THIS DOCUMENT PROVIDES TEN REASONS WHY DECRIMINALIZATION OF SEX WORK IS THE BEST POLICY FOR PROMOTING THE HEALTH AND HUMAN RIGHTS OF SEX WORKERS, THEIR FAMILIES, AND COMMUNITIES. REMOVING CRIMINAL PROSECUTION OF SEX WORK GOES HAND-IN-HAND WITH RECOGNIZING SEX WORK AS WORK AND PROTECTING THE RIGHTS OF SEX WORKERS THROUGH WORKPLACE HEALTH AND SAFETY STANDARDS. DECRIMINALIZATION MEANS SEX WORKERS ARE MORE LIKELY TO LIVE WITHOUT STIGMA, SOCIAL EXCLUSION, AND FEAR OF VIOLENCE.

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SEX WORKERS are adults who receive money or other forms of compensation in exchange for consensual sexual services, either regularly or occasionally.¹ A sex worker can be female, male, or transgender. In most countries, sex work and activities associated with it are criminal acts.²

Sex work is criminalized not only through prohibitions on selling sexual services, but also through laws that prohibit the solicitation of sex, living off of the earnings of sex work, brothel-keeping, or the purchase of sexual services. In addition, many male and transgender sex workers face arrest, prosecution, and harassment because of laws that criminalize same-sex intimate relations. Sex workers are also frequently penalized for non-criminal offenses such as loitering, vagrancy, and impeding the flow of traffic. By limiting sex workers’ freedom to negotiate condom use with clients, access public services like health care, and organize and advocate for their rights, criminalization increases sex workers' vulnerability to violence, extortion, and health risks.³

This document provides ten reasons why decriminalization of sex work is the best policy for promoting the health and human rights of sex workers, their families, and communities. Decriminalization refers to the removal of all criminal and administrative prohibitions and penalties on sex work, including laws targeting clients and brothel owners. It differs from legalization, which is a legislative regime characterized by significant regulations—many of which can limit rights and protections, create mechanisms for abuse by authorities, and have other negative impacts on sex workers. New Zealand and New South Wales, Australia are two jurisdictions known for their decriminalized sex industries.

Decriminalization goes hand-in-hand with recognizing sex work as work and protecting the rights of sex workers through labor law, and workplace health and safety regulations. When sex work is decriminalized, sex workers can press for safer working conditions and use the justice system to seek redress for discrimination and abuse.⁴ Sex workers are more likely to live without stigma, social exclusion, or fear of violence. Even where sex work is decriminalized, the prostitution of minors and human trafficking can and should remain criminal acts.
10 REASONS TO DECRIMINALIZE SEX WORK: A REFERENCE BRIEF

1 DECRIMINALIZATION RESPECTS HUMAN RIGHTS AND DIGNITY

A cornerstone of contemporary human rights is that all people are born free and equal in dignity and rights. There are many reasons why adults do sex work, whether it is their main livelihood, a temporary means to survive, or an opportunity to supplement other income. Some people find that sex work offers better pay and more flexible working conditions. Whatever the reasons, sex work is work, and sex workers should be treated with dignity. Sex workers in many parts of the world have organized to fight for human rights that cannot be fully realized as long as criminal laws threaten sex workers’ access to justice, health, and social services; undermine their right to labor and workplace protections; and expose them to violence, discrimination, and arbitrary arrest.

2 DECRIMINALIZATION HELPS GUARD AGAINST VIOLENCE AND ABUSE

Sex work is not inherently violent; it is criminalization that places sex workers at greatest risk. The need to avoid arrest—of both sex workers and their clients—means that street-based sex workers must often move to more isolated areas that are less visible to law enforcement, and where violence is more prevalent. Fear of arrest and police abuse limits the time and methods that sex workers can use to conduct safety screenings of clients without detection by police. For sex workers who are not street-based, authorities have even shut down online sex work forums, like Redbook, which have offered sex workers more detailed client screening possibilities and thus greater security. These factors, plus real or perceived impunity for perpetrators of violence against sex workers, place sex workers at heightened risk. For example, after Scotland instituted laws criminalizing solicitation in 2007, groups recorded a doubling in reported rapes and assaults. In jurisdictions that have decriminalized sex work such as New Zealand, sex workers have an increased ability to screen clients, work in safe areas with better access to security services, and refer to police in cases of violence.
DECRIMINALIZATION
CHALLENGES POLICE ABUSE
AND VIOLENCE

Where sex work is criminalized, police wield power over
sex workers. Police threaten sex workers with arrest, public
humiliation, and extortion. In Central and Eastern Europe
and Central Asia, a high proportion of sex workers have
reported suffering sexual assault by police—as high as 90 percent in
Kyrgyzstan. In Cambodia, nearly half of all freelance sex
workers have been beaten and nearly half have been raped
by police; and nearly three of every four brothel-based sex
workers have been beaten, and more than half have been
raped by police. From Namibia to Serbia, sex workers report
rape by police while in custody, often without condoms
and often as a pre-condition for release on bail. In these
instances police abuse sex workers with impunity, in part
because sex workers fear arrest or further abuse for reporting
these crimes. Decriminalization empowers sex workers to
come forward to register complaints against police who act
unlawfully, and to bring offenders to justice without fear of
negative consequences for their own lives. In New Zealand, 57
percent of sex workers reported that police attitudes improved
following decriminalization in 2003.

DECRIMINALIZATION
IMPROVES ACCESS
to JUSTICE

Laws that criminalize sex work cause sex workers to feel
unsafe reporting crimes—including violence crimes and other
abuses—because they fear prosecution, police surveillance,
stigma, and discrimination. In both Norway and Sweden,
for instance, many sex workers report that the thresholds
at which they will report crimes to the police are high as a
result of laws that criminalize sex work. Decriminalization
removes these kinds of barriers. After New Zealand reformed
its laws in 2003, many sex workers reported that they
could turn to the police and courts for help without fear
of prosecution for the first time in their lives. In 2014,
for example, a sex worker in Wellington was awarded NZD
25,000 after a brothel operator repeatedly harassed her,
violating her rights under the country’s Human Rights Act.


26 Ibid.


28 Mogulescu, Kate & Mullen, Katherine, testimony before the City of New York Comm. on Women’s Issues and the Comm. on Public Safety 8, Oversight: Combatting Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution, (2011)


5 DECRIMINALIZATION CHALLENGES THE CONSEQUENCES OF HAVING A CRIMINAL RECORD

In many countries, harsh and biased application of criminal law ensures that a large proportion of sex workers will have criminal records. Criminal records are often a source of stigma, and can drastically limit one’s future. In some parts of the United States, for example, people convicted of sex work-related offenses are registered as sex offenders and must carry documents identifying themselves as such.24 Sex offenders are often ineligible to receive loans, educational scholarships, or public housing.25 Individuals with sex work-related criminal records face great difficulty finding non-sex work employment. Employer background check policies and restrictions on licenses required for certain fields of work make it next to impossible to change careers.26 In addition, criminal convictions for sex work-related offenses have been used as the basis for arbitrary re-arrest and to remove parental custody.27, 28 Countries that decriminalize sex work should consider retroactively removing sex work-related criminal records.

6 DECRIMINALIZATION IMPROVES ACCESS TO HEALTH SERVICES

Decriminalization is associated with the best access by outreach workers to brothels, and the greatest financial support for sex worker health programs. Better financial support means greater capacity to conduct health outreach in the evening, an important feature because the evenings are often the busiest times for sex workers.29 Decriminalization has also been shown to increase condom access and rates of use by sex workers. For example, in the state of New South Wales, Australia where sex work is decriminalized, sex workers’ access to and use of condoms is higher than in other Australian jurisdictions that have varying levels of criminalization.

In addition, decriminalization enables sex workers to work in collectives in which they can organize appropriate, accessible,
and respectful health services for themselves. This offers a powerful alternative to the stigma and discrimination sex workers face in their interactions with many health care providers. The Bar Hostess Empowerment and Support Program in Nairobi, Kenya is a stand out example among groups that have developed health services that are delivered in close collaboration with sex worker communities.

7 DECRIMINALIZATION REDUCES RISK OF HIV AND SEXUALLY TRANSMITTED INFECTIONS

Decriminalization of sex work could avert up to 46 percent of new HIV infections among female sex workers over the next decade. A recent study published in The Lancet concluded that decriminalization of sex work had the single greatest potential to reduce HIV infections in female sex worker communities—even more than increasing access to antiretroviral treatment. When sex work is decriminalized, sex workers are empowered to insist on condom use by clients, and are better able to access testing and treatment for HIV and sexually transmitted infections.

In contrast, criminalization harms sex workers’ ability to negotiate condom use with clients. Visible condoms and openly negotiating condom use put sex workers at greater risk of arrest. This deters sex workers and clients from condom use, particularly among street-based sex workers who are often at highest risk of HIV infection. In response to this, various police departments around the world have decided to stop using condoms as evidence of prostitution against sex workers.

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31 Ibid.
33 The police departments of both New York City and San Francisco, two of the largest cities in the United States, have taken this approach. In both cases, these actions were undertaken by the district attorney or police commissioner.


8 DECRIMINALIZATION PROMOTES SAFE WORKING CONDITIONS

Decriminalization makes possible the creation of workplace health and safety regulations that are relevant to the sex industry. In New Zealand, for instance, decriminalization enabled the inclusion of sex work in the Health and Safety Employment Act, resulting in the creation of occupational health guidelines that sex workers have used to assert their rights with employers and clients. In New South Wales, Australia, decriminalization has been associated with sex workers’ decreased risk of occupational injury and insecurity as compared to other Australian jurisdictions.

Decriminalization also promotes safer working conditions for sex workers by enabling them to organize. Collectively, sex workers can address risk factors in their workplaces and insist upon improved conditions. For example, the mobilizing efforts of the New Zealand Prostitutes Collective have been key to asserting workplace safety rights.

9 DECRIMINALIZATION ALLOWS FOR EFFECTIVE RESPONSES TO TRAFFICKING

Trafficking is an egregious human rights violation involving coercion of individuals for sexual exploitation or forced labor. Sex workers can be natural allies in the fight against trafficking, and may be well placed to refer trafficking victims to appropriate services. For example, through a sex worker run self-regulatory board, the Durbar Mahila Samanwaya Committee in Sonagachi (Kolkata) India was able to identify and support women who had been trafficked for the purpose of sexual exploitation. When freed from the threat of criminal penalties, sex workers can organize and collaborate with law enforcement.

Despite this, laws prohibiting the purchase of sexual services are often promoted as a successful means to combat trafficking. However, there is no evidence that this is so. A 2014 report by the Swedish police found no reduction in trafficking in the country after 15 years of criminalization. Conversely, the decriminalization of sex work does not cause
an increase in trafficking. For example, New Zealand, which
decriminalized sex work in 2003, is judged by even the
United States State Department to be among those countries
doing the most effective work on human trafficking. 39

10 DECRIMINALIZATION
CHALLENGES STATE
CONTROL OVER BODIES
AND SEXUALITY

Decriminalization of sex work recognizes the right of all people
to privacy and freedom from undue state control over sex and
sexual expression. The different treatment of sex work from
other types of work is an example of governments’ long history
of exerting control over bodily autonomy, self-determination,
and sexuality. Decriminalization respects gender equality
and sexual rights. Laws against sex work intrude into private
sexual behaviors and constitute a form of state control over
the bodies of women and LGBTI persons who make up a
large majority of sex workers worldwide. 40 Like state controls
over reproductive rights and sexual acts between consenting
adults, criminal laws prohibiting sex work attempt to legislate
morality with scant regard for bodily autonomy.

39 United States Department
of State, Trafficking in
www.state.gov/j/tip/rls/
tiprpt/2014/index.htm

40 Transgender people are
rarely protected by law
from discrimination based
on gender identity, and
discrimination in employment
may be one factor that leads
them to engage in sex work.
See, e.g., K Slamah, S Winter
and K Ordek, Stigma and
violence against transgender
sex workers. RH Reality
Check, December 16, 2010,
http://www.rhrealitycheck.
org/blog/2010/12/16/stigma-
exclusion-violence-against-
trans-workers.
OPEN SOCIETY FOUNDATIONS
The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

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The Open Society Public Health Program aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices are evidence-based and reflect these values. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

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