

Global policy consultation on sex work

Guidance notes

Amnesty International is currently in the process of considering a global policy on sex work. Our international research headquarters (IS) undertook a study of the issue and has proposed a draft policy for consultation. The draft policy proposes the decriminalisation of activities relating to the buying or selling of consensual sex between adults, on the basis that this is the best means to protect the rights of sex workers and ensure that these individuals receive adequate medical care, legal assistance and police protection. Amnesty sections around the world have been asked to contribute to these discussions by canvassing opinion with their members and stakeholders.

Why has Amnesty decided to initiate a policy consultation on sex work?

Sex workers are among the most vulnerable and marginalised groups of individuals in society who often do not have access to protection and basic needs such as medical care, housing and education. Amnesty currently has no position on legal responses to sex work (such as decriminalisation, legalisation or regulation). However, Amnesty has been aware of the need to develop a policy on this issue for some time, informed by work on our Stop Violence against Women campaign, and then on poverty and human rights. Both campaigns highlighted gaps in our policies as they relate to the human rights of sex workers. For these reasons, we think it is important to consider our position in this debate.

How has Amnesty UK (AIUK) contributed to the debate?

In 2008 and 2009, members at Amnesty UK's Annual General Meeting (AGM) decided to call for Amnesty's International Board (formerly the IEC) to embark on a review of the human rights issues relating to sex work and state responses to sex work. The UK Section tabled a resolution at the 2009 ICM (Amnesty's highest decision-making forum) but the resolution was later withdrawn because of lack of support from other sections.

In 2010, the AGM decided that the issue should be taken to the 2011 ICM but the Board did not do this as it understood that moves towards a policy study were underway. In 2012, the AGM adopted another resolution 'asserting the inextricable relationship between sex work and trafficking for sexual exploitation' although it is important to note that the claim of an inextricable link between sex work and trafficking is rejected in the current policy proposal.

What's the decision making and consultation process?

The IS has put forward a draft policy proposal and is asking for Amnesty sections to provide feedback. The outcome of this policy consultation will be discussed at an international meeting in June, involving representatives from all the Amnesty sections around the world. We expect a final decision to be made in September 2014 by the International Board (elected by the International Council Meeting at which AIUK is represented). The deadline for Amnesty UK's consultation is Friday 21 March 2014 to allow enough time to process all the responses in time for the Annual General Meeting (AGM) in April.

AIUK members will have the opportunity to discuss the issue at the AGM on 12-13 April, where they will vote on the position to be adopted by AIUK in the international discussions taking place in June. The results of the consultation will be available at the AGM. We will also be consulting with a selected group of external stakeholders reflecting a wide range of views.

What kind of research and campaigning is Amnesty expected to take up should this policy go ahead?

The consultation process will determine how the policy will be implemented. At this stage, it is unlikely that the UK Section will be undertaking any significant public campaigning on this issue in the foreseeable future.

The deadline for consultation is Friday 21 March 2014. Please don't forget to send us your feedback by email: swc@amnesty.org.uk or by using the enclosed form. The International Secretariat has also produced an additional legal background document which is not included in this pack. If you'd like to see a copy please email: swc@amnesty.org.uk

Questions to help develop your response

Amnesty acknowledges that the debate around sex work is complex and opinion is divided. This policy consultation is not intended to dismiss those views and we invite you to consider alternative opinions as well as those put forward by the IS.

To help you think through some of these issues, here are some questions that you may wish to consider or discuss as part of a group:

- What do you think is the best way to protect the human rights of sex workers? Would that include supporting the decriminalisation of both the buying and selling of sex?
- How do you feel about this statement? Sex work creates a favourable environment for discrimination and exploitation and the best way to protect sex workers and/or society is to criminalise the purchase of sexual services.
- What would you like to see Amnesty calling for in relation to sex work?

European Legal Frameworks

Legal frameworks and approaches vary from country to country. In the UK, sex work is not a criminal act although it can be illegal in certain circumstances (such as kerb crawling, pimping and keeping a brothel). Sex work is legal and regulated in several European countries including Germany, Greece and Netherlands. In Sweden and Norway, it is a criminal offence to buy sex (also known as the 'Nordic' or 'Swedish' model). Sex work is legal in France but a bill aimed at penalising anyone paying for sex was recently approved by the French Parliament.

Summary: proposed policy on sex work

This document outlines the proposed policy on sex work and summarises the background documents that review the terminology used in discussions of these issues, the principal justifications advanced for the continued criminalisation of sex work, the applicable human rights law, the consequences in practice of criminalisation and decriminalisation, and the approaches taken by other organisations and experts.

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Proposed policy

Amnesty International opposes the criminalisation or punishment of activities relating to the buying or selling of consensual sex between adults. This policy is based on the human rights principle that consensual sexual conduct between adults—which excludes acts that involve coercion, deception, threats, or violence—is entitled to protection from state interference (bearing in mind that legitimate restrictions may be imposed on sex work, as noted below). This policy is also based on principles of harm reduction: on balance, the available evidence indicates that the criminalisation of sex work is more likely than not to reinforce discrimination against those who engage in these activities, to increase the likelihood that they will be subjected to harassment and violence, including ill-treatment at the hands of police, and to lead to the denial of due process and the exclusion from public benefits such as health services, housing, education, and immigration status.

This policy recognises that legitimate restrictions may be imposed on sex work if they comply with international human rights law. Such restrictions must be for a legitimate purpose, provided by law, necessary for and proportionate to the legitimate aim sought to be achieved, and not discriminatory.

This policy does not change Amnesty International’s longstanding position that trafficking into forced prostitution should be criminalised as a matter of international law.

Amnesty International considers children involved in commercial sex acts to be victims of sexual exploitation, entitled to support, reparations, and remedies, in line with international human rights law. States must take all appropriate measures to prevent violence and exploitation of children.

Amnesty International recognises that sex work is a sensitive issue in many of the countries in which we work. In particular, individuals who engage in sex work often have limited choices. Guaranteeing human rights without discrimination is the most effective way to ensure the empowerment of people involved in sex work and the protection of all individuals from discrimination, violence, and coercion.

Terms used in this proposed policy

Sex work and sex worker. Amnesty International understands “sex work” to mean the exchange of sexual services for some form of remuneration, in accord with the definition used by the Joint UN Programme on HIV/AIDS (UNAIDS).¹ The terms used to refer to sex for remuneration varies across countries and contexts. Notably, the terms “sex work” and “prostitution” are sometimes used interchangeably. Many sex workers feel the term “prostitute” is demeaning or misogynistic, and organized sex worker groups generally prefer the term “sex worker” or “person in the sex industry.” Others use the term “prostitution” to reclaim and de-stigmatize the term and practice. Where possible, Amnesty International uses the term “those engaging in sex work” or the prevailing terminology used in a particular context; in more general discussions of this issue, as in this proposed policy, Amnesty International uses the terms “sex work” and “sex worker.”

Criminalisation. State authorities use a variety of methods to discourage certain behaviour, ranging from financial incentives to the imposition of criminal sanctions. For the purposes of this policy, “criminalisation” means measures that seek to punish sex workers and clients through the threat of sanctions such as detention, fines, or exclusion from benefits or care.

Child. A “child” is any person under the age of 18, regardless of the age of majority in a particular country.

What this proposed policy does not cover

Under this proposal, Amnesty International would not take a position on whether sex work should be regulated. However, if a state does regulate sex work, Amnesty International would call for any regulation to aim at guaranteeing that individuals who undertake sex work do so voluntarily and in safe conditions and are able to stop engaging in sex work when and if they choose to.

This proposed policy does not change Amnesty International’s longstanding position that human trafficking into forced prostitution, or any other aspect of non-consensual sex, should be criminalized as a matter of international law. Victims of such crimes are entitled to protection and remedies, regardless of their sex, nationality, health status, sexual orientation, gender identity, prior work history, willingness to contribute to prosecution efforts, or other factors.

As noted above, Amnesty International considers children involved in commercial sex acts to be victims of sexual exploitation.

Laws and practices addressed by this proposed policy

People who engage in sex work are subject to criminal sanctions in three general ways. This proposed policy covers each:

- First, states criminalize the selling of sexual services, with the imposition of penalties upon sex workers themselves.

- Second, and more commonly, states impose criminal or other sanctions on activities related to sex work. Such sanctions are applied to those who keep a brothel, procure or buy sexual services, recruit for or arrange the prostitution of others, live off the proceeds of sex work, or facilitate sex work through the provision of information or assistance. Sanctions are often attached to the act of solicitation, rather than the selling of sex itself.
- Third, authorities use other laws, not specific to sex work, to harass, intimidate or justify the use of force against or exploitation or arrest of individuals engaged in sex work. Laws on vagrancy, public lewdness, public nuisance, homosexuality, cross-dressing, and gender expression are all used against people engaged in sex work. In many cases, the mere existence of these laws—even if they are rarely applied—is used to justify the harassment and extortion of sex workers both by police and others. Those individual sex workers who are non-gender conforming, or who work in public spaces such as on the street or in bars, are at increased risks of being targeted for harassment or extortion.

The principal justifications for criminalisation

The traditional bases for criminalising sex work are morality and, to a lesser extent, public health grounds.² Proponents of these traditional grounds of criminalisation argue that criminal measures protect society by creating deterrents to sex work.

More recently, the criminalisation of sex work is sometimes justified as a means of protecting sex workers themselves. One argument is that sex work, or prostitution, is inherently a form of violence against women that must be eradicated.³ The rationale for this argument is that those who claim to sell sex voluntarily are coerced to do so by circumstances or by structural disadvantages such as poverty or gender inequality. Consequently, the men and women who buy sex are seen as perpetrating abuse through maintaining unequal power-structures that keep sex workers disadvantaged, whether or not they are aware of it or believe themselves to be doing so.

Applicable human rights law

Human rights law does not explicitly require either the criminalisation or decriminalisation of sex work. The Convention on the Elimination of All Forms of Discrimination against Women requires states to protect women and girls against exploitation in the context of prostitution, but does not prohibit prostitution or sex work itself.⁴ The Committee on the Elimination of Discrimination against Women has consistently expressed concern regarding the criminalisation of women engaged in sex work.⁵

Similarly, the recruitment, transportation, transfer, harbouring, or receipt of persons by means such as force, fraud, or deception for the purpose of sexual exploitation is trafficking in persons, prohibited under international law,⁶ but sex work that does not include these elements is not trafficking. International authorities and UN agencies have consistently criticised approaches that treat all sex work as trafficking, concluding that the conflation of sex work and trafficking is mistaken as a matter of international law and counterproductive in practice.⁷

Human rights law does require states to respect, protect, and fulfil the right to the highest attainable standard of health. These obligations require states to refrain from “interfering directly or indirectly with the right to health.”⁸ States must also afford everybody the right to liberty and security of person, the right to freedom from arbitrary arrest or detention, and the

right to be free from torture or other ill-treatment.⁹ States must observe the principle of non-discrimination¹⁰ and, more generally, the reminder in the Universal Declaration of Human Rights that “[a]ll human beings are born free and equal in dignity and rights.”¹¹

The consequences in practice of criminalisation and decriminalisation

Public health research, the work of human rights organisations, and UN experts have found that the criminalisation of sex work exacerbates the risks sex workers face. For example:

- Raids, cautions, arrests, and the use of antisocial behaviour orders (ASBOs) against sex workers in the United Kingdom have been found to shift sex workers toward unsafe areas and to diminish sex workers’ ability to choose clients and negotiate condom use.¹²
- In Russia, where soliciting for money in exchange for sex is an administrative offence, sex workers have been arrested for “petty hooliganism” or for not possessing the correct documents. “This system is open to abuse by the police, who use the ambiguity of the legislation to enrich themselves financially through bribes or by taking sexual services,” three public health researchers concluded.¹³
- Two studies in 2003 and 2005 found that most instances of harassment, assault, rape, kidnapping, and murder of street-based sex workers in Vancouver and New York City were not reported to police. When such incidents were reported, police often did not register them; when they were registered, these reports were rarely investigated.¹⁴
- Elsewhere, as well, where sex work is criminalised, sex workers commonly report that they feel unable to report crimes against them.¹⁵ They are vulnerable to harassment, humiliation, extortion, summary punishment, and rape and other forms of violence by police.¹⁶
- In a particularly notorious case in 2004, police in Port Moresby, Papua New Guinea, raided a guesthouse known to be used by women who sold sex. They rounded up all of the girls and women present, beat them, covered them with food and spit, and raped at least one woman. More than twenty girls and women were forced to chew and in many cases to swallow condoms. They were then forced to blow up condoms like balloons and hold them as they were marched through the streets, while police and bystanders hit them, threw objects at them, and jeered them.¹⁷
- Clients may threaten sex workers with criminal sanctions to control and exploit them.¹⁸
- Criminalisation leads to restrictions on travel, employment, and housing, increasing sex workers’ dependence on others. Criminalisation also results in restrictions on parenting.
- In the U.S. cities of Los Angeles, New York, San Francisco, and Washington, police treat the possession of condoms as evidence of prostitution, targeting people for stops and searches on the basis of who they are, what they are wearing, and where they are standing rather than any observed illegal activity.¹⁹
- Amnesty International found that transgender women were at particular risk of arrest and detention in several U.S. cities on the presumption that they were sex workers.²⁰
- Possession of condoms has also been treated as evidence of sex work elsewhere in the world, including Kenya, Namibia, Russia, South Africa, and Zimbabwe.²¹
- The Independent Commission on AIDS in Asia’s 2008 report notes that “the criminalization of [sex work] clearly neutralizes otherwise supportive HIV policies, unless law enforcement agencies and the judiciary can be persuaded to cooperate with such policies.”²² Criminalisation has been found to increase vulnerability to HIV

and sexually transmitted infections and is linked to depression and other adverse mental health conditions, drug use, poor self-esteem, loss of family and friends.²³

- Where sex work is criminalised, health outreach workers have been subjected to arrest and beatings by police.²⁴

The negative health consequences of criminalisation are such that Anand Grover, the UN special rapporteur on the right to health, concluded in his 2010 report to the Human Rights Council, “The decriminalization or legalization of sex work with appropriate regulation forms a necessary part of a right-to-health approach to sex work, and can lead to improved health outcomes for sex workers.”²⁵

The criminalisation of clients but not the sex workers themselves is sometimes put forward as a way to avoid the negative consequences summarised above. But the UNAIDS Advisory Group on Sex Work has noted that there is no evidence that “end demand” initiatives—those that criminalise clients of sex workers rather than the sex workers themselves—reduce sex work, or improve the quality of life of sex workers.²⁶ Specifically:

- Police in many countries do not distinguish between sex workers and their clients. Even if they do, it is easy in practice to circumvent the distinction between buyer and seller by treating sex workers as accomplices or material witnesses to a crime. And targeting clients sometimes encourages law enforcement officials to use condoms as evidence of involvement in sex work, as noted above.
- Outside Sweden and Norway, the application of “end demand” approaches has resulted in grave consequences for sex workers. For example, “rescue” raids of sex establishments can result in abuses against sex workers. In India and Indonesia, researchers have found that sex workers who were rounded up in raids were beaten, coerced into sex by police, and placed in institutions where they were sexually exploited and otherwise suffered physical abuse.²⁷ Such findings strongly support the conclusion that “end demand” approaches are not suitable policy calls in the vast majority of countries in which Amnesty International works.
- Even in Sweden, these approaches have not been shown to change the behaviour of clients or to encourage sex workers to find other means of earning a living.²⁸

In contrast, sex workers in states that have decriminalised sex work report that they are less likely to suffer violence and are more able to engage in behaviours that reduce health risks. For example, New Zealand decriminalised sex work in 2003 in order to safeguard the human rights of sex workers. A literature review prepared for the New Zealand Ministry of Justice found that sex workers were less willing prior to decriminalisation to disclose their occupation to health care workers or to carry condoms.²⁹ Following decriminalisation, sex workers reported that they were more able to refuse particular clients and practices and to negotiate safer sex.³⁰

The approaches taken by other organisations and experts

The UN special rapporteur on the right to health has called for comprehensive decriminalisation of sex work, as noted above.³¹

The final report of the Global Commission on HIV and the Law, an independent body convened by the UN Development Programme (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS), also made such a call.³²

The UNAIDS Advisory Group on HIV and Sex Work has recommended:

States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers' rights or dignity and that ensure their enjoyment of due process of law.³³

UN Women has confirmed its support for decriminalisation of sex work "in order to ensure the access of sex workers to all services, including HIV care and treatment."³⁴

The World Health Organization calls for all countries to "work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."³⁵

The Canadian HIV/AIDS Legal Network, Human Rights Watch, the Kenya National Human Rights Commission, the Open Society Foundations, and the South African Commission on Gender Equality, among other groups, have called for the decriminalisation of sex work.³⁶

References

- ¹ See, for example, UNAIDS, “Sex work and HIV/AIDS,” UNAIDS Technical Update (2002), p. 3.
- ² See, for example, J.A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987) (finding that modern laws criminalising prostitution have their origin in medieval canon law); B.M. Hobson, *Uneasy Virtue: The Politics of Prostitution and the American Reform Tradition* (Chicago: University of Chicago Press, 1987). See also M.H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), pp. 210-303.
- ³ See, for example, the European Women’s Lobby’s recent campaign, “Together for the Europe Free of Prostitution,” at <http://www.womenlobby.org/spip.php?rubrique187> (accessed on 8 January 2012).
- ⁴ See CEDAW, art. 6; UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover*, UN Doc. A/HRC/14/20 (2010), ¶ 30.
- ⁵ See, for example, Committee on the Elimination of Discrimination against Women, *Concluding Observations on Fiji*, U.N. Doc. A/57/38 (2002), ¶¶ 64-65; *Concluding Observations on Hungary*, U.N. Doc. A/57/38 (2002), ¶¶ 323-324; *Concluding Observations on Kenya*, U.N. Doc. CEDAW/C/KEN/CO/6 (2007), ¶¶ 29-30; *Concluding Observations on Republic of Korea*, 31 July 2007, U.N. Doc. CEDAW/C/KOR/CO/6 (2007), ¶¶ 19-20; *Concluding Observations on France*, U.N. Doc. CEDAW/FRA/CO/6 (2008), ¶¶ 30-31; *Concluding Observations on Germany*, U.N. Doc. CEDAW/C/DEU/CO/6 (2009), ¶¶ 49-50; *Concluding Observations on Japan*, U.N. Doc. CEDAW/C/JPN/CO/6 (2009), ¶ 39.
- ⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a) (defining trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”).
- ⁷ See, for example, Human Rights Council, *Report of Anand Grover*, U.N. Doc. A/HRC/14/20, ¶ 33; UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work* (Geneva: Joint United Nations Programme on HIV/AIDS, 2009), pp. 5-6; UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking* (2013) (“The conflation of consensual sex work and sex trafficking leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights. Furthermore, failing to distinguish between these groups infringes on sex workers’ right to health and self-determination and can impede efforts to prevent and prosecute trafficking.”).
- ⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, U.N. Doc. E/C.12/2000/4 (2000), ¶ 33.
- ⁹ International Covenant on Civil and Political Rights, arts. 9, 7.
- ¹⁰ For a useful overview of the principle of non-discrimination, see Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/GC/20 (2009).
- ¹¹ Universal Declaration of Human Rights, art. 1.
- ¹² See, for example, K. Blankenship and S. Koester, “Criminal Law, Policing Policy, and HIV Risk in Female Street Sex Workers and Injection Drug Users,” *Journal of Law, Medicine and Ethics*, vol. 30 (2002), p. 550.
- ¹³ C.M. Lowndes et al., “Injection Drug Use, Commercial Sex Work, and the HIV/STI Epidemic in the Russian Federation,” *Sexually Transmitted Diseases*, vol. 30 (2003), p. 47.
- ¹⁴ World Health Organization, “Violence against Sex Workers and HIV Prevention,” Information Bulletin Series, No. 3 (2005), pp. 1-2 (citing L. Cler-Cunningham and C. Christerson, “Studying Violence to Stop It,” *Research for Sex Work*, vol. 4 (2001), pp. 25-26; J. Thukral and M. Ditmore, *Revolving Door: An Analysis of Street-Based Prostitution in New York City, USA* (New York: Urban Justice Center, 2003)).
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- ¹⁷ Human Rights Watch, *‘Making Their Own Rules’: Police Beatings, Rape, and Torture of Children in Papua New Guinea* (2005), p. 42. See also C. Stewart, “‘Crime to Be a Woman?’ Engendering Violence against Female Sex Workers in Port Moresby, Papua New Guinea,” in M. Jolly and C. Stewart, eds., *Engendering Violence in Papua New Guinea* (Canberra: ANU E Press, 2012), pp. 213-38.
- ¹⁸ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health* (2012).

- ¹⁹ Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities* (2012); M.H. Wurth et al., "Condoms as Evidence of Prostitution in the United States and the Criminalization of Sex Work," *Journal of the International AIDS Society*, vol. 16 (2013), p. 18626.
- ²⁰ Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the United States* (2005).
- ²¹ A. Shields, *Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (New York: Open Society Foundations, 2012).
- ²² Commission on AIDS in Asia, *Redefining AIDS in Asia: Crafting an Effective Response* (New Delhi: Oxford University Press, 2008), p. 5.
- ²³ J. Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work* (Bangkok: UNDP, 2012), pp. 1-3; M.L. Rekart, "Sex-work Harm Reduction," *The Lancet*, vol. 366 (2005), p. 2124; I. Vanwesenbeeck, "Another Decade of Social Scientific Work on Sex Work: A Review of Research 1990-2000," *Annual Review of Sex Research*, vol. 12 (2001), pp. 242-89. See also A.N. Morton et al., "Will the Legalisation of Street Sex Workers Improve Health?" *Sexually Transmitted Infections*, vol. 78 (2002), p. 309.
- ²⁴ See, for example, Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India* (2002).
- ²⁵ Human Rights Council, *Report of Anand Grover*, U.N. Doc. A/HRC/14/20, ¶ 46.
- ²⁶ UNAIDS, *The Report of the UNAIDS Advisory Group on HIV and Sex Work*, December 2011, p. 6-7.
- ²⁷ R. Surtees, "Brothel Raids in Indonesia—Ideal Solution or Further Violation?" *Research for Sex Work*, vol. 6 (2003), pp. 5-7; Sangram, Point of View, and VAMP, *Rehabilitation: Against Their Will? Of Veshyas, Vamps, Whores and Women: Challenging Preconceived Notions of Prostitution and Sex Work* (2002).
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- ³⁰ New Zealand, *Report of the Prostitution Law Reform Committee on the Operation of the Prostitution Reform Act of 2003* (Wellington, 2008), pp. 46-47, 50. See also C. Harcourt et al., "The Decriminalisation of Prostitution Is Associated with Better Coverage of Health Promotion Programs for Sex Workers," *Australian and New Zealand Journal of Public Health*, vol. 34 (2010), pp. 482-86.
- ³¹ Human Rights Council, *Report of Anand Grover*, U.N. Doc. A/HRC/14/20, ¶¶ 46-50.
- ³² "Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions and offer sex workers and their clients access to effective HIV and health services and commodities. Countries must: ¶ 3.2.1 Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against "immoral" earnings, "living off the earnings" of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers." Global Commission on HIV and the Law, *Risks, Rights and Health*, p. 43.
- ³³ *The Report of the UNAIDS Advisory Group on HIV and Sex Work*, p. 8. The report makes clear that its recommendation relates to buying as well as selling sex. *Id.* n.17.
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Global Policy and Sex Work

Questions and Answers

We are providing AIUK members with this Q&A because we believe that it helps to understand the draft policy proposed by our International Secretariat. However, we are conscious that some points are contested by other organisations and individuals and that a range of conclusions from different pieces of research and evidence can be (and are) used to justify a variety of positions. It is worth emphasising again that this is a policy proposal and that no position has yet been adopted by the international movement.

Why might Amnesty International need a policy on decriminalisation of sex work?

Sex workers are a very vulnerable group of people who face constant abuse of their human rights. Amnesty International is considering decriminalisation on the basis that subjecting sex workers to criminal penalties puts them at increased risk of human rights abuses such as discrimination, physical and sexual violence, denial of legal due process and police protection or exclusion from public services such as healthcare, housing and education.

Whilst Amnesty understands that this is a very sensitive issue, it is right that it considers evidence about how best to protect sex workers who are vulnerable to human rights abuses. This includes the possibility of the decriminalisation of sex work, including both selling and purchasing of sex. Individuals who engage in sex work make decisions in an imperfect world where choices can be limited. Guaranteeing human rights without discrimination is the most effective way to ensure the empowerment of individuals involved in sex work and the protection from violence and cohesion.

Is decriminalisation of sex work the same as legalisation of sex work?

Amnesty's policy calls for decriminalisation of sex work but it does not explicitly call for its legalisation. 'Decriminalisation' is defined as the removal of all laws and policies that make sex work a crime (*i.e.* laws prohibiting selling, buying or facilitating sex work, living off the proceeds of prostitution, soliciting etc.). 'Legalisation' involves not only decriminalisation but passage of specific laws and policies aimed at regulating sex work. For example, governments may pass zoning regulations that specifically confine sex work to a particular district, health laws and policies that explicitly mandate periodic health screening for sex workers, and tax schemes that apply to money earned through sex work. In addition, Amnesty does not take a position on the imposition of legitimate restrictions on the practice of sex work if they comply with international human rights law.

Why does the proposed policy support the decriminalisation of the purchase or demand for sex?

All criminal laws related to sex work generally create an environment of fear and marginalisation for sex workers. They also undermine sex workers' ability to collaborate and potentially identify violent clients and their capacity to demand condom use of clients. The term 'end demand' is often used to mean policies and law reforms that targets clients of sex workers in an effort to reduce or eliminate sex work altogether. There is little or no evidence, however, that 'end demand' initiatives actually reduce sex work or the sex industry generally, or improve the quality of life for sex workers. They have actually been shown to increase sex workers' vulnerability to violence and abuse by clients and police and to HIV transmission because the exchange remains criminalised.

Why has Amnesty International proposed taking this position when some workers may have mixed feelings about the legal status of their work?

Amnesty's policy consultation around the decriminalisation of sex work is based upon the understanding that criminalisation perpetuates stigma and discrimination and impedes the exercise of sex workers' human rights. Amnesty does recognise that there is a wide diversity of views among sex workers regarding regulation of their work. A large number of sex workers and the organisations and collectives that represent them call for decriminalisation of sex work. For example, the Global Network of Sex Work Projects (NSWP), which represents more than 100 sex workers organisations worldwide, has vocally challenged the criminalisation of sex work, affirming that member organisations 'recognise sex work as work, oppose the criminalisation of sex work, and support the self-organising and self-determination of sex workers.'

Could decriminalisation of sex work facilitate violence against sex workers?

The available evidence suggests that individuals who are engaged in sex work are exposed to levels of violence and other harm largely because of the criminalised legal status of their work. It creates conditions which tolerate violence and abuse. This limits sex workers' ability to work safely or to seek redress for or protection from such harms. By contrast, removing criminal laws and policies that impede sex workers from earning a living in a safe and dignified manner maximises their protection from violence. Criminal laws on sex work often contribute to the violence and discrimination that sex workers experience because those who target sex workers for violence can do so with the understanding that individuals selling sex have little recourse to police protection.

Treating sex work as a crime can lead to law enforcement officials failing to recognise that sex workers can be victims of crime, thus denying justice or support to sex workers who seek protection and assistance. In contexts where sex work has been decriminalised, such as in New Zealand, sex workers can turn to the police and the justice system for assistance without fear of prosecution.

Will removing criminal penalties for sex work facilitate more people entering sex work?

There is no evidence to prove that removing criminal penalties for sex work increases the number of people who enter sex work. In fact, an assessment of the amount of prostitution that took place before and after legalisation in New Zealand confirmed that the number of sex workers had not increased as a result of the passage of the Prostitution Reform Act in 2003. A government-commissioned assessment reported that the number of workers in New Zealand appeared to have decreased (from 5,932 in 2003 to 2,232 in 2007) since legalisation of sex work in the country and that legislative change did not lead to increased under-age involvement in prostitution.

Can an individual meaningfully consent to sex work?

Amnesty International's consultation is based on the notion that those who engage in sex work are not always coerced into it and that you have to look at a wide range of factors, including socio-economic pressures. Amnesty neither judges individuals' choices nor attempts to negate them, because to do so would ignore the ways that individuals act thoughtfully and deliberately to, at a minimum, survive or to empower themselves.

Does decriminalisation of sex work legitimise the objectification of women?

Amnesty acknowledges that some believe that sex work is conducive to exploitation and incompatible with measures to advance gender equality and that some view sex work as a grave form of violence against women regardless of the specific contexts and conditions in which the exchange takes place. The proposed policy is not intended to dismiss those views but is focused on the reality that criminalisation does not effectively prevent exploitation or remedy gender stereotype. Removing criminal laws and policies that prevent sex workers from earning a living in a safe and dignified manner increases their protection from violence and their ability to exercise their human rights.

How does this policy proposal relate to Amnesty International's position against trafficking in people?

Human trafficking into any form of forced labour, including forced prostitution or any other aspect of non-consensual sex, should be criminalised as a matter of international law. This view is firmly expressed throughout the draft policy proposal.

Contrary to people's fears, decriminalisation of sex work would not mean that the removal of criminal penalties for trafficking, forced prostitution, under-age prostitution or abuses against sex workers. If sex workers are not threatened with criminal prosecution, they could collaborate with law enforcement to identify victims of trafficking of all ages. Notably, the UNAIDS Guidance Note on HIV and Sex Work identifies sex worker organisations as those best positioned to refer women and children who are victims of trafficking to necessary services. Increased government regulation could also significantly help reduce trafficking due to increased oversight and regulation, along with greater transparency of the legal sex industry.