



The Real Impact of the Swedish Model on Sex Workers

Advocacy Toolkit



“The state restricts my demand for independence. It is offensive for you to force your morals upon me. I shall be protected to make decisions, as they are under the influence of the patriarchy. Earlier the view was that women couldn’t make wise, independent decisions as they were seen as being impulsive, incapable and were incapacitated persons like children. Today it is the same, but they say the patriarchy is to blame. So the feminists become my custodians instead of my family or husband. Like with children under the age of 15, the view is that adult women cannot consent to be paid for sex.”

PETITE JASMINE

“Isn’t it strange? What some feminists’ calls slavery, we call freedom.”

PETITE JASMINE

“Playing the victim card is a well tried ace throughout the times and used to defend oppression of certain groups.”

PETITE JASMINE



PHOTO: ROSE ALLIANCE



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Introduction

...NSWP MEMBERS STAND FIRMLY IN OPPOSITION TO THE CRIMINALISATION OF THE PURCHASE OF SEX, THE SO-CALLED 'SWEDISH MODEL'. THIS IS A LEGAL MODEL BASED ON IDEOLOGY, MISINFORMATION, MORALISATION AND A DISREGARD FOR THE AGENCY, HEALTH, SAFETY AND WELLBEING OF SEX WORKERS.

The Global Network of Sex Work Projects (NSWP) exists to uphold the voices of sex workers globally and connect regional networks advocating for the rights of sex workers of all genders. It advocates for rights-based health and social services, freedom from abuse and discrimination, and self-determination for sex workers. NSWP has a growing membership of over 200 member organisations spread over five regions – Africa, Asia Pacific, Europe, Latin America, and North America and the Caribbean, ranging in size from less than ten to more than 65,000 sex workers. NSWP members are regional and national sex worker networks and sex worker-led organisations from all global regions. Almost all work on health issues. Some provide services, some focus on advocacy, some on mobilising to reduce vulnerability and address the human rights issues that affect sex workers' health and wellbeing. Some member organisations work with all genders and some with only female, male or transgender sex workers. A number of member organisations work with the children of sex workers. All NSWP members sign up to the core value that states opposition to all forms of criminalisation and other legal oppression of sex work (including legislative oppression of sex workers, clients, third parties¹, families, partners and friends).

Therefore, NSWP members stand firmly in opposition to the criminalisation of the purchase of sex, the so-called 'Swedish model'. This is a legal model based on ideology, misinformation, moralisation and a disregard for the agency, health, safety and wellbeing of sex workers.

The criminalisation of sex workers' clients is claimed to be part of a new legal framework designed to eradicate sex work and trafficking by 'ending demand'. In 1999, Sweden criminalised sex workers' clients and maintained the already existing criminalisation of third parties. The individual selling of sex remained legal. Various referred to as the 'Swedish', 'Nordic' or 'End Demand' model, there is tremendous pressure in many countries to adopt this legislation. The damaging consequences of this model on sex workers' health, rights and living conditions are all too rarely discussed, with the voices of sex workers and sex worker rights organisations consistently and systematically silenced in the debate.

This advocacy toolkit serves to highlight the harms associated with this approach of criminalisation, both in relation to the simplistic and crude understandings of sex work and of sex workers that are used to justify the law, and in relation to the direct outcomes of the resulting legal framework of criminalising the purchase of sex. In contrast to claims that the Swedish model is a necessary and effective approach in protecting women from violence and exploitation, sex workers in Sweden note worrying consequences of the law in terms of their safety and wellbeing.

The advocacy toolkit continues to raise awareness of the outcomes of the law through the publishing of evidence-based fact sheets and advocacy tools, tools that provide resources to sex workers, allies and researchers around the world to challenge widespread promotion of this detrimental legal and political approach to the regulation of sex work.

¹ The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.



**SEX WORKERS WILL
NO LONGER STAY
SILENT IN THE FACE
OF THOSE WHO PUT
SEX WORKERS AND
OUR FAMILIES AT RISK,
DENY OUR AGENCY
AND UNDERMINE
OUR LABOUR, HEALTH
AND HUMAN RIGHTS.**

The first four papers in the toolkit document the impact of the Swedish model on the lives of sex workers in Sweden. The subsequent four papers highlight how the criminalisation of sex work – including criminalisation of third parties such as clients – and other factors inherent in the Swedish model, undermine and violate sex workers' human rights. Each of the latter papers includes an outline of the obligations states have under international human rights law; and recommendations for action for countries, governments and international agencies, to enable them to honour the commitments they have made and realise their human rights responsibilities.

These papers provide a means with which to tackle attempts to silence criticism of the law; principally, they serve as an evidence-based tool with which to undermine assertions that the law has not had detrimental side-effects.

The first paper '**Sweden's Abolitionist Understanding, and Modes of Silencing Opposition**' discusses the disempowering generalisations that are made about sex workers and about sex work that justify the law. The paper goes on to explore the understandings that have been used to exclude the voices of sex workers from the debate in Sweden and internationally: tools that are referred to as 'modes of silencing'.

The second paper '**Impacts of the Sex Purchase Law: Street-Based Sex Work and Levels of Sex Work**' highlights the direct outcomes of the law, stressing that the law has failed in its ambition to decrease levels of sex work, and has had negative impacts on the lives of sex workers in terms of exacerbating danger and risks to health and wellbeing.

The third paper '**Impacts of the Swedish Model's Justifying Discourses on Service Provision**' focuses on the indirect outcomes of the law: on how the understandings that justify the

law have affected the perspectives of service providers (particularly social workers), and how these perspectives have impacted service provision and harm reduction for sex workers.

The fourth paper '**Impacts of Other Legislation and Policy – The Danger of Seeing the Swedish Model in a Vacuum**' concentrates on laws and policies other than the Swedish model itself. It describes how these are used by the Swedish state and the police to directly destabilise the lives of sex workers in Sweden.

The fifth paper '**Right to Work and Other Work-Related Human Rights**' explains how existing human rights protections relate to work and addresses the ways in which criminalisation and other factors undermine sex workers' ability to benefit from these protections. Some recommendations towards better practice are also included.

The sixth paper '**Sex Work and the Right to Health**' describes the human right to health that all people have, analyses some particular challenges sex workers face in realising their right to health, and makes recommendations for enhancing sex workers' right to health.

The seventh paper '**Sex Work and Arbitrary Interference with Families**' firstly explains international human rights law related to parental rights and highlights standards relevant to the rights of sex workers as parents. Secondly, it explains ways in which these rights are violated. Some remedies for these violations are also suggested.

The eighth paper, the final paper in the advocacy toolkit, '**Sex Work and Violence: Obligations of the State**' explains that violence and related abuse against sex workers are a violation of fundamental human rights and suggests some ways to use human rights norms to address this widespread abuse.



Acknowledgements

NSWP would like to thank Bridging the Gaps for financial support in producing this advocacy toolkit and for contributing to the publication costs.

The Global Network of Sex Work Projects (NSWP) is part of Bridging the Gaps – health and rights for key populations.

Together with almost 100 local and international organisations we have united under one mission: achieving universal access to HIV/STI prevention, treatment, care and support for key populations, including sex workers, LGBT people and people who use drugs. Go to www.hivgaps.org for more information.



The Real Impact of the Swedish Model on Sex Workers

#1

Sweden's Abolitionist
Understanding, and Modes
of Silencing Opposition

Sweden's Abolitionist Understanding, and Modes of Silencing Opposition

THE VOICES OF SEX WORKERS AND SEX WORKER RIGHTS ORGANISATIONS HAVE BEEN CONSISTENTLY AND SYSTEMATICALLY SILENCED IN THE DEBATE CONCERNING WHAT IS OFTEN CALLED 'THE SWEDISH MODEL'...

Introduction

Sweden's sex purchase law, which criminalises the purchase – but not the sale – of sex¹, was introduced in 1999. Since the introduction of the law, other states have followed Sweden in adopting the legislation,² and there has been much in the way of activism, advocacy, and campaigning both for and against the legislation.

The voices of sex workers and sex worker rights organisations have been consistently and systematically silenced in the debate concerning what is often called 'the Swedish model', both in Sweden and internationally. This paper therefore serves to untangle how the voices of sex workers are silenced using various tools to undermine their testimony, which I will refer to as 'modes of silencing'.

Swedish understandings about sex work that feed into these 'modes of silencing' have also come to impact how Swedish service providers construct sex work and treat sex workers (these service providers, and the services they provide, are discussed in the third paper of this toolkit). This paper therefore aims to unpack and deconstruct the problematic understandings of sex work that justify the Swedish model.

How is sex work understood in Sweden?

In Sweden, sex work³ is constructed as a form of violence against women in and of itself; it is also argued that sex work is inevitably and unchangeably associated with violence, abuse, and exploitation. Sex workers' clients are seen to be men, sex workers as victimised women. This argument is based on a broader international

feminist perspective, termed variously as 'radical feminism' and '(neo-) abolitionist feminism' (with some variations and combinations such as 'radical abolitionist feminism', and so forth; NSWSP uses the term 'fundamentalist feminist', though this is not used in mainstream Swedish discourse). Fundamentally, what is desired by these feminist writers and campaigners is an abolition of sex work, which is seen to be a blight on society and on efforts to undermine patriarchal subordination of women.

Does everybody agree with this mainstream Swedish understanding?

No, for several reasons. Firstly, not all sex work is violent or problematic (though that is certainly not to say that it never is). Sex work – like many other forms of work – is enormously variable, and this variability applies to the levels and rates of violence and harm that can be associated with sex work. Measurable violence is associated with the context in which sex work takes place – which can be changed – and so violence and other harm varies and can be challenged.

Furthermore, many sex workers do not identify as victims. Many stress agency and self-determination in the context of their sex work, and motivations for sex work are as variable as experiences in sex work. In addition, this fundamentalist feminist understanding tells us that sex workers are disempowered (cisgender⁴) women, and that their clients are men. This neatly invisibilises male and trans sex workers, and female and LGBTQ clients: not all sex workers are cisgender women; not all clients are straight men.

1 Due to its criminalisation of the purchase of sex, the sex purchase law should not be referred to as 'decriminalisation' (even though the sale of sex is technically decriminalised), as this term refers to a full removal of legislation peculiar to sex work. The law may therefore be referred to as 'partial criminalisation'.

2 Norway and Iceland have criminalised the purchase of sex, and this legislation has been proposed in countries including England, Scotland, Northern Ireland and France.

3 Though the terms 'sex work' and 'sex worker(s)' are used in this paper to emphasise the legitimacy of labour in sex work, these terms are almost universally absent from dominant discourse and political discussion in Sweden. Instead, the terms 'prostitution' and 'prostitute(s)' are used in Sweden by many key stakeholders, despite their being argued to be pejorative and reductive by many sex workers and sex worker rights organisations the world over.

4 'Cisgender' should be taken to mean individuals whose gender identity matches their sex assigned at birth, as opposed to 'transgender'.



Therefore, in the context of the above issues with abolitionist feminism's crude generalisations, many organisations (sex worker rights organisations and unions, as well as service and healthcare providers and academic, activist, and political stakeholders), internationally and in Sweden, have attempted to complexify engagement with sex work. They have tried to challenge a narrative that universally conceptualises sex work as a form of violence, that argues that sex work is inevitably surrounded by violence, a narrative that is reductionist and that eclipses variability and nuance.

Have these voices undermined Sweden's consensus on sex work?

No, despite the fact that it has been emphasised on a political level in Sweden that sex workers themselves should contribute to political debate and discussion; instead, sex workers have been systematically excluded and silenced.

Sweden is a modernist state that has a long history of social engineering and that has established consensus on many issues. What this means on the ground is that various groups who have threatened to destabilise Sweden's aspiration to become a homogeneous, unified welfare state have been subject to various methods of control and intervention. During the 19th and 20th centuries, these groups have notably included women, sex workers, gay men, people who use drugs, immigrants, and those considered

to be eugenically deficient. Methods of control have included the forced incarceration of people with venereal diseases/STIs (such as HIV; this continues to this day), the incarceration and forced 'treatment' of people who use drugs (again, this continues to this day), and the sterilisation of large numbers of people (this only ceased in the mid-1970s, and transgender people wishing to have sex reassignment surgery were sterilised until 2013 as a requisite for their surgery).

But overt force and segregation are not the only things used to exclude and control in Sweden. Methods of control have frequently included the silencing of groups considered to be socially deviant and disruptive. In the case of sex work, several tools are made use of in Sweden to silence the voices of sex workers so that broad consensus in understanding may be established without being successfully challenged. These tools – I term them 'modes of silencing' – derive directly from broader radical feminist understandings of sex work, similarly to broader social constructions of sex work in Sweden.

Modes of silencing can be complex, and can cleverly serve to weaken perspectives that threaten to undermine Sweden's crude conceptions of sex work. However, knowledge of what they involve can be potent in undermining these disempowering tools.

Ways of silencing opposition have notably included the following four methods (though there is certainly crossover between them). Example quotations will be given for each by way of illustration.

IN THE CASE OF SEX WORK, SEVERAL TOOLS ARE MADE USE OF IN SWEDEN TO SILENCE THE VOICES OF SEX WORKERS...



MODE OF SILENCING 1

False consciousness

'False consciousness' is an old idea (coined by Friedrich Engels in the 19th century) that asserts that certain groups cannot fully comprehend their own situation or their motivation. In short, it is claimed that certain people are not 'objectively' self-aware. Because the group or individual in question has had their self-awareness undermined, their subjective perspective and testimony is undermined in turn as not being indicative of the 'truth' of their situation.

Various reasons are given for this lack of self-awareness, and this tool has been used to silence various groups whose perspectives threaten to undermine widely held views. Groups that have been undermined in such a manner internationally have included working class people, those perceived to be ethnically/racially inferior, people who use drugs, LGBT people, and sex workers.

An idea that sex workers are speaking from a position of false consciousness is routinely used in radical feminist writing and in Sweden, and is justified by several primary assumptions, which are outlined below:

Traumatisation undermining self-awareness and choice

Sex workers are seen to be so traumatised by their experiences in sex work – or by the abuse that they are seen to have experienced that has acted as a precursor to their sex work – that they are unable to properly engage

with their situation, with this abuse also argued to be re-enacted through sex work (which is constructed as necessarily abusive). The view is well-summarised (in critique) by an advisor regarding prostitution at the Swedish National Board of Health and Welfare (*Socialstyrelsen*):

“(It is argued that) if you see your situation in this way (as voluntary sex work, not as abuse), then it’s because of, you’re reacting on previous trauma, or you’re traumatised and reacting from previous sexual abuse... or you’re suffering from false consciousness”.

(Interview, 2010, Senior Advisor Regarding Prostitution – *Socialstyrelsen*)⁵

This mode of silencing does not stand up when analysed in the context of individual experience. As noted above, experiences in, and motivations for, sex work are incredibly variable. As critiqued by the above-quoted senior advisor at the Swedish National Board of Health and Welfare, people with hugely divergent experiences and motivations are therefore simply lumped ‘in the same category’:

“people, you put in the same category, and you say that well, ultimately, it’s all the same, it doesn’t matter if you make €5,000 a month, you sell sex without intermediaries, independently... you’re in the same position as someone who is forced by third parties”.

(Interview, 2010, Senior Advisor Regarding Prostitution – *Socialstyrelsen*)⁶

AN IDEA THAT SEX WORKERS ARE SPEAKING FROM A POSITION OF FALSE CONSCIOUSNESS IS ROUTINELY USED IN RADICAL FEMINIST WRITING...

5 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

6 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)



Desperation undermining true choice

Sex workers are seen to have their agency constrained to such an extent that even if they assert that they undertake sex work out of 'choice', their options are so limited as to undermine this assertion. Things that are argued to limit choice include generalisations of sex workers as impoverished, destitute, mentally unsound, and dependent on drugs/alcohol.

This mode of silencing falls down when we engage with the fact that agency and 'choice' is constrained in many situations, and is not only bisected by issues that relate to sex work, gender, and so forth. Crucially, in a context of capitalism, it can be argued that very few people actually make an entirely 'free' choice in selecting their means of income. Moreover, it should be stressed that many sex workers choose sex work from amongst (or in addition to) other means of making money, and for many reasons; many sex workers do not sell sex out of desperation.

Patriarchal conditioning undermining objectivity

Due to conditioning in the context of patriarchal oppression, sex workers are assumed to be unable to see through the blinders of their oppression/

subjugation. They are assumed to be unable to see the 'truth' of their situation. Therefore, sex workers are asserted to erroneously deproblematise their sex work. This is used to explain away the voices of sex workers who may claim to exercise agency in their work, who emphasise that they undertake it freely, who claim to enjoy their work, and/or who claim that their work is not problematic or detrimental. This view is deeply patronising and (ironically, given that it is a view espoused by some feminists) paternalistic, since it serves to silence the voices of some women whilst allowing for others – those who purport to see through the apparent infrastructure of patriarchal oppression – to speak in their place.

A model of false consciousness, then, tells us that only some sex workers' views are admissible: those that conform to the broader abolitionist understanding of sex work as inherently violent, abusive, and problematic. Those perspectives that do not construct sex work in such a way do not count. Therefore, since understandings of sex work in Sweden are informed by abolitionist feminist rhetoric, sex workers in Sweden are belittled when speaking about their own experiences, unless they buy into mainstream perceptions of sex work and/or unless they have ceased their sex work *and* have come to regret it.

...IT SHOULD BE STRESSED THAT MANY SEX WORKERS CHOOSE SEX WORK FROM AMONGST (OR IN ADDITION TO) OTHER MEANS OF MAKING MONEY, AND FOR MANY REASONS; MANY SEX WORKERS DO NOT SELL SEX OUT OF DESPERATION.



MODE OF SILENCING 2

Lying and putting on a brave face

Further to 'false consciousness' as a mode of silencing, there is an idea that sex workers actively lie or put on a brave face when they speak about their own opinions, experiences, motivations, and lives. This assertion is made in the context of the claim that sex work is universally problematic and traumatising, resulting in sex workers wishing to conceal the 'true' nature of their work.

Stakeholders in Sweden, such as members of the Stockholm Prostitution Unit – a state-sponsored organisation that provides social services to sex workers – as well as members of the Swedish police force, have asserted that to speak to sex workers directly (and therefore to grant sex workers' testimony credibility) would therefore result in a distorted and inaccurate testimony. As with a model of false consciousness, this mode of silencing serves both to undermine the narratives of sex workers, and also the validity of research and writing that places sex workers' voices as active in discussion and analysis.

The Stockholm Prostitution Unit has indeed asserted on more than one

occasion (including in communication with the Swedish National Board of Health and Welfare) that they themselves hear the genuine testimony of sex workers. A respondent from the Unit noted that if interviewed directly, sex workers would 'play a role' and 'put on a brave face', thus serving to undermine their testimony:

"if someone interviews me, if I'm a sex worker... most of us put on a brave face, and to be frank, who wants to buy a sad whore? I mean prostitution is about playing a role, I am being what you want me to be, I am horny, I am happy... they would never get any buyers if they were crying in the streets right, but it's all an act. And that is the difficult thing about interviewing people who are active in prostitution and everything".

(Interview, 2009, Social Worker, Stockholm Prostitution Unit)⁷

Such stakeholders thus position the direct voices of (certain) sex workers as passive in contribution to debate and discussion, whilst promoting their own voices as reliable.

...THIS MODE OF SILENCING SERVES BOTH TO UNDERMINE THE NARRATIVES OF SEX WORKERS, AND ALSO THE VALIDITY OF RESEARCH AND WRITING THAT PLACES SEX WORKERS' VOICES AS ACTIVE IN DISCUSSION AND ANALYSIS.

⁷ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)



MODE OF SILENCING 3

An un/misrepresentative perspective

Alongside assertions that sex workers' testimony stems from a position of false consciousness or from withholding the truth, there is an assertion that a perspective that diverges from mainstream understanding is not representative of sex workers generally.

Again, this comes back to an idea that there can be an objective 'truth' of what sex work involves. This mode of silencing is utilised predominantly where the preceding two cannot convincingly be used; this is in instances where sex workers have proved impossible to silence, where their empowerment and activism has gained recognition and standing in the debate. Fundamentally, it cannot be convincingly claimed that these sex workers are not self-aware or that they are lying, and so it is asserted that their testimony is not indicative of the experience of the vast majority of sex workers.

A 2013 quotation from Kajsa Wahlberg of the Swedish National Police in *The Guardian*⁸ illustrates how this mode of silencing is used:

"We have a small group of pro-prostitution lobbyists that are very powerful. The sex purchase act was not passed for them; it was passed for the majority of women who suffer from prostitution".

Here, Wahlberg – a proponent of the sex purchase law – asserts that those sex workers who are heard are a small and powerful lobby. The testimony of sex workers who wish to speak about their lives and experiences in Sweden are thus silenced using the claim that they are not representative: they are not "the majority". Those who are felt to be 'truly' indicative cannot speak for themselves – as they are argued to be either suffering from false consciousness or will lie/put on a brave face – and certain stakeholders therefore promote themselves as their spokespeople. We can see how greatly this perspective draws from international radical feminist theory from an assertion made by feminist writer Sheila Jeffreys – who advocates a criminalisation of the purchase of sex. The below quotation is made along the same lines, where Jeffreys simultaneously undermines the voices of some sex workers whilst selectively promoting other perspectives:

"Despite the efforts of some prostitutes' rights organisations to put a positive face on prostitution, as soon as women speak out about their experience it becomes clear that many women want to condemn the oppression of prostitution rather than celebrate it".
(Jeffreys 1997: 79)⁹

THIS MODE OF SILENCING IS UTILISED PREDOMINANTLY WHERE THE PRECEDING TWO CANNOT CONVINCINGLY BE USED; THIS IS IN INSTANCES WHERE SEX WORKERS HAVE PROVED IMPOSSIBLE TO SILENCE, WHERE THEIR EMPOWERMENT AND ACTIVISM HAS GAINED RECOGNITION AND STANDING IN THE DEBATE.

8 Thompson, H., 2013, "Prostitution: Why Swedes Believe They Got It Right", in *The Guardian*, 12 December, available online at: <http://www.theguardian.com/global-development/2013/dec/11/prostitution-sweden-model-reform-men-pay-sex> (last accessed 24 December 2013)

9 Jeffreys, S., 1997, *The Idea of Prostitution* (Melbourne: Spinifex Press)



SINCE THE JUSTIFICATION FOR THE SWEDISH MODEL DEFINES SEX WORK AS A FORM OF MALE VIOLENCE AGAINST WOMEN, TRANS AND MALE SEX WORKERS ARE EFFECTIVELY INVISIBLISED.

This is paralleled by a claim made by the Swedish National Coordinator Against Prostitution and Trafficking, who similarly emphasises that those whose direct testimony comes to be heard are the 'wrong' people to listen to:

"you have to find the right people... if you put an ad in the paper saying 'If you are a prostitute, or in the sex industry, please answer this question', it's the wrong people who is answering".

(Interview, 2009, Stockholm Länsstyrelsen)¹⁰

In addition, this mode of silencing is used to silence sex workers who are not cisgender women. Since the justification for the Swedish model defines sex work as a form of male violence against women, trans and male sex workers are effectively invisibilised. Their voices are seen by default to be unrepresentative of the vast majority of sex workers. This is despite the fact that some stakeholders in Sweden, including members of the Malmö Prostitution Unit in the south of Sweden, have highlighted that there could be more men selling sex in Sweden than cisgender women.¹¹

¹⁰ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

¹¹ This correlates with a recently conducted study. See AFP/The Local, 2012, "More Men in Sweden Sell Sex Than Women: Study", available online at: <http://www.thelocal.se/20121113/44386> (last accessed 1 February 2014)



MODE OF SILENCING 4

Caricaturing and/or demonising testimony and the speaker of the testimony

This fourth mode of silencing is a process whereby individuals who do not tally with radical feminist constructions of sex work have their perspectives exaggerated or distorted as being liberal, actively pro-sex work, and/or promoting promiscuity, for example. Criticisms of the sex purchase law in Sweden have had this very result of being attacked and demonised, and it is not only sex workers who are accused of endorsing or supporting 'the sex industry': members of LGBT organisations, service providers, researchers, and social workers have all experienced such claims when criticising the sex purchase law and its ideological justifications.

This is an ad hominem ('to/against the person') argument: instead of engaging with content of the argument, the person making the argument is undermined in order to discredit their perspective. This mode of silencing

appears to be the one that is used when all else fails to undermine testimony: when a perspective cannot be convincingly undermined, the speaker themselves is attacked.

This mode of silencing has not only been made use of in Sweden, but also internationally, where individuals and organisations that focus on a rights-based approach towards sex work (as opposed to abolitionism), for example, have been accused by abolitionist radical feminists of being pro-sex work, and even of being in cahoots with pimps and traffickers in order to discredit their perspective.

"Convinced that no one could ever choose to work in prostitution, CATW [the Coalition Against Trafficking, an abolitionist organisation] feminists perceive sex worker rights advocates as being in league with 'pimps' and 'traffickers'".

(Doezema 2010: 134)¹²

...INSTEAD OF ENGAGING WITH CONTENT OF THE ARGUMENT, THE PERSON MAKING THE ARGUMENT IS UNDERMINED IN ORDER TO DISCREDIT THEIR PERSPECTIVE.

¹² Doezenia, J., 2010, *Sex Slaves and Discourse Masters – The Construction of Trafficking* (London: Zed Books)



Summary

As with all claims as to a universal 'truth' in relation to any community or social group, generalisations in Sweden relating to sex work are inherently flawed. In order to maintain crude mainstream understandings, four key modes of silencing are used by abolitionist radical feminists to undermine the testimony of sex workers and of those critical of the sex purchase law:

- 1 a model of false consciousness;
- 2 an assertion that sex workers lie and/or put on a brave face;
- 3 a claim that sex workers who are critical of the law are un/misrepresentative;
- 4 caricaturing/exaggerating testimony and attacking the individual in order to undermine and distract from their argument.

These modes of silencing are powerful tools: they can be used interchangeably, in tandem, and there is a tool of silencing for most situations where sex workers, sex worker activists, their allies, academics, and so on, make arguments that conflict with fundamentalist feminist assertions. Since several modes of silencing are used to side-line the voices of sex workers who diverge from mainstream understandings of sex work in Sweden, proponents of the law have been able to advocate in favour of its apparent successes in something of a discursive vacuum.

Through dissecting and deconstructing these modes of silencing, they may be more comprehensively challenged and dismantled when contesting the understandings that justify the 'Swedish model'.

THROUGH DISSECTING AND DECONSTRUCTING THESE MODES OF SILENCING, THEY MAY BE MORE COMPREHENSIVELY CHALLENGED AND DISMANTLED WHEN CONTESTING THE UNDERSTANDINGS THAT JUSTIFY THE 'SWEDISH MODEL'.



Further reading on these topics

The four papers of this toolkit stem from research undertaken by the author, Dr Jay Levy, in Sweden between 2008 and 2012. This research is presented in full in:

- Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Abingdon: Routledge)

In addition to this book, several key texts provide useful further reading.

For a Swedish government overview of the legislation and the justifications and understandings that underpin the law, see:

- Ministry of Industry, Employment and Communications, 2004, *Prostitution and Trafficking in Human Beings* (Stockholm: Ministry of Industry, Employment and Communications), available online at: http://myweb.dal.ca/mgoodyea/Documents/Sweden/prostitution_fact_sheet_sweden_2004.pdf (last accessed 6 July 2014)

For an overview of the Swedish debate that preceded the sex purchase law, see:

- Svanström, Y., 2004, "Criminalising the John – A Swedish Gender Model?" in *The Politics of Prostitution – Women's Movements, Democratic States and the Globalisation of Sex Commerce*, ed. Outshoorn, J.: 225–244 (Cambridge: Cambridge University Press)

For examples of abolitionist feminist analyses of sex work, as are used to justify the Swedish model, see:

- Dworkin, A., 1992, "Prostitution and Male Supremacy", Presented at *Prostitution: From Academia to Activism*, University of Michigan Law School, 31 October
- Ekberg, G., 2004, "The Swedish Law That Prohibits the Purchase of Sexual Services – Best Practices for Prevention of Prostitution and Trafficking in Human Beings", *Violence Against Women* 10, 10: 1187–1218
- Jeffreys, S., 1997, *The Idea of Prostitution* (Melbourne: Spinifex Press)

The Real Impact of the Swedish Model on Sex Workers

#2

Impacts of the Sex Purchase Law: Street-Based Sex Work and Levels of Sex Work

Impacts of the Sex Purchase Law: Street-Based Sex Work and Levels of Sex Work

Introduction

In the first paper of this toolkit, it was described how voices critical of Sweden's sex purchase criminalisation, and critical of the ideas that justify it, have come to be silenced, undermined, and excluded from the debate in Sweden and internationally. It is this silencing process that has facilitated the success of ongoing lobbying in favour of the sex purchase law, alongside claims that the law has been successful and has not had negative impacts on the lives of sex workers.

This paper therefore highlights some of the impacts of the sex purchase law on the lives of sex workers. Street-based sex work is of specific focus, and it is stressed that those sex workers who have come to be most significantly impacted by the sex purchase law are those who are resource-poor and most in need of service provision, protection, and assistance. Instead of support, they have experienced oppression and criminalising legislation. Whether the law has been successful in its aim to abolish (or at least decrease) levels of sex work is also discussed in this paper.¹

This paper serves as a tool with which to challenge those who claim that the sex purchase law has been a success without negative repercussions.

Have there been negative impacts of the sex purchase criminalisation?

One of the most important things to consider in the context of increasing international moves towards an adoption of the Swedish model is whether the law has had negative impacts.

When the law was introduced in 1999, there had been voices in the debate in Sweden that expressed concern that sex work may move underground, and that sex work could become more dangerous. In order to allay such concerns, it was stressed that there would not be negative impacts of the law. In fact, it was emphasised that since the law criminalised only clients, sex workers themselves would be shielded from harm.

This has certainly not been the case. Sex workers and other stakeholders in Sweden note that sex workers face increasing difficulties in a context of increased competition, and that sex workers now have decreased power when negotiating with clients. Concerns voiced prior to the law's introduction have been realised.

THIS PAPER SERVES AS A TOOL WITH WHICH TO CHALLENGE THOSE WHO CLAIM THAT THE SEX PURCHASE LAW HAS BEEN A SUCCESS WITHOUT NEGATIVE REPERCUSSIONS.

¹ The indirect outcomes of the sex purchase law, in terms of the impact that it has had on the views and policies of service and healthcare providers, are discussed in the third paper of this toolkit. Additionally, there are other laws and policies that are used to target sex workers. These are discussed in the fourth paper of this toolkit.



Greater competition in street sex work

In enforcing the sex purchase law, the Swedish police focus heavily on street-based sex work, and suspected sex trafficking (which is often based only on suspicion that a sex worker is ‘foreign’). Since the police focus on street sex work, when the purchase of sex was criminalised in 1999, clients became more nervous about buying sex in public. This resulted in a drop in clients willing to buy sex publicly.²

Given that fewer clients are willing to buy sex on the street due to the fact that police enforce the sex purchase law particularly in terms of street sex work, those sex workers remaining on the street are left with fewer clients to sell sex to. These sex workers, who have not moved to selling sex via mobile phone and the internet, are often those who do not have the resources, the time, and/or the money to establish themselves off-street, and often need the money from their sex work urgently, to support children and/or to buy alcohol/drugs, for example. They continue to sell sex in a context where money can be made immediately.

This therefore leaves these sex workers in a position where services that they may not have provided previously may

now have to be provided in order to make enough money; sex workers are additionally less able to reject clients they would have rejected before, and sex workers are not able to charge the same amount for their work, as summarised by this social worker from the Malmö Prostitution Unit, in the south of Sweden:

“fewer clients on the streets, and the women still need the money to get the heroin, so the customers are able to offer less money for more... no condom, for an example... And if they really do need the money, and they have been standing there the whole night, and they need their fix... then maybe you say ‘Yes’”.

(Interview, 2010, Social Worker, Malmö Prostitution Unit)³

Therefore, the sex purchase law has handed more power to sex workers’ clients, and has disempowered street-based sex workers. And for those sex workers who have moved to selling sex in more hidden spaces in order to continue making money in a context where street sex work is more heavily policed due to the sex purchase law, the hidden nature of this sex work serves to increase the distance of sex workers from health and social service providers and the authorities.

...SERVICES THAT THEY MAY NOT HAVE PROVIDED PREVIOUSLY MAY NOW HAVE TO BE PROVIDED IN ORDER TO MAKE ENOUGH MONEY; SEX WORKERS ARE ADDITIONALLY LESS ABLE TO REJECT CLIENTS THEY WOULD HAVE REJECTED BEFORE, AND SEX WORKERS ARE NOT ABLE TO CHARGE THE SAME AMOUNT FOR THEIR WORK...

2 Since the internet and mobile phones became very popular at the same time as the introduction of the sex purchase law, it is likely that levels of street sex work dropped both because of improvements in telecommunications, and the introduction of the law.

3 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

Difficulties negotiating with clients

Since clients are criminalised, those who buy sex on the street are now nervous about arrest. What this means for street-based sex workers is that they have less time to negotiate their transactions with clients before getting into a vehicle or leaving the street with the client to avoid police detection. Consequently, sex workers have less time to assess the potential risk of a client, to negotiate which services are to be provided, and to negotiate payment.

...SEX WORKERS HAVE LESS TIME TO ASSESS THE POTENTIAL RISK OF A CLIENT, TO NEGOTIATE WHICH SERVICES ARE TO BE PROVIDED, AND TO NEGOTIATE PAYMENT.

“twenty seconds, one minute, two minutes, you have to decide if you should go into this person’s car... now I guess if I’m standing there, and the guy, he will be really scared to pick me up, and he will wave with his hand ‘Come here, we can go here round the corner, and make up the arrangement’, and that would be much more dangerous”.

(Interview, 2010, Sex Worker [Internet; Escort; Street-Based])⁴

“women says that the law made it more like a client market, because of the law they (have) got to work fast... so if they (the client) open the (car) door and you got to jump in and you never know what really’s going to happen”.

(Interview, 2010, Social Worker, Malmö Prostitution Unit)⁵

In addition to rushed negotiations, fewer clients want to give sex workers identifying information. Such information can act as an insurance for sex workers, since if identifying information has been given, sex workers can report, or threaten to report, clients who are poorly behaved,

abusive, and/or violent. With clients being criminalised, those sex workers who insist on the provision of such identifying information have fewer clients to choose from. Again, those who need income immediately are forced to take greater risks and accept anonymous clients who they would have previously been able to avoid, or face less opportunity to make money:

“I’ve been trying to work more safe, because I don’t want to have any risks, but the clients are so afraid... so they are calling from an anonymous number. And if you take an anonymous number, you can get robbed, so I was very upset the last time I was robbed... So after that I haven’t been taking any clients from anonymous numbers. So now my phone is not ringing so much.”

(Interview, 2009, Sex Worker [Street-Based; Escort; Internet])⁶

With people who buy sex criminalised, concern about being identified and/or being arrested also means that clients who witness abuse of sex workers, as well as clients who witness suspected trafficking, do not report such instances to the authorities. Sex workers and service providers have noted that their clients who buy sex have failed to report such suspicions, despite being concerned. As noted by this client, who had witnessed suspected abuse and trafficking,

“Then (if I reported it to the police) they would ask how I know... I don’t think I can get caught for that, but I will still be in a record somewhere, and then if I pop up again somewhere somehow... Just avoid it. Put a post on it on the forums that says ‘This is trafficking’”.

(Interview, 2011, Sex Worker Client)⁷

4 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

5 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

6 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

7 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

Have levels of sex work in Sweden decreased?

It is now so clear that there have been negative impacts of the sex purchase law that even the 2010 Swedish governmental evaluation of the law, which was mandated to make recommendations on how the law could be applied more effectively and not to criticise the law itself, noted that sex workers now feel more persecuted and stressed in the context of their work.⁸ This governmental evaluation stressed that where sex workers may now find life more difficult, this should be looked at in a *positive* light, since it will serve to encourage people to leave the sex industry. This is certainly a very far cry from assurances that there would not be negative outcomes of the law. The argument now seems to be that the harder the lives of sex workers in Sweden become, the more sex workers will leave sex work. It seems that whatever the outcomes of the sex purchase law, it will be claimed that they demonstrate its accomplishment: when it was introduced it was said the law would not be to the detriment of sex workers, and this was hailed as being one of the law's radical advantages over alternative legislation; now that it is clear that sex workers have experienced difficulties as a result of the law, it is paradoxically claimed that this should be seen as a success of the legislation. This is a constant process of 'shifting the goalposts' in order to promote an ideological and detrimental law.

Despite the lives of many sex workers now being more difficult, however, **there is absolutely no convincing evidence demonstrating that overall levels of sex work have decreased in Sweden.**

As noted above, the introduction of the sex purchase law was accompanied by a substantial drop in levels of street sex work.⁹ This reduction in levels of street sex work has been taken by proponents of the Swedish model to be indicative of the law's apparent success in reducing levels of sex work.

However, levels of street sex work in Sweden make up only a small proportion of sex work – as is the case in many contexts in the global north – and so a decline in levels of street sex work should not be taken to be indicative of an overall decrease in levels of sex work. And due to the fact that the majority of sex work in Sweden occurs in off-street spaces, it is nigh-on impossible to make accurate estimates or assertions as to trends, never mind assertions as to causation of trends. As is stressed by the Swedish National Board of Health and Welfare (the *Socialstyrelsen*), it has been impossible to ascertain whether overall levels of sex work have changed following the 1999 law:

“It is... difficult to discern any clear trend of development: has the extent of prostitution increased or decreased? We cannot give any unambiguous answer to that question”.

(*Socialstyrelsen* 2008: 63)¹⁰

In addition to this, it is not even certain that levels of street sex work decreased permanently: fairly soon after the law's 1999 introduction, street sex work levels then increased again. Some stakeholders note that levels today may be in line with those that were recorded previous to 1999. It should also be noted that since some sex workers who had worked on the street began to sell sex indoors when the law was introduced – due to difficulties in selling sex on the street – this displacement is not indicative of a reduction in levels of sex work.

...THERE IS ABSOLUTELY NO CONVINCING EVIDENCE DEMONSTRATING THAT OVERALL LEVELS OF SEX WORK HAVE DECREASED...

8 SOU, 2010:49, *Förbud mot köp av sexuell tjänst. En utvärdering 1999–2008* (Stockholm: Regeringskansliets Förvaltningsavdelning)

9 It should be emphasised that estimates as to specific levels of sex work, as well as increases or decreases, are notoriously unreliable given that sex work takes place in a hidden context due to criminalisation and stigma.

10 *Socialstyrelsen* (Swedish National Board of Health and Welfare), 2008, *Prostitution in Sweden 2007*, available online at: http://www.socialstyrelsen.se/lists/artikelkatalog/attachments/8806/2008-126-65_200812665.pdf (last accessed 30 September 2013)

Summary

The direct negative impacts of the sex purchase law are very much cause-and-effect:

- ▶ The sex purchase law has been used to target public sex work in Sweden.
- ▶ Therefore, fewer clients are willing to buy sex on the street, for fear of arrest.
- ▶ Some sex workers moved off-street to continue working, thereby increasing their distance from service providers and authoritative protection.
- ▶ Sex workers who continue working on the street are often resource-poor and have not been able to establish themselves off-street.
- ▶ These street-based sex workers now have to accept lower incomes and provide more services, as the presence of fewer clients has increased competition and pushed down prices.
- ▶ As clients are fearful of identification and arrest, sex workers on- and off-street have difficulties in negotiating with clients and getting identifying client information.
- ▶ This places sex workers at risk of danger and violence, and concern about arrest also means that clients are disinclined to report suspected abuse and exploitation.
- ▶ The law has therefore given more power to clients and has disempowered sex workers.

The negative impacts of the sex purchase law have perversely been held by some to be indicative of its success, since it is argued that the law therefore promotes stopping sex work in the face of escalating difficulties for sex workers.

Yet despite those seeking to export the law claiming that the law protects sex workers, and despite claims that the law has reduced levels of sex work, there is no evidence that people have stopped buying or selling sex due to the sex purchase law. There is no evidence that levels of sex work have declined as the law intended. Instead, sex work takes place in increasingly clandestine locations, and sex workers who more immediately need the income from their sex work experience greater danger and difficulty in the context of their sex work.

In summary, the Swedish model may be challenged on two key points:

- 1 The Swedish model has failed in its aim to decrease levels of sex work in Sweden.
- 2 The Swedish model has resulted in increased difficulties and danger associated with sex work.

...THERE IS NO EVIDENCE THAT PEOPLE HAVE STOPPED BUYING OR SELLING SEX DUE TO THE SEX PURCHASE LAW.

Further reading on these topics

The four papers of this toolkit stem from research undertaken by the author, Dr Jay Levy, in Sweden between 2008 and 2012. This research is presented in full in:

- Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Abingdon: Routledge)

In addition to this book, several key texts provide useful further reading.

For a discussion of levels of sex work in Sweden, and some analysis of the direct outcomes of the Swedish model, see:

- Kulick, D., 2003, “Sex in the New Europe – The Criminalization of Clients and Swedish Fear of Penetration.” *Anthropological Theory* 3: 199–218

- Levy, J. and Jakobsson, P., 2014, “Sweden’s Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden’s Sex Workers.” *Criminology and Criminal Justice*. doi: 10.1177/1748895814528926
- Östergren, P. and Dodillet, S., 2011, “The Swedish Sex Purchase Act: Claimed Success and Documented Effects.” Presented at *The International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, 3–4 March
- Östergren, P., 2004, *Sexworkers Critique of Swedish Prostitution Policy*, available online at: http://www.petraostergren.com/pages.aspx?r_id=40716 (last accessed 31 March 2012)

The Real Impact of the Swedish Model on Sex Workers

#3

Impacts of the Swedish Model's Justifying Discourses on Service Provision

Impacts of the Swedish Model's Justifying Discourses on Service Provision

Introduction

In the second (previous) paper of this toolkit, direct impacts of the Swedish model – the criminalisation of the purchase of sex – were discussed: the most notable outcomes of the law have been to the detriment of sex workers, notably street-based sex workers, and in addition to these negative outcomes is the law's failure to achieve its ambition of decreasing levels of sex work in Sweden.

In this paper, I discuss the impacts of the ideas and assertions that justify the criminalisation of the purchase of sex (discussed in the first paper of this toolkit). Specifically, these ideas – advocated by abolitionist radical feminists – include: the construction of sex work as a form of violence; the assertion that the violence that can be associated with sex work is constant and unchangeable; and additionally, the generalisation that sex workers are passive, disempowered victims. Of principal focus here are the impacts that these ideas and generalisations have had on the views of state-sponsored, sex work-targeted service providers, on service provision, and on harm reduction services and views surrounding harm reduction.

What is harm reduction and why is it needed?

As with many other jobs, harms can be associated with sex work. These harms are exacerbated by legal frameworks that criminalise sex workers, which serve to marginalise sex workers, increase social exclusion, and push sex work into underground and hidden spaces (as discussed in the second paper of this toolkit); criminalisation therefore creates disengagement between sex workers and service providers and state-sponsored protection. Violence, stigma, and discrimination are all significant harms that can be associated with some sex work, and other concerns include the transmission of HIV and other STIs and blood-borne infections.

These harms are variable, and, like with all potential harms and difficulties that can be associated with work and working environments, they can therefore be tackled, mitigated, and reduced. Though Sweden's outspoken ambition is to abolish sex work, O'Connell Davidson (2003)¹ pertinently notes that even where an aim is to reduce levels of sex work, reducing the harms surrounding sex work should be a priority 'in the meantime' (it should be stressed, however, that abolitionism and criminalisation do, in and of themselves, exacerbate and create harm, as discussed in the second paper of this toolkit).

...HARMS ARE EXACERBATED BY LEGAL FRAMEWORKS THAT CRIMINALISE SEX WORKERS, WHICH SERVE TO MARGINALISE SEX WORKERS, INCREASE SOCIAL EXCLUSION, AND PUSH SEX WORK INTO UNDERGROUND AND HIDDEN SPACES...

1 O'Connell Davidson, J., 2003, "Sleeping with the Enemy? Some Problems with Feminist Abolitionist Calls to Penalise those who Buy Commercial Sex." *Social Policy & Society* 2,1: 55–63

TO REDUCE THE HARMS THAT CAN BE ASSOCIATED WITH SEX WORK, HARM REDUCTION IS IMPERATIVE, WHETHER OR NOT THE POLITICAL AMBITION IS TO DECREASE LEVELS OF SEX WORK...

Harm reduction initiatives position themselves politically neutrally: they do not aspire towards reducing levels of the activity in question, but instead to reduce the harms that may be associated. First advocated and introduced for people who use drugs in the context of the HIV pandemic (for example, needle exchange/provision and opiate substitution therapy), harm reduction initiatives have been advocated for sex workers; they include condom provision, the provision of information on selling sex more safely, the provision of lubricants, the provision of medical and GUM (genitourinary medicine) services, and arguably decriminalisation, since criminalisation is itself demonstrated to be harmful. To reduce the harms that can be associated with sex work, harm reduction is imperative, whether or not the political ambition is to decrease levels of sex work, as is the case in Sweden.

If harm reduction is imperative, is there opposition to harm reduction?

Yes: abolitionist feminist discourse sees sex work as a form of violence, and sees the variable harms that can be associated with sex work as constant. This means that harm reduction is simply dismissed since:

- 1 harm reduction discourse does not strive to reduce levels of sex work, and is therefore seen as conflicting with abolitionist aims, and
- 2 it is asserted that the harms surrounding sex work cannot be reduced, and so efforts to reduce harms are seen to be pointless and unrealistic. As per the below quotation, sex work is seen to always and inevitably be “really, really dangerous”:

“prostitution in itself attracts strange people, and I think prostitution has always been, and always will be really, really dangerous... in what way can you help someone then, what kind of information would you give to help people?”

(Interview, 2009, Social Worker, Stockholm Prostitution Unit)²

As with other elements of radical feminist discourse, then, this opposition to harm reduction has come to inform the stance of Swedish stakeholders and service providers. Harm reduction for sex workers is opposed, since it is not just seen to be pointless in the context of what are asserted to be unavoidable harms, but is actually seen to *encourage* and *facilitate* sex work. Harm reduction is seen to keep people in sex work where otherwise they may have ceased, and these approaches are therefore seen to undermine Sweden's expressed aim to abolish sex work:

“harm reduction is many times a way of, I mean it, it tends to keep people in the problem, instead of helping them to leave”.

(Interview, 2009, Social Worker, Stockholm Prostitution Unit)³

2 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

3 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

Swedish views of condom provision for sex workers and their clients

This wider opposition to harm reduction has led to opposition amongst targeted service providers, the Swedish Prostitution Units. These organisations are tasked by the government to reduce levels of sex work through social service provision.⁴ Though sex workers and their clients are both foci for HIV and STI prevention for the Swedish National Board of Health and Welfare, the Stockholm Unit in particular opposes condom provision to sex workers during its outreach work. Condoms are not seen as measures to promote health and to reduce harm, but instead as means with which to attract sex workers to the Stockholm Unit's offices (where condoms are available).

Despite Sweden being often regarded as one of the world's ultimate welfare states, the Swedish model has resulted in street-based sex workers not being provided with condoms. The need for condom distribution during outreach to street-based sex workers is made clear by reports of sex workers having to provide one another with condoms, and further reports of sex workers having to shoplift condoms:

"every time I'm on the street, the girls are coming to me asking for condoms... When I was working before, regularly (on the street)... girls were shoplifting condoms. And now I don't know what they do. But it was a store, then they didn't want to let us in".

(Interview, 2009, Sex Worker [Street; Escort; Internet])⁵

Not only is there opposition to the provision of condoms to sex workers; opposition to the provision of condoms to sex workers' clients has been considerable in Sweden. The Malmö Prostitution Unit, in the south of Sweden, has previously attempted to provide harm reduction services, providing sex workers with condoms during outreach, and providing condoms to people who buy sex. However, its giving condoms to clients resulted in a national outcry.

II: "We tried with condoms, and it became a national issue. Not a local, but a national issue. It is very funny if you think about it, 'cause we, you gotta remember, we gave out how many condoms?"

I: "Eight condoms."

II: "Eight condoms! Eight condoms. And it became a national issue."

(Interview, 2010, Two Social Workers, Malmö Prostitution Unit)⁶

This opposition was due to the fact that in Sweden (and abolitionist feminist discourse), the purchase of sex is constructed as a form of violence; it is this understanding that justifies the Swedish model. With sex work constructed as a form of violence, giving condoms to sex workers' clients – seen to be the perpetrators of this violence – is therefore seen as providing the tools with which to commit a violent offence, not as a means with which to promote health and harm reduction.

WITH SEX WORK CONSTRUCTED AS A FORM OF VIOLENCE, GIVING CONDOMS TO SEX WORKERS' CLIENTS... IS THEREFORE SEEN AS PROVIDING THE TOOLS WITH WHICH TO COMMIT A VIOLENT OFFENCE, NOT AS A MEANS WITH WHICH TO PROMOTE HEALTH AND HARM REDUCTION.

⁴ It is very important to remember that Sweden's desire to decrease levels of sex work was to be achieved through both legal interventions (criminalisation of demand) and through social interventions. In spite of this, when the law was introduced in 1999 no money whatsoever was given to social services (and several million Swedish kronor were given to the police).

⁵ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

⁶ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

Swedish view of guides to safer sex work and harm reduction information

As well as giving condoms to sex workers and their clients, the Malmö Unit has also provided a harm reduction pack, which includes a safer sex work guide, informed by sex workers themselves. Again, these guides are felt by some key stakeholders in Sweden to actually encourage sex work, and were even considered by the National Coordinator Against Trafficking and Prostitution to encourage people to *begin* sex work:

“maybe some young girls who is not in the prostitution for the moment, they find this on the internet, and say ‘Ah, maybe it could be really safe, because I have this handbook, and I have these things, so nothing could happen’”.

(Interview, 2009, Interview, 2009, Stockholm Länsstyrelsen)⁷

As discussed above, with sex work generalised as inevitably and unchangeably surrounded by violence, providing information on safer sex work is also seen to be pointless: there is not seen to be any such thing as safer sex work.

Moreover, as a Swedish politician who proposed the Swedish model notes below, since the purchase of sex has been criminalised, providing harm reduction and information regarding safer sex work is seen as providing information regarding how to commit a crime, a crime that has been constructed in dominant Swedish discourse as a form of violence.

“since it’s illegal, you can’t, it becomes very strange if you are informing of something that not legal in Sweden”.

(Interview, 2010, Proposer of *Sexköpslagen*; Politician – Social Democrats)⁸

With so little provided by way of harm reduction and information on safer sex work, sex workers in Sweden learn how to avoid harm from doing their own research, from having to educate one another, or from having experienced harm personally.

Selective and conditional service provision for sex workers in Sweden

Further to Swedish oppositions to harm reduction, generalisations of sex work as problematic and violent have informed the views and attitudes of Swedish service providers. With all sex workers assumed to be victims in need of assistance and exit from sex work, service providers are unconcerned about providing services to sex workers who do not identify their sex work to be problematic and/or who do not identify as victims. These sex workers do not fit into mainstream and political assumptions regarding sex work, and so they are simply excluded from state-sponsored assistance. Indeed, sex workers ‘who feel good’ are not seen to be worthy of the ‘energy’ of service providers:

“as far as they feel well, and like to be in this situation, fine with me, I mean, the day when they don’t like it anymore, they can come to me. So I don’t spend my energy on this group of people”.

(Interview, 2009, Stockholm Länsstyrelsen)⁹

Though respondents from the Stockholm Prostitution Unit emphasised that they did not judge their clients, and that they did not insist that their clients ceased selling sex, it seems that their alignment with Swedish understandings of sex work have resulted in their assuming their clients to be victims, as well as applying abolitionist conditions on their provision of services.

...WITH SEX WORK GENERALISED AS INEVITABLY AND UNCHANGEABLY SURROUNDED BY VIOLENCE, PROVIDING INFORMATION ON SAFER SEX WORK IS ALSO SEEN TO BE POINTLESS: THERE IS NOT SEEN TO BE ANY SUCH THING AS SAFER SEX WORK.

7 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

8 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

9 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

As per the below quotations, one sex worker noted that social workers had refused to provide her with assistance in getting a doctor's note unless she ceased her sex work for a period of time; another reported that she was expected to adopt a victim status during her engagement with social workers at the Unit. These claims certainly contrast with the Stockholm Unit's asserted neutrality, suggesting instead that they align firmly with the discourses that justify the Swedish model.

"I had so many questions. Is this wrong? What will happen if I get sick? What happens if I get robbed? What happens if I get killed with a customer?... And they were not talking about the good things, they were only doing (making) things worse. So when I go home from them, I was crying, and I was feeling like, 'Oh my god, what a bad dirty people I am'... I like to do this. I'm not a bad girl... they should really be able to understand how we're thinking, and why we are thinking, and why we exist. Not to push us out back on the street, and (say) 'you're a bad person'".

(Interview, 2010, Sex Worker [Internet Escort])¹¹

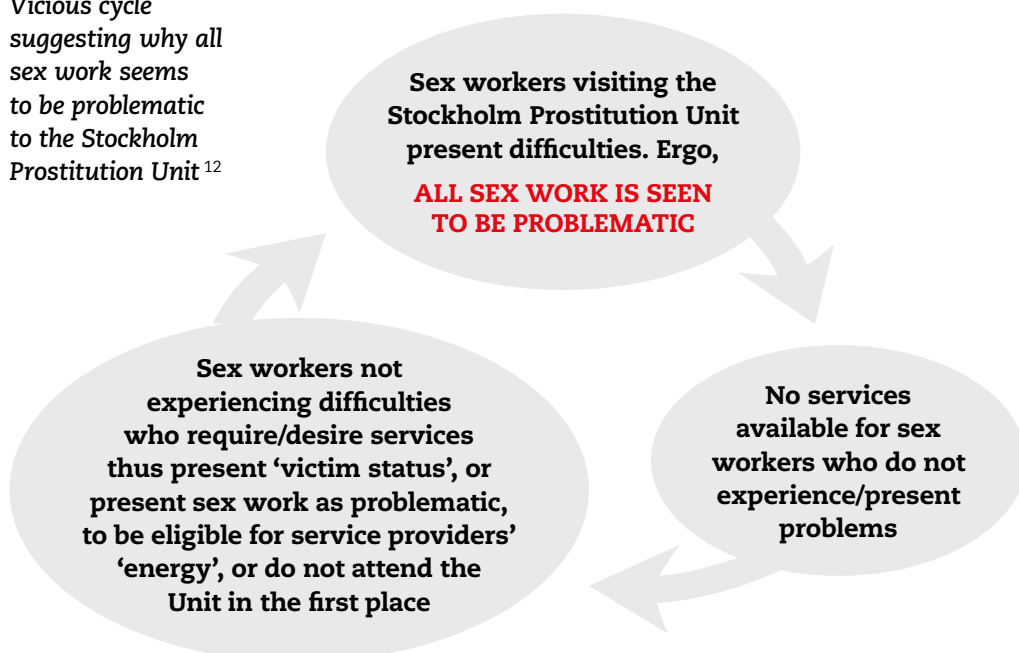
With only some sex workers eligible for state-sponsored assistance, we can see why stakeholders in Sweden assert that all sex work is problematic: only those sex workers who problematise their sex work are entitled to service provision. Those who do not may therefore position themselves as being a victim and/or their sex work as being problematic, or they will not seek out service provision at all:

...ONLY THOSE SEX WORKERS WHO PROBLEMATISE THEIR SEX WORK ARE ENTITLED TO SERVICE PROVISION. THOSE WHO DO NOT MAY THEREFORE POSITION THEMSELVES AS BEING A VICTIM AND/OR THEIR SEX WORK AS BEING PROBLEMATIC, OR THEY WILL NOT SEEK OUT SERVICE PROVISION AT ALL...

"I was going to talk to them for some months, and she (Stockholm Prostitution Unit Social Worker) also told me that if she was going to help me, to write a paper, that I needed to *sjukskrivning* (sick note)... she was going to write a paper to help me to get the doctor to write that paper, because I have been waiting for three years... so she said 'if you are stopping prostitution for three months, and you don't do anything for three months, then I will write that paper'".

(Interview, 2009, Sex Worker [Street; Escort; Internet])¹⁰

*Vicious cycle suggesting why all sex work seems to be problematic to the Stockholm Prostitution Unit*¹²



¹⁰ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

¹¹ Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

¹² Levy, J., 2012, *Second-Class Citizens of Sweden: Sex Work and Drug Use in the People's Home* (University of Cambridge: PhD Thesis)



Summary

SUCH OPPOSITION... IS MARKEDLY SIMILAR TO OPPOSITION TO DRUG-RELATED HARM REDUCTION, WITH NEEDLE EXCHANGE AND PROVISION FALSELY ASSERTED TO ENCOURAGE DRUG USE, AND NOT SEEN IN A CONTEXT OF REDUCING HARM.

In opposing the Swedish model, arguments tend to focus on the *direct* outcomes of the law. This paper has made clear that it is not only the law itself that needs to be opposed, but, in addition, the ideas that frame it, which are informed by ideological generalisations.

These ideas include generalisations of sex work as inevitably violent and of sex workers as disempowered victims, and these beliefs have directly informed the views of service providers. Harm reduction initiatives are opposed, seen to be both pointless and actually counterproductive in their apparently encouraging and facilitating sex work. Such opposition, driven as it is by Swedish

radical feminist abolitionism, is markedly similar to opposition to drug-related harm reduction, with needle exchange and provision falsely asserted to encourage drug use, and not seen in a context of reducing harm.

Although the Swedish model is advocated as a progressive piece of legislation and set of ideas, as a part of Sweden's liberal and progressive welfare state and Sweden's aspirations towards 'gender equality', the refusal of service providers to provide even the most basic services and harm reduction initiatives to sex workers – due to the ideas that frame the Swedish model – undermines such claims.

Further reading on these topics

The four papers of this toolkit stem from research undertaken by the author, Dr Jay Levy, in Sweden between 2008 and 2012. This research is presented in full in:

- Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Abingdon: Routledge)

In addition to this book, several key texts provide useful further reading.

For discussions of harm reduction – particularly sex work-related harm reduction – and the importance of focussing on harm reduction and service provision, see:

- Cusick, L., 2005, “Widening the Harm Reduction Agenda: From Drug Use to Sex Work.” *International Journal of Drug Policy* 17: 3–11
- Rekart, M. L., 2005, “Sex-Work Harm Reduction.” *The Lancet* 366: 2123–2134

For further discussion of the impacts of the Swedish model on service provision, see:

- Levy, J. and Jakobsson, P., 2014, “Sweden’s Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden’s Sex Workers.” *Criminology and Criminal Justice*. doi: 10.1177/1748895814528926

The Real Impact of the Swedish Model on Sex Workers

#4

Impacts of Other Legislation
and Policy – The Danger of
Seeing the Swedish Model
in a Vacuum

Impacts of Other Legislation and Policy – The Danger of Seeing the Swedish Model in a Vacuum

Introduction

In the second paper of this toolkit, the direct impacts of the Swedish model on street-based sex work and on the wider dynamics of sex work were discussed. It was established that the law has failed in its stated mission of reducing levels of sex work in Sweden, and has additionally served to worsen conditions for sex workers, contrary to assertions that the criminalisation of the purchase of sex would not have negative side-effects. The third paper of the toolkit illustrated that the impacts of the Swedish model have not only been direct: the ideas that justify the law have informed the views of service and healthcare providers, and have had negative impacts on targeted service provision for sex workers in Sweden.

Though the law has had negative side-effects on sex workers,¹ the Swedish model itself directly criminalises only people who buy sex. It is claimed that sex workers are therefore legally protected from direct interference from the state and that this is what makes the Swedish model such a progressive and important law. If we are to believe what supporters of the Swedish model say, sex workers are immune from attention of, and persecution from, the police and the state.

Indeed, this was noted by one such supporter of the law – a senior member of the Swedish police – who asserted that the police have no recourse to target sex workers directly:

“the police definitely don’t interfere, I mean because selling is not criminalised. That is not a police issue, if you want to sell it’s okay. We don’t target the women, or the person in prostitution.”

(Interview, 2010, Police [Prostitution and Trafficking])²

This sort of assurance is frequently used as a means with which to promote the Swedish model. It is regularly asserted that this legislation will protect sex workers from the sort of state-sponsored harassment to which they have often been subjected in other states and contexts.

Does the Swedish model protect sex workers from state-sponsored harassment?

No. It needs to be stressed that the Swedish model – the law criminalising the purchase of sex – should not be analysed only in a vacuum. The above assertions that sex workers are not directly harassed and ‘interfered’ with are entirely untrue. This paper demonstrates that the Swedish model has not resulted in an end to sex workers being targeted directly by the state. Sex workers suffer not only displacements from public space – as discussed in this toolkit’s second paper – but also deportations internationally, evictions from private property and their own property, and issues related to child custody.

**THIS PAPER
DEMONSTRATES THAT
THE SWEDISH MODEL
HAS NOT RESULTED
IN AN END TO SEX
WORKERS BEING
TARGETED DIRECTLY
BY THE STATE.**

1 This would have been fairly easy to predict, given that criminalising legislation frequently has the effect of displacing the activity in question and exacerbating harm and marginalisation. Indeed, concerns that the law would have these impacts were expressed during the legal debate prior to the Swedish model’s introduction in 1999.

2 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

Laws and policies other than the sex purchase law

Harassment during client arrests

As noted above, the Swedish police have asserted that they do not directly target sex workers themselves, only their criminalised clients. This is misleading, since police need to target sex workers themselves in order to target sex workers' clients. For a successful prosecution, the police would require either testimony from the sex worker in question, from witnesses, or to catch a sex worker and their client 'in the act'. This involves highly invasive raids, during which sex workers have reported that police have refused to allow them to dress, have verbally assaulted them, have recorded their identity, and have documented the events on film. This is a far cry from assertions that sex workers are shielded from authoritative harassment and 'interference'.

Evictions and domestic harassment

Aside from reports of problematic and abusive encounters, sex workers have been targeted when not even seeing clients. It is illegal in Sweden to provide premises for sex work to take place, and it is also the case that "tenancy right is forfeited" if "sexual relations for payment"³ take place. However, as long as one's landlord is unaware of any sex work taking place, no action will be taken. The police have thus been noted to report sex workers to their landlords, which therefore forces the evictions (or the landlords will be prosecuted by the police).

Similarly, police have reported sex workers to hotels and venues, with sex workers then being kicked out and/or barred from returning, which again serves to displace sex workers. Such reporting seems punitive and spiteful, deliberately making sex workers' lives difficult. There was additionally a case of women being denied entry to a venue simply because they were assumed to be sex workers due to their being perceived to be Asian, with the court upholding this decision. Such is the stigma and racialisation of sex work in Sweden that the movements of both sex workers, and other groups of marginalised women, have come to be controlled and delimited:

"In a decision issued earlier this week, the court ruled Harry's [the venue in question] owners had a 'legitimate reason' to stop to women in their efforts to curb suspected prostitution."⁴

Some sex workers may choose to work collectively for reasons that can include safety, protection, and to avoid feeling isolated in their work. Yet these sex workers can also be targeted by the police, charged with pimping one another under pimping legislation, a law that predates the Swedish model. Furthermore, sex workers' partners or adult children can be prosecuted for receiving the income of sex work. It is clear that these laws do not solely serve to protect sex workers from exploitation, and the introduction of the Swedish model was not accompanied by the removal of legislation that is used to directly disrupt the lives of sex workers themselves.

IT IS CLEAR THAT THESE LAWS DO NOT SOLELY SERVE TO PROTECT SEX WORKERS FROM EXPLOITATION, AND THE INTRODUCTION OF THE SWEDISH MODEL WAS NOT ACCOMPANIED BY THE REMOVAL OF LEGISLATION THAT IS USED TO DIRECTLY DISRUPT THE LIVES OF SEX WORKERS THEMSELVES.

³ Jordabalken law, available online at: <https://lagen.nu/1970:994> (last accessed 14 July 2014); author's translation

⁴ See The Local, 2013, Pub Cleared for Rejecting 'Asian Looking' Women, 12 September, available online at: <http://www.thelocal.se/20130912/50200> (last accessed 14 July 2014) for an account of this case.

Further to such legislation, the police have been known to visit sex workers' homes and overtly threaten them with police interference. This is in stark contrast to police assurances that "the police definitely don't interfere" with sex workers:

"they come to my door and, you know, ask for my ID and so forth so it's like harassment ... The third time it's like, 'We know what you're doing, I mean, what you're about. We're going to go after your clients' ... I make a living out of this, so I was really paranoid for a very long time after."

(Interview, 2010, Sex Worker [Internet Escort])⁵

Deportations

In addition to invasions of sex workers' privacy and police deliberately forcing evictions of sex workers from hotels, venues, and from their homes, immigration authorities work to displace sex workers internationally through deportations. These deportations are somewhat at odds with Swedish social constructions of sex work. As was discussed in the first paper of this toolkit, Swedish understanding of sex work draws on abolitionist feminist discourse in constructing sex workers as passive victims who lack agency, arguing that it is impossible to truly consent to sex work or to choose to sell sex. Migrant sex workers and victims of human trafficking are therefore seen as indistinguishable in Sweden. Given this conflation of migrant sex workers and victims of human trafficking, it might be assumed that attitudes towards migrant sex workers (who are assumed, by default, to be exploited and in need of protection and state-sponsored intervention and assistance) may be sympathetic, albeit also disempowering and patronising.

In fact, migrant sex workers and victims of trafficking alike are deported when they come to the attention of the authorities in Sweden. They may remain in the country as long as they testify at a trial (if one is to take place), but once the state has no remaining use for the individual, they are deported. In some circumstances they can apply to remain, though it is rare that these applications are successful. Sweden's posturing as a country that prioritises the welfare of sex workers and victims of trafficking alike is certainly not an accurate indicator of the country continuing to use laws and policies to internationally displace sex workers. One individual, known to Swedish sex worker rights organisation Rose Alliance, was deported with "she has not supported herself in an honest manner" (author's translation) stamped on her deportation order as the reason for her deportation.⁶ This branding of sex workers as immoral and 'dishonest' resonates with historically established stigma, rather than the abolitionist feminist construction of sex workers as victims.

Sweden continues, therefore, to use an array of laws, policies, and perceptions to directly target sex workers themselves: pieces of legislation are used to evict, displace, and deport sex workers, with justifications including victim labelling and historical stigma, which are used interchangeably depending on which happens to best suit the circumstances. The Swedish model claims to target sex workers' clients only, but in actual fact sex workers themselves remain very much the focus of law enforcement and the state, and essentially remain criminalised, marginalised, and subject to gross social exclusion and persecution.

...SEX WORKERS THEMSELVES REMAIN VERY MUCH THE FOCUS OF LAW ENFORCEMENT AND THE STATE, AND ESSENTIALLY REMAIN CRIMINALISED, MARGINALISED, AND SUBJECT TO GROSS SOCIAL EXCLUSION AND PERSECUTION.

5 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge)

6 Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Routledge); also see Levy, J. and Jakobsson, P., 2013, *Abolitionist Feminism as Patriarchal Control – Swedish Understandings of Prostitution and Trafficking*, *Dialectical Anthropology* 37, 2: 333–340

Child Custody

Additional to these direct harassments and prosecutions of sex workers by the Swedish authorities is the fact that sex workers in Sweden have difficulties with social services in terms of child custody. Sex workers report losing custody of their children, with their sex work being cited as the reason for such interventions.

To understand how the state justifies this, we should bear in mind how sex work and how sex workers have come to be understood in Sweden: sex workers are seen as traumatised, abused, vulnerable, disempowered victims, unable to exercise choice and agency in decisions to sell sex. Sex work is asserted to be undertaken as a result of trauma, and is seen to result in further traumatisation.

Since sex workers are therefore viewed as unstable victims, they are not seen by some stakeholders in Sweden as being capable parents. Not only this, but with ‘false consciousness’ used as a means to silence the voices of some sex workers, this same narrative is seemingly used to undermine the testimony of sex workers who do not problematise their sex work, legitimising a removal of child custody. In short, if a sex worker is seen to be unable to engage with their reality ‘objectively’ (i.e. in terms of how sex work has been constructed in Sweden and in abolitionist feminist discourse), they are seen to be unable to take care of their children.

The case of Petite Jasmine illustrates how the understandings of sex work that justify the Swedish model, as outlined above, are used to justify the removal of sex workers’ children, and can result in enormous harm and danger to sex workers (beyond that of losing child custody). Jasmine was a member of Swedish sex worker rights organisation Rose Alliance, and was

an outspoken critic of the Swedish model. When the state removed her children from her custody, one key motivator was that she was ‘romanticising prostitution’, in that she refused to condemn sex work, to define it as damaging, and to identify as a victim in line with dominant Swedish understanding:

“Social Services made an emergency recovery of the kids, dragging them from her arms... and then started an investigation. They placed them with the father straight away. During the investigation regarding her parental skills, they told her she was lacking insight into the damage her sex work caused.”

(Pye Jakobsson interviewed by Caty Simon for *Tits and Sass*, 2013)⁷

Jasmine’s children were taken from her and placed with her ex-partner; this man had a history of recorded abuse, and it seems that the authorities were aware that his abusive behaviour and that his stalking had continued after the state removed the children from Jasmine. It therefore appears that Swedish social services feel that abusive men are better equipped as parents than people who sell sex. This is due to how sex workers have come to be perceived in Sweden, understood as incapable and lacking in self-awareness.⁸

Following the removal of Jasmine’s children from her and award of their custody to her violent ex-partner, this same partner was arrested by the Swedish police in the summer of 2013, and charged with stabbing Jasmine to death at their meeting with social services. The title of a *Tits and Sass* interview with Rose Alliance founder and friend of Jasmine’s, Pye Jakobsson, after Jasmine’s death sums up Sweden’s complicity in Jasmine’s murder: “*The Bloody State Gave Him the Power*”.

IT THEREFORE APPEARS THAT SWEDISH SOCIAL SERVICES FEEL THAT ABUSIVE MEN ARE BETTER EQUIPPED AS PARENTS THAN PEOPLE WHO SELL SEX.

7 Simon, C., 2013, “The Bloody State Gave Him The Power: A Swedish Sex Worker’s Murder”, *Tits and Sass*, 16 July, available online at: <http://titsandsass.com/the-bloody-state-gave-him-the-power-a-swedish-sex-workers-murder/> (last accessed 23 June 2014)

8 Such issues with child custody are not peculiar to Sweden or, indeed, the global North. As one sex worker rights activist noted, “The case of the late Petite Jasmine of Rose Alliance follows a beaten path in Africa where sex workers are regarded as bad parents. Sex workers in Africa hardly receive any support towards raising of their children even when the fathers of their children [are] able but in the event that the man decides that he wants his children the mother, especially if she is identified as a sex worker, will have no say in the matter.”

Summary

In support of the Swedish model, it is argued that only sex workers' clients are criminalised and are subject to the attention of the authorities and the police. As this paper of the toolkit has highlighted, this is clearly untrue in the context of sex workers' lives and realities in Sweden. Social constructions of sex workers have come to justify deportations and sex workers losing custody of their children. As with the second paper in this toolkit, these processes are very much cause and effect, and derive from the narratives that justify the sex purchase law:

- ▶ The Swedish model is justified by a construction of sex work as a form of violence. Sex workers are seen to be passive victims who are unable to exercise 'true' choice and consent due to the asserted traumatisation of sex work, and the traumatisation that is argued to act as a precursor to sex work.
- ▶ Since sex workers are seen to be incapable of making decisions about even their own lives, they are seen to be incapable of looking after their children appropriately.
- ▶ Those sex workers who refuse to identify with these mainstream perceptions of sex work risk losing custody of their children. Their refusal to identify as such is not seen to be indicative of their 'objective' situation: it is seen to derive from their 'false consciousness', as discussed in this toolkit's first paper.

In addition to difficulties with child custody, several pieces of legislation – older legislation than the sex purchase law itself – have remained in place, and are used to directly target sex workers themselves, to evict sex workers from homes, and to remove sex workers from hotels and venues. Such is the array of legislation that is used to directly target sex workers in Sweden that the only ways a sex worker can work and only be affected by the Swedish model itself are 1: by selling sex in the street, or 2: going to clients' homes. Sweden's laws and policies therefore exacerbate danger, serving to push sex workers to work in ways that can be less safe.

In opposing the Swedish model, it is important to not only focus on the direct and indirect outcomes of the law itself (see, respectively, papers 2 and 3 of this toolkit), but to remember that the law is something of a smokescreen that masks the wider impacts of laws and policies upon the lives of sex workers in Sweden. It conceals the fact that, for all intents and purposes, sex workers themselves remain persecuted and criminalised in Sweden. The assertion that sex workers are legally protected and decriminalised by the Swedish model is a false one.

SWEDEN'S LAWS AND POLICIES THEREFORE EXACERBATE DANGER, SERVING TO PUSH SEX WORKERS TO WORK IN WAYS THAT CAN BE LESS SAFE.

Further reading on these topics

The four papers of this toolkit stem from research undertaken by the author, Dr Jay Levy, in Sweden between 2008 and 2012. This research is presented in full in:

- Levy, J., 2014, *Criminalising the Purchase of Sex – Lessons from Sweden* (Abingdon: Routledge)

In addition to this book, several key texts provide useful further reading.

For some discussion of how legislation other than the sex purchase law is used to destabilise the lives of sex workers directly, see:

- Levy, J. and Jakobsson, P., 2014, “Sweden’s Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden’s Sex Workers”, *Criminology and Criminal Justice*, doi: 10.1177/1748895814528926
- Östergren, P. and Dodillet, S., 2011, “The Swedish Sex Purchase Act: Claimed Success and Documented Effects.” Presented at *The International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges*. The Hague, 3–4 March

For an overview of how trafficking is constructed (and conflated with sex work) in abolitionist fundamentalist feminism, how Sweden constructs issues surrounding human trafficking, and for discussion of the deportation of sex workers and victims of human trafficking, see:

- Agustín, L., 2005, “Migrants in the Mistress’s House: Other Voices in the ‘Trafficking’ Debate”, *Social Politics* 12, 1: 96–117
- Doezema, J., 2010, *Sex Slaves and Discourse Masters – The Construction of Trafficking* (London: Zed Books)
- Levy, J. and Jakobsson, P., 2013, “Abolitionist Feminism as Patriarchal Control – Swedish Understandings of Prostitution and Trafficking”, *Dialectical Anthropology* 37, 2: 333–340
- Regeringskansliet, 2008, *Action Plan against Prostitution and Human Trafficking for Sexual Purposes* (Stockholm: Ministry of Integration and Gender Equality Sweden), available online at: http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Sweden_Infosheet_National_Action_Plan_Against_Human_Trafficking_en.pdf (last accessed 9 November 2013)
- Weitzer, R., 2007, “The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade”, *Politics and Society* 35, 3: 447–475



The Real Impact of the Swedish Model on Sex Workers

#5

Right to Work and Other
Work-Related Human Rights

Right to Work and Other Work-Related Human Rights

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS STATES THAT 'EVERYONE HAS THE RIGHT TO WORK, TO FREE CHOICE OF EMPLOYMENT, TO JUST AND FAVOURABLE CONDITIONS OF WORK AND TO PROTECTION AGAINST UNEMPLOYMENT.'

“People take it for granted that you can go to work as a doctor, researcher or academic or a bureaucrat. No one questions your right to do so. No one expects that you can wake up and go to work and your work place has been shut down [...] no explanations, no entitlements, no final pay cheque and no opportunity to seek redress. You might be at work when police come down to shut down your work place – simply because of the occupation you have chosen. Strange to imagine but this is a reality for many sex workers around the world [...] Viewing sex work as work and regulating it within a labour rights framework has multiple benefits and is a crucial element in combating the HIV pandemic [...] Our ability to protect ourselves where we work is tied [to] the reduction of stigma and discrimination and recognition of our rights and ability to choose how and where we work.”

(Sex worker activist, International AIDS Conference, Melbourne, 2014)¹

Introduction

The Universal Declaration of Human Rights states that ‘Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.’² These provisions of the Declaration are expanded and made legally binding in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which requires countries to ‘recognise the right to work, including right of everyone to the opportunity to gain his living by work which he freely chooses or accepts’. It further mandates countries to ensure ‘safe and healthy working conditions’ and a fair wage.³

Yet the criminalisation of sex work prevents sex workers from enjoying labour rights and protections against unfair treatment in the workplace. Criminalisation gives national governments and sub-national jurisdictions a reason for not recognising sex work as legitimate work and, consequently, sex workers’ labour rights are not protected. Criminalisation effectively lets states get away with not protecting sex workers as workers, and, in several ways, it also undermines sex workers’ own capacity to protect themselves in the workplace. For example, if sex work is a criminal act, it is unlikely that sex workers are legally able to form collectives, trade unions, or other organisations that could facilitate sex worker-led efforts to ensure safe working conditions for themselves. The criminalisation of clients of sex workers, as happens in Sweden, also undermines the rights of sex workers to work and to choose the work that they do. In turn, this situation also shapes negative public perceptions, whereby sex work is often not viewed as legitimate work, but rather as criminal victimisation. These misuses of criminal law should not be allowed to take away the fundamental labour rights from which sex workers, like all persons, should benefit, and to which UN member states are committed.

This paper explains how existing human rights protections relate to work and addresses the ways in which criminalisation and other factors undermine sex workers’ ability to benefit from these protections. Some recommendations towards better practice are also included.

1 Full speech can be found here: <https://www.youtube.com/watch?v=kgBsEZi4Lig>; accessed on 23 August 2014.

2 Universal Declaration of Human Rights, United Nations, 1948.

3 International Covenant on Economic, Social and Cultural Rights, UN Gen. Assembly res. 2200A(XXI), 16 December 1966, Articles 6, 7.

International standards

The ICESCR is widely ratified, including by the vast majority of states that criminalise sex work. The Covenant includes broad-ranging protections of work-related rights. In addition to the right to work, to freely choose one's work, and the right to safe and healthy conditions of work, ICESCR provisions include the following:

- ▶ Workers must receive fair wages and 'equal remuneration for work of equal value', with particular attention to ensuring equitable remuneration for women compared to men.
- ▶ Women must not suffer from work conditions 'inferior to those enjoyed by men'.
- ▶ Workers have the right to form trade unions and join the trade union of their choice. Trade unions must also be allowed to form national federations and to join international union associations.
- ▶ Workers have the right to go on strike.
- ▶ Police and members of the armed forces must not restrict workers' rights.
- ▶ In the period before and after childbirth, 'working mothers should be accorded paid leave or leave with adequate social security benefits.'
- ▶ Workers have the right to 'rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.'⁴

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) reaffirms the right to work 'as an inalienable right of all human beings' and it elaborates on equality of workers' rights between men and women.⁵ It notes that:

- ▶ Women must have the same rights as men with respect to choice of profession, work-related benefits, social security, unemployment benefits, retirement benefits, disability benefits and the right to paid leave.
- ▶ Women have equal rights to 'protection of health and to safety in working conditions, including the safeguarding of the function of reproduction,' and women should not be dismissed from their work on the grounds of pregnancy or maternity leave.
- ▶ The state should ensure that women are provided with 'the necessary supporting social services to enable [them] to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities'.
- ▶ States should ensure 'special protection to women during pregnancy in types of work proved to be harmful to them.'⁶

Sex work as work is not explicitly mentioned in CEDAW. However, the treaty notes that states should 'take all appropriate measures, including legislation, to suppress [...] exploitation of prostitution of women.'⁷ It is important to note that this statement does not imply that all prostitution is exploitative: rather, it is meant to suggest that where exploitation exists, it must be addressed.

⁴ Ibid., Articles 7, 8, 10.

⁵ UN Convention on the Elimination of All Forms of Discrimination Against Women. UN General Assembly res. 34/180, 18 December 1979, Article 11.

⁶ Ibid.

⁷ Ibid., Article 6.



THESE FUNDAMENTAL HUMAN RIGHTS STANDARDS ARE HOWEVER FAR FROM THE REALITY OF SEX WORKERS IN MOST COUNTRIES.

Regional multilateral bodies have also established protections of workers' rights. The European Social Charter – a legally binding treaty of the member states of the Council of Europe – has perhaps the most wide-ranging labour rights protections of any multilateral treaty. It includes detailed provisions on the right to work, to healthy and safe workplaces, and a wide range of other benefits, including the right of workers to organise and to engage in collective bargaining, to maternity benefits, the right to receive vocational training, and the right to social security.⁸ In its provisions relating to the 'right to dignity at work', the Charter explicitly prohibits sexual harassment in the workplace and mandates states to 'promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work.'⁹

The Charter of the Organization of American States includes the right to fair wages and 'acceptable working conditions for all,' and the American Convention on Human Rights – a legally binding treaty of North, Central, South American and Caribbean states – mandates state parties to move towards progressive implementation of that goal.¹⁰ The African Charter on Human and Peoples' Rights also guarantees that all people 'have the right to work under equitable and satisfactory conditions.'¹¹

The International Labour Organization is a specialised agency of the United Nations that issues labour standards and policies based on the deliberation from a governing body that represents workers, employers and governments. Like human rights conventions, ILO international conventions are legally binding treaties. However, ILO also issues technical guidance that is not legally binding. In 1998, ILO member states highlighted several fundamental principles from existing binding conventions, including 'freedom of association and the effective recognition of the right to collective bargaining' and the 'elimination of discrimination in respect of employment and occupation.'¹² These fundamental human rights standards are however far from the reality of sex workers in most countries.

The 2005 UN World Summit on Social Development mandated ILO to assist countries in promoting the goal of 'fair globalisation [...] full and productive employment and decent work for all'.¹³ ILO has developed a 'Decent Work' agenda that includes maintaining a list of occupations that constitute 'decent work'; ILO defines 'decent work' as being 'based on the understanding that work is a source of personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development.'¹⁴ Unfortunately the ILO 'decent work' agenda does not include improving work conditions for sex workers. Indeed, for example, the ILO 'decent work' agenda for Africa notes that sex work is an example of 'high-risk and self-destructive behaviour', and suggests that sex work is pursued only when people have limited employment options.¹⁵

8 Council of Europe. European Social Charter, Strasbourg, 1996, Articles 1–29. At: <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/English.pdf>

9 Ibid., Article 26.

10 Organization of American States. American Convention on Human Rights (Pact of San Jose), 22 November 1969, Article 26.

11 Organization of African Unity. African (Banjul) Charter on Human and Peoples' Rights, OAU doc. CAB/LEG/67/3, 27 June 1981, Article 15.

12 International Labour Organization. ILO Declaration on Fundamental Principles and Rights at Work. Geneva, 1998. At: <http://www.ilo.org/declaration/lang-en/index.htm>.

13 United Nations General Assembly. 2005 World Summit Outcome. UN doc. A/60/L.1, 15 September 2005, para 47, at: <http://www.who.int/hiv/universalsaccess2010/worldsummit.pdf>.

14 International Labour Organization. 'Decent work agenda' (web text), at: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang-de/index.htm>.

15 International Labour Organization. *The Decent Work Agenda in Africa: 2007–2015*, para 145. Geneva, 2007.



MEMBER STATES THAT HAVE ENDORSED THESE MEASURES BUT THEN SAY THAT HARM REDUCTION DOES NOT APPLY TO SEX WORK OR THE PURCHASE OF SEX AS A CRIMINAL ACT FUNDAMENTALLY UNDERMINE THE COMMITMENT TO HUMAN RIGHTS THAT THEY HAVE PREVIOUSLY MADE.

However, in its non-legally binding guidance on HIV in the workplace, ILO has recognised the vulnerability of sex workers and their need for workplace protections. ILO's 2010 recommendation on this subject urges that employers facilitate access to HIV prevention, treatment, care and support for all workers in all sectors, including formal and informal work: thus, sex work is included.¹⁶ The recommendation urges countries to ensure that all people who work have 'access to all means of prevention [...] in particular male and female condoms and, where appropriate, information about their correct use, and the availability of post-exposure prophylaxis', as well as to harm reduction measures, as advocated by the World Health Organization and UNAIDS.¹⁷ In this statement, the ILO echoes a long-standing position of UN member states on access to condoms and harm reduction services as a matter of human rights.¹⁸ Member states that have endorsed these measures but then say that harm reduction does not apply to sex work or the purchase of sex as a criminal act fundamentally undermine the commitment to human rights that they have previously made.

Some UN human rights bodies have commented upon, or made recommendations relating to, sex workers' working conditions and work-related rights. The UN Special Rapporteur on the right to health noted that safe working conditions are part of the enjoyment of the right to health and are a principal rationale for decriminalising sex work 'along with the institution of appropriate occupational health and safety regulations.'¹⁹

The Global Commission on HIV and the Law – a group of prominent experts including several former heads of state – called for the repeal of laws 'that prohibit consenting adults to buy or sell sex, as well as laws that

otherwise prohibit commercial sex [...] Complementary legal measures must be taken to ensure safe working conditions to sex workers.'²⁰ Some prominent human rights organisations have also commented on sex workers' work-related rights: Human Rights Watch calls for the decriminalisation of sex work, noting that criminalisation of sex work can lead to 'a host of ancillary human rights violations, including exposure to violence from private actors, police abuse, discriminatory law enforcement, and vulnerability to blackmail, control, and abuse by criminals.'²¹

National legal regimes and sex workers' work-related rights

National legal regimes – laws and court decisions – often do not reflect the human rights protections discussed in this paper. Commercial sexual transactions or activities associated with them – such as soliciting or communicating for sex work, keeping a brothel, and living off the earnings of sex work – are criminal acts under the law in over 100 countries.²² In many cases, criminal prohibitions are applied not only to sex workers themselves but also to clients and third parties, and even families, partners, and friends.²³

Broadly worded laws such as the 'pimping' law in Sweden criminalise landlords and friends of sex workers, even if there is no demonstrable intent to promote sex work. In addition to criminal law sanctions, municipal, civil or public order charges are often brought against sex workers for infractions such as loitering, vagrancy, impeding the flow of traffic, public indecency, or disorderly behaviour.²⁴ These also directly obstruct sex workers' rights to work and to safe and healthy working conditions. Sex workers are too often easy targets for law enforcement agents, and when combined with the stigma and

16 International Labour Organization. Recommendation 200: Recommendation concerning HIV and AIDS and the world of work. Geneva, 2010, p 2.

17 Ibid., para 15.

18 See, e.g., UN General Assembly, Declaration of Commitment on HIV/AIDS, UN doc. A/RES/S.26/2, 2001.

19 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the General Assembly of the UN, A/HRC/14/20, 27 April, 2010. Para 46.

20 Global Commission on HIV and the Law. *Rights, risk and health*. New York, 2012, p 99. At: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>.

21 Human Rights Watch, 'World Report: 2014', p. 47. At: http://www.nswp.org/sites/nswp.org/files/HRW_world%20report%202014_web_0.pdf.

22 Open Society Foundation Public Health Program. *The Global Commission on HIV and Law: Sex Workers – A brief for civil society*. New York, 2013. At: <http://www.opensocietyfoundations.org/sites/default/files/HIV-and-the-Law-Sex%20Workers-20130930.pdf>.

23 The term 'third parties' includes managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work.

24 UNAIDS. UNAIDS Guidance Note on HIV and Sex Work, Annex 1, 'The legal and policy environment and the rights of sex workers.' Geneva, 2011.



**IT IS CONTRARY
TO THE SPIRIT OF
WORK-RELATED
HUMAN RIGHTS FOR
THE STATE TO TAX
WORKERS WITHOUT
PROTECTING THEIR
BASIC RIGHTS OF
WORKERS BY LAW
OR RECOGNISING
THEIR CHOSEN WORK
AS LEGITIMATE.**

marginalisation they already face in many places, this situation can lead to abusive policing and arbitrary arrest and detention, all of which directly undermine their work-related rights.

In a few countries, improving working conditions for sex workers was an explicit motivation for reform of penal laws, or by court decisions suggesting the need for reform. For example, New Zealand's 2003 legislation decriminalised sex work, and one of the stated goals of the law was to 'promote the welfare and occupational health and safety of sex workers.'²⁵ When the impact of this law was later evaluated, sex workers noted that a number of improvements in their work conditions were linked to the legal change in the status of sex work. These improvements included feeling less pressured to accept undesirable clients, getting greater support from management in the matter of refusing clients, and feeling more empowered to insist on condom use.²⁶

A significant 2013 Supreme Court decision in Canada was brought in the case of *R. v. Bedford*, in which the Court struck down provisions the country's sex work laws, asserting that they endangered the working conditions of sex workers.²⁷ In particular, the prohibition in the Canadian Criminal Code against 'communicating' for the purpose of sex work – such as screening of dangerous clients and hiring security guards – was deemed by the Supreme Court as preventing sex workers from undertaking certain actions that could protect them from violence.²⁸ Furthermore, the law's broad provision against operating a 'bawdy house' blocked sex workers from working indoors: the Court judged this not to be in keeping with maintaining personal safety. The criminal provisions against sex work were also judged to be in conflict with sex workers' right to 'security of the person' under Canada's Charter on Rights and Freedoms,

a wide-ranging human rights law.²⁹ *Bedford* gave the Canadian government one year to produce legislation in response to the points laid out in the decision. Unfortunately, however, the Conservative-led government of Canada proposed a bill that was approved by Parliament in 2014 which criminalises the purchase of sex. Therefore, the bill effectively reinstates some of the Criminal Code provisions that were struck down by the *Bedford* ruling.³⁰

A few court decisions have helped to advance sex workers' claims to labour rights. In the 2010 South African case of *Kylie v. CCMA et al.*, the Labour Appeal Court ruled that a sex worker who had worked in a massage parlour and who had claimed unlawful dismissal had the right to fair labour practices, despite the fact that sex work was deemed illegal under the law.³¹ The successful prosecution in South African courts, and elsewhere, of violent criminals who assaulted or killed sex workers is, of course, also a step toward greater workplace safety for sex workers.³²

In Sweden, where the purchase of sex is a crime and where sex work is seen as inherently victimising and not a legitimate form of work, sex workers are nonetheless required to pay taxes. It is contrary to the spirit of work-related human rights for the state to tax workers without protecting their basic rights of workers by law or recognising their chosen work as legitimate.

Migrant workers whose rights – both as workers and as migrants – are subject to extensive international protections, nonetheless may be blatantly denied workers' rights in many countries when they engage in sex work. As a result, they may often be assumed to be victims of trafficking, they can face xenophobia and discrimination independent of their work, and they are not protected from arbitrary deportation or detention.³³

25 Parliament of New Zealand. Prostitution Reform Act, Public Act no. 28, 27 June 2003, sec. 3, 'Purpose'.

26 G Laverack, A Whipple. 'The sirens' song of empowerment: a case study of health promotion and the New Zealand Prostitutes Collective.' *Global Health Promotion* 17(1): p. 33–38, 2010.

27 Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101.

28 Ibid.

29 Canadian Charter of Rights and Freedoms. Constitution Act, 1982, part I. At: <http://laws-lois.justice.gc.ca/eng/const/page-15.html>.

30 Canadian HIV/AIDS Legal Network. Reckless endangerment: Q&A on Bill C-36: Protection of Communities and Exploited Persons Act. Toronto, 2014. At: <http://www.aidslaw.ca/site/wp-content/uploads/2014/11/BILLC36-June2014-ENG.pdf>.

31 J Whitten, 'Victory for sex worker,' *IOL News*, 29 May 2010. At: <http://www.iol.co.za/news/south-africa/victory-for-sex-worker-1.485488#.VNUEAv50xdl>.

32 Network of Sex Work Projects. Statement by South African civil society organisations, applaud verdict in de Jager case and call for decriminalisation of sex work (press statement), 27 May 2014. At: <http://www.nswp.org/news-story/statement-south-african-civil-society-organisations-applaud-verdict-de-jager-case-and-cal>.

33 See, e.g., TAMPEP. Sex work, migration, health. Amsterdam, 2009. At: http://tampep.eu/documents/Sexworkmigrationhealth_final.pdf.

Conclusions and recommendations

There is a very wide range of labour rights to which sex workers, like all workers, are fully entitled under human rights treaties that are widely ratified. Women in sex work should be supported as parents and should receive all maternity and parental benefits enjoyed by other women in the workforce. Many of the rights of workers that are well established in human rights law are particularly pertinent to sex workers' situations. The human rights protection against police interference with workers' rights, the right to form associations and unions, and the right to a full range of benefits are especially lacking in the lives of millions of sex workers. Instituting policies based on the idea that sex work does not constitute legitimate work, or that sex workers do not have agency to choose their work, contradicts a large body of human rights law and principles that all UN member states have endorsed.

It is clear that governments often fail to ensure that sex workers are able to benefit from the most basic rights of workers. Yet most countries have in fact identified and agreed to implement these rights as part of wider fundamental entitlements for everyone who works. Therefore, in failing to respect, protect, and fulfill the labour rights of sex workers, most countries in the world are in breach of the commitments they have made to workers' rights and women's rights and to fundamental guarantees of safety and non-discrimination.

The single most important measure for improving sex workers' opportunities to enjoy labour rights is the decriminalisation of sex work, as many experts have noted.³⁴ Sex work and all activities associated with it, and by all persons associated with it, should be removed from criminal law. United

Nations agencies concerned with human rights, workers' rights, HIV, and women's rights, should be vocal advocates for decriminalisation of sex work and, within the mandates of their organisations, should provide technical guidance and support for national-level decriminalisation, as well as the inclusion of sex work in existing labour, industrial, and business frameworks in relation to conduct and health and safety standards. Sex workers should participate meaningfully in these reforms.

The International Labour Organization should also take the lead in inclusion of sex work in its efforts to ensure safe and healthy workplaces for all. ILO should also promote the recognition of sex work as legitimate and decent work. It should assist national governments to support sex workers to receive the range of safeguards and benefits enjoyed by all workers. Above all, it should be a leading voice for asserting that sex work is not inherently harmful or exploitative but should be recognised as work that merits the same policy attention to occupational health and safety that is given to other kinds of work.

National governments should allow and encourage the formation of sex worker collectives and unions and enable their registration as legal entities. Sex worker organisations can be a valuable channel for information on occupational health and safety and workers' rights, and sex workers should be included in programme and policy decision-making in these areas.

Finally, national human rights institutions and mainstream labour leaders should help to educate policymakers and the public on the universal right to choose one's work, including sex work, and to practice one's chosen profession.

...IN FAILING TO RESPECT, PROTECT, AND FULFILL THE LABOUR RIGHTS OF SEX WORKERS, MOST COUNTRIES IN THE WORLD ARE IN BREACH OF THE COMMITMENTS THEY HAVE MADE TO WORKERS' RIGHTS AND WOMEN'S RIGHTS AND TO FUNDAMENTAL GUARANTEES OF SAFETY AND NON-DISCRIMINATION.

³⁴ See, for example, Global Commission on HIV and the Law. *HIV and the law: risks, rights and health*. New York, 2012.

The Real Impact of the Swedish Model on Sex Workers

#6

Sex Work and the
Right to Health



nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

Sex Work and the Right to Health

Introduction

All people have the right to health. In human rights law, the right to health is not the same as the right to be healthy – no government could guarantee good health to all individuals – but rather the right to a certain standard of health services. Having access to health services delivered in an ethical, respectful and scientifically sound way is an important part of living a life of dignity. Unfortunately, health services can also be a source of discrimination, stigma, and actions that are disrespectful and even abusive.

Sex workers in many parts of the world lack access to health services that respect their dignity and provide non-judgmental, affordable and good-quality care. Where sex work or activities related to it are forbidden under the law, sex workers may be well justified in fearing to seek care at government health facilities, even if government services are the most affordable. For example, in Sweden, the national strategy against HIV/AIDS (Prop.2005/06:60) highlights precisely why sex workers may be extremely reticent to access services and are sceptical of the treatment they might receive and risks they might encounter.

“The government’s long-term goal is to eliminate prostitution...In the Government’s view, it is important to highlight the close relationship that exists between men’s exploitation of persons in prostitution and the spread of HIV infections and other sexually transmitted diseases...It is of importance that there is close cooperation between authorities on communicable diseases, as well as the police and social services.”

Sex workers remain subject to stigma and marginalization, and are at significant risk of experiencing violence in the course of their work, often as a result of criminalization. As with other criminalized practices, the sex-work sector invariably restructures itself so that those involved may evade punishment. In doing so, access to health services is impeded and occupational risk increases.

(Anand Grover, UN Special Rapporteur on the Right to Health, 2010)¹

For the most part, explicit reference to the right to health remains absent from Sweden’s domestic health policies... Sweden has a commendable policy of actively mainstreaming human rights, including the right to health, into its international policies... Yet its explicit integration of the rights to health into its own national policies appears to be at a rudimentary level. Some might be driven to the conclusion that, at the domestic level, Sweden does not practice what it preaches.

(Paul Hunt, UN Special Rapporteur on the Rights to Health, Mission to Sweden, 2007)²

Local women who remain in prostitution, especially women addicted to heroin and other hard drugs, report increased vulnerability to violence and infection with sexually transmitted diseases...In the first years of its abolitionist prostitution policy, the Swedish Government largely neglected to address the situation of drug-addicted women in prostitution. This problem has somewhat improved in recent years...However, waiting periods are said to be far too long.

(Yakin Ertürk, UN Special Rapporteur on Violence Against Women, Mission to Sweden, 2007)³

SEX WORKERS IN MANY PARTS OF THE WORLD LACK ACCESS TO HEALTH SERVICES THAT RESPECT THEIR DIGNITY AND PROVIDE NON-JUDGMENTAL, AFFORDABLE AND GOOD-QUALITY CARE.

1 UN General Assembly. Report of the Special Rapporteur on the right to health, Anand Grover. UN doc. A/HRC/14/20, 27 April 2010.

2 UN General Assembly, Human Rights Council, Fourth session. Report of the Special Rapporteur on the right to enjoyment of the highest attainable standard of physical and mental health, Paul Hunt. UN doc. A/HRC/4/28/Add.2, 28 February 2007.

3 UN General Assembly, Human Rights Council, Fourth session. Report of the Special Rapporteur on Violence Against Women, its causes and consequences, Yakin Ertürk. UN doc. A/HRC/4/34/Add.3, 6 February 2007



...GOVERNMENTS SHOULD PROVIDE THE BEST POSSIBLE SERVICES THAT RESOURCES ALLOW, ENSURE THEY ARE PROVIDED TO ALL PEOPLE WITHOUT DISCRIMINATION, AND ENSURE THAT THEY ARE CONTINUALLY PROGRESSING TOWARD IMPROVED SERVICES.

In some countries where sex work is against the law, health workers are required or encouraged to report to the police the names of people they suspect of being sex workers. Many other factors may impede sex workers' access to respectful and good-quality health care, including wanting to avoid the moral judgments that health workers might make, inconvenient hours of operation of health facilities, and the concern that health workers may not understand the health needs and rights of sex workers. HIV has shone a spotlight on the health of sex workers worldwide, but the result has not always been better access to respectful health care for sex workers.

This paper describes the human right to health that all people have, analyses some particular challenges sex workers face in realising their right to health, and makes recommendations for enhancing sex workers' right to health. For a discussion on the ways in which Sweden fails to protect sex workers' right to health in the context of their work, please refer to the 3rd paper in the Swedish Model Advocacy Toolkit: Impacts of the Swedish Model's Justifying Discourses on Service Provision⁴.

International standards related to the right to health

In the global human rights regime, the right to health was first described in detail in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of that widely ratified treaty notes that all people have the right to the 'highest attainable standard of physical and mental health.'⁵ That phrase recognises that excellent health services are not built in a day. Rather governments should provide the best possible services that resources allow, ensure they are provided to all people without discrimination, and ensure that they are continually progressing toward improved services. The Covenant defines four priority areas of government responsibility in health services:

- ▶ the healthy development of the child and reduction of infant mortality;
- ▶ improvement of all aspects of environmental and industrial hygiene;
- ▶ the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- ▶ access to all medical services and medical attention in the event of sickness.⁶

4 NSWP, Advocacy Toolkit Briefing Paper #3: Impacts of the Swedish Model's Justifying Discourses on Service Provision, 2014. <http://www.nswp.org/resource/advocacy-toolkit-briefing-paper-3-impacts-the-swedish-model-s-justifying-discourses-service>

5 International Covenant on Economic, Social and Cultural Rights. UN General Assembly resolution 2200A(XXI), 16 December 1966.

6 Ibid., art. 12, 2(a)- 2(d).

In 2000, the UN Committee on Economic, Social and Cultural Rights issued a ‘general comment’ on the right to health that laid out more detailed criteria for judging whether the responsibility of governments to protect and fulfil the right to health is being met.⁷ Among the key recommendations in this expert comment are the following:

- Health services need to be available in sufficient quantity to meet everyone’s need.
- Services must be accessible in several ways: physically accessible, including to people living in remote areas, people with disabilities and other ‘marginalised’ persons; economically accessible (that is, affordable); and information about services must be within ready reach of all people.
- Health services must be scientifically sound and must respect medical ethics.
- Health services should be culturally appropriate.
- ‘Industrial hygiene’ in ICESCR (art. 12) means ‘the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment’.⁸
- The right to health should be understood to include ‘measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.’⁹
- Comprehensive HIV services should be part of standard health care as resources allow.

- Countries should make available through health services all of the products on the WHO Model List of Essential Medicines, which includes a very wide range of medicines, including treatment for HIV.
- The right to health includes protection from gender-based violence, including for the most marginalised persons.¹⁰

The Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹ was the first major human rights treaty to articulate reproductive health rights. These included the following:

- Women and men have the same right ‘to decide freely and responsibly on the number and spacing of their children’ and to have the information and means to enable the exercise of that right (art. 16(1e)).
- The state should ensure all services associated with pregnancy, ‘granting free services where necessary,’ including adequate nutrition during pregnancy and lactation (art.12(2)).

CEDAW also articulates related reproductive rights, such as paid maternity leave, non-discrimination in the workplace on the grounds of pregnancy, and child care for working parents.¹²

Most of the health rights contained in the ICESCR and CEDAW have also been adopted in regional human rights treaties in the Americas, Europe and Africa. The Convention on the Rights of Persons with Disabilities further extends the right to health to include good-quality services that do not exclude or discriminate against persons with disabilities.¹³

7 UN Committee on Economic, Social and Cultural Rights. General comment no. 14 on the right to the highest attainable standard of health. UN doc. no. E/C.12/2000/4, 11 August 2000.

8 Ibid., para 15.

9 Ibid., para 14.

10 Ibid., para 35.

11 Convention on the Elimination of All forms of Discrimination Against Women. UN General Assembly resolution 34/180, 18 December 1979.

12 Ibid., article 11.

13 Convention on the Rights of Persons with Disabilities and Optional Protocol. UN doc. A/RES/61/106, 13 December 2006.

SEX WORKERS REPORT THAT THEY OFTEN EXPERIENCE A LACK OF EMPATHY AND UNDERSTANDING WHEN ACCESSING SERVICES AFTER EXPERIENCING VIOLENCE, PARTICULARLY IN COUNTRIES WHERE THE LAW CRIMINALISES ASPECTS OF SEX WORK.

The reality of health rights for sex workers

Sex workers in many countries experience systematic and persistent stigma, marginalisation and discrimination in many spheres, including health services. Where they are unable to ensure consistent use of condoms by clients and other safe sex practices, they are vulnerable to sexually transmitted infections, including HIV. UNAIDS reports that HIV prevalence amongst sex workers is on average 12 times higher than in the general population, according to data from 110 countries.¹⁴ Figure 1 on the next page shows for 19 countries the dramatic disparity between HIV prevalence amongst sex workers and the whole population. In spite of facing increased HIV risk, sex workers are often excluded from comprehensive HIV prevention, treatment and care services. (Data on sexually transmitted infections other than HIV are less available, partly because many of these diseases are asymptomatic, and diagnostic testing of STIs other than syphilis is not readily available.¹⁵) Alarming, research carried out by Rose Alliance in Sweden in 2014 found that 30% of those interviewed have experienced problems in getting an HIV test in Sweden.

“I was scared after the condom broke one time when I work in Sweden, but the nurse ask me so many times why I needed a test. I don’t understand why”
(Kvinna, 20 years old)

Violence – physical, sexual and psychological – is a human rights violation but also a health problem. The direct health consequences of sexual violence – including rape – are physical injury, psychological trauma, and high risk of sexually transmitted infections and unwanted pregnancy.

Sex workers report that they often experience a lack of empathy and understanding when accessing services after experiencing violence, particularly in countries where the law criminalises aspects of sex work.

“I also talked a little bit with the midwife when she wanted to write a prescription of the pill to me after the abortion, and she completely failed to understand that it could be an abuse to have sex without a condom if the agreement is to have sex with a condom.”

“prejudice against sex workers is there at all the authorities,...including health care...experiences does teach you that people more or less think one has deserved it because it was one’s own choice to put oneself in the situation, so then the rape becomes one’s own choice too”

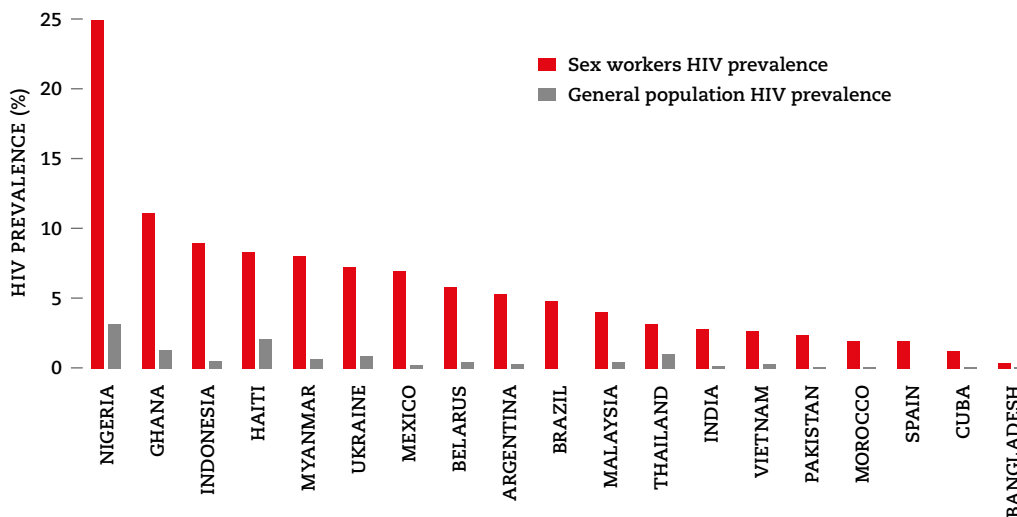
(Swedish sex workers interviewed from a Rose Alliance report on Discrimination)

Violence perpetrated by the police keeps sex workers from seeking the protection of law enforcement officers to which they have a right. As UNAIDS notes, it also keeps sex workers from seeking care at health facilities where they may fear that health workers will report them to the police.¹⁶

¹⁴ Joint United Nations Programme on HIV/AIDS (UNAIDS). *The gap report*. Geneva, 2014, p 189.

¹⁵ N Ortayli, K Ringheim, L Collins, T Sladden. Sexually transmitted infections: progress and challenges since the 1994 International Conference on Population and Development (ICPD). *Contraception* 90:S22–S31, 2014.

¹⁶ UNAIDS, *Gap Report*, op.cit.

FIGURE 1: HIV prevalence among sex workers and in the general population in selected countries, 2014Source: UNAIDS, *The gap report* 2014. (See note 11).

IN 2008, UNAIDS ESTIMATED THAT LESS THAN 1% OF GLOBAL EXPENDITURES ON HIV PREVENTION WAS DEVOTED TO SERVICES SPECIFICALLY FOR SEX WORKERS.

UNAIDS and WHO, as well as the high-level Global Commission on HIV and the Law, assert that criminalisation of sex work is a principal barrier to sex workers' access to health services.¹⁷ Possession of condoms is used as evidence of the 'crime' of sex work in the criminal justice systems of many countries where sex work is criminalised.¹⁸ Police can confiscate condoms, undermining both the health and the human rights of sex workers. As noted in WHO expert recommendations, decriminalisation of sex work would reduce 'the fear and stigma faced by sex workers,... thereby facilitating them to seek and utilize health and other services.'¹⁹ The Global Commission on HIV and the Law calls for decriminalisation of all aspects of sex work, including the purchase of sex, noting that all forms of criminalisation can be barriers to access to health services for sex workers.²⁰ Criminalisation of sex work is also a barrier to realising sex workers' rights as workers, including the right to a safe and healthy workplace.

Due to violence, criminalisation, stigma, discrimination and other marginalising factors, sex workers in many countries are excluded from HIV services in spite of their high risk. In 2008, UNAIDS estimated that less than 1% of global expenditures on HIV prevention was devoted to services specifically for sex workers.²¹ Health services for sex workers are most effective when they are tailored especially to the situation of sex workers and provided by health professionals trained to treat them respectfully, but few countries have such services.²² Moreover, many services supposedly designed to meet the needs of sex workers are limited to condom distribution and HIV testing but do not include CD4 testing or antiretroviral therapy, lubricants, or specialised services for male and transgender sex workers.²³ UNAIDS has long called for integration of reproductive health and HIV services at all levels of health systems to improve sex workers' access to both, but there is little evidence that this integration has happened in many low- and middle-income countries.

17 UNAIDS, *ibid.*; World Health Organization, UNAIDS, UN Population Fund (UNFPA), Network of Sex Work Projects. *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*. Geneva, 2012; Global Commission on HIV and the Law. *Rights, risk and health*. New York, 2012, p 99. At: <http://www.hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

18 UNAIDS, *ibid.*

19 WHO et al., *op.cit.*, p. 17.

20 Global Commission, *op. cit.*

21 UNAIDS. *Guidance note on HIV and sex work*. Geneva, 2012. At: http://www.nswp.org/sites/nswp.org/files/JC2306_UNAIDS-guidance-note-HIV-sex-work-en%5B1%5D_0.pdf

22 UNAIDS, *Gap Report*, *op. cit.*, pp. 194–195.

23 *Ibid.* See also World Health Organization, UN Population Fund, UNAIDS, Network of Sex Work Projects, World Bank. *Implementing comprehensive HIV/STI programmes with sex workers*. Geneva, 2013, esp. chapter 4.



**SAFE WORKPLACES
FOR SEX WORK
SHOULD HAVE
RELIABLE STOCKS
OF CONDOMS AND
SHOULD SUPPORT
SEX WORKERS IN
THEIR EFFORTS TO
PERSUADE CLIENTS
TO USE CONDOMS
CONSISTENTLY.**

The anti-sex work policy of the U.S. government, which remains the most important donor to HIV programmes internationally, has been an important barrier to funding health services for sex workers. Both U.S. anti-trafficking laws and the law enabling U.S. funding for HIV programmes internationally limits U.S. funding to organisations that are formally opposed to prostitution. This provision has had the obvious direct effect of making less funding available to the organisations most likely to be working closely and doing effective health programming with sex workers and their collectives.²⁴ Some experts conclude, moreover, that this policy effectively closed down even some programmes not funded by the U.S. because HIV activities meant for sex workers became taboo, and organisations feared losing U.S. support for other kinds of activities.²⁵ Other countries, notable Sweden, also have anti-sex work policies built-in to their foreign aid requirements. The Swedish International Development Cooperation Agency (SIDA), a government agency working on behalf of the Swedish parliament and government, in response to a parliamentary question on the subject of cooperation with the Dutch agency ‘Mama Cash’, stated that:

“SIDA has...made it known that they are well aware of Mama Cash’s attitude to prostitution and do not cooperate with the organization around such activities. In SIDA’s agreement with Mama Cash there is a specific clause prohibiting the Swedish contribution to be used for the decriminalization of sex purchases. In SIDA’s dialogue with the organization it is constantly emphasized that funds from SIDA may not be used for any activities related to women in prostitution or the policy or advocacy work around ‘sex workers’ rights”

(Q & A session in Swedish parliament, 5 December 2012)

In countries where sex work is legal under certain circumstances and regulated by the state, mandatory health examinations, including HIV testing, may be administered in punitive or disrespectful ways.²⁶ Similarly, so-called ‘100% condom use’ programmes, which are meant to ensure universal practice of safe sex in brothels, nightclubs or other sex work venues, have been implemented in ways that violate the rights of sex workers. In some countries, police have publicly ‘named and shamed’ sex workers accused of not using condoms, and accusations of non-use have led to mandatory medical examinations.²⁷ UN agencies and the Global Network of Sex Work Projects recommend voluntary universal condom access – always free of coercion – rather than punitive 100% condom programmes.²⁸ Safe workplaces for sex work should have reliable stocks of condoms and should support sex workers in their efforts to persuade clients to use condoms consistently.²⁹ Voluntary, supportive programmes of this kind make punitive measures unnecessary.

24 MH Ditmore, D Allman. An analysis of the implementation of PEPFAR’s anti-prostitution pledge and its implications for successful HIV prevention among organizations working with sex workers. *Journal of the International AIDS Society* 16:17354, 2013, <http://www.jiasociety.org/index.php/jias/article/view/17354>

25 Ibid.

26 World Health Organization, Regional Office for the Western Pacific. Experiences of 100% condom use programs in selected countries of Asia. Manila, 2004.

27 Open Society Foundations. Laws and policies affecting sex work: a reference brief. New York, 2012.

28 WHO et al., *Implementing comprehensive HIV/STI programmes*, op.cit., p. 88.

29 Ibid.



THE WORK OF SEX WORKER-LED ORGANISATIONS IN MANY PARTS OF THE WORLD IN CREATING AND IMPLEMENTING APPROPRIATE SERVICES FOR SEX WORKERS AND EDUCATING WHOLE COMMUNITIES (NOT JUST SEX WORKERS) ABOUT HIV PREVENTION HAS BEEN ONE OF THE SUCCESSES OF HIV RESPONSES.

Sex worker-led services as best practice

Meaningful participation of sex workers and sex worker collectives has proven to be the key to ensuring the right to health services for their peers. The work of sex worker-led organisations in many parts of the world in creating and implementing appropriate services for sex workers and educating whole communities (not just sex workers) about HIV prevention has been one of the successes of HIV responses.

In 2013, UNAIDS, WHO, UNFPA and the World Bank worked with the Global Network of Sex Work Projects to produce practical guidance on good practices in health services for sex workers based on experiences from many countries in which sex workers were meaningfully involved in design, implementation and evaluation of health services.³⁰ A few examples illustrate approaches that can be effective and empowering:

- ▶ Many health programmes for sex workers employ peer educators, but some assume that peer educators can work indefinitely as volunteers, or they fail to give peer educators opportunities for leadership or advancement. Experiences from a number of countries show that peer educator networks are most effective and sustainable when educators are adequately compensated, including having a regular salary for outreach work and compensation for the costs of transportation, training programmes, and use of mobile phones.³¹ Many successful peer educator networks also enable outreach workers to receive training in the management, oversight or mentoring of outreach networks or in policy-level or community-level advocacy and public speaking.

- ▶ In some countries, finding and maintaining drop-in centres or safe spaces for sex workers has been successful both for promoting safety and for delivery of or referral to health services.³² These may be places where sex workers can relax, form networks, share experiences, do laundry or have a shower, and in some cases get information about or access to health care services. Drop-in centres may be strategically located near health facilities, or they may organise and host health information events featuring local service providers. Ideally drop-in centres or safe spaces should be planned, managed and evaluated with meaningful involvement of sex workers and their organisations.
- ▶ Sex workers can play an important part in monitoring the quantity, quality and accessibility of health services they might frequent.³³ Only sex workers themselves understand the ways in which health services can be either demeaning and inhuman or supportive and respectful. If they are able to develop networks in their communities, sex workers can organise simple surveys that will enable their peers to recount experiences with particular health care providers, and they can use the results in strategic advocacy to improve the performance of service providers. The results can also form the basis for sex workers to train health workers if they can create opportunities to do so.

³⁰ Ibid.

³¹ Ibid., p. 60.

³² Ibid., pp. 62–63.

³³ Ibid., pp. 68–72.



MEANINGFUL PARTICIPATION OF SEX WORKERS IN CONDOM PROGRAMMES IS THE BEST WAY TO ENSURE PROVISION OF THE MOST APPROPRIATE CHOICE OF TYPES OF CONDOMS AND LUBRICANTS AND THE MOST APPROPRIATE MEANS OF COMMUNICATION ABOUT THE IMPORTANCE OF USING THE PRODUCTS.

- Sex worker-led condom and lubricant promotion has been shown to be more effective than interventions where sex workers are only recipients of assistance. Condom programmes designed without the meaningful participation of sex workers often exclude lubricants. Sex worker-led programmes can work effectively with managers and brothel owners to ensure access to condoms and lubricant in workplaces, they can best identify sustainable supply chains and the best distribution channels to reach all sex workers, and they can support sex workers in negotiating condom use with spouses or intimate partners. Meaningful participation of sex workers in condom programmes is the best way to ensure provision of the most appropriate choice of types of condoms and lubricants and the most appropriate means of communication about the importance of using the products. Sex workers can also most effectively communicate information about means of safe sex in addition to condoms.
- Meaningful participation of sex workers in programme design, implementation and evaluation is essential for creating and sustaining health services that meet sex workers' needs beyond condoms, lubricants and HIV.³⁴ Harm reduction services for sex workers who inject drugs are proven to be more effective when peers are meaningfully involved in outreach, information sharing and service delivery, and peers can also be helpful in sharing information about treatment for drug dependence. Sexual and reproductive health services will be more accessible and more appropriate to the needs of sex workers if they are involved in the planning and implementation. For example, sex workers will know best the contraceptive methods and information that are suited to their needs.

³⁴ Ibid., chapter 5.

Conclusions and recommendations

THE RIGHT TO HEALTH IS A CENTRAL ELEMENT OF A LIFE OF HUMAN DIGNITY FOR SEX WORKERS, AS FOR ALL PEOPLE.

The right to health is a central element of a life of human dignity for sex workers, as for all people. Sex workers are routinely kept from realising their right to health by stigma, discrimination, criminalisation, unjustly punitive health regulations, violence, and ill-conceived donor policies. Many countries simply do not honour the commitments they have made to ensure good-quality, accessible, respectful and rights-based health services for all people, including sex workers. Nonetheless, often through the collective action of sex workers themselves, there are good examples in a number of countries of health services meeting sex workers' needs, and there are international guidelines to help replicate those experiences.

Successful experiences in improving sex workers' access to good-quality health services lead to a number of lessons and recommendations:

- ▶ **Decriminalisation is a key to the right to health:** Criminalisation of sex work contributes to violence against sex workers, bad practices in health services such as mandatory reporting to police, stigma and discrimination in health services, and fear of seeking government-supported services. It keeps governments and employers from making workplace health and safety for sex workers a priority. Decriminalisation of sex work may not solve all problems immediately, but it is essential for removing many barriers to health care for sex workers. National human rights and public health commissions, leaders and organisations should join with sex worker organisations in strategising and advocating for decriminalisation of sex work as a means of protecting, respecting and fulfilling sex workers' right to health.
- ▶ **Right to organise and associate:** Organisations or collectives of sex workers may be able to do more than individuals to remove barriers to health services. No matter how sex work is treated under the law, sex workers should be able to form organisations. Organising is likely to improve sex workers' ability to bring a strong voice to community-level or policy-level discussions on public health services or advocacy for better services in a given location. Sex workers able to pool their resources may also be able to organise basic services for themselves. All countries should respect the right of sex workers to organise and form associations and should remove discriminatory barriers to this organising.

**PUBLIC HEALTH
AUTHORITIES
SHOULD SUPPORT
SEX WORKER-LED
SERVICES, ESPECIALLY
THOSE THAT REACH
MARGINALISED
PERSONS WHO FACE
DIFFICULT BARRIERS
TO REGULAR SERVICES.**

- **Quality and accessibility of health services:** Public health authorities should recognise that the whole community benefits when the right of sex workers to good-quality health services is respected. Public health authorities should ensure that sex workers participate meaningfully in the design, implementation and evaluation of health services that they use and in the training of health care workers. If health professionals are disrespectful to sex workers, there should be functioning mechanisms of complaint and redress, and health workers should know that they can be sanctioned for disrespectful conduct toward sex workers. Public health authorities should support sex worker-led services, especially those that reach marginalised persons who face difficult barriers to regular services. In addition, the public health system should make every effort to ensure that sex workers have ready access to integrated services for reproductive health, sexually transmitted infections and basic health care. Health authorities must ensure that sex workers do not face discriminatory exclusion from health insurance schemes or health information. United Nations leaders in UNAIDS, WHO and UNFPA should use all opportunities to advocate with member states for high-quality, comprehensive health services for sex workers to be a high priority in national policy-making.
- **Workplace health:** Public health and occupational safety authorities should work together to ensure that sex workers have healthy and safe working conditions, which is the right of all workers. (See also the paper in this series on ‘Right to work and other work-related human rights.’) Even if some elements of sex work remain illegal or subject to administrative sanction, it is in the interest of fulfilling the rights of all people to reduce the risk of violence, infectious disease and other health problems faced by sex workers in their regular work.

The Real Impact of the Swedish Model on Sex Workers

#7

**Sex Work and Arbitrary
Interference with Families**

Sex Work and Arbitrary Interference with Families

IN SOME COUNTRIES, SEX WORKERS CAN FACE LOSING CUSTODY OF THEIR CHILDREN JUST BY VIRTUE OF BEING SEX WORKERS, A SITUATION THAT IS OFTEN BASED ON MORAL JUDGMENTS.

“After one year and three months, to finally see her standing in front of me. The feeling when she runs into my arms and hugs me, to sniff her hair which immediately becomes soaking wet with my tears, stroke my finger along her little nose and chin, stroking her little hand and hold her tiny body in my firm embrace and kiss her eleven thousand times on the forehead. To finally get to look into her eyes and tell her seventeen thousand times how missed and loved she is. And never want to let go again, but must. Created by my body, the two of us are part of each other forever. The love for my children is indescribable. (And the justice system has said joint custody and half the time, where were you when everything was going on?).”¹

(Excerpt from Petite Jasmine’s blog after she was allowed to see her daughter)

“Sex workers lose custody of their children through social services or family courts solely because of their occupation, and not based on any specific evidence of harm or incapacity to parent, violating their right to be free from arbitrary interference with their family life and non-discrimination.”

(Case study from Portugal)²

“If you want to be 100% safe, you should not have any children in Sweden if you are a prostitute.”

(Swedish sex worker cited in Levy and Jakobsson)³

Introduction

All persons – men and women – have the right to establish and/or create a family. Everyone also has a right to protection from arbitrary interference with his or her family and privacy. Furthermore, the right of children to enjoy the protection of their parents is well established in human rights law.

Judged by society and the state, sex workers around the world face stigma and discrimination as parents. In some countries, sex workers can face losing custody of their children just by virtue of being sex workers, a situation that is often based on moral judgments. The extreme measure of taking children away from their biological parents is prevented in most places by rigorous requirements of evidence of misdeeds or incapacity of the parents. Moral judgments should not be substituted for that evidence. In countries such as Sweden, law and policy based on a conceptualisation of sex workers as victims who lack agency can contribute to the idea of sex workers as unfit parents.

This paper firstly explains international human rights law related to parental rights and highlights standards relevant to the rights of sex workers as parents. Secondly, it explains ways in which these rights are violated. Some remedies for these violations are also suggested.

1 Jasmine, P., 2013, ‘Äntligen!’, available online at <http://www.njutningtillsalu.com/2013/05/antligen.html> (last accessed 23 November 2013; translation via Google Translate).

2 International Committee on the Rights of Sex Workers in Europe, 2005, *The Declaration of the Rights of Sex Workers in Europe*, available online at <http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/default-brussels2005.pdf> (last accessed 25 September 2014).

3 J Levy, P Jakobsson. Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers. *Criminology and Criminal Justice* 14(5): pp 593–607, 2014.



THE RIGHT OF CHILDREN TO ENJOY THE PROTECTION OF THEIR PARENTS IS AN IDEA THAT PERMEATES THE MOST WIDELY RATIFIED HUMAN RIGHTS TREATY IN THE WORLD, THE CONVENTION ON THE RIGHTS OF THE CHILD.

International human rights law and standards

The widely ratified International Covenant on Civil and Political Rights (ICCPR) is one of the main pillars of the global human rights system. The Covenant guarantees all persons ‘of marriageable age’ the right to ‘found a family’ as well as the right to marry.⁴ The Covenant also guarantees the right of every person to be free from ‘arbitrary or unlawful interference with his privacy, family, home or correspondence’ and from ‘unlawful attacks on his honour and reputation,’ as well as the right of legal protection in the case of such interference or attacks.⁵ In its commentary relating to the right to establish a family, the UN committee overseeing compliance with the ICCPR notes that spouses are assumed to have equal rights and responsibilities with respect to the family, and that therefore in child custody or divorce proceedings, discrimination against either party is prohibited.⁶

A body of reproductive rights norms and law also benefits all people. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees the equal right of men and women to ‘decide freely the number and spacing of their children’.⁷ The notion of autonomy is particularly crucial to women’s equality in reproductive decision-making.⁸

The right of children to enjoy the protection of their parents is an idea that permeates the most widely ratified human rights treaty in the world, the Convention on the Rights of the Child. The main article in the Convention that discusses separation of children from their parents notes that the state can intervene to separate parents and children only in rare cases when the best interests of the child are clearly served as determined by ‘competent bodies subject to judicial review.’⁹ This extreme measure might happen, according to the Convention, in cases ‘involving abuse or neglect of the child by the parents, or...where the parents are living separately and a decision must be made as to the child’s place of residence.’¹⁰ The article then refers to situations of ‘detention, imprisonment, exile, deportation or death’ and identifies these as factors that lead to separation of children from their parents.¹¹ Clearly, the separation of children from their parents is seen in the Convention as not to be taken lightly.

Other provisions of the Convention are relevant to this issue. The Convention highlights the responsibility of the state to make its ‘best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child’ and that both parents be given ‘appropriate assistance’ by the state to enable them both to take on this responsibility.¹² The Convention also makes clear that adoption of children, for example, must never be the result of coercion on the parents, and should be undertaken only if other measures are clearly unable to ensure the child’s best interests.¹³

4 International Covenant on Civil and Political Rights. UN General Assembly, 1966, art. 23(2).

5 Ibid., art. 17.

6 Human Rights Committee. General comment no. 19: Article 23 (the family). Geneva, 1990.

7 Convention on the Elimination of All Forms of Discrimination Against Women, UN General Assembly res. 34-180, 1979, art. 16.1(e).

8 Center for Reproductive Rights and UNFPA. *ICPD and human rights; 20 years of advancing reproductive rights through UN legal bodies and legal reform*. New York, 2013. At: http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_ICPD_and_Human_Rights.pdf.

9 Convention on the Rights of the Child, UN General Assembly, 20 November 1989, Article 9(1).

10 Ibid.

11 Ibid., Article 9(4).

12 Ibid., Article 18.

13 Ibid., Article 21.



...JASMINE'S CHILDREN WERE PLACED WITH HER EX-PARTNER WHO HAD A DOCUMENTED HISTORY OF ABUSE. HE LATER KILLED JASMINE.

Indeed, the letter and spirit of the Convention's provisions on the issue of separation of children from their parents are clearly based on the fundamental idea that such separation is an extreme measure, and one that should never be undertaken in any way that could be regarded as discriminatory, or arbitrary. As noted by the Committee on the Rights of the Child, which oversees compliance with the Convention:

[G]iven the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child.¹⁴

Several provisions of the Convention on the Rights of the Child also guarantee children – according to their age and maturity – the right to express their viewpoint and to participate in decision-making concerning their situation and interests. Similar protections of the right of children to enjoy family life with their parents are also found in regional human rights treaties in Europe, Africa, and the Americas.

Arbitrary separation of children from parents in sex work

In 2005, sex worker organisations in Europe came together to compose a declaration of their rights. One of the provisions they highlighted was that 'current or former engagement in sex work should not be considered grounds for challenging a person's fitness to

be a parent or have custody of his or her children.'¹⁵ Although there is no global data on this particular point it is clear – as evidenced from anecdotal accounts from around the world – that sex workers are routinely judged to be unfit parents. It is also clear that this judgment is not based on the careful consideration of the best interests of the child and the rights of parents mandated by international human rights norms, but rather it is based on arbitrary moral judgments as well as unjustified attacks on the honour of sex workers.

In places where sex work is criminalised, criminalisation is a clear contributing factor to such judgments. Yet even where sex work is not criminalised as such – as in countries that criminalise the purchase but not the sale of sex – sex workers still are at risk of losing custody of their children. For example, to justify the policy of criminalising clients to 'protect' sex workers in Sweden, the state portrays sex workers as traumatised victims who are unstable and unable to exercise agency.¹⁶ This depiction contributes to the viewpoint that sex workers are 'traumatised' persons with no agency and who are not fit to be parents. Furthermore, if in Sweden sex workers themselves refuse to condemn sex work – work which is legal – this is seen as a character deficiency. Sex workers are thus put in an impossible position: they are forced to lie about, or outright reject, their means of livelihood. In this regard, the case of Petite Jasmine is shocking but unfortunately not unique. Her refusal to condemn sex work was part of the state's justification for removing her children from her custody, and in this very sad instance, Jasmine's children were placed with her ex-partner who had a documented history of abuse. He later killed Jasmine.¹⁷ In Sweden, even though sex work itself is not illegal, police and social service agents collude in order to target sex workers for child custody proceedings.

¹⁴ UN Committee on the Rights of the Child, 29 May 2013, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (art. 3, para. 1), CRC/C/GC/14, para 61

¹⁵ International Committee on the Rights of Sex Workers in Europe, 2005, *The Declaration of the Rights of Sex Workers in Europe*, available online at http://www.sexworkereurope.org/sites/default/files/userfiles/files/join/dec_brussels2005.pdf.

¹⁶ Global Network of Sex Work Projects. *The real impact of the Swedish model on sex workers: an advocacy tool kit. Part 4: Impacts of other legislation and policy – The danger of seeing the Swedish model in a vacuum.* Edinburgh, 2014. At: <http://www.nswp.org/resource/the-real-impact-of-the-swedish-model-sex-workers-advocacy-toolkit>.

¹⁷ Ibid.



**...SWEDEN'S
DECISION-MAKING
REGARDING STATE
'PROTECTION' OF SEX
WORKERS' CHILDREN
FUNDAMENTALLY
APPEARS TO LACK
MEANINGFUL
PARTICIPATION
OF BOTH PARENT
AND CHILD.**

It is somewhat ironic and disheartening that Sweden played such an important role in the development of the Convention on the Rights of the Child,¹⁸ but now has policies that, in relation to sex workers and their families, seem to disrespect the foundational principles of this treaty. Throughout the development of the CRC, Sweden frequently advocated what were, at the time, ground-breaking ideas about children having the chance to participate in decision-making about state policies and practices that concern them.¹⁹ However, Sweden's decision-making regarding state 'protection' of sex workers' children fundamentally appears to lack meaningful participation of both parent and child.

Sex workers are cavalierly disparaged as parents, but it is often the law itself that undermines sex workers' ability to be parents. Provisions of some national laws are in direct contradiction to the human rights mandate of states, which aims to support people in carrying out their parental responsibilities. In India, for example, sex workers are unable to register the birth of their children if they cannot prove the definitive identity of the father of the child, and no birth registration means the child is unable to enter school and receive other public benefits.²⁰ In Canada, alarmingly, an overly broad definition of the term 'bawdy house' (brothel) in the law could justify removing children living in the home of a sex worker even if they were never present when sex work occurred, and possibly even if sex work did not take place in that particular location.²¹

It is undoubtedly true that children of sex workers face discrimination at school and in other social situations. Yet this is not inherently a consequence of sex work: rather it is more often the result of unjust and arbitrary criminalisation. When sex workers are able to organise – for example, in a number of collectives in India – they have made great progress working with communities and amongst themselves to minimise discrimination against their children in school or otherwise, and to ensure good educational opportunities.²² In Sonagachi, Kolkata, home of the well-known sex work collective Durbar Mahila Samanwaya Committee (DSMC), the children of sex workers have organised themselves to fight for their rights and those of their parents.²³ In this case, the children asserted their desire to be with their mothers and supported their mothers' capacity to be good parents. This response was also a reaction to an Oscar-winning documentary called 'Born into Brothels' which portrays DSMC members as uncaring parents.²⁴

18 Office of the UN High Commissioner for Human Rights. *Legislative history of the Convention on the Rights of the child*, vol. 1. New York and Geneva, 2007. At: <http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>.

19 Ibid.

20 J Godwin. *Sex work and the law in Asia and the Pacific: laws, HIV and human rights in the context of sex work*. Bangkok: UNAIDS, UNFPA and UNDP, 2012, p. 3.

21 G Betteridge. *Sex, work, rights: reforming Canadian criminal laws on prostitution*. Toronto: Canadian HIV/AIDS Legal Network, 2005, p. 70.

22 See, e.g., SANGRAM/VAMP Team. *The VAMP/SANGRAM sex workers movement in India's southwest* (Changing the World series). Toronto: AWID, 2011.

23 O Sircar, D Dutta. *Beyond compassion: children of sex workers in Kolkata's Sonagachi*. *Childhood* 18(3): 333–349, 2011.

24 Ibid.



...SEX WORKERS WERE ONCE AGAIN PORTRAYED AS NEEDING PITY AND RESCUE, RATHER THAN AS RESPONSIBLE PERSONS WITH THE AGENCY TO MAKE RATIONAL DECISIONS AND TO GUIDE AND PARENT CHILDREN.

DSMC also joined the case of *Budhadev Karmaskar v. West Bengal* (2011), which was prompted by the brutal murder of a sex worker. While the murderer was convicted and the court upheld the right of sex workers to have official documents – including ration cards and registration of the birth of their children – it also concluded that ‘a person becomes a prostitute not because she enjoys it but because of poverty’. The court therefore declared that ‘society must have sympathy toward sex workers and not look down on them.’²⁵ The court also instructed the formation of a panel to guide India on the ‘rehabilitation’ of sex workers, including vocational training to allow them to escape sex work. Even with this small recognition of their status as human beings and as parents, sex workers were once again portrayed as needing pity and rescue, rather than as responsible persons with the agency to make rational decisions and to guide and parent children.

A study of street-based sex workers in New York City indicated that the city’s policy did not regard either sex work or drug use inherently as causes for removing children from a parent. However, sex workers who lost custody of their children reported that they knew that they would have to demonstrate an end to their drug use in order to regain custody.²⁶

While in many countries HIV responses have prompted some attention to health services for sex workers, it is rare that health facilities where sex workers receive care offer crèches or other child care, or offer the possibility of integrated paediatric care along with services for working parents.

²⁵ Supreme Court of India, Criminal Appellate Jurisdiction, Criminal appeal no. 135, *Budhadev Karmaskar v. State of West Bengal*, 2011.

²⁶ J Thukral, M Ditmore. *Revolving door: an analysis of street-based prostitution in New York City*. New York: Urban Justice Center, 2005.



Conclusions and recommendations

Sex workers face many forms of discrimination, but among the most extreme is the removal of their children from them on the basis of arbitrary and moral judgments, or by unjustified depictions of sex workers as irresponsible and lacking agency. Unjust criminalisation of sex work or of activities associated with sex work makes it easy for state authorities to portray sex workers as unfit parents. Where, as a matter of policy, sex workers are portrayed as traumatised victims, it is also easy to make the case that they are incapable of being good parents.

International legal protections and standards on this issue are clear:

- ▶ Children must not be removed from the care of their parents except as a measure of last resort, where there is a well-evidenced justification based on the best interests of the child (subject to judicial review) and never on the basis of arbitrary moral judgments.
- ▶ Judging sex workers as incapable of being parents solely on the grounds of a moral judgment against sex work is contrary to human rights norms.
- ▶ All people have the right to be free from arbitrary interference with their family life and privacy and from arbitrary, discriminatory, and unjust attacks on their honour.

It is clear that many countries grossly violate these basic standards. Unsupported judgments of moral character and negativity towards the parental capacity of sex workers flourish due to policy, law, and social mentality. Connecting sex work to unfit parenting is not only discriminatory: it is an unjust attack on the honour, rights, and dignity of sex workers. International leadership is called for because this is an area where countries

still have much to accomplish in order to rectify such policies and practices. In particular:

- ▶ As part of decriminalisation of all aspects of sex work, national governments should urgently review their laws, policies, regulations, programmes, and social services to ensure that actions taken supposedly to protect the children of sex workers do not violate the rights of the sex worker or the children involved, and that the actions reflect the best interests of the child. Child protection services, judges, prosecutors, and police should be made aware – preferably with the help of sex worker organisations and human rights leaders – that sex work in itself is not grounds for judging a person to be an unfit parent. Countries should also review their policies and practices relating to sex work with reference to the human rights commitment they have made to support all parents in fulfilling their parental responsibilities.
- ▶ International organisations should provide guidance for the review of national laws, policies, and practices described in the previous point.
- ▶ National and international human rights bodies should make public statements about the injustice of using sex work as the reason for removing children from their parents. These bodies should also advocate and facilitate the review of cases in jurisdictions where sex workers have lost child custody rights.
- ▶ Sex workers should be allowed to form organisations and collectives like any other group in civil society. They should be supported by the state to use their collective capacity to fulfil their responsibilities as parents.

**UNSUPPORTED
JUDGMENTS OF
MORAL CHARACTER
AND NEGATIVITY
TOWARDS THE
PARENTAL CAPACITY
OF SEX WORKERS
FLOURISH DUE TO
POLICY, LAW, AND
SOCIAL MENTALITY.**

The Real Impact of the Swedish Model on Sex Workers

#8

**Sex Work and Violence:
Obligations of the State**



nswp

Global Network of Sex Work Projects
Promoting Health and Human Rights

Sex Work and Violence: Obligations of the State

The State has an obligation to investigate all acts of violence against women, including systemic failures to prevent violence against women. Where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation. The investigation should also be conducted with a gender perspective and consider a victim's special vulnerability.

(Rashida Manjoo, UN Special Rapporteur on Violence Against Women, 2013)¹

**...WHERE THERE IS
CRIMINALISATION OF
SEX WORK – INCLUDING
CRIMINALISATION
OF THIRD PARTIES
SUCH AS CLIENTS –
VIOLENCE AGAINST SEX
WORKERS WILL, AND
DOES, FLOURISH.**

Introduction

Sex workers are vulnerable to violence in many settings. They often experience violence at the hands of the police, but also from clients and those for whom violence is an expression of hatred or social disdain. Many experiences of violence recounted by sex workers around the world stem from stigma and discrimination, which are heightened when sex work is criminalised. Violence against sex workers may take the form of rape and other sexual violence, beating and other physical violence sometimes in acts amounting to torture, and, in the worst cases, homicide, as well as numerous forms of psychological and emotional violence.² Furthermore, vilification, hate speech, and social isolation can be violent, even if they do not directly attack bodily integrity. Male, female and transgender sex workers are all vulnerable to violence.

The murder of Petite Jasmine in Sweden, a horrific outcome of the stigma and related abuse caused by the Swedish model of criminalising the purchase of sex, prompted the production of this series of papers on sex work and human rights, including the right of sex workers to be protected from violence. The intention of these papers is to highlight that where there is criminalisation of sex work – including criminalisation of third parties such as clients – violence against sex workers will, and does, flourish. This paper explains that violence and related abuse against sex workers are a violation of fundamental human rights and suggests some ways to use human rights norms to address this widespread abuse.

It should be noted that depicting sex work as inherently victimising and a form of violence against sex workers – who are portrayed as having no agency and requiring protection in the form of removing them from sex work – contradicts the spirit of human rights protections to which Sweden and other Nordic countries are committed. Under human rights law, all persons have the agency to choose their means of livelihood, and all persons enjoy the right to bodily security and to lives of dignity and freedom from stigma and discrimination.

1 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, Para 73, 14 May 2013.

2 WHO, UNFPA, UNAIDS, NSWP, World Bank. Implementing comprehensive HIV/STI programmes with sex workers: practical applications from collaborative interventions, chapter 2, 'Addressing violence against sex workers,' Geneva, 2013, p 23.



EVEN WHERE THE POLICE ARE NOT DIRECT PERPETRATORS OF VIOLENCE, IF THEY HARASS, ISOLATE, OR MARGINALISE SEX WORKERS, THEY DEEPEN STIGMA AND MAKE IT EASIER FOR SEX WORKERS TO BE VILIFIED.

Sex workers face many forms of violence and vilification

I want to report the crime but don't think I can win, but I don't have any organisation to back me up, so if I can't win then it will only get worse afterwards.

(A sex worker who was raped by a police officer in Phnom Penh, 2009)³

Information on violence against sex workers is, in some places, very limited. This leads to underestimation of the problem of violence, but the lack of data is not surprising. As noted in the annexes to the UNAIDS Guidance Note on HIV and Sex Work:

“... sex workers who suffer violence or abuse at the hands of clients or other persons are too fearful to report these offenses to the police. They have little reason to expect that the police would help them.”⁴

In many settings, police may be the principal perpetrators of violence, making it especially unlikely that sex workers would turn to them to report violent abuse. Even where the police are not direct perpetrators of violence, if they harass, isolate, or marginalise sex workers, they deepen stigma and make it easier for sex workers to be vilified. Even if sex workers have the courage to report incidents of violence, in many places it is likely that no official action would be taken. In some places such as Sweden, police and social service agents may work together to target sex workers as a way to arrest clients, or to make the case that sex workers are unfit parents. These actions also make it unlikely that sex workers will exercise their right to seek the protection of the state from violence and other abuse. (See also the paper in this series on child custody.)

Nonetheless, thanks to the work of sex worker organisations as well as some human rights groups and researchers, there are many accounts of violence and related abuse against sex workers.⁵ A full summary is beyond the scope of this paper, but a few examples may convey the depth of these abuses. The most extreme form of violence is homicide, and it is shocking that sex workers remain vulnerable to violent murder in many places. The case of Petite Jasmine is unfortunately not an isolated case, and is far from the only such story from the global north. One of the worst cases of serial killing in Canada involved the murder of twenty-six sex workers in the Vancouver area in 1999–2001. Police did not take reports of missing sex workers seriously, noting that they ‘come and go,’ or suggesting that they were keeping out of sight after disputes over drugs.⁶ In at least one case they ignored the complaint of a sex worker who came to them having already been beaten: she was later killed.⁷ Following a long period of police neglect, the murdered sex workers were found buried on the pig farm of the killer, who is now serving a life sentence. Shockingly, after the closure of that case, sex workers continued to be targeted by killers in parts of Canada.⁸

3 Amnesty International. ‘Breaking the Silence –Sexual Violence in Cambodia’, [ASA 23/001/2010] 2010

4 UNAIDS. Guidance Note on HIV and Sex Work, annex 1, ‘The legal and policy environment and the rights of sex workers,’ Geneva, 2011.

5 See, e.g., WHO, UNFPA, UNAIDS, NSWP, World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical applications from collaborative interventions*, esp. chapter 2, ‘Addressing violence against sex workers,’ pp 19–40. Geneva, 2013.

6 Y Jiwani, ML Young. Missing and murdered women: reproducing marginality in news discourse. *Canadian Journal of Communication* 31: pp. 895–917, 2006.

7 T Theodore, ‘Police were callous to beaten sex worker, missing-women inquiry told,’ *Globe and Mail*, 27 February 2012;

8 M Hager, K Bolan, ‘Sex trade workers still getting killed a decade after Pickton arrest,’ *Vancouver Sun*, 13 May 2014.



NOT ONLY DOES MISAPPLYING CRIMINAL LAW TO SEX WORK LEAD TO VIOLENCE, BUT FAILURE TO USE CRIMINAL LAW TO PROSECUTE CRIMES AGAINST SEX WORKERS ALSO CONTRIBUTES TO VIOLENCE.

Sex worker organisations are best placed to document violent abuse against sex workers, in addition to other kinds of abuse that may not constitute physical or sexual violence but are in many ways as demeaning and inhumane as violence. Many of their reports have been gathered by the Global Network of Sex Work Projects.⁹ Some mainstream human rights organisations have also documented homicides and other violence against sex workers. The murder of at least nine sex workers in Honduras, in early 2014, was characterised by Amnesty International as a crime of impunity because ‘those who murder sex workers believe they can literally treat these human beings as garbage to be disposed of’.¹⁰ Amnesty International has also documented extreme mistreatment amounting to torture and extortion of sex workers by police in a number of countries including Nigeria.¹¹ Human Rights Watch also documented violent abuse of sex workers by police and other officials in China, including in ‘re-education through labour’ detention centres.¹²

In addition to many reports from human rights organisations and sex worker organisations, UN Special Rapporteurs on Violence Against Women have also highlighted violence against sex workers in some reports. In Papua New Guinea, the Special Rapporteur documented police violence, sexual abuse, and arbitrary detention, faced by sex workers in Port Moresby.¹³ In El Salvador, the Special Rapporteur investigated reports of killed and missing women and noted that ‘many of the murdered women come from the most marginalised sectors of society: they are poor, from rural areas, of ethnic origin, sex workers or maquila workers.’¹⁴

Many factors underlie violence against sex workers. It is however clear that criminalisation of sex work – or of elements of the practice of sex work

– makes violence more likely in many ways.¹⁵ Firstly, violence at the hands of the police or detention officers – either in detention settings or during stops, searches, and arrests – is much less likely if the police do not have authority under the law to interfere with sex work. Secondly, sex workers are much more able to organise and protect themselves from violence through their organisations if they are not rendered criminals by the law. Indeed, criminalisation of sex work may also be a direct barrier to being able to register a sex worker organisation as a legal NGO. Sex worker organisations in many places have enabled sex workers to share information on dangerous clients, to negotiate safer working conditions, and otherwise to protect themselves from violence. Thirdly, criminalisation feeds social disdain and marginalisation, which may manifest themselves in violent hate crimes. Criminalisation of sex work or sex work practices adds to the multiplicity of other human rights violations that may underlie violence against sex workers, including discrimination based on socio-economic status, class, caste, race, ethnicity, migration status, and use of illicit drugs.

Not only does misapplying criminal law to sex work lead to violence, but failure to use criminal law to prosecute crimes against sex workers also contributes to violence. For example, there are few laws in the world that explicitly protect sex workers from sexual violence, and there are too many jurisdictions where sexual violence in particular is simply disregarded or considered an ‘occupational hazard’ of sex work.¹⁶ It is equally demeaning to depict all aspects of sex work as inherently violent and all sex workers as victims without agency: this depiction fundamentally undermines sex workers’ status as persons, like all others, who can seek the protection of the law from abusive actions of society or the state.

9 Global Network of Sex Work Projects, ‘Violence against sex workers’ (web inventory), <http://www.nswp.org/category/tags/violence-against-sex-workers>

10 L Ladutke. The ‘most dangerous city in the world’ – especially for sex workers. Amnesty International (blog), 18 January 2014.

11 Amnesty International. ‘Welcome to hell fire’: torture and other ill-treatment in Nigeria. London, 18 September 2014.

12 Human Rights Watch. ‘Swept away’: abuses against sex workers in China. New York, May 2013.

13 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Mission to Papua New Guinea, A/HRC/23/49/Add.2, para 46, 18 March 2013.

14 Human Rights Council, GA Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, para 68, 23 May 2012.

15 See also UNAIDS, Guidance Note and annexes, op.cit.

16 K Gilbert. Rape and the sex industry. *Criminology Australia* 3(4): pp. 14–17, 1992.

International standards on the protection of women from violence

According to international human rights law, every person enjoys protection of his or her ‘security of person.’¹⁷ While some experts have understood ‘security of person’ to be particularly relevant to the protection from arbitrary detention, the expert committee that oversees compliance with the International Covenant on Civil and Political Rights has made it clear that protection from violence is central to this idea:

The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. For example, officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury. The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.¹⁸

This interpretation is especially relevant to sex workers who are vulnerable to violent abuse both by ‘officials of states parties’ and ‘in the public sphere’. Depicting sex work as inherently a form of violence against sex workers, is contrary to the spirit of sex workers as human beings with the right to choose to live as sex workers and to be free of ‘intentional infliction of bodily or mental injury’.

While there was a desire on the part of UN member states to build on the two bedrock international covenants on civil/political rights and economic/social rights to have specialised treaties on the rights of groups such as women, children, and persons with disabilities, there have also been efforts by some member states to have more specific protections against violence, especially violence against women. These efforts have been more successful at regional levels than at the global level.

It is both significant and unfortunate that the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), a legally binding treaty covering a wide range of women’s rights issues, is silent on the explicit matter of violence against women. It has proven very difficult for the UN member states to agree to legally binding language on violence against women. The UN General Assembly’s 1994 Declaration on the Elimination of Violence Against Women refers to this challenge, noting that states seeking to protect women from violence ‘should not invoke any custom, tradition or religious consideration to avoid their obligations.’¹⁹ This wording relates to the fact that there may be some UN member states that are unready to condemn all violence against women as a crime because they see some violence against women as culturally acceptable. While the 1994 declaration contains valuable language, it is however not legally binding.

DEPICTING SEX WORK AS INHERENTLY A FORM OF VIOLENCE AGAINST SEX WORKERS, IS CONTRARY TO THE SPIRIT OF SEX WORKERS AS HUMAN BEINGS WITH THE RIGHT TO CHOOSE TO LIVE AS SEX WORKERS AND TO BE FREE OF ‘INTENTIONAL INFLICTION OF BODILY OR MENTAL INJURY’.

17 International Covenant on Civil and Political Rights. UN General Assembly, 1966, article 9(1).

18 UN Human Rights Committee. General Comment no. 35. Article 9: Liberty and security of person, 28 October 2014.

19 UN GA Resolution, Declaration on the Elimination of Violence against Women [A/RES/48/104], 23 February 1994.

**...SEX WORKERS
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The CEDAW Committee, which oversees compliance with the women's rights Convention, has recommended to member states that the intent of several of the non-discrimination provisions of CEDAW is to protect women against violence in the home, the workplace, and elsewhere, even if 'violence' does not appear in the Convention.²⁰ Although these recommendations do not have the force of law, it is helpful that the CEDAW Committee urges governments – when reporting on the status of women – to give accounts of their activities in the area of 'laws against family violence and abuse, rape, sexual assault, and other gender-based violence' and 'effective legal measures including penal sanctions, civil remedies, and compensatory provisions, to protect women against all kinds of violence, including inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace.'²¹ In addressing violence against women, the CEDAW Committee underscored the vulnerability of sex workers to violence, noting that 'their status, which may be unlawful, tends to marginalise them,' adding that sex workers 'need the equal protection of laws against rape and other forms of violence.'²²

In relation to legally binding law at the regional level, the first regional human rights treaty that explicitly addressed violence against women was approved by the Organization of American States in 1994: the 'Inter-American Convention on the Prevention, Punishment and Eradication of

Violence Against Women.' The Convention notes that some women are particularly vulnerable to violence 'by reason of [...] their race or ethnic background or their status as migrants, refugees or displaced persons.'²³ It further notes the need for special protections for 'women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.'²⁴ Although sex work is not explicitly mentioned, it is clear that some sex workers would fall into the listed categories of vulnerability.

The 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,' also known as the Maputo Protocol of 2003, is the Africa region's main women's rights treaty and it explicitly prohibits violence against women. Article 4 of the Protocol urges governments to 'enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex, whether the violence takes place in private or public' and to give priority to the enforcement of such laws.²⁵

The European region came later to the issue of developing a convention on gender-based violence. Its convention deals with gender-based violence and domestic violence, and was approved for member state consideration in 2011 and came into force with the required ten ratifications in 2014.²⁶ While the European convention also addresses the need for special attention to vulnerable women and girls, it does not make explicit reference to sex work.

20 Committee on the Elimination of Discrimination against Women. General recommendation no. 12, 8th session, 1989; also General recommendation no. 19, 11th session, 1992. At: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

21 CEDAW Committee, General Recommendation No. 19 (11th session, 1992): Violence against women.

22 Ibid.

23 Organization of American States. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

24 Ibid., Article 9.

25 African Union. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2nd Ordinary Session of the African Union Assembly, Maputo, 11 July 2003.

26 Council of Europe. Convention on preventing and combating violence against women and domestic violence. Council of Europe Treaty Series no. 210.

...REMOVING SEX WORK AND RELATED PRACTICES FROM CRIMINAL LAW CAN QUICKLY LOWER THE RISK OF DAY-TO-DAY VIOLENCE FOR SEX WORKERS.

Redress in courts and other state response

Judicial decisions, and in a few a few cases legislation at regional and national levels, demonstrate that persistent violent abuse against sex workers does not need to be inevitable. Sex worker organisations in many parts of the world have trained their members as paralegals to advise and accompany sex workers pursuing justice or have otherwise organised access to legal services for their members.²⁷ Where sex workers have been able to pursue claims for protection against or redress from violence, they have sometimes won cases in national or regional courts. For example, a sex worker in Spain won a judgment by the European Court of Human Rights in 2012 whereby the court found that the government of Spain had failed to protect sex workers from police violence.²⁸ (In general, cases in regional courts can be pursued only when all remedies in national courts have been exhausted). In recent years, some national and provincial courts have also issued decisions that assert the need to protect sex workers from extreme abuse. For example, in India, where sexual violence against female sex workers is a persistent crisis, a New Delhi judge ruled in 2014 against youths accused of gang-raping a sex worker of Rwandan origin. The judge explicitly rejected the idea put forward by the defence – that since the woman was a sex worker, raping her was not a crime.²⁹ Furthermore, although it had taken a long time to progress to this point, a 2014 judgment from a provincial court in South Africa brought a conviction in the case of a rape and murder of a sex worker in 2008.³⁰

Sex workers have initiated many other efforts to protect themselves from violence, including anti-violence training for police, establishing safe spaces, creating hot-lines and other ways to report violence, ‘know your rights’ information and/or campaigns, and safe and respectful health services for survivors of violence.³¹

However it is notable – and sadly ironic – that in places such as Sweden, policies that are based on a construction of sex work as inherently violent fundamentally undermine use of the justice system to end abuse of sex workers, including violence and vilification, from society. Under this model, the justice system, human rights institutions, and social services see themselves as required to protect women from sex work, rather than to protect sex workers from abuse, as is suggested by international human rights law. Moreover, in relation to human rights institutions, where Sweden and other Nordic countries have been held up as global leaders, the construction of sex work as inherently violent opposes the emerging consensus on the rights of sex workers as expressed by the global organisation of national human rights commissions.³²

Although there are relatively few examples of decriminalisation of sex work, those that exist serve to demonstrate that removing sex work and related practices from criminal law can quickly lower the risk of day-to-day violence for sex workers. Indeed, in New Zealand, where sex work was decriminalised in 2003, an expert review of the impact of the law after about five years found that street-based sex workers still felt they were at high risk of violence, but that many sex workers felt for the first time that they could seek the protection of the police when they faced a violent situation.³³ While decriminalisation is not an immediate panacea, it may be one of the most effective single measures for reducing violence against sex workers.

27 See, e.g., WHO et al., op.cit., p. 27; J Csete and J Cohen. Health benefits of legal services for criminalised populations: the case of people who use drugs, sex workers and sexual and gender minorities. *Journal of Law, Medicine and Ethics* 38(4): pp. 816–831, 2010.

28 European Human Rights Court, B.S. v. Spain, Application no. 47159/08, para 62–63, 24 July 2012.

29 ‘Delhi court: being a prostitute doesn’t confer right to violate her,’ *OneIndia*, 12 November 2014, at <http://www.oneindia.com/india/being-a-sex-worker-does-not-confer-right-to-violate-her-court-1559435.html>.

30 Sonke Gender Justice, SWEAT, Sisonke Sex Workers Movement, Women’s Legal Centre. Civil society applaud verdict in sex work murder case and call on the South African Law Reform Commission to urgently recommend the decriminalisation of sex work for the safety of all sex workers (press statement), 26 May 2014, at: <http://www.genderjustice.org.za/news-item/>.

31 WHO et al., op.cit., pp. 30–35.

32 Amman Declaration and Programme of Action, International Coordinating Committee of National Institutions, 7 November 2012, at: <http://nhri.ohchr.org/EN/ICC/InternationalConference/11IC/Background%20Information/Amman%20PoA%20FINAL%20-%20EN.pdf>.

33 Ministry of Justice, Government of New Zealand. Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act of 2003. Wellington, 2008. At: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>.

Conclusions and recommendations

...STATE INSTITUTIONS SHOULD DO EVERYTHING POSSIBLE TO ENSURE THAT ALL MECHANISMS RELATED TO PROTECTING WOMEN FROM VIOLENCE CLEARLY ADDRESS THE NEEDS OF SEX WORKERS.

Global-level human rights law (which the UN oversees) and the treaties established by regional human rights bodies do not explicitly prohibit violence against sex workers. But international law prohibiting violence against all persons, as well as commentaries of UN treaty bodies, reports of UN Special Rapporteurs, binding regional prohibitions, and some court decisions, all highlight the vulnerability of female sex workers to violence and the responsibility of states to address this vulnerability. While most states are grossly negligent in this area, there is emerging experience in many countries demonstrating effective measures for protecting women sex workers from violence.

Some actions that should be taken to enable states to realise their human rights responsibility in this area are as follows:

- **Decriminalisation of sex work, including decriminalisation of both the sale and the purchase of sex:** As already noted, removing sex work and practices involved with sex work from the remit of criminal law would in most places be the most effective single measure to protect female sex workers from violence. Decriminalisation would give the police less of a free hand to engage in abusive and violent practice, enable sex workers to organise for their own protection more easily, and, over time, reduce the stigma associated with criminality that causes social disdain and abuse.
- **Ensuring capacity of sex workers to seek justice:** Where decriminalisation is not immediately possible or during periods of transition to decriminalisation, it should be a priority of governments, international donors, United Nations leaders, and civil society groups focused on human rights, to ensure that sex workers to have access to legal services and the mechanisms of justice. National human rights commissions should make violence against sex workers a priority in their work. In addition, there should be adequately funded and specialised legal aid services to deal with violence against sex workers. Police, prosecutors, and judges should also be trained to enable them to prosecute crimes against sex workers as effectively as possible. Furthermore, state institutions should do everything possible to ensure that all mechanisms related to protecting women from violence clearly address the needs of sex workers.
- **Participation of sex workers in documentation of abuses and follow-up action:** A central part of government responsibility in protecting sex workers from violence is documenting these abuses, an activity in which sex workers and their organisations should participate meaningfully. Follow-up actions, including ensuring that reported abuses are pursued in the criminal justice system, must be transparent and independently monitored.



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► **UN leadership:** There is a clear need for legally binding UN-level human rights law on violence against women that recognises the vulnerability of women in sex work to violent abuse. As well as member states, UN leaders in the areas of women's rights, criminal justice, HIV/AIDS, and protection from torture and other cruel punishment, should actively and publicly take up the cause of establishing lasting legal protections for women from all forms of violence.

► **Human rights institutions:** In countries such as Sweden – and others where law and policy are based on the demeaning and dehumanising idea of sex workers fundamentally lacking agency – human rights institutions and leaders should educate policy-makers and the public on fundamental human rights standards, under which sex workers have the right to choose their means of livelihood, to live in dignity, and to be free of stigma and vilification.



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