

## ISSUE BRIEF

### SEX WORKERS' RIGHTS

#### Human rights and the criminalization of sex work

The criminalization of sex work is increasingly recognized as a human rights concern. Criminalization of sex work, in all its forms, disproportionately impacts those most marginalized by society.<sup>i</sup> In some contexts, sex work and public nuisance laws create an enabling environment for police and others to commit extortion and engage in harassment and violence against sex workers with impunity.<sup>ii</sup> The enforcement of criminal laws against sex work can lead to forced evictions, arbitrary arrests, investigations, surveillance, prosecutions and punishment of sex workers.<sup>iii</sup> The criminal status that is placed on sex workers means that they are severely disadvantaged in seeking justice and redress for violent crimes against them, offering attackers impunity and leaving sex workers at risk of further violence and abuse.<sup>iv</sup> “Rescue raids” of sex sector establishments by police, often under the guise of anti-trafficking initiatives, can result in abuses against sex workers, including arbitrary detention in “rehabilitation centers”, and can lead to the dispersal of sex workers from safer working environments.<sup>v</sup> In places like India and Indonesia, researchers have found that sex workers who were rounded up in raids were beaten, coerced into sex by police, and placed in institutions where they were sexually exploited and otherwise suffered physical abuse.<sup>vi</sup> Sex workers in Papua New Guinea have reported unlawful detention, rape and extortion by police. Mona, a sex worker there, described the abuse she faced from police officers:

*“It was 6pm. I was having sex with one of my friends [clients] at Jack Pidik Park in a bus. The police started to beat my friend and me. They tried to make me do group sex with the six policemen. Then they told me to suck my friend’s dick. Six police officers did sex to me one by one. They were armed with guns, so I had to do it. I don’t have any support to come to court and report them. It was so painful to me, but then I let it go. If I go to the law, they cannot help me as sex work is against the law. The police have the law to do that.”<sup>vii</sup>*

#### Human Rights Standards and Health Impact

Amnesty International has gathered evidence that demonstrates that the criminalization of consensual sex work between adults has a foreseeable negative impact on a number of human rights, including: the rights to life, liberty and security of person; freedom from torture, or cruel, inhuman or degrading treatment or punishment; freedoms of expression and association; and more. The Committee on the Elimination of Discrimination Against Women (CEDAW) has specifically condemned criminalization policies that can exacerbate the rights violations of sex workers instead of improving them.<sup>viii</sup> The UN Special Rapporteur on the right to health has explicitly called for the decriminalization of sex work and for existing domestic labor laws, occupational health and safety laws, social insurance schemes and other protections to be extended to sex workers, including irregular migrant workers.<sup>ix</sup> The World Health Organization has also explicitly called for decriminalization of sex work in its work to ensure sex workers have access to health services and to reduce instances of HIV.<sup>x</sup>

#### Economic, social and cultural rights

Simply decriminalizing sex work will not by itself resolve the range of human rights abuses that sex workers face, nor lead to full realization of sex workers’ human rights. States have a duty to ensure that no one is living in a situation of extreme deprivation. The International Covenant on Economic, Social and Cultural Rights (ICESCR) outlines states’ responsibilities to realize the

right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>xi</sup> At a minimum, states must develop and implement effective initiatives and policies in line with their human rights obligations to realize economic, social and cultural rights. States should also ensure that all persons have options in determining the type of work they engage in. No one should have to sell sex if they do not want to do so. Sex workers should be supported and enabled to participate in the development of laws and policies impacting their lives. It is important for states to not only focus on ensuring that people can leave the sex sector, but also take measures to increase sex workers' rights, safety and well-being while in the sector.

### **Impact of criminalizing the purchase of sex**

Criminalizing those who purchase sex (whilst decriminalizing certain aspects of selling sex) is sometimes proposed as a means to reduce/eradicate sex work by ostensibly shifting the criminal burden from sex workers to clients, creating a disincentive against buying sex, and thereby working to reduce demand for commercial sex. In both Sweden and Norway, researchers have found evidence of increased risk-taking among sex workers in relation to their safety since the passage of the purchasing ban. The research indicates that sex workers are taking greater risks in their interactions with clients, such as agreeing to visit their homes, concluding negotiations with clients more quickly or in secluded spaces that are safer for the client, and agreeing to engage with more dangerous clients.<sup>xii</sup> Katia, a sex worker in Norway, told Amnesty about violence she had been subjected to in a buyer's apartment:

*"[I] would prefer to work at home. The customer can't hurt you so much. I'm more relaxed there, it's more dangerous going to customers' houses. I went with a Pakistani man to his house. He tried not to pay me so much. He punched me two times in the jaw. I didn't tell the police. If he broke much I would have told police. It's a problem - I would have to tell them what I do. I don't want it on my records."<sup>xiii</sup>*

### **Impact of criminalizing the organizing of sex work**

Amnesty International supports the criminal prosecution of abuse, coercion or violence by third parties involved in sex work. It also supports the criminalization of forced labor and trafficking into the sex sector. These are serious crimes, and all allegations and reports of crimes against individuals in the sex sector should be promptly and impartially investigated and those found responsible (through a fair trial) brought to justice. While it is perhaps logical to consider offenses like "brothelkeeping", "renting premises for the purposes of prostitution" and "living off the proceeds of prostitution" as being necessary for the protection of sex workers, the relevant legislation rarely distinguishes between organizational activity that is exploitative, abusive, or coercive, and activity that is personal, practical, supportive or for the purposes of safety. Legislation instead tends to apply blanket prohibitions on all collaborative organization of sex work. As such, sex workers working together or with a receptionist, cleaner, security guard or driver for the purposes of safety, can frequently be criminalized and subjected to police enforcement under organizational prohibitions. Notably, this type of criminal law enforcement limits sex workers' ability to address safety concerns in their working environments. Maria, an indoor sex worker in Norway told Amnesty about the dangers of working alone:

*"If a customer is bad you need to manage it yourself to the end. You only call the police if you think you're going to die. If you call the police – you risk losing everything."<sup>xiv</sup>*

### **What Amnesty International means by decriminalization**

Decriminalization means the removal of all laws and policies that make sex work a criminal offense (such as those prohibiting selling, soliciting, manifesting, buying or facilitating sex work or living off the proceeds). It also relates to the discriminatory use of other laws, which are not specific to sex work, to harass, intimidate, exploit, arrest or justify the use of force against individuals engaged in sex work. Laws against vagrancy, public lewdness, public nuisance, homosexuality and cross-dressing, and regulations such as those on public nuisance or quality of life, among others, are all used in a discriminatory way against individuals engaged in sex work.<sup>xv</sup> Decriminalization of sex work does not mean decriminalization of violence or other rights violations that occur within sex work. Laws on assault, intimidation, harassment, blackmail, labor exploitation, forced labor and human trafficking, among others, can and should be used to protect the rights of sex workers.<sup>xvi</sup>

### **Legalization versus decriminalization**

Amnesty International's policy does not call for "legalization", which involves not only decriminalization, but development and enforcement of additional specific laws and policies aimed at regulating sex work, distinct from other employment sectors. Decriminalization focuses more on individuals involved in the sex sector, whereas legalization is associated with structuring the industry itself.<sup>xvii</sup> Different legal regulatory approaches to sex work pose different implications for human rights.<sup>xviii</sup> Along those lines, Amnesty International's policy is concerned with the realization of the human rights of individuals who sell sex.

### **Regulation**

States can impose legitimate restrictions on the sale of sexual services provided that such restrictions comply with international human rights law. In particular, they must be for a legitimate purpose, appropriate to meet that purpose, provided by law, necessary for and proportionate to the legitimate aim sought to be achieved, and not discriminatory.

### **Coercion, consent and autonomy**

It is important to avoid approaches to the issue of consent and sex work that eliminate any possibility of consent and thereby actively disempower sex workers, denying them individual agency and bodily autonomy. Sex work implies consent of sex workers and their capacity to exercise that consent voluntarily.<sup>xix</sup> For the purposes of Amnesty International's policy on sex workers' rights, the term "consent" refers to the voluntary and ongoing agreement to engage in a particular sexual activity. Consenting to sex or to sell sex does not mean consenting to violence. Sex workers, like other people, can change or rescind their consent to have or sell sex at any point and this must be respected by all parties involved. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse which must be treated as a criminal offense.

### **Trafficking in persons and its conflation with sex work**

Trafficking in persons, including into the sex sector, is not the same as sex work. Sex work refers to a contractual arrangement where sexual services are negotiated between consenting adults with the terms of engagement agreed upon between the seller and the buyer. Trafficking is expressly nonconsensual.<sup>xx</sup> Anti-trafficking experts have expressed concern that over-extending the definition of trafficking in persons to include all cases of commercial sex undermines initiatives to end trafficking by diluting attention and effort: "The equation of prostitution with

trafficking (typically through a broad reading of the means ‘abuse of a position of vulnerability’) provides a case in point: it permits states to claim easy credit for virtually effortless arrests and prosecutions that do little or nothing to address those egregious forms of sexual exploitation that the Protocol was intended to challenge.”<sup>xxi</sup> The UN Special Rapporteur on violence against women has noted the need to ensure that “measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.”<sup>xxii</sup>

### Impact of calls for decriminalization of sex work on anti-trafficking initiatives

The available evidence indicates that criminalization of sex work does not reduce trafficking. This is noted by *The Lancet* and other credible research institutions.<sup>xxiii</sup> Some research indicates that decriminalization of adult consensual sex work may in fact help victims of trafficking by leading to more effective anti-trafficking efforts.<sup>xxiv</sup> When not threatened with criminalization, sex worker organizations have collaborated with law enforcement to identify women and children who have been trafficked, and to refer them to the necessary services.<sup>xxv</sup> There is some evidence that traffickers actually use the existence of criminal law and policy enforcement against sex work to control trafficked persons and discourage them from approaching police for help.<sup>xxvi</sup>

### Endnotes

<sup>i</sup> Amnesty International, [Stonewalled: Still demanding respect. Police abuses against lesbian, gay, bisexual and transgender people in the USA](#) (2006); J. Amon, ‘[Canada’s prostitution bill a step in the wrong direction](#)’, *Ottawa Citizen*, 2014; International Committee on the Rights of Sex Workers in Europe (ICRSE), *Underserved. Overpoliced. Invisibilised. LGBT sex workers do matter*, 2016; Women’s Refugee Commission, *Mean streets: Identifying and responding to urban refugees’ risk of gender-based violence - Refugees engaged in sex work*, 2016; [NSWP Statement on High Levels of Violence Against Transgender Sex Workers in Turkey](#), 2016.

<sup>ii</sup> See UNDP, Global Commission on HIV and the Law, *Risks, rights & health*, 2012, p. 37; WHO, *Violence against women and HIV/AIDS: Critical intersections, violence against sex workers and HIV prevention*, 2005; Women’s Network of Unity, *Violence against sex workers is prevalent in Cambodia with customers and the police often the perpetrators*, 2011; W. Lyon, “Client criminalisation and sex workers’ right to health”, *Hibernian Law Journal*, 2014; UNFPA, UNDP and APNSW (CASAM), *The right(s) evidence – Sex work, violence and HIV in Asia: A multi-country qualitative study*, 2015; Asijiki – Coalition to Decriminalise Sex Work in South Africa, *Sex Work and HIV, Fact Sheet*.

<sup>iii</sup> See Human Rights Watch, *Sex workers at risk: Condoms as evidence of prostitution in four U.S. cities*, 2012; M.H. Wurth, et al., “Condoms as evidence of prostitution in the United States and the criminalization of sex work”, *Journal of the International AIDS Society*, 2013; Amnesty International, [Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the United States](#); UNDP, Global Commission on HIV and the Law, *Risks, rights & health*, 2012; UNDP, UNFPA, UNAIDS and APNSW, *Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, 2012; WHO, UNFPA, UNAIDS, NSWP, [Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach](#), 2012; C.A. Mgbako, *To live freely in this world: Sex worker activism in Africa*, NYU Press, 2016; Amnesty International, [The human cost of ‘crushing’ the market: Criminalization of sex work in Norway](#).

<sup>iv</sup> See C.M. Lowndes, et al., “Injection drug use, commercial sex work, and the HIV/STI epidemic in the Russian Federation”, *Sexually Transmitted Diseases*, 2003; UNDP, Global Commission on HIV and the Law, *HIV and the Law, Rights, risks & health*, 2012, p.37 (citing UNIFEM, ‘A legal analysis of sex work in Anglophone Caribbean’, 2007; USAID, C. Jenkins, C. Sainsbury, Cambodian Prostitutes’ Union, Women’s Network for Unity, *Violence and exposure to HIV among sex workers in Phnom Penh, Cambodia*, 2006; A. Crago, *Our lives matter: Sex workers unite for health and rights*, 2008, pp. 31-32; I. Pauw and L. Brener, “You are just whores— ‘‘You can’t be raped’’: Barriers to safer sex practices among women street sex workers in Cape Town”, *Culture, Health & Sexuality*, 2003, pp. 465-81; Women’s Refugee Commission, *Mean streets: Identifying and responding to urban refugees’ risk of gender-based violence - Refugees engaged in sex work*, 2016, and Amnesty International reports: [The human cost of ‘crushing’ the market: Criminalization of sex work in Norway](#), [Harmfully isolated: Criminalizing sex work in Hong Kong](#), [Outlawed and abused: Criminalizing sex work in Papua New Guinea](#), and [‘‘What I’m doing is not a crime’’: The human cost of criminalizing sex work in the City of Buenos Aires, Argentina](#).

<sup>v</sup> Sex Workers Project, *The use of raids to fight trafficking in persons: A study of law enforcement raids targeting trafficking in persons*, 2009; Empower Foundation, *Hit & run: The impact of anti-trafficking policy and practice on sex workers’ human rights in Thailand*, 2012.

- <sup>vi</sup> See R. Surtees, 'Brothel raids in Indonesia – Ideal solution or further violation?', *Research for Sex Work*, 2003, pp. 5-7; Sangram, Point of View and VAMP, *Rehabilitation: Against their will? Of veshyas, vamps, whores and women: Challenging preconceived notions of prostitution and sex work*, 2002.
- <sup>vii</sup> Interview with Mona, 24 January 2015.
- <sup>viii</sup> See CEDAW, Concluding Observations: China (including mainland China, Hong Kong and Macau), UN Doc. CEDAW/C/CHN/CO/6, 2006, para. 19. In its concluding observations to China, CEDAW expressed concern that "the continued criminalization of prostitution disproportionately impacts on prostitutes rather than on the prosecution and punishment of pimps and traffickers." In a subsequent country review of China, the Committee expressed concern that "notwithstanding the abolition of the re-education through labour system, the State party continues to use the custody and education programme that involves the incarceration of women, which disproportionately affects women in prostitution." CEDAW, Concluding Observations: China, UN Doc. CEDAW/C/CHN/CO/7-8, 2014, para. 28. Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of China, CEDAW/C/CHN/CO/7-8, para. 28
- <sup>ix</sup> Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, UN Doc. A/HRC/14/20, 2010, paras. 46-50; *Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, UN Doc. A/HRC/23/41, para. 76(j).
- <sup>x</sup> See WHO [Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach](#), 2012.
- <sup>xi</sup> International Covenant on Economic, Social and Cultural Rights, Article 11.
- <sup>xii</sup> U. Bjørndahl, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo and Ministry of Justice and Public Safety, 2012.
- <sup>xiii</sup> Interview with Katia, 27 January 2015.
- <sup>xiv</sup> Interview with Maria, 30 January 2015.
- <sup>xv</sup> Similarly, laws against sex work have been used against individuals who have been targeted by the authorities though not for selling sex. For example, Amnesty International's work on the "Queen Boat" case in Egypt from 2001 (see [Egypt: Torture and imprisonment for actual or perceived sexual orientation](#)) and several subsequent cases. Amnesty International's research in Papua New Guinea also documented how male sex workers are prosecuted under sections of the criminal code also applied to same-sex relations between men. Amnesty International, [Outlawed and abused: Criminalizing sex work in Papua New Guinea](#).
- <sup>xvi</sup> C. Harcourt et al. "The decriminalization of sex work is associated with better coverage of health promotion programs for sex workers", *Australian and New Zealand Journal of Public Health* 34(5): 482-486, 2010.
- <sup>xvii</sup> Global Alliance Against Traffic in Women (GAATW), *Moving beyond 'supply and demand' catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking*, 2011.
- <sup>xviii</sup> J. Pritcher and M. Wijers, "The impact of different regulatory models on the labour conditions, safety and welfare of indoor-based sex workers", *Criminology & Criminal Justice*, 2014.
- <sup>xix</sup> See J. Chuang, "Exploitation creep and the unmaking of human trafficking law", *American Journal of International Law*, 2014, p. 640.
- <sup>xx</sup> See UNDP, Global Commission on HIV and the Law, *Risks, rights & health*, 2012, p. 41.
- <sup>xxi</sup> A.T. Gallagher and J.N. Ezeilo, "The UN special rapporteur on trafficking: A turbulent decade in review", *Human Rights Quarterly*, Vol.37, No.4, 2015, pp. 913-940.
- <sup>xxii</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Mission to India, Rashida Manjoo, UN Doc. A/HRC/26/38/Add.1, 2014, para. 78 (e).
- <sup>xxiii</sup> Anti-Slavery International, Submission by Anti-Slavery International to the Committee on Justice on the proposal of Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, Northern Ireland Assembly, 2014 (citing Europol); ["Keeping sex workers safe"](#), *The Lancet*, 2015.
- <sup>xxiv</sup> R. Weitzer, "The mythology of prostitution: Advocacy research and public policy", *Sexuality Research and Social Policy*, 2010, pp. 23-25.
- <sup>xxv</sup> See, for example, Durbar Mahila Samanwaya Committee, [Innovative approaches to combat trafficking of women in sex trade by Durbar Mahila Samanwaya Committee \(Kolkata\)](#); Open Society Foundations, [10 reasons to decriminalize sex work: A reference brief](#), p. 6; UNAIDS, *Guidance note on HIV and sex work*, 2012.
- <sup>xxvi</sup> Institute for Applied International Studies, A. Brunovskis and G. Tyldum, "Crossing borders: An empirical study of transnational prostitution and trafficking in human beings", *Eldis*, 2004.