigma as well as the outright refusal, in some cases, to provide services to sex workers. When these factors are combined with a legal framework that further marginalizes or terrorizes sex workers, the implications for effective HIV policy are significant. In spite of this, issues related to sex workers' health and rights are not typically considered when framing laws and policies with respect to sex work.

The suppression of sex workers' rights through law is generally accompanied by failed HIV policy. It is not possible to mobilize sex workers as the agents of HIV prevention while treating them as a social problem. The protection of sex workers' and clients' human rights is not only consistent with effective HIV policy, but a prerequisite.

While there are reasons to examine closely how regulation of sex work can be put in place in effective ways, it appears clear that decriminalization is an important initial step. Furthermore, as the World AIDS Campaign states, it is possible for states to decriminalize sex work without promoting it. No decriminalized arrangement currently in place anywhere in the world reflects a total absence of sex industry-specific regulation by the state.

Defining Sex Work

The legal definitions of sex work vary widely. Many of the problems of vagueness are a consequence of jurisdictions trying to locate a public moral vision within laws regulating sex work. Perhaps the strongest argument for decriminalization, and regulation through civil laws, is not so much that it is morally neutral, as that it constitutes in most situations an appropriate balancing of public morality with sex workers' rights.

Migration and Citizenship

Migration is an important dimension of the sex industry all over the world. Migrant sex workers generally operate in hidden environments, in fear of law enforcement, and without adequate access to HIV-related information or services. Successful strategies for bringing these workers into national regulatory frameworks, including HIV programs, have relied on guaranteeing of equal labour and social protections for all workers, regardless of migration status.

Dealing with gender and sexuality

There are a number of ways in which jurisdictions may address (or fail to address) gender and sexuality in sex work, that will have implications for their efforts to develop coherent and effective HIV policies. Efforts to integrate sex workers in HIV interventions through decriminalization, for example, will not be fully effective unless they reach a fuller range of the statuses, identities and acts implicated in sex work.

Sex workers, clients, third parties

In addition to defining and regulating sex work, legal frameworks may define and regulate the actors within it, beyond the transaction itself. In regard to sex workers themselves, the need is urgent for jurisdictions to frame non-discriminatory laws that will help build sex workers' trust in the legal system, and their openness to partnering with the state to develop and implement critical interventions for HIV prevention.

The approach to clients may mirror that adopted towards sex workers, or radically differ. Where it is a crime to sell and purchase sexual services, clients may be prosecuted, and in some cases, forced to register as sex offenders. Shifting the stigma of sex work onto their clients merely pushes yet another, even larger group of people underground, out of the reach of HIV prevention and treatment programs. Jurisdictions take a range of approaches to regulating those in the sex industry besides the sex worker and the client, including brothel owners or managers, individuals who facilitate the transaction in any way, and even friends, lovers and family members...
who may be supported through the earnings of the sex worker. Recent studies suggest that provisions seeking to limit the involvement of third parties, supposedly in the interests of sex workers, tend to have negative consequences in practice.

**Association, Collectivization and Allies**

One of the most effective responses to injustices and the health risks that flow from them is self-organising by sex workers. This is complicated in many countries by regulations that impose barriers to NGO registration. Even the most basic rights of assembly and association may be denied to sex workers by law. Laws such as these run counter to explicitly-formulated state policies that recognize the importance of collectivization for effective HIV prevention, given the ways in which it promotes peer education and information-sharing, as well as empowerment.

Perhaps one of the most significant obstacles to sex worker organizing is a result of transnational rather than domestic regulation. The restrictions imposed by the United States on recipients of their global HIV/AIDS funding programs, through the so-called Anti-Prostitution Pledge, requires the organizations to have a policy explicitly opposing prostitution and sex trafficking. The extremely negative impact of this policy on organizations all over the world, addressing the needs of sex worker in terms of HIV-related outreach, information and services, has been well documented.

**Conclusions**

While law has a limited role to play, in the broader context of the stigmatization of sex workers and discrimination against them, legal frameworks should take care to avoid further marginalizing and isolating sex workers and their clients. Furthermore, from the perspective of advancing goals of HIV prevention and treatment access, there are a clear set of outcomes that the law could promote or contribute to:

- They should create avenues for sex workers and their clients to report crimes voluntarily, including rape or the operation of organized crime networks.
- They should prohibit the discrimination and abuse that sex workers often face when seeking services for the prevention and treatment of HIV.
- They should ensure that the free flow of information about HIV through peer-led interventions or mass media is not blocked by censorship.
- They should provide meaningful, well-enforced penalties for police who engage in harassment or blackmail of sex workers.
- They should encourage the collectivization or collective voice of sex workers.
- They should ensure that there are no obstacles to advocacy and service provision groups supporting sex workers.

With this in mind, jurisdictions should strongly consider the decriminalisation of sex work, bearing in mind that it is possible to do so without endorsing or incentivizing the industry. Legal frameworks should bear in mind the full range of workers in the sex industry, especially those who are most vulnerable and invisible. There are two particularly important issues here:

- **Migration status**: Regardless of the underlying immigration scheme in place, states should ensure that migrant sex workers receive, at a minimum, the same labour protections and access to health services as other sex workers. Deportations should be avoided.
- **Gender and Sexuality**: Efforts to integrate sex workers in HIV interventions will not be fully effective unless a fuller range of the statuses and identities implicated in sex work are considered, and ensured access.

Bearing in mind that sex worker organizing is demonstrably one of the most effective modes of addressing HIV, jurisdictions should not restrict NGO, collective or trade union formations.
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<tr>
<td>Nature &amp; Scope of Authority</td>
<td>The High Court is a division of the Bangladesh Supreme Court which hears original cases and reviews decisions of district and sessions courts.</td>
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| Facts & Background Law | • Petitioners are a group of human rights organizations engaged in protecting women engaged in prostitution. They contend that the government of Bangladesh regularly takes measures to harass women in prostitution and their children by evicting them from the peaceful occupation of their homes, physically and verbally abusing them, and placing them into vagrant homes. Petitioners focus on one particular incident, when police allegedly rousted a large number of sex workers from their place of residence and had them placed in vagrant homes. Petitioners assert that these actions violated the constitution of Bangladesh and were not done in conformity with statutes on vagrancy.  
• The Constitution of Bangladesh protects the right to life and livelihood, personal liberty, equal treatment and non-discrimination, and the right to freedom of movement. The Constitution further guarantees fundamental human rights and freedoms and respect for the human dignity and worth of the human person.  
• Prostitution is not illegal in Bangladesh, although the law criminalizes the keeping of brothels, living on the earnings of a prostitute, importing a female for purposes of prostitution, and causing, encouraging or abetting the seduction or prostitution of a girl.  
• The Bangladesh Vagrancy Act provides that a police officer may require any person who is apparently a vagrant to accompany the officer to appear before a Magistrate, who will make a determination of vagrancy. |
<p>| Issue | Did police violate the Vagrancy Act and the Bangladesh Constitution in evicting sex workers from their homes and having them declared vagrants and placed in vagrant homes? |
| Holding | Yes; both the statute and the constitution were violated. |</p>
<table>
<thead>
<tr>
<th>Rule, Application, and Judgment</th>
<th>Mere roaming around in an area, without ‘asking for alms,’ does not constitute vagrancy under the Act. In addition, the actions of the police violated the sex workers’ constitutional rights to life, livelihood, dignity and worth of the human person. The court orders that any sex workers remaining in the vagrant home be released.</th>
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<tbody>
<tr>
<td><strong>Nature &amp; Scope of Authority</strong></td>
<td>Decisions of the Court of Appeals for Ontario are binding within the province of Ontario. The decision is appealable to the Supreme Court of Canada.</td>
</tr>
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</table>
| **Facts & Background Law** | • Three women who are currently working or have in the past worked as prostitutes, including the executive director of Sex Professionals of Canada, seek a declaration that certain provisions of the Criminal Code are unconstitutional.  
• While prostitution is legal in Canada, Parliament indirectly restricts the practice of prostitution by criminalizing certain related activities, including operation of common bawdy-houses, living on the avails of prostitution, and communicating in public for the purposes of prostitution.  
• Section 7 of the Canadian Charter of Rights and Freedoms guarantees the right to life, liberty and security of the person ‘and the right not to be deprived thereof except in accordance with the principles of fundamental justice.’ Section 2(b) guarantees freedom of expression. |
| **Issue** | Do these criminal provisions violate the constitutional provisions protecting the right to liberty and security of the person or freedom of expression? |
| **Holding** | • The statutory provision criminalizing the operation of bawdy houses is unconstitutional. The declaration of invalidity is suspended for 12 months to give Parliament an opportunity to draft a Charter-compliant bawdy-house provision, should it choose to do so.  
• The provision prohibiting ‘living on the avails’ of prostitution is unconstitutional. The court reads in words of limitation to clarify that the prohibition against living on the avails of prostitution applies only to those who do so in ‘circumstances of exploitation.’  
• The provision regarding communicating in public for purposes of prostitution does not violate plaintiffs’ constitutional right to freedom of expression. |
| **Rule, Application, and Judgment** | • The court describes the practical effect of these three provisions, prior to the ruling that struck them down: The only way to sell sex in Canada without risking criminal sanction was ‘out-call’ work, meaning the sex worker had to meet a customer at an indoor location such as a hotel room or the customer’s home. The bawdy-house provision prohibited a sex worker from doing ‘in-call’ work – i.e., servicing customers from a fixed indoor location such as a commercial brothel, and the prohibition against ‘living on the avails’ of prostitution criminalized exploitive pimping but also prevented the sex worker from paying a bodyguard for protection.  
• The court finds that these provisions increase the risk of physical violence to prostitutes and thus infringe on plaintiffs’ constitutional right to security of the person and, in addition, the deprivation does not accord with ‘principles of fundamental justice.’  
• The court finds that the provision regarding communicating in public is supported by a legitimate legislative objective in that street prostitution is associated with serious criminal conduct including drug possession, drug trafficking, public intoxication and organized crime. This provision is allowed to stand. |
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<tr>
<th><strong>Notes</strong></th>
<th>Decision available at: <a href="http://www.ontariocourts.ca/decisions/2012/2012ONCA0186.htm">http://www.ontariocourts.ca/decisions/2012/2012ONCA0186.htm</a></th>
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<tbody>
<tr>
<td><strong>Nature &amp; Scope of Authority</strong></td>
<td>The Labour Appeal Court is the highest court for appeals from the South African Labour Courts. The Labour Courts have the same status as High Courts and adjudicate matters relating to labour disputes between an employer and an employee.</td>
</tr>
</tbody>
</table>
| **Facts & Background Law** | - Kylie was a sex worker who was employed in a massage parlor to perform sexual services for pay. She was terminated from her employment on grounds not relevant to the issues, and she brought a challenge before the South African Commission for Conciliation Mediation and Arbitration.  
- Before the arbitration could take place, one of the Commissioners ruled that the Commission did not have jurisdiction to arbitrate on a claim of unfair dismissal, as sex work is unlawful in South Africa. Kylie sought judicial review of this ruling in the Labour Court.  
- The Labour Court held that because sex work is illegal, the employment contract is void and thus unenforceable; that although Sec. 23 of the South African Constitution provides that ‘everyone has the right to fair labour practices,’ this provision does not protect a person who engages in illegal employment; and that reinstatement of employment could not be ordered by the court, as that would amount to directing the employer to perform an illegal act.  
- Kylie appeals this ruling to the Labour Appeals Court. |
| **Issue** | Does Sec. 23 of the constitution afford protection to a sex worker, whose employment is illegal under South African law? |
| **Holding** | Yes. The constitutional right to fair labour practices vests in ‘everyone,’ even if no formal contract of employment is involved and even if the work is prohibited by law. |
| **Rule, Application, and Judgment** | - Previous judicial rulings support a generous approach to the range of beneficiaries protected by Sec. 23, and also support the right of sex workers to be treated with dignity not only by their customers, but also by their employers. The court points to the South African Constitution’s commitment to freedom, equality and dignity, and the fact that it ‘reflects the long history of brutal exploitation of the politically weak, economically vulnerable and socially exploited during three hundred years of racist and sexist rule.’  
- While reinstatement may not be an appropriate remedy given the illegality of sex work, plaintiff, if she prevails, could be awarded monetary compensation for a procedurally unfair dismissal as a *solatium* for the loss of her right to a fair procedure.  
- The court notes in dicta that this ruling – that sex workers are to be considered employees for purposes of the labour legislation and the constitution – means that sex workers could, conceivably, be entitled to form and join trade unions; however, collective agreements concluded between brothels and sex worker unions which amount to furtherance of the commission of a crime would not be enforceable.  
- The decision of the Labour Court is set aside and the case is returned to the Commission for a ruling. |
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<th>Statute</th>
<th>Brottsbalken [BrB] [Criminal Code] 6:11 (Swed.)</th>
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<tbody>
<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>The Act Prohibiting the Purchase of Sexual Services (SFS 1998:408) was the original 1999 Swedish legislation criminalizing the purchase of sex. The ban on purchasing sex was incorporated into the Penal Code in 2005, and in 2011 the maximum penalty was raised to one year. The statute is binding throughout Sweden.</td>
</tr>
<tr>
<td><strong>Substance</strong></td>
<td>A person who procures a temporary sexual relationship in exchange for payment shall be sentenced, for the offense of ‘purchasing sexual services,’ to a fine or imprisonment for up to one year.</td>
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<th>Statute</th>
<th>Prostitution Reform Act 2003 (N.Z.)</th>
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<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>Binding law throughout New Zealand.</td>
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| **Substance** | • The stated purpose of the Act is to decriminalize prostitution ‘while not endorsing or morally sanctioning prostitution or its use,’ and to create a framework that safeguards the human rights of sex workers and protects them from exploitation, promotes the welfare and occupational health and safety of sex workers, is conducive to public health and prohibits sex work by minors, among other reforms.  
• Contracts for the provision of, or arranging the provision of, commercial sexual services are declared to be legally valid. However, despite anything in a contract, a sex worker may at any time refuse to provide, or to continue to provide, a sexual service to another person. The person so refused may not insist on performance but may, where appropriate, seek damages.  
• Operators of businesses of prostitution must adopt and promote safe sex practices, including provision of condoms and posting of health information. In addition, Sex workers and their clients must use safe sex practices. Violations of these provisions constitute criminal infractions and are punishable by fines.  
• Sex workers are considered to be at work for the purposes of the Health and Safety in Employment Act while they are providing sexual services.  
• Certain restrictions are placed on the advertising of sexual services.  
• Inducing or compelling another person to provide commercial sex services or turn over the proceeds of sex work is a criminal offense punishable by up to 14 years’ imprisonment.  
• Non-citizens may not enter New Zealand with the intention of performing sex work or operating a business of prostitution, and a temporary visa holder is liable for deportation if s/he engages in such work or business.  
• Commercial sex work is strictly prohibited for persons under 18 years of age.  
• Powers of entry by police officers or health inspectors are regulated by the Act.  
• Businesses of prostitution are regulated by the Act. |
### Statute

<table>
<thead>
<tr>
<th>Nature, Scope &amp; Source of Authority</th>
<th>Federal legislation effective throughout the United States.</th>
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<tr>
<td>Substance</td>
<td>In the introductory ‘Findings’ section of this Act (codified at 22 U.S.C. § 7601(23) and (24)), Congress declares:</td>
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<td>- Prostitution and other sexual victimization are degrading to women and children, and it should be the policy of the United States to eradicate such practices. The sex industry, the trafficking of individuals into such industry, and sexual violence are additional causes of and factors in the spread of the HIV/AIDS epidemic.</td>
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<td>- Strong coordination must exist among the various agencies of the United States to ensure effective and efficient use of financial and technical resources within the U.S. Government with respect to the provision of international HIV/AIDS assistance.</td>
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This statute, among other things, authorizes foreign assistance to combat HIV/AIDS, with the following restrictions on recipients (codified at 22 U.S.C. § 7631(e) and (f)):

- No funds made available to carry out this Act ‘may be used to promote or advocate the legalization or practice of prostitution or sex trafficking.’ However, this does not preclude the provision to individuals of palliative care, treatment or post-exposure prophylaxis, and necessary pharmaceuticals and commodities including test kits, condoms and microbicides.

- No funds made available to carry out this Act may be used to provide assistance to any group or organization ‘that does not have a policy explicitly opposing prostitution and sex trafficking.’ However, this restriction does not apply to the Global Fund to Fight AIDS, Tuberculosis, and Malaria; the World Health Organization; the International AIDS Vaccine Initiative or to any United Nations agency.

### Statute
**Law on Suppression of Human Trafficking and Sexual Exploitation, NS/RKM/0208/005, Feb. 15, 2008 (Cambodia)**

<table>
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<tr>
<th>Nature, Scope &amp; Source of Authority</th>
<th>Binding law throughout the territory of the Kingdom of Cambodia.</th>
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<tr>
<td>Substance</td>
<td>Unlawful removal of a minor from his or her place of residence by means of force, threat, deception, abuse of power or enticement is a criminal offense punishable by imprisonment for 2 to 5 years.</td>
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<td></td>
<td>Unlawful removal of another for the purpose of profit making, sexual aggression, production of pornography, marriage against the will of the victim or any form of exploitation is a crime punishable by imprisonment for 7 to 15 years, with enhanced penalties if the victim is a minor or if the offense is committed by a public official or an organized group. ‘Exploitation’ includes the prostitution of others, pornography, commercial sex act, forced labor or services, slavery, debt bondage, involuntary servitude, child labor or the removal or organs. The consent of the victim is irrelevant where force, threat, deception, etc. are used.</td>
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<td>The following acts are also made criminal by this statute: unlawful recruitment</td>
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for exploitation; selling, buying or exchanging a human being, with enhanced penalties if the sale, purchase or exchange is done for purposes of exploitation; various forms of transportation for illegal purposes; abduction, detention or confinement of a person without legal authority; soliciting for the purpose of prostitution; procuring prostitution; management of prostitution or of an establishment for prostitution; provision of a premise for prostitution; money loan in connection with child prostitution; distributing, selling, leasing or displaying pornography; possessing, transporting, importing or exporting pornography; sexual intercourse or indecent acts with minors.

- Enhanced penalties are provided if a child is involved in the above offenses.
- Contracts for the purchase, sell or exchange of human beings or for the purpose of sexual exploitation are null and void. Civil remedies are available for victims of exploitation.

Notes

The statute is available in English translation at:


Basic Documents of International Law


http://www2.ohchr.org/english/law/ccpr.htm

Along with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, this multilateral treaty is a core instrument of what is known as the international bill of rights.

Among its many guarantees are the right to life, personal security, due process, the right to be free of arbitrary or unlawful interference with privacy, the right to be treated with dignity and the right to equal protection of the law without discrimination on any ground such as race, color, sex, language religion, political or other opinion, national or social origin property, birth or other status.


http://www2.ohchr.org/english/law/cescr.htm

Along with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, this multilateral treaty is a core instrument of what is known as the international bill of rights. Among its many protections is Article 12(1) which provides: ‘The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’


http://www2.ohchr.org/english/law/cedaw.htm

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), sometimes referred to as the international bill of rights for women, was adopted by the U.N. General Assembly in 1979. The Convention defines discrimination against women and presents an agenda for national initiatives to end such discrimination. It
covers three broad areas: civil and legal rights, reproductive rights, and social and cultural patterns that impact on women’s human rights.


This Convention defines ‘child’ as any human being below the age of 18 years (or earlier, if so defined by the law applicable to the child). The Convention states that in all actions concerning children, the best interests of the child shall be the primary consideration. Among other things, the Convention guarantees the right of all children to non-discrimination, protection and care, life and development, non-separation from parents except where necessary in the child’s best interests, protection from illicit transfer or non-return of children abroad, freedom of expression and association, freedom from arbitrary interference with privacy, access to information and education, and protection from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation, including sexual abuse.


This Protocol obligates signatories to prohibit the sale of children, child prostitution and child pornography by passing criminal laws against such acts. States Parties also agree to adopt appropriate measures to protect the rights and interests of child victims, and to establish laws and policies to prevent the exploitation of children. The Protocol also includes provisions regarding extraterritorial jurisdiction, extradition and international cooperation.


Article 3(a) of the Protocol defines ‘trafficking in persons’ as follows:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3(b) provides that the consent of the trafficked person to the intended exploitation is irrelevant when means such as force, coercion, abduction, fraud or the like have been used.


The International Labour Organization (ILO) was established by the Treaty of Versailles in 1919 for the purposes of abolishing injustice toward workers and establishing fair and human conditions of labour. The ILO became the first specialized agency of the United Nations in 1946 and has adopted international labour standards in several areas,
including the right to organize trade unions, the right to be free of forced labour, standards for working conditions and social protections, and freedom from discrimination in employment, among others.

The Declaration on Fundamental Principles and Rights at Work was adopted by the International Labour Conference in 1998 as a response to the growing challenges of globalization, advances in information technology and the development of a universal market economy. The Declaration commits ILO members to respect and promote rights in four categories: freedom of association and the right to collective bargaining, elimination of forced labour, abolition of child labour, and elimination of discrimination in employment.


This report details the ILO’s Recommendation concerning an international labour standard designed to strengthen workplace HIV prevention efforts and to facilitate access to treatment for persons living with or affected by HIV/AIDS. The ILO notes that HIV presents significant challenges to attainment of decent work and sustainable development. The effects of HIV have been most profound in the most productive age groups, and it imposes significant costs and burdens on enterprises through falling productivity and loss of skills and experience. HIV also impacts the workplace in terms of discrimination and stigmatization against workers living with HIV, particularly affecting groups that are already marginalized.

The Recommendation is intended to apply to all workers, including sex workers. (Delegates to the committee responsible for finalizing the text of the recommendation determined that it was not necessary to name sex workers explicitly in the Recommendation, as they were implicitly included in the broad scope note at sections 2(a) and 2(b), which refers to ‘all sectors of economic activity, including the private and public sectors and the formal and informal economies’; see, International Labour Conference, Provisional Record No. 13 (Rev.), 99th Sess., Jun. 16, 2010, at para. 192-210, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_141773.pdf

The standard provides that safety and health measures to protect workers’ exposure to HIV at work should include, among other things, personal protective equipment. The standard also calls for workplace measures to promote the protection of sexual and reproductive health and sexual and reproductive rights for men and women.


Article 1 defines discrimination for purposes of the Convention as any distinction ‘which, being based on race, colour, sex, language, religion political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.’

This is a blog entry by an author, lecturer and sometime academic whose interests include migration, trafficking and sex work. She had earlier criticized a report by Swedish government evaluators who claim that the 1999 Swedish law criminalizing the purchase of sex had reduced trafficking in Sweden. She now critiques a working paper with a statistical model that appears to demonstrate a reduction in trafficking. She points out that the model is unscientific as it is based on erroneous Danish data which had been rejected by the Danish Parliament, as well as on numbers coming from a small NGOs and police departments who use varying definitions of the term trafficked and ‘often admit to being confused.”


This study of 299 female sex workers in the capital city of Guyana, the poorest country in the Caribbean region aside from Haiti, was aimed at identifying the risk factors for HIV in sex workers. The researchers found an HIV prevalence rate of 30.6 percent. In areas such as Guyana, where HIV transmission is largely heterosexual and high HIV prevalence is found among sex workers, sex workers are considered to be ‘core group’ for HIV transmission and an important population for HIV prevention interventions.

The authors looked at health service use factors and found that HIV infection was associated with obtaining condoms from public sector services. The association of HIV status with source of condoms indicated that the public sector services were successfully reaching women with HIV, and that women with high rates and high risk of infection were apparently heeding health education messages and accessing condoms from the project. Comparison with a 1997 study showed that the project may have led to a drop in HIV prevalence in the downtown area of Georgetown from almost 46 percent to about 36 percent.

The authors report that the Pan-Caribbean Partnership on HIV/AIDS and the Caribbean Community established a program on HIV/AIDS law, ethics and human rights, leading to proposals for law reform in Guyana and other countries in the region. The authors hope that these initiatives may assist in reducing discrimination against sex workers and enhancing their access to and use of health services to combat sexually transmitted diseases, including HIV.


ARROW was established in Malaysia in 1993 as a regional organization devoted to ensuring that women’s and gender perspectives are included in development policies and plans in the Asia-Pacific region. The founders’ goal was to enable women in the region to be more instrumental in defining and controlling their lives, particularly in the area of health and human rights. The ‘MDG 5 Watch’ web site is a project initiated by ARROW, along with numerous other organizations and individuals in the Asia-Pacific region. MDG 5 Watch is aimed at monitoring countries’ reports on their progress toward achieving Millennium Development Goals 3 and 5 (promoting gender equality and improving maternal health), and comparing and contrasting the country reports with local data-gathering, evidence
and research. ARROW wants to ensure that decision makers are aware that ‘[w]omen are watching their governments to see if they will deliver on their promises.’ Among other things, the project monitors countries that criminalize sex work.

One specific data item reported: Viet Nam has adopted an ‘abolitionist’ approach toward sex work. An ordinance passed in 2003 provides social and economic measures to prevent prostitution and imposes criminal sanctions against customers, procurers and prostitution organizers. ARROW states that prostitutes in Viet Nam are considered ‘victims’ who are put into government-run centers for treatment and rehabilitation. This will change next year, however; although prostitution will remain illegal in Viet Nam, a new law effective July 2013 will abolish these centers; see, Vietnam Scraps Regulation Forcing Prostitutes into Rehabilitation Centers, Thanh Nien News.com (Jun. 20, 2010), http://www.thanhniennews.com/index/pages/20120620-vietnam-will-not-force-prostitutes-to-treatment-center.aspx.


The Canadian HIV/AIDS Legal Network works to promote the human rights of people living with and vulnerable to HIV in Canada and internationally, through research, advocacy, public education and community mobilization. This document is an information sheet produced by the organization, part of a series entitled Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution. The series examines the need to reform Canada’s prostitution laws so as to better protect the rights and health of sex workers in Canada.

This information sheet looks at two different legal approaches to prostitution: New Zealand’s 2003 Prostitution Reform Act, which decriminalized certain activities related to prostitution while regulating the trade; and Sweden’s 1998 law criminalizing the purchase of sexual services. The document compares the effects of these two approaches and concludes that the New Zealand legislation is much more respectful of the autonomy, dignity and human rights of sex workers than is the Swedish statute and offers a better model of legislation that promotes human rights and protects the health of sex workers and their clients. The Swedish approach appears to have had little effect on the numbers of prostitutes working in that country while making their work more dangerous and creating more health risks.

Other information sheets in the series present such topics as: decriminalizing sex workers; sex workers and HIV/AIDS: stigma, discrimination and vulnerability; enforcing marginalization, undermining safety: the impact of the criminal law on sex workers; and sex workers and international human rights, among others.


This work is a contribution to an anthology presenting debates among socio-legal scholars over the role of the State in controlling erotic practice, intimacy and identity. The author examines legislation passed in the United States in 2000 designed to provide legal residency and welfare benefits to undocumented workers and trafficking victims. She says that at first glance, this statute appears to be beneficial to migrant sex workers but on closer inspection is revealed as ‘a soft glove covering a still punishing fist.’

She describes the 2000 Trafficking Victims Protection Act (U.S.) as a statute designed to increase penalties against traffickers and provide assistance to abused workers without regard to the worker’s immigration status. In reality, the author contends, the Act was meant as a small but politically strategic exception to an otherwise punitive legal regime surrounding foreign sex workers entering the United States. She points out that restrictive immigration laws
benefit traffickers, who can find ways around the law, while punishing migrant women by keeping them dependent on third parties for transport and entry. She concludes that statutes such as this rely heavily on narratives of female powerlessness, and while no one should be forced into prostitution in order to survive, the best social responses include more open borders and more expansive government support for the poor.


This paper presents a review of the literature on the risk factors for HIV among sex workers in sub-Saharan Africa and the HIV prevention interventions that have proved successful in the region. The report summarizes the epidemiology of HIV among sex workers and their clients, including a description of key socio-demographic patterns in the lives of sex workers that increase their risk of HIV infection. It then summarizes published evidence on the effectiveness of various interventions for reducing HIV incidence in this population, and concludes with an overview of HIV surveillance priorities and suggestions for further research.

Studies indicate that sex workers in this region experience a significantly higher incidence of HIV infection than does the general population. Risk factors include the number of clients, duration of sex work, inconsistent condom use, a high background prevalence of other sexually transmitted diseases and the type of sexual activity. Sex workers who use condoms consistently have a lower risk of infection; however, in one study from Ghana, female sex workers reported they didn’t always use condoms because of client refusal or client brutality. Some sex workers reported being too afraid to ask clients to use condoms, and others said they were instructed by the owner of their workplace not to decline a client who refused to use a condom. A consistent finding, across many studies, is that clients offer sex workers more money, up to 3.5 times more, for sex without a condom. Evidence suggests that sex workers who are poorly organized and have few alternative sources of income are unlikely to reject a client who refuses to use a condom.


The authors are highly critical of the Swedish legislation that criminalizes the purchase of sex and of policymakers who justify and ‘market’ the legislation for export. Those who support the Act, they say, have overstated its success in reducing prostitution and trafficking and understated its harmful effects. The authors state that the problem with these claims, including those made in 2010 in an official government evaluation of the Act, is that they do not appear to be supported by the available facts and research.

The authors look carefully at research examining the effects of the legislation and conclude that the Act has not decreased prostitution or trafficking for sexual purposes, nor has it had a deterrent effect on clients to the extent claimed. In addition, the authors report serious adverse effects of the Act with regard to the health and well-being of sex workers. Clients are less willing to serve as witnesses in anti-trafficking cases brought against those who exploit the sexual labor of others, since they would have to admit to committing a crime by purchasing sex. Sex workers report increased stigmatization since the advent of the Act, and this affects their candor with health providers and may increase HIV risk. Sex workers further point out that they were not consulted when the law was being formulated nor at the time it was evaluated ten years later. They have more difficulty now making contact with clients and have to rely on pimps to find clients. With fewer clients available, sex workers have lower
negotiating power, which means they may not be able to demand safer sex practices and are more frequently exposed to dangerous clients.

The authors conclude that the reports and documents that have a scientific rather than an ideological basis do not support the claims of success made by Swedish government officials when describing the sex-purchase Act. They argue that policy decisions regarding prostitution should be based on knowledge rather than radical feminist ideology branding all sex workers as victims, and that sex workers themselves should be consulted when policy is being developed.


The purpose of this study was to determine the prevalence and risk factors for HIV infection among female sex workers in Johannesburg. HIV infection was identified in 46.4 percent of the 295 sex workers in the study. A higher frequency of condom use was significantly associated with a lower rate of HIV infection.


The 1999 law in Sweden that directs criminal sanctions against those who buy sex, rather than against sex workers, is discussed in this article by a government official who enthusiastically supports the law. The author describes the policy behind the law – the first of its kind in the world – which is to reduce or eliminate prostitution in Sweden by drying up demand, thus, the theory goes, making Swedish prostitution markets less lucrative so that traffickers will go elsewhere. The overarching purpose of the law, the author says, is to create a society where women and girls can live lives free of all forms of male violence.


FIRST is a coalition of feminists working in Canada to support the rights of sex workers and advocate for decriminalization of adult sex work. In this information bulletin, FIRST reports that a member of Parliament in Canada plans to introduce legislation based on the Swedish law that criminalizes the purchase, but not the sale, of sex and makes pimping and brothel ownership illegal. The group presents a critique of the Swedish model, calling it deeply problematic and a failure. FIRST reports that in the ten-year period the law has been in effect in Sweden, there have been about 2,000 arrests, but no one has been jailed and convictions result in minor fines at the most. Thus, those who purchase sex have not been particularly affected while the brunt of the law has fallen heavily and negatively on sex workers. Sex workers in Sweden have reported greater difficulty in assessing clients for dangerousness because negotiation outdoors must be done quickly. They are less likely to seek help from police when clients become abusive. Because sex work has moved indoors to a large extent, the few sex workers remaining on the street are less able to support each other and warn about dangerous clients. Fewer customers means that sex workers cannot afford to be as particular about whom they take on as a client and how insistent they can be about safe sex practices.

Rather than follow the Swedish model, FIRST advocates a full decriminalization approach, which has been employed with good results in New Zealand. The group also notes recent surveys indicating that approximately one-half of all Canadians support decriminalization of prostitution, and only 8 percent support the Swedish punish-the-client approach.

The author describes the political debate in Sweden leading to that country’s law criminalizing the buying, but not the selling, of sex. Factors he discusses include the strength of the women’s movement in Sweden which was highly effective in mobilizing support for legislation that would be very controversial in other countries, a Swedish popular movement tradition that has historically been influential in forming government policy, the link between drugs and sex work, and fears about foreign prostitutes, among others.


Regulation of sex and sexuality by governments goes beyond criminalization of sex acts and reaches into such areas as prohibition of the sale of contraceptives to unmarried persons and mandatory HIV testing of sex workers. The authors note that international reporting mechanisms, such as data collection under the Declaration of Commitment on HIV/AIDS, which help draw attention to sex workers and other persons in the context of HIV can provide governments with a tool for assessing the effects of their policies on the health and well-being of individuals and populations.

The authors provide an overview of the relevant international legal standards regarding government regulation of sex and sexuality and summarize the HIV-related impacts of laws and policies in such areas as the right to equality and non-discrimination, criminalization of sex work and conflation of sex work with trafficking. They then look at the self-reported data on legal and policy environments from 133 countries, submitted in biennial country reports to UNAIDS under the 2001 Declaration of Commitment on HIV/AIDS. Analysis of this data shows that, despite global recognition of the need for supportive legal and policy environments to ensure an effective response to the HIV threat, many countries continue to retain and enforce laws and policies regarding sex work that create obstacles to effective HIV prevention, treatment, care and support.


This study compared three different legal approaches to sex work: (1) prohibition, including the Swedish system that criminalizes the buying of sex; (2) licensing; and (3) decriminalization. The authors conclude that, taking into account health and welfare impacts and administrative effectiveness, decriminalization probably offers the best outcomes. They caution that more research is needed to confirm this initial impression.


Human Rights Watch (HRW) reports that women and girls who engage in sex work in Cambodia are often subjected to beatings, rape, sexual harassment, extortion, arbitrary arrest and detention and forced labor not only by police but also by government officials, municipal security guards in public parks, and employees of government-run rehabilitation centers which are, in essence, squalid jails. Every sex worker interviewed had paid bribes to police at some point.

 Trafficking in women and girls is a serious problem in Cambodia. However, government initiatives, including 2008 anti-trafficking legislation which was encouraged by the United States, fail to distinguish between trafficked sex workers and those entering the trade voluntarily. Criminalization of aspects of sex work has facilitated police
harassment, violence and extortion of bribes from trafficking victims and voluntary sex workers alike. HRW faults the U.S. government for its advocacy of punitive anti-prostitution measures without adequately consideration of the local context, which in Cambodia includes a long history of abuse of sex workers by police, who have traditionally acted with absolute impunity.

HRW recommends that the Cambodian government stop the arbitrary arrest of sex workers, thoroughly investigate all acts of violence and extortion by law enforcement and government officials and bring violators to justice, permanently close prostitution ‘rehabilitation’ centers where people are detained in violation of domestic and international law, increase the number of female police officers trained to handle situations involving gender-based violence, suspend criminal provisions against solicitation and develop programs in consultation with sex workers to provide legal assistance, health care, child care and vocational training. HRW recommends to the United States government that it recognize the vulnerable status of sex workers in Cambodia and elsewhere and ensure that they are not further penalized as a result of U.S. policies.


The author calls the Swedish statute criminalizing the buying of sexual services ‘an experiment in social engineering to end men’s practice of purchasing commercial sexual services.’ The hope when the legislation was passed was that fear of arrest and public stigma would cause men to change their sexual behavior, that sex workers would be forced to find another line of work, and that sex trafficking and the presence of migrant sex workers would be eliminated. The author concludes that the experiment has been a failure: The government cannot conclusively establish that the law has reduced prostitution or trafficking, and sex workers face more dangerous working conditions. Despite evidence to the contrary, the Swedish government continues to claim that the law is a success and to advocate that other countries adopt its approach.

This paper analyzes the Swedish government’s 2010 report evaluating the first ten years’ experience with the law and demonstrates that the government’s claims are not supported by evidence. In addition to a comparison of claims with evidence, the report also details the negative consequences of the law, including an increased risk of violence to sex workers, client reluctance to cooperate with law enforcement, increased stigma against sex workers, more police harassment, and negative health consequences.

The author calls on the Swedish government to stop making unsubstantiated claims of success and stop promoting the law as a model for other governments. She recommends that the law be repealed and that law enforcement focus instead on halting trafficking into forced prostitution and the use of minors in prostitution. In addition, she says, the government needs to work with adult sex workers to provide services and assistance the workers themselves have identified as necessary and to ensure they are provided the legal protections afforded other workers.


The author provides a critique of the Swedish law that criminalizes the buying of sex. He discusses the origins of the legislation and reviews assessments of its impact. He argues that the law reflects Sweden’s anxiety about its position in the European Union and its fear not only of being overrun with foreign prostitutes from the ‘Eastern
bloc,’ but also fear of invasion by radical notions – such as the idea that sex work is a profession – seeping in from neighboring countries in the EU.

The author asserts that in the national debate preceding passage of the Act, prostitutes were consistently portrayed as exploited victims who need governmental protection and need others to speak for them. As for impacts, Kulick reports that to the extent, if any, that the law has reduced street prostitution, it seems to have simply shifted sex work into bordellos and onto the Internet. Social workers have found it more difficult to reach prostitutes. Police report that it is more difficult to prosecute pimps and traffickers, because clients are now unwilling to testify. As the number of clients has dropped, along with the price per client, sex workers are forced to take on more clients and choose from a smaller selection and are thus more likely to end up with the unstable and the dangerous.

The author examines the reasons why prostitution was chosen as the flash point for discussions of Sweden’s entry into the EU, focusing on Swedish self-image as neutral, internationalist, and an exemplar of moral righteousness. The passage of a law criminalizing the purchase of sex is, in the author’s view, Sweden’s way of symbolically distancing itself from a masculinized EU that can reward Sweden but often threatens instead to exploit it.


The author reports on research he conducted in Sweden between 2008 and 2011, examining the effects on female sex workers of the 1998 *sekköpslagen*, the Swedish law criminalizing the purchase of sexual services. He interviewed sex workers, politicians, representatives of NGOs and activist groups, police, health care providers, social workers and others. He found that many politicians and social workers see no differentiation between forced and free sex work, between child and adult sex work, and between consensual migrant sex work and human trafficking. Many in Sweden see sex workers solely as victims, and any talk of voluntarily entering the profession is dismissed as a victim’s reaction to earlier abuse and trauma, or part of the role-playing that prostitutes engage in. Female sex workers are described as lacking any agency, except when they decide to leave sex work.

The rationale given for criminalizing the purchase of sex was the notion that, if there were no clients, sex work and trafficking would simply fade away. Under an abolitionist approach, harm reduction methods are seen as problematic as they normalize an illegitimate activity. When the purchase of sex is construed as an act of violence, harm reduction approaches such as providing condoms to sex workers or their clients, or providing information on safer sex, are seen as facilitating a violent crime.

The author also notes that claims of a decrease in the amount of sex work occurring in Sweden as a result of the law are difficult to verify and appear to be based on faulty evidence. He criticizes the government’s position that the law should be exported, given the lack of empirical evidence to support its effectiveness and the fact that the law serves to further pathologize and stigmatize sex workers and to exclude them from the political discourse.


This internet posting describes the Swedish statute that criminalizes the purchase of sex, outlining how the law came to be and the controversy it has spawned. The posting reports that the sex trade has not disappeared, as proponents of the legislation hoped, but has gone underground and become more violent since passage of the law. The author also reports that a new countrywide union for prostitutes is being formed for the purpose of abolishing the law and improving the situation of sex workers in Sweden.
This news item reports on the 1999 Swedish law that criminalizes the purchase but not the sale of sex. The reporter interviewed a police official in Sweden’s anti-trafficking unit who termed the law a success in reducing the numbers of prostitutes while conceding that accurate statistics are hard to come by. This official also said that police departments in a number of other European countries were considering adopting the Swedish approach. The author notes that critics of the law question whether it has caused a reduction in prostitution, or merely pushed it off the streets and into more dangerous locales. He reports also that most European countries prohibit pimping and running brothels but tolerate prostitution and do not penalize either sex workers or their clients.

This news article reports that officials from the Department of Justice in Ireland made a visit to Sweden to assess the impact of Swedish law criminalizing the clients of sex workers. The Justice Minister reported back that he had asked the Attorney General to examine the resulting report and provide views on the legal and constitutional implications of introducing similar legislation in Ireland. The Minister stated further that any proposal to amend the law would require careful consideration.

The author quotes the representative of an organization that works with sex workers and trafficking victims. This person was in favour of bringing the Swedish model to Ireland, as the group “recognises prostitution as an aspect of male violence against women and children and recognises that women in prostitution are victims.” The author reports that only three other countries have followed the Swedish model of criminalizing the client. One of these, Britain, made it an offense to pay for sex with a woman who had been trafficked or forced into prostitution. The British law presumes, however, that all sex workers are ‘controlled for another’s gain’ and thus it would be no defense to prosecution that the client had no knowledge that the woman was being exploited.

This article surveys the feminist debates – the ‘anti-prostitution’ and ‘sex worker’ camps – as they relate to sex work in the African context. The authors call on African governments to apply a human rights-based approach to legal and policy issues involving sex workers, focusing in particular on the importance of decriminalization. Although they are firmly in the sex worker camp, their hope with this article is to move beyond polarized debate and transcend the victim/agent dichotomy in theorizing around this issue.

While there have been a few regional efforts to organize around the issue of sex worker rights, African sex workers have been largely absent in the global conversation, and the authors attribute this to intense stigma and discrimination that affect sex workers’ ability to advocate for their own human rights and to access needed health services. They report a general sense that gender-based violence is simply a part of sex work that women in the trade feel they have to accept, rather than criminal action from which they deserve protection. Many African governments tolerate routine police abuse and exploitation of sex workers, and workers are subjected to vicious beatings and sexual assaults from clients who object to condom use. The criminalization of sex work throughout Africa heightens the risks of violence and sexually transmitted infection and lowers the chances that the affected women will receive legal redress and medical services.

In addition to applying the feminist debates surrounding sex work to the African situation and discussing decriminalization in detail, the authors also examine the distinction between forced and unforced prostitution in international law. They note that many African countries have ratified international human rights instruments that
guarantee to all people the right to choose their work, the right to freedom of association, and the right to be free of discrimination, violence and arbitrary arrest. They conclude that decriminalization will lead to de-stigmatization and provide a foundation from which sex workers in Africa can form collectives to fight against violence, abuse and discrimination.


New York State Senator Velmanette Montgomery (D-Brooklyn) posts this news item on her official web site. She reports that a bill she introduced which would bar the use of condoms as evidence of prostitution has garnered support from public health experts, human rights activists, advocates for sex workers and the LGBT community. She points to the conflict between state and city health policies which encourages condom use and the distribution of millions of free condoms to help combat sexually transmitted infections, and criminal procedure policy which permits confiscation of condoms as evidence of the criminal offense of prostitution. The senator’s bill would halt this police practice, which makes people hesitant to carry condoms to protect their health and that of others.


The author discusses the legal approaches to sex work around the world – ranging from no legislation on the subject to full criminalization of all aspects of sex work – and provides a number of different ways in which scholars and activists have categorized these different approaches. She identifies 21 different ‘frameworks’ (and states in a later web posting that six more frameworks have emerged recently). She notes that there is no common understanding of terminology and conceptualization; terms such as total or partial criminalization, decriminalization, non-criminalization, legalization, regulation, no-law, and non-prosecution, among others, are in use. This creates problems, she says, in communicating about the impacts of different legal approaches and fashioning improvements in legal systems that will protect human rights and advance HIV prevention methods.

She concludes with a statement of her recommended approach to sex work, arguing for full decriminalization, separation of the concepts of trafficking and sex work, and replacement of criminal laws with legal rules that treat sex work the same as any other occupation or commercial activity.


ProCon.org is a nonprofit organization whose stated purpose is ‘promoting critical thinking, education and informed citizenship by presenting controversial issues in a straightforward, nonpartisan, primarily pro-con format.’ Under the topic of ‘Prostitution,’ ProCon presents the policies of 100 countries on prostitution, brothel ownership and pimping. The countries were chosen to be representative of major religions, geographical regions, and policies toward prostitution. For each of the 100 countries studied, the web site provides a chart stating whether prostitution, brothel ownership and pimping are legal and giving more detailed information in narrative form, with sources cited. For some countries, the relevant legislative authority is cited.

The PROS Network (Providers and Resources Offering Services to Sex Workers) is a coalition of organizations and individuals that collaborate on programs surrounding sex work-related issues in the New York metropolitan area. The Sex Workers Project provides legal and social services to sex workers based on principles of human rights and harm reduction, as part of the Urban Justice Center, an organization serving low-income and marginalized persons in New York through direct legal services, advocacy, community education and organizing.

This paper reports on two studies documenting the police practice of confiscating condoms during street encounters and arrests for prostitution-related crimes, purportedly for use as evidence of prostitution-related offenses. This practice has been identified domestically and internationally as one raising public health and human rights concerns. It conflicts with New York State public health policies and initiatives designed to stem the HIV epidemic, such as the distribution of free condoms in New York City, and discourages people from carrying condoms thus undermining their ability to protect themselves. At the time of this report’s publication in April 2012, measures were under consideration in the New York State Legislature to prohibit the introduction of condoms as evidence in prosecutions related to prostitution.

The report discusses the importance of condoms to HIV prevention in New York City and the general state of policing of prostitution in the city. The report details the results of interviews with sex workers, some of whom are under the mistaken impression that carrying condoms is itself a crime. The authors conclude that condom confiscation is a widespread police practice in New York City. While there is no evidence that confiscation reduces the incidence of sex work, the findings of these studies indicate that it produces harmful effects, *i.e.*, it discourages condom use and increases vulnerability to HIV infection, further marginalizes already vulnerable populations, increases mistrust of law enforcement, violates sex workers’ right to health and impedes peer-education efforts to promote safe sex practices among sex workers.


This web posting reports on an address made to attendees at a 2001 conference for sex workers held in Taipei. The speaker is a sex worker from Sweden who comments on the Swedish law that criminalizes the purchase of sex. She says that the new law does not help sex workers, as it sees them as victims in need of rehabilitation rather than persons in the work force who have made a choice to engage in sex work. Instead, she says, the government should offer education on safe sex for sex workers and focus on their health needs. She says that prostitution in Sweden is run by the ‘Russian mafia.’ Sex workers who are abused or subjected to violence are afraid to call the police, she says, because word gets around and then they lose their clients. Many sex workers have left Sweden for neighbouring countries, she continued, and Denmark, Finland and Norway want Sweden to change its law to prevent this cross-border problem.


The Sex Workers Project operates as part of the Urban Justice Center, an organization serving low-income and marginalized persons in New York through direct legal services, advocacy, community education and organizing. The
Sex Workers Project provides legal and social services to sex workers, based on principles of human rights and harm reduction.

This paper aims to ‘illustrate the complexity of human trafficking and the danger of conflating trafficking and sex work.’ The authors point out that the vast majority of sex workers strive for fair and safe working conditions that offer a living wage with medical benefits. Many sex workers are not forced or trafficked into this line of work, but rather choose to work in the industry. The conflation of trafficking with sex work ignores the voices of sex workers themselves, the authors say, and worsens their working conditions.

The authors point out that there is no evidence that increased criminalization of sex work leads to a decrease in trafficking, but there are many indications that criminalization harms sex workers. Stigmatized as criminals, sex workers cannot effectively advocate for occupational safety and health. Equating trafficking with sex work ignores those who are trafficked into manual labour and domestic work, and equally ignores those who voluntarily choose sex work as their profession.

The conflation mindset has led to harmful federal policies, the authors report. They point to the ‘anti-prostitution’ pledge that the U.S. government requires of all countries that receive foreign assistance from the U.S. Federal legislation prohibits U.S. funding for organizations that support the legalization of prostitution. While these provisions were well intentioned, the authors say, they have in practice polarized international governmental policy and minimized the human, social and economic rights of sex workers.


This 2009 article reports that the pioneering Swedish law that criminalizes the purchase of sex is under review. While some lawmakers advocate even harsher penalties for clients, others, including some sex worker organizations, argue that the law has not worked well in practice and has failed to protect sex workers.

One academic is quoted as saying that those who promote the law portray all prostitutes as victims of men’s violence and persons in need of rescue. She said further that the law itself came about as a product of the influential feminist movement in Sweden and entrenched leftist views of prostitution as capitalist exploitation. Legalization is a better option, this academic said, because it reduces risks to prostitutes while integrating them into the welfare system and offering them unemployment insurance, health care and pension benefits. A spokesperson for an organization of sex workers said that the Swedish approach had marginalized prostitutes and put them at increased danger.


This brief Fact Sheet reports that HIV prevalence in the Caribbean is about 1 percent, which is higher than in any other region of the world outside of sub-Saharan Africa. Unprotected heterosexual sex, especially paid sex, is the primary mode of HIV transmission in this region. HIV rates among female sex workers are quite high, ranging up to 27 percent in Guyana.

UNAIDS reported in 2010 a renewed focus on its goal of ‘zero discrimination, zero new AIDS infections, and zero AIDS-related deaths.’ The report notes a 19 percent decrease in the number of new infections since 1999, and an increase in access to treatment for those living with AIDS in low- and middle-income countries. It generally concludes that steady progress has been made toward achieving universal access to HIV prevention, treatment, care and support but that many challenges remain.

Patterns and sources of HIV infection vary from region to region. In Western, Central and Eastern Africa, paid sex remains an important factor in the spread of HIV; for example, almost one-third of new infections in Ghana occur in sex workers, their clients, or their other sex partners. In Asia, the HIV epidemics are driven in large part by the paid sex work trade; however, intensive HIV prevention programs among sex workers in one Indian state have proved to be highly effective. In Eastern Europe and Central Asia, the interplay between injecting drug use – the major driver of HIV infection in this region – and sex work is accelerating the spread of HIV; as an example of this effect, it is estimated that at least 30 percent of sex workers in the Russian Federation have injected drugs. Unprotected heterosexual sex, particularly paid sex, is the primary mode of transmission in the Caribbean, and high HIV infection levels are reported among female sex workers there. In Central and South America, most countries have focused their HIV prevention efforts on sex workers, with good results. Sex between MSM is the primary driver of HIV infection in North America and Western and Central Europe, with paid sex work playing a minor role. The same is true in the Middle East and North Africa, with paid sex apparently not a major driver of HIV infection in those regions. In Oceania, paid sex work appears to be an important element in the HIV epidemics.

The report further notes that human rights are increasingly becoming part of nations’ response to the AIDS epidemic but that criminalization and discriminatory laws are still a problem. It concludes that, despite extensive progress, many countries will fail to meet MDG Goal 6: halting and reversing the spread of HIV. In spite of this, HIV prevention programs among sex workers in parts of the globe have achieved major progress in increasing condom availability and use in sex work, and in reducing HIV infections in this population.


UNAIDS reports that efforts to combat the HIV epidemic in the Caribbean region have met with some success, primarily in the areas of blood safety, ART coverage and prevention of mother-to-child transmission. However, many challenges remain. HIV prevalence rates are high among MSM and sex workers, but HIV prevention efforts have not been directed toward these populations. With external donor support decreasing, national governments and civil society organizations will have to increase their services and advocacy for people living with HIV.

UNAIDS notes that there are no comprehensive health programs targeting sex workers in the Caribbean region. There are only a handful of self-organized sex worker groups at the national level, but one regional group, the Caribbean Sex Worker Coalition, has been organized and has begun to provide sex workers a voice in policy formulation and program development. Stigma, based on perceptions of immorality, undermines HIV prevention, testing and treatment-seeking behaviour and quality of care in this region for those populations most at risk, including sex workers.

This report finds that the failure to respond adequately to the human rights and public health needs of MSM and transgender people, two groups with the highest rates of HIV infection, has fallen far short of what is required to ensure universal access to services for HIV prevention, treatment, care and support. The report notes that, in some contexts, transgender people are also involved in sex work and/or inject drugs. Therefore, addressing the epidemic among marginalized groups is important not only for members of those groups but also is an effective strategy to avert a larger epidemic among the general population.

The strategy outlined in the Framework is based on three key guiding principles: Action must be grounded in a commitment to human rights; action must be informed by evidence; and action is required by a broad range of partners, including affected communities, governments, the private sector, and the UN family.

UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work* (rev. ed. 2012), available at:  

In many countries, sex workers experience a higher rate of HIV infection than most other population groups. Vulnerability to HIV as a result of sex work affects women, men and transgender people alike. Yet sex workers have inadequate access to HIV prevention services and to treatment, care and support, and less than one percent of global funding for HIV prevention is focused on HIV and sex work. The purpose of this Guidance Note is to provide clarification and direction on approaches to reducing HIV risk in the context of sex work. It offers a policy and programmatic approach to this issue and emphasizes the fundamental right of all people to make informed choices about their lives, bodies and sexuality, the right not to be trafficked or held in slave-like conditions, and the importance of protecting children from any form of sexual exploitation.

The Guidance Note reports that where sex workers are able to assert control over their working environments and insist on safer sex, HIV risk and vulnerability can be reduced significantly. However, where laws, policies, stigma and discrimination drive sex work underground, sex workers find themselves without access to health services, social and legal support, and without protection from violence and abusive working conditions. The Note describes important elements of an effective rights-based strategy for fighting HIV among sex workers and emphasizes the importance of including sex workers in development of such strategies.


This report was intended to complement the 2009 UNAIDS Guidance Note on HIV and Sex Work (a 2012 update of which is described elsewhere in this Bibliography). The UNAIDS Advisory Group was established in 2009 by the Executive Director of UNAIDS to provide advice on issues related to HIV and sex work, with a focus on enhancing human rights protections for female, male and transgender sex workers and on removing barriers to universal access to HIV prevention, treatment, care and support for this population. The Group identified four themes on which it provides further clarification:
• Legal and policy environment of sex work: This includes laws, policies and practices that can undermine sex workers’ rights and their access to HIV services, including such things as criminal laws against sex work, laws criminalizing HIV transmission or same-sex practices, and health regulations mandating HIV testing for sex workers. The Group recommends decriminalization of sex work and activities associated with it.

• Shifting the strategic focus from reducing demand for paid sex to reducing demand for unprotected paid sex: The Group advises that empowering sex workers for greater control over their work environment will enhance HIV prevention efforts. This will require a change in the power dynamics within sex work so that sex workers, rather than clients or managers, exercise control over condom use.

• Conflation of sex work and trafficking: The Group differentiates trafficking, which involves force, coercion, deceit and exploitation, with sex work which, even when it is illegal, involves a consensual contractual arrangement between adults. Anti-trafficking efforts typically ignore the possibility of engaging sex workers as partners in identifying and preventing trafficking in persons, although sex workers are well placed to help in this effort and have a strong motivation to combat trafficking.

• Economic empowerment of sex workers: Social marginalization and poor health services restrict sex workers’ ability to improve their living and working conditions and to achieve economic security. Stigma and discrimination aggravate economic disempowerment by, among other things, restricting sex workers’ access to financial, legal and health services. Programs that require an exit from sex work as a condition of access to job training or extension of credit fail to recognize that some sex workers do not want to be rehabilitated or leave sex work. The Group recommends that sex work be considered a legitimate form of earning a living and that sex workers enjoy work-related protections to the same extent as all other workers.


This is the first report by the Secretary-General to the UN General Assembly following the June 2011 Political Declaration on HIV and AIDS. The Secretary-General reports progress in several areas, including increased access to essential prevention and treatment services, a decline in new infections and AIDS-related deaths, and adoption of safer sexual practices among young people in high-prevalence countries. However, many challenges remain, including a lack of resources and/or lack of political will. For example, fewer than 10 male condoms are available for every man in sub-Saharan Africa annually, and globally, at least 18 countries do not support the targeted promotion of condoms for sex workers. Other problems arise from punitive laws and human rights violations which undermine national responses. Most countries criminalize sex work or some aspect of it; such criminal laws marginalize sex workers and expose them to violence, sanctions, and often incarceration, and result in their exclusion from national economic, health and social support programs. In sum, the Secretary-General reports that the world is not on track to meet the 2015 targets. He concludes that the global response to HIV must be smarter, more strategic and efficient, and grounded in human rights.


The author examines the distinction between risk and risk behaviors in the context of the sex work industry. She points out that it takes enormous courage to leave a familiar place, for example an impoverished rural community, and migrate to a city or another country to find work and support oneself or one’s family. The choice to move is a more or less voluntary form of risk-taking. However, once the migration is complete, conditions in the new environment may drive subsequent decisions and subsequent risks.
Sex work is something that many migrants choose, or drift into, or are coerced to do. The author points out that the decision to work in the sex sector may be a conscious facing of risk; however, the context in which that work will be done is defined by the society and state apparatus that surround it. Where sex work is criminalized or highly stigmatized, as it is in most areas of the world, the individual sex worker often has little room to exert control over her or his work activities. Where sex workers are subject to police abuse – from confiscation of condoms to extortion and rape – and violence from clients, the lack of opportunity for redress creates a ‘context of risk’ which is difficult for any individual to overcome.


This is one in a series of information bulletins published by the World Health Organization with input from a variety of NGOs working to further women’s health globally. The bulletin focuses on the relationship between violence commonly directed at sex workers and the risks of HIV infection in this population.

The authors report that sex workers are among the groups most vulnerable to HIV infection across the globe, for many reasons. Many sex workers are migrants who face cultural, social, legal and linguistic obstacles in attempting to access social and health services. Many are subjected to recurring violence, a manifestation of the stigma attached to sex work. Because of criminalization of sex work or activities related to it, sex workers are prime targets for harassment and violence by clients and police alike. In many countries, sex workers are beaten or coerced into sex by corrupt police officials or placed in institutions where they face further sexual abuse and degrading and sometimes dangerous conditions of confinement. Pimps and other ‘gatekeepers’ often exercise control over such things as a sex worker’s choice of clients or whether the worker is allowed to insist on condom use. Clients may use violence or the threat of violence to compel unprotected sex from a sex worker.

Sex workers face other barriers to accessing HIV prevention and treatment. Health providers are often hostile to sex workers, refusing to treat them, imposing mandatory HIV testing as a precondition to treatment, or violating the confidentiality of their medical records. Many sex workers experience low self-esteem caused or exacerbated by stigma, violence and lack of control over one’s life, which often leads to alcohol and drug use, behaviors linked to increased HIV risk.

The authors conclude that HIV prevention strategies for sex workers must incorporate violence prevention strategies. They report that in some settings sex workers are beginning to take control of their own lives, act in their individual and collective interests to find solutions to problems of occupational health and labor rights, and contribute to the fight against HIV/AIDS. This information bulletin includes a Sex Work Toolkit of practical strategies to reduce violence against sex workers.


The China Sex Workers Organization Network Forum (CSWONF) is a group of 14 organizations founded in 2009 to support the occupational health and safety of sex workers in China. The organization was funded by UNFPA to study of the effects of a nationwide crackdown on sex work, part of an anti-vice campaigns conducted in 2010 by public security and police bureaus in China, and to analyze how crackdowns of this sort, which occur periodically in China, will affect sex workers and HIV prevention.
Surveys and interviews were conducted with female, male and transgender sex workers, owners of entertainment establishments (EEs) and peer educators in 12 Chinese cities. Crackdowns typically involve raids, arrests, fines, detention, deportation from cities, harassment, blackmail and/or violence from public security forces. Female sex workers are targeted to a much greater extent than are male sex workers. The crackdowns are conducted in an atmosphere of corruption. EEs that can afford to purchase special relationships (‘guanxi’) with police – either by paying money or providing sex workers to police – are less affected by crackdowns; one EE owner said the crackdowns are basically all about money.

The study concluded that crackdowns cannot eliminate sex work but instead create unsafe and less healthy work environments. The intensified policing involved in the 2010 crackdown affected sex workers’ earnings, because many EEs closed down and clients were lost. Many sex workers became more mobile and took work in environments where they had less negotiating power regarding condom use. Some stopped carrying condoms for fear they would be used as evidence of prostitution. Peer educators reported that the crackdowns can destroy well-developed HIV prevention communities, as previous prevention patterns are interrupted and it becomes more difficult for peer educators to locate target groups.


Sex workers, along with illicit drug users and those who face criminal sanctions due to homosexuality or transgender status, often find their health threatened by social exclusion and legal marginalization. Incarceration, which is a constant threat for many in these populations, can makes matters even worse. The authors examine the types of legal problems linked to negative health outcomes in these populations and conclude that access to legal services may be essential to positive health outcomes.


This is an audio report on the situation of sex workers in Burma, where the government strictly prohibits prostitution and brothels. Sex workers report that they do not carry condoms, because that identifies them as prostitutes and can lead to arrest. A Burmese lawyer interviewed for the report says that the law is unevenly enforced and that criminalization pushes sex work underground where it is harder for safe-sex education efforts to reach the workers.

The report focuses on the substantial health risks to sex workers in Burma. It is estimated that more than 30 percent of sex workers in the country are HIV-positive. HIV infection goes untreated among sex workers; one sex worker interviewed had never heard of ARVs, and none of the sex workers could afford the medication in any event. Some sex workers resort to traditional medical treatments, such as a tea that is reputed to kill the virus. One health care provider along the Burma-Thai border, where many sex workers are recruited, says that Burmese sex workers have very limited choices. Most are forced into the trade, where they are at risk of HIV infection from clients who do not use condoms. In addition, many sex workers inject drugs to make the work more tolerable and enable them to work longer hours.

This paper reports on a study of 1,000 female and transgender sex workers in Phnom Penh. The study explores the relationship between HIV risk and the extreme violence directed at sex workers in this region, particularly the widespread phenomenon of gang rape. HIV prevalence dropped in Cambodia between 2002 and 2003, and this development is often attributed to the ‘100% Condom’ program in that country. However, this positive news is threatened by the increasing vulnerability of sex workers to brutal gang rape occurring at gunpoint or knifepoint. Over 90 percent of the sex workers involved in this study were raped at least once in the past year, and most of these incidents were gang rapes by clients, gangsters, and often by police.

Societal disruption caused by decades of war and other destructive forces has led to rising levels of drug use and the growth of out-of-control youth gangs in Phnom Penh. These factors make the sex trade extremely unsafe, and the author points out that Cambodia has the classic features of a rape-prone society: high levels of general violence, male dominance, and the silencing and punishing of female sexuality. Unless the human rights of sex workers are taken into account in HIV prevention strategies, the author says it is doubtful that Cambodia will be able to sustain reductions in the transmission of HIV.

A note preceding the title page makes clear that this project was funded by USAID in 2003, prior to that agency’s issuance of a directive prohibiting the promotion or advocacy of prostitution or sex trafficking, in accordance with U.S. government policy. The note goes on to confirm that no funds made available for the research and report were used for such advocacy purposes and that the awardee organization (the POLICY Project) has a policy explicitly opposing prostitution and sex trafficking. The note states further that both USAID and the POLICY Project are committed to fighting the spread of HIV and other sexually transmitted infections and the POLICY Project affirmatively recognizes that effective HIV prevention and treatment strategies require that the dignity and rights of sex workers are respected.


This document was prepared with input from 21 endorsing organizations from around the world. It sets forth the many ways in which criminalizing transmission of HIV endangers and oppresses women and calls for rights-based approaches in the response to HIV and AIDS. One of the ‘ten reasons’ is the fact that marginalized women, including sex workers, often lack adequate access to HIV prevention and treatment resources as a result of their already-criminalized status. If HIV exposure or transmission is also criminalized, female sex workers will be further stigmatized and subjected to the threat of double prosecution, setting up yet another barrier to accessing health care.


Many Caribbean countries maintain laws and policies that undermine universal access to, use of, and education about condoms in spite of the fact that the majority of HIV transmissions in the region come about through unprotected heterosexual sex. The Pan-Caribbean Partnership Against HIV/AIDS (PANCAP) was awarded a grant to develop a model condom policy for Caribbean countries, to promote the use of condoms as the primary feature of a cost-efficient and effective HIV prevention program. This document is a report of the model policy, which was
developed through a broad participatory consultation process involving national, regional and international stakeholders. The model policy is based on the recognition that condoms need to be a good quality product and be affordable and accessible to all those who are sexually active and at risk of HIV and other sexually transmitted diseases. The policy is intended to offer a more streamlined method for countries in the region to provide and promote condoms and to make appropriate use of resources ranging from international aid to household income.

High risk groups such as sex workers, whose sexual activity is illegal in most Caribbean countries, have a more difficult time accessing condoms and also have a much higher HIV prevalence rate than does the general population. The report notes that the region’s culture is conducive to gender inequity which leads to a widespread inability of women, including female sex workers, to negotiate safer sex practices such as condom use.


This news article reports on the genesis of an upcoming Human Rights Watch (HRW) report on sex workers rights. A researcher for HRW was prompted to study the issue while working with the North Carolina Harm Reduction Coalition and observing a sex worker in Durham refusing the offer of free condoms out of fear the condoms would be used by police as grounds for harassment and arrest, or produced in court as evidence of prostitution. Even when possession of condoms is not illegal, sex workers will not carry condoms if they think it will lead to their arrest. This puts sex workers, their clients and the larger community at greater risk of HIV infection. The researcher quoted in the article stated that this issue is part of a broader concern about the human rights of sex workers. “Other people don’t get arrested for protecting their health,” she said.

P.M. Pyett & D.J. Warr, Vulnerability on the Streets: Female Sex Workers and HIV Risk, 9 AIDS Care 539 (1997)

In this study of 24 female sex workers, the authors examine risks of violence and HIV infection among women working on the streets. These women face many difficulties in attempting to protect themselves from violence and sexually transmitted disease; major factors include physical threats and coercion from clients, an absence of legal protection for street workers, extreme social isolation and lack of community support, and in some cases, youth, homelessness and heavy drug use. The authors conclude that decriminalization of prostitution would reduce some of these dangers and increase women’s ability to insist on safe sex practices; they also emphasize the need for clients to accept responsibility for condom use.


The authors studied the effect of residential instability, defined as a high frequency of reported evictions, on HIV risk among female sex workers in the South Indian state of Andhra Pradesh, an area with high HIV infection rates among sex workers. The researchers found that female sex workers without stable housing situations were more likely to report sexual violence, physical violence, accepting more money for unprotected sex with clients, and a recent symptom of sexually transmitted infection. They concluded that residential instability is associated with HIV risk factors.

The authors interviewed 31 female and transgender sex workers in two cities in Serbia, to explore their perceptions of risk in the sex work environment. The authors acknowledge some limitations in their research, noting that this is basically an exploratory study generating findings for testing in later research.

Sex work is highly stigmatized in Serbia, and violence from clients and police was reported as the greatest source of concern. Violence and the threat of violence are linked to increased vulnerability to sexually transmitted infections through coerced unprotected sex and a reduced capacity to negotiate condom use. Social and economic uncertainty in Serbia, along with ethnic bias against Roma populations, a history of using violence as a strategy for policing social unrest, and reports of police violence in targeting vulnerable groups, all combine to make sex work a risky profession. Physical violence from clients is common, but police violence is seen as a greater threat and less open to risk management. Many sex workers report being forced to comply with police demands for free sex as a way to avoid arrest or public humiliation. Attempts to resist such demands often lead to violent retribution. Extreme violence was reported toward transgender persons and Roma.

The authors conclude that there is a need to ‘design out’ violence from sex work by fashioning interventions that can monitor client and police perpetrators of violence, provide legal support for protection of sex workers’ health and human rights, and create safer environments for sex work.


Noting that the demand for paid sex often accompanies global sporting events, the authors see the 2010 World Cup competition as a strategic opportunity for South Africa to respond in a rights-based way to challenges posed by the sex industry, including the HIV epidemic in that country. They contend that public health goals are best achieved when sex work is decriminalized and sex workers are empowered, rather than persecuted or seen as victims. They say that the World Cup presents the government of South Africa with a chance to institute progressive changes that can inspire long-term reform for the rest of southern Africa.

The authors argue that the HIV vulnerability of sex workers in southern Africa is directly linked to the criminalization of their work, in the following ways: Because they are engaged in illicit activity, sex workers often face multiple barriers, including discrimination, in accessing health care services. Sex workers are reluctant to report violence to the police or to seek legal recourse after rape and are often targeted by the police for abuse and sexual assault. As part of an outlawed profession, they often operate in risky and crime-infested areas without support structures or the possibility of collective action to improve their working conditions. Stigmatization against sex workers means that violence and abuse directed at them are publicly condoned. The authors conclude that reducing HIV transmission during the World Cup would best be achieved in an environment where sex work is decriminalized.


The author discusses the impact of South Africa’s criminalization of sex work and other social factors on the living and working conditions of sex workers in Hillbrow, an inner-city neighbourhood of Johannesburg, with a focus on their ability to avoid HIV infection. The author describes an intervention by the Reproductive Health & HIV Research at the University of Witwatersrand to provide health care services and education to hotel-based sex workers in...
Hillbrow. The author argues that decriminalization of sex work, and a legal rights-based approach to HIV risk in this population, are crucial to improving sex workers’ material conditions.


This report describes the legal environment surrounding sex work in the 12 former British colonies of the Commonwealth Caribbean. Regional reforms beginning in 1986 focused heavily on criminalization of prostitution and increased penalties for solicitation and activities surrounding sex work, primarily pimping and brothel-keeping. The author also discusses the use of vagrancy laws to control sex workers and the role of laws against human trafficking. Across the region, the legal regimes implicitly portray sex workers in a variety of contradictory ways: as exploited and in need of protection, as immoral sex offenders, and as disruptive of public peace, morality and order.

In addition to laws specifically focusing on prostitution and trafficking, sex workers are impacted by legislation in other areas, including criminal laws against non-disclosure of HIV status or transmission of HIV, drug possession and trafficking laws, criminalization of consensual anal and oral sex, laws against ‘prohibited immigrants’ and laws restricting access to abortion. The legal environment in this region does not recognize prostitution as a form of legitimate work and approaches sex work in terms of criminal law rather than labor law. The author notes that the relatively minor offenses carrying minimal penalties – such as laws against vagrancy or disturbing the public order – often represent more insidious restrictions on sex workers because, when public prosecutors and defense lawyers are not involved, police can use these laws as instruments of harassment, abuse and control of sex workers.

The author also discusses the role of international law in the areas of human rights and trafficking and labor law, as it relates to the legal control of sex work in this region.


This study documents the experiences of female, male and transgendered persons who engage in sex work in four African countries: Kenya, Uganda, South Africa and Zimbabwe, each of which criminalizes some aspect of sex work. The study involved a literature review followed by in-depth interviews with individuals and focus group discussions with sex workers. The report discusses human rights violations experienced by sex workers, the strategies employed to avoid these, the barriers sex workers face in accessing health services and the broader impacts on HIV epidemics. It also includes practical suggestions for advocacy to improve the lives and working conditions of sex workers.

While some sex workers in the study were forced by severe poverty and unemployment to enter the sex trade, others were attracted by the flexible working hours, ready cash and the sense of independence gained through remunerative work. Some entered the trade in order to support family members, pay school fees, or obtain seed money for other business ventures.

In all countries, sex workers report routine sexual violence from police and related authorities. Physical abuse and humiliating treatment from police are also common. Money and sex are extorted from sex workers by police, landlords and others on the fringes of the sex industry. Clients can become violent, and many are indifferent to pain they may inflict on a worker whose services they have purchased. Many sex workers are offered extra money for
unprotected sex or are subjected to violence for refusing. Social isolation and stigma are the norm. Without exception, sex workers reported that criminalization of sex work deprives them of basic rights and impacts negatively on their ability to avoid HIV.

In attempting to access health care services, many sex workers encounter hostility, poor treatment and breaches of confidentiality, although higher-quality care is reported by those with access to sex worker-specific clinics. Sex workers are often reluctant to disclose their occupation to their health care provider, and many are not willing to get tested for HIV due to stigmatization.

Recommendations arising from the study include decriminalization of sex work, the application of rights-based approaches to public health interventions, sex worker-led advocacy to reduce stigma and demand access to rights and health services, training of police, community education, legal assistance and establishment of sex worker-specific health care facilities.


In this commentary article, the authors describe the effects of criminalization on the health and safety of sex workers. Where sex work is illegal, sex workers may be easily exploited or abused by clients, pimps and police officials. Isolation and disempowerment create barriers to negotiating safe sex practices, which increases vulnerability to sexually transmitted infections, include HIV. The authors call for more attention to understanding the link between violence against sex workers and condom use.


This work catalogs the law governing sex workers in five South Asian countries: Bangladeshi, India, Nepal, Pakistan and Sri Lanka. The author notes that activists working with HIV prevention programs in the area, or those supporting sex worker empowerment, often find it difficult to access laws governing prostitution or trafficking in these countries. This report aims to fill that gap. It is not a field-work study on how the law affects the lives of sex workers in these countries; rather its intent is to explain the content of relevant laws for activists and practitioners in working in the field.

The author reports on both legislation and court decisions. Issues covered include the problem of conflation of sex work with trafficking, the right of sex workers to live in liberty and dignity, the right to move freely and reside in a place of one’s choosing, the right to migrate, forced and voluntary sex work, the case of minors, and other topics.


Human Rights Watch reports that, at the time of this study, the incidence of HIV/AIDS in Kazakhstan was largely confined to injecting drug users and sex workers but that severe police repression and brutal abuse of these populations was impeding access to prevention and treatment programs and fueling an impending HIV/AIDS epidemic.
Sex workers in Kazakhstan are often migrants from rural to urban areas who lack the official registration documents necessary to obtain legal residence and city services. This vulnerable status makes them easy targets for extortion by police. Failure to pay extortion demands can lead to detention and physical and sexual abuse, including brutal beatings and coerced or forced unprotected sex. Police have been reported to offer protection to pimps in exchange for monetary payments and free sexual services from sex workers. Sex workers’ desperate poverty, lack of information, and demands from clients often prevent them from negotiating condom use. In addition, sex workers provide a bridge to the general population in the spread of HIV/AIDS, as injecting drug users sometimes sell sex to support their drug habit.

Some promising developments are reported, however. In 2001, the government instituted a five-year interministerial plan to combat HIV/AIDS. Laws and regulations relevant to HIV/AIDS were being reviewed for consistency with international standards on HIV/AIDS and human rights.


This report by three U.N. agencies calls for greater attention to issues of gender inequality and poverty as those issues impact on the HIV risk for women worldwide. The percentage of women among all adults living with HIV globally rose steadily in the decade preceding this report. While the HIV epidemic takes different patterns in different regions, the gender equality existing everywhere means that women are less able than men to exercise control over their bodies and their lives. Without access to financial resources, women are dependent on men and thus are more susceptible to abuses of power. Violence and the threat of violence also limit women’s ability to protect themselves from HIV/AIDS. The authors report that women often risk violence if they insist on safer sex, and may stay in abusive relationships if they have nowhere else to go. Poverty pushes many women into sex work to feed their families, and sex work raises their risk of HIV infection.


This document is a news announcement of a series of demonstrations sponsored by the Women’s Network for Unity (WNU), a sex workers’ collective based in Phnom Penh. A link to the announcement is posted on the web site of the Paolo Longo Research Intitiative (PLRI), a group of researchers, policy analysts and sex workers involved in the sex workers’ rights movement.

WNU reports that hundreds of women gathered in Phnom Penh for 16 days of activism against gender violence in Cambodia. The group notes that a law on human trafficking and sexual exploitation, passed in 2008 with the stated aim of protecting women, has actually been used to justify harassment and abuse of sex workers. Arbitrary arrest and detention can be followed by demands for sex as a condition of release. WNU calls on the government of Cambodia to change the law to protect sex workers and other marginalized female workers and normalize their occupations.

This report by Amnesty International (AI) calls on the government of Swaziland to enact long-promised law reform to ensure the protection of women and to bring the country in line with its obligations under the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). While a new Constitution adopted in 2004 formally guarantees women in Swaziland the right to be treated on an equal footing with men, legislative reforms to implement these rights have not been enacted. Discrimination and the low social status of women render them vulnerable to high levels of gender-based violence, poverty, unemployment and HIV infection. Swaziland has the highest HIV prevalence in the world, and women far outnumber men in rates of infection, which is 49 percent in women ages 25 to 29, and 31 percent in women aged 15 to 49.

A new Sexual Offenses and Domestic Violence bill was only recently introduced in Parliament, leaving in place the Girls’ and Women’s Protection Act of 1920. Marital rape is not criminalized under the 1920 Act, nor under Swazi common law, and the Act provides that it shall be a defense to rape of a female child that the child was a prostitute at the time. As AI points out, not only could this provision lead to impunity for a child rapist, but it also supports attitudes that sex workers are not worthy of legal protection.


This literature review and analysis examines research on the burden of HIV among sex workers as compared with other women of reproductive age in low- and middle-income countries. The authors analyzed 102 studies involving close to 100,000 sex workers in 50 countries. They found that, overall, 11.8 percent of female sex workers were HIV positive; in 26 countries with medium and high background HIV prevalence, this rate went up to 30.7 percent. These results indicate that the burden of the HIV epidemic falls disproportionately on female sex workers as compared with other women. The authors identify an urgent need to increase access to HIV prevention programs in this population, focusing on reducing stigma, discrimination and violence toward female sex workers.


The Sonagachi Project in Calcutta, India is a community-level HIV intervention program that defines HIV and other sexually transmitted diseases (STDs) as occupational health hazards, advocates human rights for sex workers, provides access to condoms and STD treatment, and creates a sense of community and political awareness among sex workers. The Project, which aims to reduce the stigma of sex work, has resulted in economic, political and occupational power for sex workers in Calcutta. In addition, condom use is high and HIV prevalence low in Calcutta compared to other less-impoverished areas of India, and WHO has selected the Songachi Project as a model for STD and HIV intervention programs. However, until this study there was no rigorous research testing the Songachi model in controlled conditions to determine whether the Project is responsible for the low HIV rates found in Calcutta.

For this study, the Sonagachi model was replicated in two other communities. The researchers emphasized that this intervention was designed by the community, sustained by the community, and is taken to new communities by the sex workers themselves; the academic researchers were involved only the extent they conducted an evaluation of the project conceived and refined over time by the community.
Results indicated that consistent condom use increased substantially in areas with Songachi-type services, and that this increase was sustained over a 16-month period. The clinics provided free health care to sex workers, their families, clients, and other persons living in the red light districts where they were located. Having access to these resources was likely responsible for increased self-esteem among sex workers and also increased their status within the community. Because the programs are intended to be sustainable over the long term, the researchers were optimistic that, like the Songachi Project, these clinics would begin to spin off social entrepreneurial programs such as a micro savings and lending cooperative, literacy programs, cultural programs, and schools.


This paper reports on the Sonagachi Project in Kolkata, India aimed at challenging the internalized stigma of sex workers. The project provides alternatives to the powerlessness that many sex workers experience, by demonstrating to participants that sex workers have rights that should be respected, that sex workers can identify themselves with other oppressed but politically successful groups, and that sex workers have made positive achievements. The project also provides participants with evidence and experience of the change that is possible when sex workers are empowered.


This Fact Sheet points out that although HIV disproportionately affects society’s most vulnerable and marginalized, there has been a lack of attention globally to scaling-up HIV prevention services for those populations at highest risk, including sex workers, MSM and injecting drug users. Sex workers, for example, are conservatively estimated to be eight times more likely to be infected with HIV than are other adults. In addition to the significant health risks faced by these populations, the high HIV prevalence rates means there is a substantial risk of transmission to the broader population.

Prevention efforts aimed at specific populations have helped bring HIV epidemics under control. Several countries report a decline in HIV prevalence among sex workers when condom promotion efforts are increased. amfAR calls for stronger efforts to deliver evidence-based HIV prevention service through local channels that vulnerable populations trust. The group also advocates building the capacity of health systems to address the specific needs of these populations, and assessing the appropriate mix of NGO- and government-provided services for these populations, appropriate to each country setting.


This document describes laws in Swaziland relating to all aspects of children’s lives and compares that legal regime with the country’s obligations under the U.N. Convention on the Rights of the Child, which it ratified in 1995. The author provides data on the circumstances of Swazi children, noting among other things that 56.6 percent of the entire population of the country consists of children under the age of 19 years, 10 percent of households are headed by children, and 66 percent of all children live below the poverty line. The HIV epidemic in Swaziland is the second
highest in the Southern Africa region, and at the time this report was written, it was estimated that life expectancy in the country would decrease to age 27 and the number of orphans would increase to 120,000.

The legal protection for female children is spotty and much of it is outdated. For instance, the author reports that the Girls’ and Women’s Protection Act 39 of 1920, section 3(1), makes it a criminal offense for a male person to have sexual intercourse or commit immoral or indecent acts with a girl under the age of 16 years, or to solicit or entice a girl under 16 to commit such acts; however, section 3(3) provides a defense to prosecution if the girl was a prostitute at the time of the offense.


This study points out that sexual behaviours have been the primary focus of HIV prevention efforts throughout the world but that such behaviours are driven by a combination of personal desires, social and cultural relationships and economic processes, all of which makes HIV prevention anything but simple. This report looks at HIV prevention strategies and the theories on which they are based.

One of these, the ‘social network’ theory, focuses on the fact that unlike other types of health-related behaviours, HIV risk behaviour directly involves two people, and the scope and character of one’s broader social network should be examined in any attempt to comprehend individual risk behaviour. One application of this theory is the concept of ‘bridge populations’ that form a link between high and low prevalence groups. For example, men who have sex with both commercial and non-commercial sex partners can carry HIV infection from the sex worker population into the general population.

The report notes that most of the research on theory-driven interventions has taken place in industrialized countries with epidemics that differ from those in developing countries, and it calls for researchers to test models and approaches across diverse cultural, economic and social situations.


This study examines social and environmental factors affecting condom use and sexually transmitted infections (STIs) among sex workers in Corumbá, Brazil, site of a combination clinical and social intervention for sex workers called Encontros (Coming Together). The researchers tested participants for STIs and surveyed them about social cohesion, participation in networks, and access to and management of resources.
A decrease in the number of unprotected sex acts was found to be associated, in female sex workers, with increased social cohesion and participation in social networks and, in male sex workers, with access to and management of social and material resources. The authors conclude that the social context within which sex workers negotiate sexual practices is associated with condom use, and that HIV prevention efforts should incorporate strategies to modify the social environment and empower sex worker communities, including interventions that seek to create social cohesion, improve access to resources, create networks, ensure community participation and otherwise establish human rights.

In this literature review, the authors start from the recent recognition, at high levels of the United Nations and within other parts of the international community, that effective HIV prevention programs are often thwarted by laws criminalizing commercial sex work. They argue that despite this emerging understanding of the link between criminal law and poor public health outcomes in the area of sex work, national legal frameworks often remain at odds with the demands of human rights activists and policy makers at the international level.

The authors note that the debates about how best to govern commercial sex often focus on disease control and harm reduction, female virtue and empowerment, and migration and slavery. For those who focus primarily on exploitation and slavery, the sex industry is seen as inherently abusive and sex workers as exploited and lacking agency. In this view, sex work is conflated with sex trafficking, and public health initiatives aimed at making sex work safer are condemned as aiding exploitation and even slavery.

The formal human rights framework of international law becomes irrelevant to sex workers to the extent that it views sex work as itself an affront to human dignity. The authors point out that the broad spectrum of rights claimed by sex workers is grounded in the workers’ own collective understandings of human rights and justice, rather than on sophisticated technical knowledge of international human rights treaties and laws. While international law and sex workers’ groups agree that access to HIV testing and condoms are necessary to good health outcomes, sex worker rights activists put equal emphasis on their broader right to work in safe, clean and fair workplaces. The authors conclude that safe practices and fulfillment of all human rights for sex workers are possible only when regulatory frameworks recognize commercial sex work as a legitimate activity.


This study, funded by UNICEF and the U.S. Centers for Disease Control and Prevention, surveyed 1900 households in Swaziland to assess the prevalence of sexual violence against girls under 18 years of age and to examine associations between sexual violence and selected health-related conditions.

Information was gathered from over 1200 girls and women aged 13 to 24 years. One-third of the respondents reported experiencing an incident of sexual violence before they reached the age of 18. Perpetrators were most commonly men or boys from the respondent’s neighbourhoods, boyfriends or husbands, or male relatives. Sexual violence was found to be associated with sexually transmitted diseases, pregnancy complications or miscarriages, unwanted pregnancy, feelings of depression and suicidal thoughts, difficulty sleeping and alcohol consumption. The study further documents the circumstances under which sexual violence tends to occur, with the aim of providing information that can inform prevention strategies.


The authors studied the occupational contexts and key behavioural risk factors for HIV among female sex workers in sub-Saharan Africa. They found that this population experienced heightened vulnerability to HIV due to a lifestyle characterized most commonly by poverty, violence, criminalization, high mobility and ‘hazardous alcohol use.’ These factors contribute to behavioural risk factors such as low condom use and anal sex. Other high-risk behaviours and context, such as multiple concurrent partnerships and high turnover in the sex worker trade,
increase the risk of HIV infection and transmission in this population and their sexual partners. As a result, women are disproportionately affected by HIV in Africa.

The authors conclude that targeted services, which take into account the behavioural and social vulnerabilities of female sex workers in this region, are urgently needed.


This paper explains the “AIDS and MDGs’ approach, which seeks to combat the global HIV epidemic – the aim of Millennium Development Goal (MDG) 6 – while linking that effort with other MDGs. The purpose of this approach is to generate intervention strategies that engage these intersecting relationships to catalyze greater progress in the areas of HIV, health and development. The paper identifies three important pillars of an ‘AIDS and MDGs’ approach: achieving better understanding of how AIDS and MDGs impact one another; documenting and sharing lessons learned across MDGs, and creating cross-MDG synergy so as to promote promising strategies that simultaneously address AIDS with other MDGs.

The paper provides specific examples of how MDG 6 intersects and interacts with other MDGs – particularly those addressing poverty, education, gender equality, and child and maternal health – and describes some programs and interventions that have successfully employed an ‘AIDS and MDGs’ approach.


This web posting includes the language of the PEPFAR pledge, part of the (U.S.) President’s Emergency Plan for AIDS Relief. It is provided by AIDS Matters, which describes itself as a web resource for global AIDS professionals. The posting notes that PEPFAR’s web site is limited, and it is difficult to find the actual language of the pledge; thus, its reproduction here. The pledge requires that recipients of U.S. aid under the statute sign a pledge that they do not promote legalization of prostitution.

**Kate Butcher, Confusion Between Prostitution and Sex Trafficking, 361 The Lancet 1983 (2003)**

The author notes that the United States statute designed to aid in the global fight against HIV, tuberculosis and malaria includes the restriction that no funds under the Act may be used to provide assistance to any organization ‘that does not have a policy explicitly opposing prostitution and sex trafficking.’ She points specifically to the inclusion in the same phrase of the words ‘prostitution’ and ‘sex trafficking,’ stating that this conflation reflects an ideological view of prostitution as a moral vice. The equation of sex work with trafficking is not confined to the United States, the author points out, and it is a mistaken concept.

The difference between prostitution and trafficking, the author says, turns on the issue of individual agency. While many women are forced into the sex trade against their will, millions of women choose to sell sex, most commonly for economic reasons. It can be a well-paying profession in comparison to others for which undereducated women from impoverished backgrounds are often relegated. While there may be many women, and men, who wish to leave the sex industry, there are others who voluntarily choose to ply the trade. Public health workers, development programs, and human rights organizations have a responsibility to ensure that all individuals enjoy the same level of human rights, whatever their involvement in the sex industry.
The author notes further that while it is the HIV epidemic that has given rise to the current debate over sex work and trafficking, it has been sex workers – initially identified as a public health threat – who have been recruited to promote safer sex and have done so in every region of the world and have educated their clients to use safe sex practices as well. Every person has the right to resist being drawn into prostitution by trafficking, the author concludes, but international human rights law also protects every person’s right to work and to be free from work-related injury, whether it be from rape, violence, robbery or other human rights violations.


While acknowledging that PEPFAR (the U.S. President’s Emergency Plan for AIDS Relief) has enabled access to treatment for hundreds of thousands of people living with HIV around the world, the authors point out that the PEPFAR anti-prostitution clause, forbidding the ‘promotion of prostitution’ by recipients of HIV funding, has also produced exceedingly negative consequences. Some of those consequences include an elimination or reduction of HIV prevention services to sex workers, closure of drop-in centers, and denial of clinic-based care and reduced access to condoms and other commodities necessary for safer sex. In some cases, peer education about safer sex techniques has halted and campaigns addressing violence against sex workers have shut down.

Organizations are thus faced with the choice of forgoing USAID funding or denying critical HIV prevention, health and education services to sex workers. This is counter to best HIV-prevention practices, the authors note, and they call for elimination of the anti-prostitution pledge.


The author is a member of the Coalition Against Trafficking in Women and the Nordic-Baltic campaign against trafficking in women. She describes the negotiations leading up to the signing of the U.N. Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, noting that the definition of the term ‘trafficking’ was the most controversial aspect of the negotiations.

The author opposes the position of governments and NGOs who argued during the debates for a definition that would have included only forced trafficking and would eliminate the term ‘victim’ from the text. She criticizes countries that have legalized prostitution, arguing that they have a financial investment in their local prostitution markets and ‘need a constant flow of new women for prostitution purposes.’


This book is described as the first-ever comprehensive and in-depth analysis of the international law of human trafficking. The author sets out the new international laws on this issue and discusses how they relate to international human rights norms, transnational and international criminal law, and refugee law. She focuses on the legal obligations of States, both individually and collectively, to prevent trafficking, protect victims and prosecute perpetrators.

The author of this commentary, the Vice President for Public Policy at the Global Health Council, reviews the health and human rights implications of the anti-prostitution pledge required of grant recipients for U.S. funds intended for HIV prevention programs.

Legislative history of the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 demonstrates that the pledge arose from a motivation to eradicate prostitution, seen by the legislative sponsors as a degrading and victimizing institution that has contributed to the spread of HIV/AIDS. USAID issued a directive requiring all organizations, domestic and non-domestic, to certify that they have a policy explicitly opposing prostitution and sex trafficking.

USAID officials insist that the pledge does not conflict with information, education, care, treatment or micro-finance programs for sex workers, and the law does include a provision that the anti-prostitution pledge requirement shall not be construed to preclude palliative care, treatment, post-exposure pharmaceutical prophylaxis, and necessary commodities including test kits or condoms. The author points out that although the law does not require that sex workers be denied information or services, it has nevertheless had a chilling effect on NGOs around the world which have either eliminated services to sex workers or refused substantial grants from USAID.

The author notes that the lack of guidance for the type of organizational policy that would satisfy the anti-prostitution requirement has led to uncertainty and caution among NGOs receiving HIV/AIDS funds from the United States. He says that the resulting ambiguity creates the potential for misinterpretation and overreaction. NGOs have told the Global Health Council that they avoid discussing the pledge in public, hesitate to participate in public meetings on sex work and, in one instance, shut down a magazine and web site.

The author says that it would be in the public interest to safeguard the right of domestic and foreign NGOs to debate contentious issues such as the legitimacy and decriminalization of sex work, as better policy emerges from vigorous conversation, not from an attempt to stifle ideas. He refers to two lawsuits in U.S. courts challenging the pledge, notes that they have thus far resulted in rulings holding the pledge unconstitutionally vague and a violation of the right to freedom of speech, and concludes that the government should rescind this unsound policy.


This paper examines the nationwide crackdown on sex work in Cambodia in the wake of 2008 legislation, the Law on the Suppression of Human Trafficking and Sexual Exploitation, that makes nearly all aspects of buying and selling sex illegal, regardless of whether consenting adult sex workers are involved. Sex work is defined in the law as sexual exploitation, and also criminalized are the acts of assisting or protecting the prostitution of others, and ‘training a person with a view to practice prostitution,’ which could include HIV prevention efforts.

The legislation was spurred in part by an agreement between the government of Cambodia and USAID regarding implementation of a program to combat human trafficking. It was also intended to implement the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

Since the crackdown began, brothels have been closed and along with them the former HIV prevention program that involved police making regular visits to brothels to verify condom use and encourage testing for sexually
transmitted diseases. The sex trade has relocated to ‘entertainment’ venues, where condoms are forbidden as they could be used as evidence of prostitution.

The author argues that the crackdowns have made it impossible for sex workers to participate in responses to both HIV and human trafficking. The current punitive approach scatters poorer sex workers into venues where condoms are banned, and places others in detention centers featuring abuse, starvation, and lack of services and medical attention. She advocates instead policies and programs that address both public health and trafficking issues, with recognition of sex work as a legitimate occupation.


This article discusses the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, which accompanies the UN Convention Against Transnational Organized Crime. The Protocol is a wide-ranging international agreement which addresses the crime of trafficking in persons on a transnational level. The Convention and Protocol replace a 1949 UN Convention dealing with trafficking and prostitution which was seen as outdated as child sex trafficking has proliferated and organized criminal groups have become involved globally, and as the emphasis has shifted to victim protection and assistance.

The author, who was involved in the negotiating process and considers the Protocol ‘a huge step forward in advancing the human rights of women and children,’ describes the process by which the Protocol came to be. She notes that the debate over the definition of ‘trafficking’ was the most contentious part of the negotiations.

The author was part of a coalition that opposed the efforts of a group of NGOs and governments that advocated limiting the definition of trafficking to forced trafficking by abduction, coercion or the like and thus recognizing that some sex workers enter the trade voluntarily. The author’s position, which ultimately prevailed, was that the definition of trafficking should be more inclusive, so that the burden would not fall on victims to prove they had been forced into prostitution. She argues that the Protocol does not equate prostitution and trafficking, but as it is clear that much trafficking is done for the purpose of prostitution, ‘the Protocol establishes that the exploitation of prostitution and trafficking cannot be separated.’

The author decries what she sees as a bias ‘in some UN agencies and circles’ in favour of defining prostitution as legitimate work and buyers of commercial sex as legitimate customers. She agrees with those who see the sex industry as inherently harmful to women and rejects the argument that exploitation and violence in prostitution is preventable. She also states her disagreement with the UN Special Rapporteur on Violence Against Women and the UN High Commissioner for Human Rights, both of whom support a definition of trafficking based on force.


This report, part of a series of Migration Studies, discusses the ‘Palermo Protocols’ – that is, the two Protocols to the UN Convention Against Transnational Organized Crime. One of these is the Protocol that deals with trafficking in persons. The author discusses the development and creation of these Protocols, then analyzes the bridge the Protocols create between transnational criminal law and international human rights law. The author says that human trafficking is not in itself a human rights issue but rather ‘a criminal law issue with a human rights dimension.’ Although the Convention and its Protocols were motivated primarily by law enforcement concerns, the protective measures included in the Protocols are also intended to advance the human rights of migrants.
She notes the distinction in the Protocols between coerced and consensual irregular migrants. Under this distinction, trafficked persons – usually women or children – are considered to be unwilling victims, often forced into the sex trade, whereas smuggled persons – usually male – are considered to be lawbreakers who migrate in search of work. While States are more likely to apply criminal enforcement measures against smuggled persons, the author notes that even those who voluntarily engage in illegal entry are often forced to migrate by circumstances of poverty or humanitarian crises in their countries of origin, and are often victimized by acts amounting to torture or inhuman or degrading treatment, including physical and sexual abuse, to the same extent as are trafficked persons. Thus, human rights concerns are relevant to both groups.

After an extensive legal analysis, the author concludes that the trafficking Protocols play a role in making each field of law – criminal and human rights – reinforce one another. The two systems, she says, are interlinked, as effective implementation of criminal law may lead to more effective protection of human rights.


This book collects essays aimed at debunking the notion that trafficking and prostitution are synonymous. The collection as a whole presents the argument that trafficking in human beings today represents an increase in violation of the rights of freedom of movement, decent employment, and social and economic security. The focus is on Asia, but the work also discusses the U.S.-led war on trafficking and characterizes it as a broader attack on migrants, aboriginal people, poor people and sex workers.


This ‘Acquisition and Assistance Policy Directive’ explains for USAID personnel, and for partners involved in the Acquisition and Assistance process, how to implement directives in the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003. The Policy Directive provides standard clauses to be included in assistance agreements and contracts that include HIV/AIDS funds.

Such agreements and contracts are required to contain provisions explaining that organizations eligible to receive grants under the agreement or contract are not required to ‘endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.’ In addition, the documents must contain the statement that information provided about the use of condoms as part of projects funded under the agreement or contract ‘shall be medically accurate and shall include the public health benefits and failure rates of such use’ and shall be consistent with a USAID fact sheet on condoms.

Each such agreement and contract must also contain the following statement: ‘The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or sex trafficking.’ Each recipient or contractor must insert this provision into all of its subagreements and subcontracts, and each recipient (with certain specified exceptions) must have a policy explicitly opposing prostitution and sex trafficking.
In Part I of this two-part article published by the BBC, the author reports that while most European countries are increasingly restricting prostitution, New Zealand has gone in the opposite direction, passing a law in 2003 that decriminalizes sex work and subjects it to normal employment, health and safety standards. New Zealand sex workers interviewed for the article were universally opposed to the Swedish approach, which subjects the client but not the sex worker to prosecution; this still criminalizes the business, they said.

One New Zealand sex worker praised her country’s decriminalization law, saying she welcomed the opportunity to work for a legitimate business in a safe environment. A representative of the New Zealand Prostitutes Collective (NZPC) said that better and safer working practices are now the norm, and sex workers are more aware of their rights and are empowered to stand up to exploitive practices by brothel owners. She said that prostitutes are also more likely now to report violence to police, and police are treating their complaints seriously. However, New Zealand society in general has been slow to accept the new legal status of prostitution, the author reports, and many in the trade keep their profession a secret.

In Part II of the article, the author reports that the chances are very slim that a New Zealand-type decriminalization reform will take hold in Europe in the near future. This is due to the widespread but probably erroneous perception in Europe that most sex workers are trafficked into the trade against their will.

Among advocates of decriminalization as the best public policy for dealing with sex work, there are those who argue that legal brothels are a safer alternative to criminalization and those who contend that state regulation of brothels simply constitutes another form of exploitation of women, exchanging illegal pimps with legal ones. The authors of this study address the issue of safety in legal brothels by examining the presence of violence in legalized brothels in Nevada.

The authors describe the legal situation of sex work in Nevada, as follows: Legislation makes licensed prostitution legal in counties with populations of under 400,000; in more densely populated counties, prostitution is prohibited. After the advent of the HIV/AIDS epidemic in the mid-1980s, Nevada promulgated administrative regulations that require any person applying for employment as a prostitute to take medical tests for HIV and other sexually transmitted diseases; only those whose tests are negative may be licensed to work. The regulations further provide that every week during their employment, female sex workers in licensed brothels must undergo pap tests for gonorrhea and chlamydia and monthly blood tests for syphilis and HIV. A positive HIV test means the sex worker loses her license to practice. It is a felony to practice sex work after a positive HIV test.

The authors interviewed sex workers, brothel managers and policy makers, exploring what the authors say are three forms of violence relevant to the issue of sex work: interpersonal violence directed against sex workers, violence against community order, and sexually transmitted diseases as violence. The authors conclude that legalization of sex work brings a level of public scrutiny, official regulation and bureaucratization to brothels that decrease the risk of all three types of violence. However, they also point out that mandatory HIV and other medical tests arise from society’s fear of prostitutes as vectors of disease and, in this, the concern has been unidirectional: ‘There are yet to be any regulations that attempt to test prostitutes’ customers as similar sites of contagion.’

The author interviews sex workers in the New Zealand city of Tauranga and analyzes the country’s experience with the sex industry eight years after prostitution was decriminalized there.

The Act requires that brothel operators ensure that condoms are used, and it provides criminal penalties for both the sex worker and the client if condoms are not used, and for any brothel owner operating without a certificate. Thus, although prostitution is decriminalized, criminal penalties may still be applicable for violation of specific regulations surrounding sex work regarding condom use and certification. The author also reports that Immigration New Zealand is monitoring brothels and says it will charge brothel owners with aiding and abetting illegal immigration if it finds that beds are being rented to undocumented workers.

The Act permits local authorities to enact bylaws regulating the location of brothels. Tauranga passed such bylaws, which regulate the location of brothels and prohibit solicitation on the streets. Tauranga bylaws also permit a prostitute to offer commercial sex services from home, but only if no other sex workers operate on the premises. The author reports that Tauranga brothels are monitored by way of complaints about non-compliance but the city reports that few complaints have been received.


This news article describes the ruling by an Ontario Superior Court Judge striking down three criminal provisions related to prostitution, and reactions thereto. The author calls it a potentially landmark decision that could ultimately lead to legalized brothels in Canada. The judge held that the provisions at issue – which criminalize the operation of bawdy houses, living off the avails of prostitution, and communicating for the purposes of prostitution – were unconstitutional and contributed to the danger faced by prostitutes.

The article notes that the federal Justice Minister said the government would probably appeal, citing defendants’ arguments that any acts of prostitution are inconsistent with respect for human dignity. The Christian Legal Fellowship, which intervened in the case, argued that prostitution is immoral and should be stigmatized. However, counsel for the plaintiffs remarked that the ruling was an important decision that removed laws that put people into harm’s way. The executive director of the Sex Professionals of Canada stated that the ruling will permit sex workers to set up guilds and associations and advocate for better occupational and health standards.

(The Ontario Court of Appeals affirmed this ruling to the extent it held unconstitutional the provisions regarding brothel keeping and living off the avails of prostitution; it reversed the ruling regarding communicating in public. See abstract of the Court of Appeals judgment, below).


In 2009, two organizations filed a complaint with the Kenya National Commission on Human Rights, alleging systematic violations of women’s reproductive health rights in Kenyan health facilities. In response, the Commission launched an inquiry and found numerous such violations. This document is a report on that inquiry.

The Inquiry Panel brought together health experts, government officials, representatives of civil society organizations, health care providers and members of the public who had experienced or witnessed violations of
sexual and reproductive rights. Information was collected through desk research, public hearings and field interviews. This wide-ranging inquiry uncovered a number of violations in the areas of family planning, maternal health, sexual violence, financing of health care services, and violations of the sexual and reproductive rights of sexual minorities, sex workers and other vulnerable and marginalized groups.

Sex workers provided information to the Commission concerning stigmatization, discrimination, violence, arrests and extortion by police and exposure to HIV when clients refuse to use condoms. Among its recommendations, the Commission called on the government of Kenya to decriminalize and regulate voluntary sex work for adult men and women; to prosecute instances of forced sex work; to address complaints of violence directed at sex workers; to ensure access to condoms and other forms of sexual reproductive health commodities; and to provide economic empowerment programs for sex workers who wish to leave the sex trade and engage in other forms of employment.


This book, produced by the International Labour Office (ILO), examines the economic incentives that drive people in Southeast Asia to work as prostitutes, the many economic interests that derive profit from prostitution, and the broader policies of governments that contribute, perhaps inadvertently, to sustaining this sector of the economy. The author makes a clear distinction between the exploitation of children for sexual purposes and adult sex workers who enter the trade voluntarily. While adults are also trafficked and exploited, her study indicates that most adult sex workers enter the business willingly.

While the ILO declines to take a stand on whether prostitution should be legalized, the organization calls for recognition of the work of prostitution as an economic sector. In the four countries studied – Indonesia, Malaysia, Thailand and the Philippines – the sex industry has grown into a vigorous commercial sector that provides employment to millions of workers and makes a significant contribution to national incomes.


This Annual Report of the body responsible for overseeing human rights in India includes, in an appendix, a set of Recommendations that arose from the National Conference on Human Rights and HIV/AIDS, held in New Delhi on Nov. 24-25, 2000 and sponsored by the Human Rights Commission of India. The Recommendations are a series of ‘actions points’ for dealing with the HIV epidemic intended to complement the International Guidelines on HIV/AIDS and Human Rights, as applicable to the Indian context.

The Recommendations encompass issues of consent and testing, confidentiality, discrimination in health care and employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS, marginalized populations, and a general statement about the importance of respecting human rights in the fight against HIV.

Among recommendations relevant to sex work and HIV are the following:

- The staff of all public and private medical facilities that test for HIV should be trained and sensitized to the need for informed consent as a prerequisite to testing, and for provision of the best possible counseling services before and after testing.
- Counselors should advise that testing is recommended for those who might feel they have engaged in unsafe practices, but the right to refuse testing must be respected.
- The legal framework, including administrative procedures and professional norms, should be revised to ensure respect for confidentiality of medical records. Disclosure of test results without consent should be done only in
exceptional circumstances.

- The rights of women to provide or withhold informed consent for HIV testing must be protected.
- Any sexual activities undertaken with consent between adults should be legalized.
- Harm reduction programs, including condom distribution among marginalized populations, should be legitimized and expanded.


New Zealand’s Prostitution Reform Act of 2003 included provision for establishment of a Review Committee whose duties include a review of the operation of the Act three to five years after enactment, to examine how well it was achieving its prescribed purpose and whether any amendments to the Act were necessary. This paper is a report of that review.

The Review Committee was comprised of sex workers, brothel operators, a nun, a general practitioner, an academic, a city councilor, a criminologist, a public health official, social workers, representatives of NGOs, and a retired policeman. The group assessed the impact of the legislation on the human rights, welfare, occupational health and safety of sex workers and the prohibition of the use of minors in prostitution. The Committee’s findings were wide-ranging. The Committee noted that the Act has had little impact on the numbers of people working in the sex industry but has had a marked effect in protecting the rights of sex workers, including the right of those under 18 not to be used in sex work, the right of adults not to be forced to engage in sex work, the right to refuse a particular client or sexual practice and the right not to be subjected to exploitive or degrading employment conditions. These beneficial effects have come about, the Committee concluded, chiefly because sex workers have been empowered by removing the illegality of their work.

Sex workers were reported to be more likely to report incidents of violence to the police since advent of the Act. One stated purpose of the Act was to assist sex workers in leaving the sex industry; however, the Committee found that some sex workers found it offensive to be offered assistance in leaving work where they are quite happy. The Committee found that the brothel operator certification system established by the Act was generally operating well, and they determined that the Act had raised awareness of the problem of underage prostitution and had not led to an increase in the number of minors involved in the sex trade.

The Committee concluded that the sex industry had not increased in size since passage of the Act. While progress in some areas was slower than had been hoped and problems of stigmatization and discrimination against those involved in sex work still remain, the Committee found that the legislation had been effective in achieving its purpose and that the vast majority of people involved in the sex industry are better off than they were before passage of the Act.


This news article describes the arrest in Christchurch, New Zealand, of 14 prostitutes, clients and associates, after residents complained of disorder. A police commander stated that even after decriminalization of prostitution, there may be “an element attached to prostitution that causes public concern.” While commercial sex is legal, the police representative said, intimidating and offensive behaviour by associates of the prostitutes is not legal, and police will respond to community concerns over safety and disorder.
The Canadian HIV/AIDS Legal Network, an organization which promotes the human rights of people living with HIV through research, legal and policy analysis, education and community mobilization, issued this news release on the 2010 decision in the Bedford case in which a Superior Court judge held unconstitutional three portions of the Canadian Criminal Code dealing with prostitution.

The Network reports that the Superior Court judge struck down provisions of the criminal code making it illegal to communicate in public for purposes of prostitution, to keep a common bawdy house, and to live off the avails of prostitution. The Network described the effects of these legislative provisions: They make it illegal to work indoors in a protected environment, they force sex workers into dangerous situations and practices in efforts to avoid police detection, and they compel sex workers to get into vehicles quickly without having adequate time to assess a potential client and negotiate the terms of a transaction. The Network hailed the judge’s ruling, as it acknowledges the human dignity of sex workers and assists in empowering them to work free from violence and other risks to their health and safety.

(The Ontario Court of Appeals affirmed this ruling to the extent it held unconstitutional the provisions regarding brothel keeping and living off the avails of prostitution; it reversed the ruling regarding communicating in public. See abstract of the Court of Appeals judgment, below).


ProCon.org is a nonprofit organization whose stated purpose is ‘promoting critical thinking, education and informed citizenship by presenting controversial issues in a straightforward, nonpartisan, primarily pro-con format.’ Under the topic of ‘Prostitution,’ ProCon presents federal and state laws in the U.S. on prostitution, in chart format, with links to the text of some of the statutes and ordinances. The information presented deals only with adult prostitution; laws on human trafficking or child prostitution are not included.


The authors report that, at the time of this study, HIV prevalence was very high among sex workers in Addis Ababa (73.7 percent). Sex work is not legal in Ethiopia. This study examines links between HIV status and other factors, including the socio-demographic characteristics of sex workers in that city, their sex work history, their attitudes and knowledge regarding HIV and other sexually transmitted diseases, and their sexual behaviors. Among factors associated with an increased risk of HIV infection were working in shared rooms, a high number of clients, the use of injectable hormones and past or current infection with syphilis. Factors associated with a decreased risk included a high level of education, peer education on sex work, condom use in general, and condom use for contraception. The use of condoms for contraception was strongly linked with the participation in a peer-education program run by NGOs in Addis Ababa that specifically promoted the use of condoms for both contraception and protection against and HIV and sexually transmitted diseases.

UNAIDS and WHO report in 2005 that the number of people living with HIV had increased in all but one region over the preceding two years. Sub-Saharan Africa remained the hardest-hit region, with growing epidemics underway in Eastern Europe and Central Asia. Women were proportionately being infected in greater numbers. The thrust of this report was to warn that HIV prevention efforts need to be intensified worldwide.

The report points out that, among sex workers, HIV prevention efforts are most successful when they include safer sex initiatives that empower sex workers to protect themselves and their clients. The report notes in particular that the efforts of sex workers of Kolkata’s Sonagachi red-light district had increased condom use to 85 percent, and reduced HIV prevalence to under four percent in the three years between 2001 and 2004. By contrast, 85 percent of sex workers in Jakarta reported that they did not use condoms with any clients in the preceding week, because they fear being arrested for possessing condoms as police view such possession as proof of prostitution.