#02 The criminalisation of clients
The criminalisation of clients

The criminalisation of sex workers’ clients is often claimed to be part of a new legal framework to eradicate sex work and trafficking by ‘ending demand’. In 1999, Sweden criminalised sex workers’ clients and maintained the criminalisation of third parties such as brothel-owners, managers, security and support staff. The individual selling of sex remained legal. This model is frequently referred to as the ‘Swedish’, ‘Nordic’ or ‘End Demand’ model. There is tremendous pressure in many countries to advance such legal and policy measures. The damaging consequences of this model on sex workers’ health, rights and living conditions are rarely discussed.

The flawed logic behind ‘ending demand’

The basic premise of criminalising buying sex is that clients’ demand for sex is responsible for women entering, and remaining in sex work. In this framework, male and transgender sex workers are rarely recognised, while female sex workers are frequently conflated with children, ‘pimps’ and traffickers in what are often anti-migrant narratives. Simultaneously, female sex workers are construed as victims with no agency – and as harmful to all women, family and the nation at large.

Many advocates for the criminalisation of clients promote it as part of a ‘neo-abolitionist-feminist’ or ‘fundamentalist feminist’ ideology, wherein sex work is equated with violence against women, exploitation and trafficking. Clients are seen as ‘abusers’ who must be arrested and punished. This logic derives from the ‘abolitionist’ legal frameworks of the late 19th century, which are still in place in some European and Latin American countries. ‘Abolitionists’ believed that by criminalising those who recruited or profited from female sex workers, prostitution would be eradicated. The assumption was that no woman would consent to sexual exchange on her own. Given that this has not succeeded, neo-abolitionist/fundamentalist feminists have extended their target to clients, regarding them as the ultimate root cause of sex work.

This view overlaps with the views of prohibitionist groups, including religious conservatives and anti-feminist groups. Prohibitionists have traditionally favored criminalising all parties involved in sex work are now advancing the Swedish model and calling themselves ‘neo-abolitionists’. This wide array of political factions share the core belief that sex work is inherently degrading, violent and wrong and consider the state responsible for eradicating sex work.
The line separating fundamentalist feminists and prohibitionist groups has blurred. They often work together to promote law and policies against sex work, a prime example being the American coalitions to end demand.9 The overlap in their positions can be explained. Prohibitionists often acquiesce to exempt sex workers from criminalisation, if they agree to mandatory rehabilitation. Conversely, abolitionists have tended to uphold approaches that continue to punish or incarcerate sex workers who refuse rehabilitation. The common agenda is summed up by Swedish sex worker, Pye Jakobsson: “We want to save you. And if you don’t appreciate it, we will punish you.”10

The impact of law and policy based on this approach has devastating consequences for sex workers.

**Variations on the Swedish model and the lobby for their implementation**

Criminalising clients is hardly a new phenomenon. In many countries, legal measures aiming to eliminate sex work have been implemented for well over a century. These include laws that directly criminalise the buying of sex.11 Other laws criminalise or penalise clients indirectly. This can be through laws criminalising people found in brothels or through laws against soliciting, communicating for the purpose of prostitution and ‘kerb-crawling’.12 Laws relating to conduct in public spaces, framed as ‘reducing social nuisance’ or ‘protecting public order’, are also frequently used to penalise clients.13 While the theoretical framework for the Swedish model is quite unique, sex workers’ experiences of the criminalisation of clients in different contexts add to the growing body of data about the lived consequences of such measures.

Sweden, in 1999, was the first country to use a radical feminist argument – i.e. sex work is inherently male violence against women – to justify new legislation that criminalises buying sex, while selling sex remains legal.14 The Swedish government has retained laws that criminalise brothels and otherwise profiting from sex work.15 Since its implementation, through the National Swedish Institute, the country has invested extensively in exporting this legal framework to other countries.16 According to Gunilla Ekberg, the former government official responsible for prostitution policy in Sweden,

*Part of my tasks was also to ‘export’ the Swedish anti-prostitution strategies – that is to influence legislators and women’s groups in other countries to campaign for similar laws. And we saw huge changes. For example, South Korea, South Africa, Norway and other countries have enacted the same legislation that criminalises the buyer.*17

Indeed in recent years, criminalising (or further criminalising) clients has been discussed by law-makers in India, France, Estonia, Finland, Croatia, the Philippines, Spain, Italy, the United Kingdom and Canada.18 Justifications have sometimes departed from the Swedish conceptualisation, but all are based in the belief that sex workers are both damaged by sex work, and in turn, damaging to society.

The US government is another and far more influential source of international pressure in repressing sex work. In 2003 the American
government became a strong adherent of ending demand in order to fight what it termed ‘sexual slavery’. New York and Illinois have since adopted laws that severely punish clients. In the same year the US State Department began publishing an annual Trafficking in Persons Index. This is a three tier category system, which grades countries ostensibly according to their performance in preventing trafficking. More often, however, it rewards countries for intensifying crackdowns on sex work and illegal migration.19 When a country is placed in the lowest category it can have its foreign aid revoked. This index has placed enormous pressure on many governments to repress sex work.20 In 2011 the index called for the criminalisation of clients worldwide.21

Several countries, including Guatemala, Cambodia and South Korea, have since passed trafficking laws based on the premises of either an abolitionist or prohibitionist viewpoint, which conflates sex work with trafficking. These are being ruthlessly implemented, to shut down brothels and inhibit sex workers from working.22 In the cases of South Korea and Guatemala, they have also criminalised some or all forms of paying for sex.23

Often, laws have been changed as a result of the combined forces of lobbies by local actors, Swedish support and American pressure. Increasingly, the notion of ending demand is gaining currency with the United Nations, partially due to Swedish and American lobbying.23

Emerging new laws are not uniform. Despite an investigation by the Norwegian police refuting the successes of the Swedish model, Norway has criminalised buying sex24 and has preserved its existing laws against clients. In 2009, Iceland criminalised buying sex while retaining existing laws against brothels.25 In 2010, the Icelandic government banned strip clubs.

Sometimes, clients are targeted in order to shut down brothels. Guatemala introduced new laws against brothels and criminalised clients who pay an intermediary for sex work. Selling sex remains decriminalised.27

While making the buying of sex illegal, most countries have maintained or increased the criminalisation of sex workers. For example,

- South Korea’s new laws criminalise clients and brothel-owners while retaining the criminalisation of sex workers.28
- South Africa now criminalises clients but has retained laws that criminalise brothel-owners and sex workers.29
- Lithuania extended penalisation to clients, while retaining it for sex workers.30
- In the US, the End Demand Coalition succeeded in increasing the sentence for both clients and sex workers in the state of Illinois.31
- The penalties for buying sex have increased in New York while those for selling sex have been maintained.32
- Clients of sex workers are now criminalised in Scotland and Italy. Sex workers remain criminalised through offenses related to soliciting.

A number of new laws also apply transnationally.33 For example, Norway has made it illegal to purchase sex abroad, including for those in military service. The American Department of Defense has rewritten the Uniform Code of Military Justice to include “patronising a prostitute” as a criminal offense for soldiers.34 The UN has banned peacekeepers from purchasing sexual services, and from frequenting zones or establishments where sex work might take place.35

Global Network of Sex Work Projects
Impact of end demand legal frameworks on sex workers

Increased repression of sex workers

Many supporters of the Swedish Model state that decriminalising sex work is a cornerstone of their vision. However it is clear that most countries implementing the Swedish model are further outlawing sex work. In the state Illinois for example, laws to end demand have resulted in elevating the selling of sex to a felony, punishable by imprisonment up to a year.36 In 2002, fewer than 3,500 sex workers were arrested in South Korea. After the passage of the Swedish-inspired law reforms, this number rocketed to 16,951 in 2004 and 18,508 in 2005.37

In both South Korea and the US, the only way a sex worker can avoid incarceration is by accepting rehabilitation. In South Korea, the judiciary or police officer decides if a woman is worthy of rehabilitation, based on her ‘character’ and the motives of the case.38

Even in contexts where the selling of sex is legal, if women work together indoors, and pay each other for rent or expenses, they can be criminalised under laws against brothel-keeping or profiting from prostitution.39

It is common for sex workers to be disproportionately targeted for arrest under unrelated laws. In Sweden and Norway, although selling sex is not a criminal offence, the intensity of police repression against sex workers has led to large numbers being arrested and deported for illegal immigration.40 In fact, during the first year of Sweden’s new law, prosecutors were unable to indict numerous sex workers because they were deported before their statements were recorded.41

Further, sex workers experience higher levels of harassment due to the policing of clients on the street.42 Police officers in Sweden often clandestinely film women engaging in sexual acts to obtain evidence against clients. The women are then subjected to invasive searches.43

Increased violence and discrimination

A major claim of the Swedish government is that criminalising clients has significantly reduced the number of sex workers. This assertion is based on a decline in the number of street-based sex workers, a fact which a number of researchers attribute to the growth of other ‘hidden’ forms of sex work.46

Indeed, in several countries, it has been observed that police surveillance and arrest of clients has displaced sex workers. Sex workers are reported to increasingly use the internet to solicit customers or to have moved to venues that masquerade as other businesses such as massage parlors, hair dressers and hotels.47
However, sex workers whose living conditions are precarious are often unable to work in sectors of the sex industry that require set routines, start-up funds or familiarity with technology. In Sweden, women on the streets have reported greater competition, declining prices and harsher conditions. To compensate for fewer clients, women accept clients who are drunk, aggressive or refuse condom use. Since client criminalisation in Sweden, sex workers are at greater risk of violence and infectious diseases.

Since client criminalisation in Sweden, sex workers are at greater risk of violence and infectious diseases.

Should violence occur, they would be unlikely to get help. In the city of Edinburgh, in Scotland, sex workers reported 66 incidents of violence in 2006, compared with 126 after the implementation of kerb-crawling measures the following year. In Montreal, during a three month period of widespread anti-client sweeps in 2001, sex workers reported three times the amount of violent incidents, and five times the amount of violent incidents with a deadly weapon than prior to the sweeps.

Sex workers face major obstacles in reporting violence and coercion, given that exposing oneself as a sex worker to a police officer can lead to more harassment and the risk of deportation. Likewise, a client encountering a sex worker who has been coerced, or is in danger, is unlikely to report it to the police for fear of incriminating himself. The Norwegian National Police Board found that the Swedish law has made it harder to gather evidence against individuals who have coerced or exploited sex workers. In addition, Sweden’s National Board of Health and Welfare found that the criminalisation of clients may lead to an increase in exploitation of sex workers by third parties.

Thai sex workers have likewise reported that since the prohibition on US soldiers purchasing sex, their working conditions have become more dangerous. Often, soldiers will only meet sex workers in isolated locations or request that one woman service multiple soldiers to avoid drawing attention.

There is no evidence that the Swedish law has reduced trafficking in persons in the sex industry. In an evaluation of the Swedish law in 2010, seven current sex workers were interviewed. All stated that stigma against them had increased since the passing of the law. Unfortunately, this was reported as a positive development since it might deter women from doing sex work.

Decreased access to health and social services

Laws criminalising clients, and laws against brothels, impede sex workers’ ability to protect their health at work. In Sweden, a study by the Norwegian National Police Board has found that many street-based sex workers compensate for loss of earnings, as a result of client criminalisation, by not using condoms. In South Korea, indoor venues such as massage parlours tend not to keep condoms on the premises because this can be regarded as evidence of sex work.
Police harassment compels many sex workers to frequently change areas or work from hidden locations. This hinders their ability to connect with health and social services. In South Korea and Sweden, health authorities have expressed concern about negative consequences of the law on sex workers’ health. In addition, researchers in South Korea have found a correlation between the new prostitution acts and an increase in sexually transmitted infections.

In South Korea and Sweden, only projects which target women leaving sex work receive funding. These projects are inherently discriminatory as access to educational and vocational training, health and counseling services is contingent upon stopping sex work.

**Decreased access to housing and shelter**

Laws against purchasing sex, profiting from sex work, or against renting a space for sex work, can render landlords and hotel owners who rent to a sex worker liable. In many countries, landlords have the legal right to terminate leases and evict without notice individuals suspected of being sex workers – even when the selling of sex is not a crime. This also affects individuals who live in low-income social housing, on whom it can have a particularly severe impact. In Norway, police are known to pose as clients and call sex workers’ advertisements in order to find out their address. They then threaten to charge the landlord under pimping laws if they do not evict the sex worker immediately. Women often lose their deposits, which can amount to three months rent. Once listed as evicted sex workers, it is difficult to rent a new home. In 2011, this was part of an orchestrated campaign by the Oslo police named Action Homeless.

In Norway, police have notified all hotel chains that they will face charges for renting rooms to women who are known sex workers. As a result, hotel chains prohibit sex workers from checking in to any of their hotels. Some are reported to be racial profiling women who they believe could be sex workers.

In summary, there is no conclusive evidence to suggest that legal measures criminalising clients, brothel-owners, managers and support staff within the sex industry eliminate or significantly reduce sex work. The available evidence suggests instead that such measures are increasing repression, violence and discrimination against sex workers. This diminishes sex workers’ access to health care, social services and housing. The criminalisation of clients is not a human rights-based response to sex work.