

Twenty one different frameworks of sex work law and still counting

July 2011

Sex work law reform continues to be discussed in several countries and at the UN. The Regional Dialogues of the Global Commission on HIV and the Law have taken place and hundreds of submissions about sex work law reform were received. I am sure that the sex workers rights movement has reason to be optimistic about the recommendations of the Commission which we will hear next year.

The material that follows began as a folder for gathering information about the definitions and ideas around law and sex work. As the folder grew I became increasingly aware that although some very good work exists, no agreed analysis or even common understandings of different legal terms and approaches has emerged. This means we lack a solid basis for discussions about the impact of legal frameworks and for planning changes that can reduce human rights abuses and HIV vulnerability among male, female and transgender sex workers.

This paper begins with perspectives on language, beginning with a comment from Carol Lee, who invented the term 'sex worker'. It then lists 21 different frameworks and sets of terms for talking about sex work. The final entry is a recommendation about how we should think about sex work and law by me. It is a work in progress.

Cheryl Overs

Carol Lee, **Prostitution Law Reform: Defining Terms.** [www.bayswan](http://www.bayswan.com)

There is no official definition of legalized or decriminalized prostitution. Those who are not familiar with the contemporary discussion about prostitution law reform usually use the term "legalization" to mean any alternative to absolute criminalization, ranging from licensing of brothels to the lack of specific laws dealing with prostitution. Most references to law reform in the media and in other contemporary contexts use the term 'legalization' to refer to any system that allows some prostitution. These common definitions of legalization are extremely broad. Conflicting interpretations of this term often cause confusion in discussions concerning law reform.

There is much work to be done to create a meaningful framework for discussion of prostitutes' rights. Each of the linguistic approaches can be problematic: The term legalization is overly broad. The term decriminalization has not worked its way into a contemporary discussion and can elicit confusion and misinterpretation. Obviously, all these terms will be evoked in thorough discussion of the issues. Consensus regarding definitions should be established early. As the discourse develops, it is essential that terms be developed from the perspective of those who will be affected by the legislation.

Michael Goodyear, academic and activist.

An examination of regulatory systems is often confused by imperfect terminology that means different things in different contexts and locations. Common terms include abolition, prohibition, criminalisation, decriminalisation, legalisation and regulation... These policies have been shaped by different social, cultural, legal and political traditions, and by the differing roles played by a variety of actors in framing issues and remedies.

Controlling Loose Women : International trends in the regulation of the exchange of sexual services

<http://www.plri.org/resource/controlling-loose-women-international-trends-regulation-exchange-sexual-services>

Model 1.

Topic Law, migration, sex work in Europe
Authors Tampep

Framework

- 1) sex work specific law;
- 2) migration law
- 3) public health law.

Source www.services4sexworkers.eu/s4swi/articles/view/id/24

Model 2.

Topic Describing models of law and possible reform
Authors. Sex Workers Advocacy and Education Task Force. SWEAT. South Africa

Framework

1. Total criminalisation
With this model, the laws make all aspects of sex work illegal. The police or other state law enforcement agencies enforce the laws.
2. Partial criminalisation
With this model, only some parts of sex work are a crime – for example, the laws may punish only sex workers or only clients. All the models make forced and underage sex work a crime, though.
3. Non-criminalisation
With this model, sex workers and sex work businesses have to obey the same laws as all employees and business sectors i.e. laws dealing with labour, occupational health and safety and human rights. Under this model, there are still laws making abuse, trafficking, forced and under aged sex work crimes.
4. Regulation
This model uses a system to work out where, when and how sex work will take place. It is usually a compromise between the needs of the sex work industry and local communities. When people don't comply with the regulations, they are committing a crime.

Model 3. Understanding Sex Work 2003

Topic Categorising legal responses to sex work
Authors. HIV/AIDS Alliance

Framework

1. Regulation : certain activities associated with selling sex are illegal, such as advertising, operating brothels, soliciting and recruiting sex workers, but selling or buying sex itself is not illegal.
1. No Law : the penal code does not mention prostitution e.g. Tanzania, Botswana, Grenada
2. Prohibition : the act of selling sex is itself illegal. eg. The United States, Saudi Arabia, Cuba.

Source : Understanding Sex Work

Model 4.

Topic. Categorising legal responses to sex work
Authors. The Law & Policy Project. Mailman School of Public Health,
Columbia University 2006

Framework

1. Prohibition/partial prohibition (often associated with the 'abolitionist' position)
2. De-criminalization/ partial decriminalization
3. Legalization, including state regulation
4. Non-prosecution/ suspension of arrests (sometimes called pragmatic or selective enforcement)

Source. Columbia University <http://www.plri.org/resource/provisional-framework-analyzing-laws-and-policies-affect-sex-workers>

Model 5.

Topic. Exploration of the health and welfare impacts and effectiveness of different legal approaches to sex work.

Authors Harcourt C, Egger S, Donovan B

Framework

1. Prohibition, including the unique Swedish law criminalising sex workers' clients;
2. Licensing
3. Decriminalisation.

Source : Harcourt C, Egger S, Donovan B. Sex Work and the Law Sexuality Health .
2005;2(3):121-8

Model 6

Topic Defining terms
Authors Scarlet Alliance Australia

Framework

- 1) Decriminalisation
Decriminalisation refers to the removal of all criminal laws relating to the operation of the sex industry. The decriminalisation model aims to support occupational health and safety and workplace issues through existing legal and workplace mechanisms.
 - 2) Legalisation
Refers to the use of criminal laws to regulate or control the sex industry by determining the legal conditions under which the sex industry can operate. Legalisation can be highly regulatory or merely define the operation of the various sectors of the sex industry. It can vary between rigid controls under legalised state controlled systems to privatising the sex industry within a legally defined framework. It is often accompanied by strict criminal penalties for sex industry businesses that operate outside the legal framework.
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Model 7.

Topic Categorising Sex Work law
Authors Wikipedia

Framework

1. Regulation
prostitution may be considered a legitimate business; prostitution and the employment of prostitutes are legal, but regulated; the current situation in the Netherlands, Germany and parts of Nevada The degree of regulation varies very much. Some countries outlaw the act of engaging in sexual activity in exchange for money, while others allow prostitution itself, but prohibit most forms of procuring (such as operating brothels, facilitating the prostitution of another, deriving financial gain from the prostitution of another, soliciting/loitering etc) in an attempt to make it more difficult to engage in prostitution.
2. Decriminalization:
"prostitution is labor like any other. Sex industry premises should not be subject to any special regulation or laws", the current situation in New Zealand; the laws against operating a brothel, pimping and street prostitution are struck down, but prostitution is not regulated nearly at all.

Source Wikipedia

Model 8

Topic Categorising legal responses to sex work
Authors ?

Framework

- 1) Criminalized prostitute, namely decriminalized prostitute. This model believes that prostitution and all activities associated with prostitution constitute a crime. Some U.S. states adopt this model. Also it exists in the socialist period of Romania, Hungary, Czech and Slovakia.
- 2) Legalized prostitute means according to the law the nation recognize, standardize and manage prostitution industry. Prostitutes must register, prostitution income should pay tax and it is necessary to conduct regular health checks. Germany, France, Austria, the Netherlands and the United States and other countries in most parts of Nevada take this model.
- 3) Non-criminalized prostitute. The characteristics of this model are not to prohibit prostitution, but not implement the legalization of prostitution. The essence is no intervention to ordinary prostitute and prostitute behavior itself. This model takes a liberal stand on prostitution and the United Kingdom and Japan take this model.

Source ???!!)

Model 9

Topic Categorising legal responses to sex work
Authors United Nations' Report of the Special Rapporteur on violence against Women, its causes and consequences'10 (1997)

'Prohibition paradigm: Prohibitionism seeks to punish any acts or persons involved in prostitution, including the woman herself. Although everyone involved in prostitution, including the women, clients and third parties, are subject to legal penalties, it is rarely the case that States enforce the laws against traffickers and/or clients.

Abolishing paradigm: Abolitionism calls for the elimination of laws on prostitution and rather than criminalizing the transaction between the prostitute and the client, the abolitionist strategy targets third parties such as pimps, brothel-keepers, traffickers and the Government. The long term goal of abolitionism is the complete abolition of prostitution.

Regulation paradigm: Regulationism is characterized by official State tolerance of what is often understood to be a 'necessary evil', by attempting to control prostitution through government regulatory schemes. Such schemes are either classically regulated by government authorities primarily through legally permitted brothels or by means of a neo-regulatory system whereby indirect mechanisms, such as taxes or mandatory health examinations, regulate prostitution.

Decriminalization paradigm: The decriminalization paradigm views prostitution as work and seeks to decriminalize prostitution and the exploitation of prostitution by third parties. Decriminalization is focused on the coercion and violence rather than on prostitution itself and seeks to utilize labour laws to address working conditions and the rights of prostitutes.'

Source. UN Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, 1997) 10 UN doc. E/CN.4/1997/47

Model 10

Topic Categorising legal responses to sex work
Authors Report for European Parliament

Framework

3. 'Abolitionism: A country falls under this model if outdoor and indoor prostitution are not prohibited. The State decides to tolerate prostitution and not to intervene on it. Prostitution by adults is not subject to punishment, but profiting from another person's prostitution is, however, criminalized.
4. New Abolitionism: This model is a development on the 'abolitionism' model. A country falls under this model if outdoor and indoor prostitution are not prohibited, but with reference to the latter the State intervenes to explicitly prohibit the existence of brothels.
5. Prohibitionism: A country falls under this model if outdoor and indoor prostitution are prohibited. Parties involved in prostitution can be liable to penalties, including, in some cases, the clients.
6. Regulationism: A country falls under this model if outdoor and indoor prostitution are regulated by the State and therefore not prohibited when exercised according to this regulation. Prostitutes are often registered by local authorities and are in some cases obliged to undergo medical controls.'

Source 'Study on National Legislation on Prostitution and the Trafficking in Women and Children' conducted for the European Parliament in 2005. European Parliament 2005/IPOL/C/FEMM/ST/2004-05

Model 11

Topic Categorising legal responses to sex work
Authors Arte TV

Framework

1. **The "prohibitive" model:** both the prostitutes and pimps and Free are liable to prosecution. This model is the least common. It is found today in most American states, in communist China and the countries bordering the Persian Gulf. Sweden has since tightened the criminal and the suitors of prostitutes is a punishable offense.
2. **The "regulation" of prostitution:** Prostitution is a "necessary evil" to be monitored properly. Prostitutes are reported and need to undergo routine medical examinations. The operation of brothels is allowed in special "red light zones". This model is applied in the Netherlands and - to a lesser extent - Germany, Greece or Turkey.

3. **The "abolitionist" model** : although pimping is prohibited by law, neither women nor their clients engage in prostitution are liable to prosecution.

Source Arte.tv/de/suche/364664.html

Model 12

Topic Identify HIV trends in setting with different legal approaches

Authors International Planned Parenthood Federation

Framework 'heat map' of countries that have 'criminalised behaviours closely linked with HIV

Source Verdict on a Virus

Model 13

Topic : Description and categorisation of sex work laws in 100 countries

Authors **ProCon**

Framework Prostitution / Brothel Ownership /Pimping

Legal/ Limited Legality/ Illegal

Source : www.plri.org/resource/100-countries-and-their-prostitution-policies

Model 14

Topic "What countries have legal prostitution?"

Author www.sexworker.at

"It would be easier to ask which countries is it illegal in, that would be a very short list, with mainly the U.S. where consenting adult sexual rights are denied. Prostitution is LEGAL (with some restrictions that aren't that bad) in Canada, most all of Europe including England, France, Wales, Denmark, etc., most of South America including most of Mexico (often in special zones), Brazil, Israel (Tel Aviv known as the brothel capital of the world), Australia, and many other countries. It is either legal or very tolerated in most all of Asia and even Iran has "temporary wives" which can be for only a few hours! New Zealand passed in 2003 one of the most comprehensive decriminalization acts which even made street hookers legal which is causing many concerns"

Source <http://tinyurl.com/35f73md>

Model 15

Topic **Categorising legal responses to sex work**

Authors **Marlise L Richter¹ Matthew F Chersich, Fiona Scorgie Stanley Luchters Marleen Temmerman and Richard Steen**

Framework

1. Total Criminalisation. All aspects of sex work are illegal (eg South Africa)
2. Partial decriminalisation. Some aspects of sex work are illegal (eg Sweden)
3. Legalisation. Legal under certain circumstances (eg Germany)
4. Decriminalisation Removal of all laws on sex work (eg New Zealand)

Source Sex work and the 2010 FIFA World Cup: time for public health imperatives prevail
<http://www.globalizationandhealth.com/content/6/1/1>

Model 16

Topic Categorising legal responses to sex work
Authors Sexworker.at Portal (Germany)

Framework

1. Prohibitionism Prostitution is prohibited
Abolitionism State control with economic pimping is prohibited
2. New abolitionism In addition, brothels are prohibited
3. Regulationism Prostitution permission with control rules.
4. Liberalism Full decriminalisation of sexual services

Source. www.sexworker.at

Model 17

Topic Summarising legal responses to sex work
Authors Avert

Laws around sex work differ between countries. In some, sex work is illegal, meaning that is fully prohibited by the law. In others, it is criminalised, meaning that the act of sex work itself is not illegal, but that associated activities – for example, soliciting sex or running a brothel – are. In a few, sex work is legalised and regulated. These different legislative systems can affect how HIV prevention is carried out amongst sex workers.

Source <http://www.avert.org/sex-workers.htm>

Model 18

Topic Legal framework and definitions in “Occupational health and safety among commercial sex workers”

Authors Michael W Ross, PhD, MedDr, MPH,^{1, 2} Beth R Crisp, PhD,³ Sven-Axel Månsson, PhD,² Sarah Hawkes, MB, BS, PhD⁴ Scandinavian J Work Environ Health – online first.
doi:10.5271/sjweh.3184 p12

1. decriminalization (removal of laws against prostitution and allowing the “free market” to operate);
2. partial criminalization of clients, as in some Scandinavian countries;
3. legalization, which may provide for regulation, licensing, and screening of sex workers and their work premises; and encouragement of condom use.

“ Irrespective of which formal legal system is in operation, in reality most sex workers are forced to transact their services outside the protection of the law”

Model 19

Topic Legal framework and definitions in, Sex Work (Prostitution) Policy: A Critical Analysis British Society of Criminology Annual Conference Northumbria University, Newcastle on Tyne July 3-6, 2011

Author Frances M. Shaver

1 *Criminalization* uses criminal law to regulate people working in the sex industry (PWSI (i.e., sex workers)), managers, owners and operators (who are seen to be living on the avails of prostitution) and clients.

2 The *Swedish model* uses the criminal law to regulate clients, managers, and owners/operators, but not PWSI (sex workers). Legislation criminalizes the purchase of sexual services, procurement, working indoors, working with others, advertising, and profiting from the sexual labor of others.

3 *Legalization* regulates sex work and sex work-related activities through the use of criminal law. Current legalization practices include licensing of workers, compulsory medical check-ups for workers, registration and size limitations on bawdy-houses, maintenance of procuring and pimping criminal laws, and limitations on street prostitution.

4 *Decriminalization* regulates PWSI and sex work activities without using criminal law, while recognizing labor rights and responsibilities. Workers, managers, and business establishments can benefit from laws about labor/employment standards; occupational, health, and safety; workers' compensation; union rights & organization; employment insurance, and public pensions.

Model 20

Topic Legal framework and definitions in "Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health" *Harvard Journal of Law and Gender* 34 (2011): 223. Available at: http://works.bepress.com/aziza_ahmed/3

Author Aziza Ahmed.

1 *Decriminalization*—Decriminalization translates into the repeal of criminal laws that address sex work. Supporters of decriminalization include sex worker rights groups, sex-positive feminists, and public health scholars who largely draw from the health and human rights movement. These groups argue that decriminalization allows sex workers to collectivize,

mobilize, and change an often unsafe work environment under the leadership and direction of sex workers. Sex-positive feminists note that sex workers are the best allies in the battle against trafficking because sex workers have immediate access to trafficked women.

2. *Regulation*—Regulation is characterized by a “patchwork” of local legal regulations. These regulations often have the goal of monitoring sex worker behavior and improving the health of sex workers in order to stop the spread of HIV/AIDS. Local public health authorities often support regulatory schemes, but both abolitionist feminists and sex-positive feminists have largely been opposed to regulation. For abolitionist feminists, regulation represents ongoing regulation of women’s bodies. For sex-positive feminists, regulation empowers state agencies to utilize coercive measures in an attempt to improve health outcomes.

3. *Partial criminalization*—Best characterized by the “Swedish model,” partial criminalization may target clients, people who live off the earnings of a sex worker, and those people who profit from sex work. Supporters of partial criminalization are typically religious and/or right-wing groups in the United States, along with abolitionist feminists. Sex-positive feminists and sex workers have largely opposed partial criminalization schemes because of the negative impact on sex workers when clients are criminalized. These negative consequences include being pushed underground and into unsafe locations to continue to engage in sex work.

4. *Full criminalization* A full criminalization legal regime would include criminal sanctions for sex workers, clients, living off of the earnings of a sex worker, and others involved in the act of soliciting or selling sex. Supporters may include conservative or right-leaning individuals and organizations, though some abolitionist feminists have also supported full criminalization. Like partial criminalization, any purported health benefits of full criminalization come from ending sex work.

Model 21

Topic Legal framework and definitions

Author : International HIV/AIDS Alliance and Commonwealth HIV/AIDS Action Group (2010)

1. Full decriminalization

Decriminalization refers to the removal of all criminal laws related to the operation of the sex industry. Decriminalization enables occupational health and safety issues to be addressed through existing general employment laws. Under this model, sex work is treated as a legitimate form of work, and the sex industry is subject to the same general laws related to workplace health and safety as other industries. These laws may enable specific guidelines on workplace health to be developed for the sex industry. This model has been adopted in New Zealand and New South Wales, Australia. To achieve full decriminalization in New Zealand, amendments were required to taxation, social security and planning laws. Decriminalization also enables peer-based sex worker organizations to register as NGOs and advocate for policies and programmes to improve the health and human rights of their members.

2 State regulation and licensing

This model involves a government body regulating the licensing of sex industry businesses, operators, managers and, in some cases, sex workers. It has been adopted in some jurisdictions in Australia.¹²⁷ Licensing is often accompanied by strict criminal penalties for sex industry businesses that operate outside the legal framework.

The experience of jurisdictions with this model has been very mixed. Regulation can introduce safety standards in brothels and during sexual acts. However, where licensing conditions are burdensome, it can result in a small percentage of the industry operating legally but the

remainder of the industry continuing to operate illegally. Many sex workers may have little choice but to operate outside of the licensed industry if it becomes over-regulated. The model may deliver benefits to some sex workers but has proved problematic when licensing conditions are too complex and costly to comply with. Particularly in countries where the rule of law is weak, police or licensing authorities responsible for monitoring compliance may abuse their authority, demand bribes or sexual services.

3. Partial prohibition

In India, a partial prohibition model that would decriminalize soliciting but criminalize clients of sex workers was proposed in 2006.¹²⁸ This proposal was opposed by advocates for sex workers rights, as it would drive sex work underground. Many countries do not criminalize the act of sex work itself. However, other aspects of the sex industry, such as operating a brothel or living on the earnings of sex work, are illegal (e.g. Bangladesh).

4. Non-prosecution policies

In countries where decriminalization of sex work is not a realistic political option in the short term, other pragmatic options can be considered in advance of law reform. Prosecution policies can prohibit use of the possession of condoms or HIV education materials as evidence of the commission of a sex work offence. A policy decision not to arrest or prosecute sex work in particular localities can allow health promotion to occur openly within the industry.

The last word, by me.

Male female and transgender sex workers' vulnerability to HIV is exacerbated by criminal law and discriminatory application of civil and administrative law that occurs in different ways, and to different degrees, across the world. Criminalisation of sex work prevents establishment of safe places for sex workers to work and reduces their access to ethical and effective sexual and reproductive health services including HIV prevention and care. It also reduces sex workers access to other necessities such as education and housing and violates rights those to bodily integrity, privacy, freedom of movement and association. Criminal laws against buying or selling sex, and facilitating the sex work of others, contribute to sex workers lack of legal protection from violence by criminals, members of the public and police themselves.

Laws against selling sex drive sex workers into dangerous situations such as roadsides and remote locations and, when they are caught, into jails, police stations and detention centres. They also encourage sex workers to move around either within a country or across borders which has also been shown to increase vulnerability to HIV. Laws against intermediaries in the sex industry create hidden or disguised commercial sex venues in which working conditions are poor and unprotected sex is more common because the presence of condoms can be used as evidence of prostitution of brothel keeping, trafficking or sexual exploitation.

The conceptual conflation of "trafficking" with "sex work" has ultimately served to undermine efforts to address both genuine human trafficking and HIV in the context of commercial sex. The legal conflation of "sexual exploitation" with trafficking and sex work applies even where sex workers are adult and consenting. Discriminatory use of administrative and civil law deprives many sex workers and their children of basic rights which contributes to economic and social exclusion that is strongly associated with increased vulnerability to HIV. These unfavourable legal conditions particularly impact young people involved in sex work and undocumented migrant sex workers, many of whom have no access to HIV treatment and care at all.

There is widespread agreement, including among sex workers, that law should strongly support the position that no person should ever be forced to sell sex, and that children should never be sexually abused. At the same time there is increasing recognition that legal moralism has failed to prevent abuse associated with commercial sex or to protect public

health and human rights. This has resulted in emerging consensus that criminal laws against adult sex work should be removed and replaced with legal rules that apply to other occupations and commercial activities, including labour law.

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