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Rachel Marshall

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# SEX WORKERS AND HUMAN RIGHTS: A CRITICAL ANALYSIS OF LAWS REGARDING SEX WORK

RACHEL MARSHALL\*

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\* Rachel Marshall is a 2016 graduate of American University, Washington College of Law and currently serves as a law clerk to the Honorable Julie H. Becker of the Superior Court of the District of Columbia. The author gratefully acknowledges the assistance of Professor Juan Mendez and Professor Elizabeth Abi-Mershed who advised her in the process of writing this Article. She would also like to thank Kanya Bennett for her encouragement and assistance in editing this Article, as well as her husband, Michael Uehlein, for his patience and unending support. The opinions expressed in this Article are the author's and do not necessarily reflect the policies or official views of the Honorable Julie H. Becker or the Superior Court of the District of Columbia.

## INTRODUCTION

Rachel Moran was a mere fourteen years old when she started to sell her body for sex.<sup>1</sup> Her father had just committed suicide and her mother had a severe mental illness, so she ran away from home and found herself with no other option.<sup>2</sup> Moran said she was coerced into prostitution by her older boyfriend and soon began seeing seven to ten men every day.<sup>3</sup> After working on the streets for two years, she later began working in a brothel.<sup>4</sup> Prostitution “deeply . . . eroded [Moran’s] confidence” and caused her to start using drugs to dull the pain.<sup>5</sup> Moran believes that consent is never truly present in prostitution and prostitution is always a human rights abuse.<sup>6</sup> She also deeply dislikes the term “sex work.”<sup>7</sup>

Maggie McNeill, on the other hand, embraces the term “sex worker.”<sup>8</sup> She proudly shares her chosen profession with others, describing the work as just one of many ways a woman can make a living.<sup>9</sup> In fact, in a recent interview, McNeill said, at least in the United States, that the average sex worker is a middle class to working class woman who advertises on the Internet and only works for herself.<sup>10</sup> She insists that, while women can be exploited by sex work and forced into trafficking, some women become sex workers by choice and that sex work is not inherently exploitive.<sup>11</sup>

Moran’s and McNeill’s vastly different narratives on sex work are not uncommon. The debate surrounding sex work and whether some people, particularly women, voluntarily choose to enter the field has exploded recently due, in part, to the international human rights organization Amnesty International announcing in August

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1. Joyce Hackel, *After Seven Years in the Dublin Sex Trade, Rachel Moran Says Prostitution Is Always Abuse*, PRI (Oct. 1, 2015, 5:00 PM), <http://www.pri.org/stories/2015-10-01/after-seven-years-dublin-sex-trade-rachel-moran-says-prostitution-always-abuse> [<http://perma.cc/7J2VEATA>].

2. *Id.*

3. *Id.*

4. *Id.*

5. Rachel Moran, *Buying Sex Should Not Be Legal*, N.Y. TIMES (Aug. 28, 2015), [http://www.nytimes.com/2015/08/29/opinion/buying-sex-should-not-be-legal.html?smid=fb-share&\\_r=2](http://www.nytimes.com/2015/08/29/opinion/buying-sex-should-not-be-legal.html?smid=fb-share&_r=2) [<http://perma.cc/6SBY69M2>].

6. Hackel, *supra* note 1.

7. Moran, *supra* note 5.

8. Thaddeus Russell & Alexis Garcia, *Former Sex Worker & Activist Maggie McNeill on Why We Should Decriminalize Prostitution: ‘This Is Not What Feminism Was Supposed to Be.’* REASON.COM (July 14, 2014, 10:10 AM), <https://reason.com/reasontv/2014/07/14/former-sex-worker-activist-maggie-mcneil> [<http://perma.cc/M586P65F>].

9. Maggie McNeill, *Introduction*, THE HONEST COURTESAN, <https://maggiecmneill.wordpress.com/about> [<http://perma.cc/A8BDZNUR>].

10. Russell & Garcia, *supra* note 8.

11. *Id.*

2015 that it would support the decriminalization of all consensual sex work.<sup>12</sup> This decision was met with both praise and opposition alike, including a letter fiercely condemning the new policy from the Coalition Against Trafficking in Women.<sup>13</sup> The letter, which argues that decriminalizing sex work “will in effect support a system of gender apartheid,” was signed by former sex workers and even Hollywood stars.<sup>14</sup>

Despite the disagreement on how best to protect the human rights of sex workers, it is clear state parties must take proactive steps in order to fulfill their treaty obligations and protect the rights of this vulnerable class. This Article argues that, in order to most effectively protect the human rights of those who voluntarily enter sex work and uphold their international obligations, state parties should combine robust civil laws decriminalizing sex work with holistic approaches that provide support to keep sex workers safe and provide them with an option to leave sex work, should they choose. Part I of this Article defines sex work and describes the various laws, both international and domestic, that address the issue of sex work and encompass the human rights of sex workers. In particular, Part I will look at three countries’ approaches to dealing with sex work in their domestic laws. Part II analyzes the effectiveness of decriminalizing sex work, discusses why decriminalization will not increase sex trafficking, and examines some of the cultural hurdles in decriminalizing sex work. Part III of this Article recommends a holistic approach in order to protect the human rights of sex workers and emphasizes the importance of state parties consulting sex workers and advocacy groups when creating laws that affect their profession. Finally, this Article concludes that, while it may not be easy to achieve, decriminalization of sex work will lead not only to the destigmatization of sex workers, but also to the full protection of sex workers’ human rights.

## I. BACKGROUND

### A. *Defining Sex Workers*

The concept of “sex workers” did not emerge until the 1970s “as a counterpoint to traditionally derogatory names, to emphasize the

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12. See Jessica Elgot, *Amnesty Approves Policy to Decriminalise Sex Trade*, THE GUARDIAN (Aug. 11, 2015, 3:09 PM), <http://www.theguardian.com/world/2015/aug/11/amnesty-approves-policy-to-decriminalise-sex-trade> [http://perma.cc/LC6KW9E9].

13. *E.H.*, *Why Decriminalising Sex Work is a Good Idea*, THE ECONOMIST (Aug. 18, 2015, 11:50 PM), <http://www.economist.com/blogs/economist-explains/2015/08/economist-explains-13> [http://perma.cc/S2PJRF6K].

14. *Id.* (quoting the letter that was signed by American actors Meryl Streep and Lena Dunham).

legitimacy of sex work.”<sup>15</sup> It is important to distinguish sex work from trafficking, sexual exploitation, and the like. This Article will define sex workers as those who engage in voluntary, consensual commercial sex.<sup>16</sup> Sex trafficking and forced prostitution, on the other hand, constitute a serious human rights violation that involves “force, abduction, deception, or other forms of coercion for the purpose of [sexual] exploitation.”<sup>17</sup> It is important to make this distinction between sex work and sex trafficking because anti-trafficking initiatives can sweep in sex workers against their will.<sup>18</sup> This can foster “distrust between authorities and sex workers,” thus placing the sex workers in danger if they face a situation where they may need help.<sup>19</sup>

While the sex worker population is comprised of men, women, and transgender persons, the majority of sex workers are women, and they will be the focus of this Article.<sup>20</sup> Although some sex workers go into sex work due to poverty or lack of other options, many “choose to do sex work because it offers better pay and more flexible

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15. *Policing Sex Work*, INCITE! 25, <http://www.incite-national.org/page/policing-sex-work> [<http://perma.cc/5AFCVUW8>] [hereinafter *Policing Sex Work*].

16. AMNESTY INT’L, 32ND INTERNATIONAL COUNCIL MEETING: CIRCULAR NO. 18: 2015 ICM CIRCULAR: DRAFT POLICY ON SEX WORK 1, 7 (2015), available at <http://files.ctctcdn.com/54482ed6201/46da8bac-36d7-4a59-b9e0-fd79b1aec409.pdf>.

17. *Understanding Sex Work in an Open Society*, OPEN SOC’Y FOUND., <https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society> [<http://perma.cc/7WYXCUBU>] (last updated Oct. 2015) [hereinafter *Understanding Sex Work*].

18. *See id.* (noting, for example, that anti-trafficking initiatives may relocate and detain sex workers in “safe houses against their will” or deprive sex workers of their autonomy in choosing how to make a living).

19. *See id.* (explaining that a distrust in authorities can push sex worker underground and make health outreach difficult).

20. *Policing Sex Work*, *supra* note 15. For the purposes of preserving space, this Article does not address the particular issues faced by LGBT sex workers. For additional reading on LGBT sex workers in particular, please refer to the following: Zack Ford, *How LGBT People Would Benefit from the Decriminalization of Sex Work*, THINK PROGRESS (July 28, 2015), <http://thinkprogress.org/lgbt/2015/07/28/3685268/amnesty-decriminalize-sex-work-celebrities> [<http://perma.cc/T9CYAYK8>] (arguing that LGBT people could particularly benefit from the decriminalization of sex work because, not only are they more likely to be profiled by law enforcement for being involved in sex work, they are also more susceptible to violence while performing sex work); Diane Anderson-Minshall, *How LGBT Liberation Connects to the Oldest Profession*, ADVOCATE (July 15, 2015, 4:00 AM), <http://www.advocate.com/commentary/2015/07/15/op-ed-how-lgbt-liberation-connects-oldest-profession> [<http://perma.cc/B6JMUKEP>] (asserting that because gay culture has a long history of sex work and a disproportionate number of trans and queer youth end up homeless, thus turning to sex work, the LGBT community should support the legalization of sex work); INT’L COMM. ON THE RIGHTS OF SEX WORKERS IN EUROPE, UNDERSERVED.OVERPOLICED.INVISIBILISED: LGBT SEX WORKERS DO MATTER 1, 3 (2015), [http://www.sexworkeurope.org/sites/default/files/resource-pdfs/icrse\\_briefing\\_paper\\_october2015.pdf](http://www.sexworkeurope.org/sites/default/files/resource-pdfs/icrse_briefing_paper_october2015.pdf) (noting the strong intersection between sex workers’ rights and LGBT rights).

working conditions,” or even because it allows them to “explore and express their sexuality.”<sup>21</sup> In fact, many sex workers find the job both “empowering and rewarding.”<sup>22</sup> Regardless of the reason behind entering sex work, sex workers should enjoy the same rights and protections as those in other professions.

### *B. International Human Rights Law and Sex Work*

Although many women voluntarily choose to engage in sex work, they can still be susceptible to extraordinarily high rates of violence.<sup>23</sup> The types of violence sex workers are exposed to can be categorized in three ways: physical violence, sexual violence, and emotional or psychological violence.<sup>24</sup> Physical violence entails “[b]eing subjected to physical force which can potentially cause death, injury or harm.”<sup>25</sup> It can include, but is not limited to, being “slapped, pushed, shoved, hit . . . kicked,” or otherwise beaten, and threatened with weapons like knives and guns.<sup>26</sup> Sexual violence faced by sex workers includes “[r]ape, gang rape . . . sexual harassment, [and] being physically forced or psychologically intimidated to engage in sex or . . . sex acts against one’s will.”<sup>27</sup> Sex workers also face emotional and psychological violence such as being insulted, “humiliated or belittled in front of other people; being threatened with loss of custody of one’s children; being confined or isolated from family or friends; being threatened with harm,” and being subjected to controlling behavior.<sup>28</sup> Violence against sex workers occurs not only at the hands of customers, but also “managers, fellow employees, family, friends, domestic partners,” and even police officers.<sup>29</sup>

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21. *Understanding Sex Work*, *supra* note 17.

22. *Id.*

23. *Policing Sex Work*, *supra* note 15; see Katherine Koster, *17 Facts About Sexual Violence and Sex Work*, HUFFINGTON POST (Dec. 4, 2015, 5:15 PM), [http://www.huffingtonpost.com/katherine-koster/16-facts-about-sexual-ass\\_b\\_8711720.html](http://www.huffingtonpost.com/katherine-koster/16-facts-about-sexual-ass_b_8711720.html) [<http://perma.cc/VC4BU2LZ>] (“Globally, sex workers have a 45 to 75% chance of experiencing sexual violence at some point in their careers and a 32 to 55% chance of experiencing sexual violence in a given year.”).

24. WORLD HEALTH ORG., IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES WITH SEX WORKERS: PRACTICAL APPROACHES FROM COLLABORATIVE INTERVENTIONS 1, 23 (Oct. 2013), [http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf) [hereinafter *COLLABORATIVE INTERVENTIONS*].

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Policing Sex Work*, *supra* note 15, at 25 (explaining that, particularly where sex work is criminalized, sex workers often face abuse at the hands of law enforcement, including extortion for sexual acts, profiling, and failure to respond to reports of violence at the hands of others).

This type of violence implicates numerous human rights violations.<sup>30</sup> Below is a summary of some of the key international human rights laws that either directly or indirectly address the rights of sex workers.

*1. International Human Rights Treaties that Address Prostitution*

Of all the international human rights laws that encompass the rights of women, one of the first treaties to explicitly mention prostitution was the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>31</sup> Adopted in 1979, it describes discrimination against women as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>32</sup>

In attempting to ensure equal access to, and equal opportunities in public and political life, CEDAW specifically addresses prostitution.<sup>33</sup> Article 6 urges state parties to “take all appropriate measures . . . to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>34</sup> While some legal scholars argue that article 6 encompasses an abolitionist view on sex work,<sup>35</sup> legislative history reveals otherwise.<sup>36</sup> In drafting the article, “Morocco introduced an amendment to . . . [add] the ‘phrase “suppression of prostitution” in addition to the phrase “suppression of the exploitation of prostitution.””<sup>37</sup> However, Italy and the Netherlands expressly rejected the addition, signifying “that article 6 does not consider all prostitution inherently coercive.”<sup>38</sup>

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30. See COLLABORATIVE INTERVENTIONS, *supra* note 24, at 23.

31. Chi Mgbako & Laura A. Smith, *Sex Work and Human Rights in Africa*, 33 *FORDHAM INT'L L.J.* 1178, 1201 (2010).

32. Convention on the Elimination of All Forms of Discrimination against Women art.1, Dec. 18, 1979, 1249 U.N.T.S. 13.

33. *Id.* at art. 6.

34. *Id.*

35. Berta E. Hernández-Truyol & Jane E. Larson, *Sexual Labor and Human Rights*, 37 *COLUM. HUM. RTS. L. REV.* 391, 397 (2006) (explaining that the United Nations took an abolitionist approach towards sex work for a majority of the twentieth century).

36. See *id.* at 398–99.

37. Mgbako & Smith, *supra* note 31, at 1201.

38. *Id.* (citation omitted).

While not a resounding endorsement of sex work, CEDAW represents a shift from an abolitionist mindset to one that recognizes the human rights of sex workers.<sup>39</sup> In General Recommendation 19, the Committee on the Elimination of Discrimination Against Women (Committee) sought to further define gender-based violence as a form of discrimination.<sup>40</sup> Regarding article 6, the Committee noted that “[p]rostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.”<sup>41</sup>

Over a decade later, the United Nations adopted the Declaration on the Elimination of Violence Against Women (DEVAW), which marked a clear distinction between forced and voluntary prostitution.<sup>42</sup> DEVAW explicitly refers to “forced prostitution,” which illustrates the recognition of a difference between forced and voluntary prostitution (sex work).<sup>43</sup>

## *2. Other International Documents Addressing the Rights of Sex Workers*

There is no singular international human rights instrument that explicitly addresses human rights protections for sex workers, yet many treaties encompass a number of human rights that are frequently denied to sex workers.<sup>44</sup> The “right to be free from arbitrary arrest, detention, discrimination and violence;” the right to work; and the right to free association are addressed in numerous human rights treaties and provide a legal basis for protection of sex workers’ human rights.<sup>45</sup>

The United Nations Declaration of Human Rights (UDHR) more broadly addresses the individual human rights obligations of

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39. *Id.*

40. See CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, GENERAL RECOMMENDATION NO. 19, COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (11th session, 1992) (explaining that rights and freedoms protected include “(a) [t]he right to life; (b) [t]he right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) [t]he right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) [t]he right to liberty and security of person; (e) [t]he right to equal protection under the law; (f) [t]he right to equality in the family; (g) [t]he right to the highest standard attainable of physical and mental health; (h) [t]he right to just and favorable conditions of work.”).

41. *Id.*

42. See G.A. Res. 48/104, Declaration on the Elimination of Violence against Women 3 (Feb. 23, 1994).

43. See *id.*

44. See Mgbako & Smith, *supra* note 31, at 1202–04.

45. See *id.* at 1202–03.



state parties.<sup>46</sup> The UDHR protects the right to life, liberty, and personal security,<sup>47</sup> as well as economic, social, and cultural rights.<sup>48</sup> The crux of UDHR is found in article 22, which asserts “the realization of the economic, social and cultural rights” is fundamental to a person’s ability to achieve “free and full personal development.”<sup>49</sup> The UDHR, which was adopted in 1948, serves as the foundation of all major international human rights laws.<sup>50</sup>

The International Covenant on Civil and Political Rights (ICCPR) in particular addresses many rights frequently denied to sex workers.<sup>51</sup> Article 7 provides the right to be free of “cruel, inhuman or degrading treatment or punishment.”<sup>52</sup> Article 9(1) preserves the right to be free from “arbitrary arrest or detention.”<sup>53</sup> Article 10 demands humane treatment of those who are in detention,<sup>54</sup> and article 14 provides for equal access before a court, along with adequate understanding of criminal charges and access to legal counsel.<sup>55</sup> These articles work together to address the violation of rights sex workers often face at the hands of law enforcement that arise most frequently in countries where sex work is criminalized. As previously mentioned, sex workers are frequently subjected to profiling, harassment, and even sexual assault or rape by law enforcement.<sup>56</sup>

Another international treaty that encompasses the human rights of sex workers is the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>57</sup> The ICESCR is helpful in assessing the rights often denied to sex workers where sex work is not considered a legitimate form of work or where it is considered

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46. See G.A. Res. 217 (III)A, Universal Declaration of Human Rights (Dec. 10, 1948).

47. *Id.* at art. 3.

48. *Id.* at art. 22.

49. KIM MOSOLF, URBAN JUSTICE CTR., INTERNATIONAL HUMAN RIGHTS STANDARDS AND THE RIGHTS OF SEX WORKERS (June 2005), <https://swp.urbanjustice.org/sites/default/files/20050601-human-rights-sex-workers-rights.pdf>.

50. See *id.*

51. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 173 [hereinafter ICCPR].

52. *Id.* at 175.

53. *Id.*

54. *Id.* at 176.

55. *Id.* at 176–77.

56. See MOSOLF, *supra* note 49 (sharing the story of Samantha, who explains that many local police officers know who she is and will “threaten her with arrest . . . even when she is not engaging in sex work.”). Officers have demanded sex “in exchange for letting her go.” *Id.* When she experiences violence at the hands of customers or in her personal life, she does not report such incidents to police due to her past experiences. *Id.* When she has been charged with crimes, her public defense attorney typically advises her to plead guilty for quick release, but it is never clear what the ultimate conviction is for or whether she has any outstanding warrants. *Id.*

57. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, pt. III, art. 6 [hereinafter ICESCR].

illegal.<sup>58</sup> Article 6 provides the right to work and asserts state parties must take steps that “include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”<sup>59</sup> Article 11 addresses the right “to an adequate standard of living,” which includes access to adequate housing, food, and clothing.<sup>60</sup> When sex work is considered illegitimate or illegal, it often impedes a sex worker’s ability to access the basic necessities that are considered to be a part of our fundamental human rights.<sup>61</sup>

Article 12 of the ICESCR protects the right to the “highest attainable standard of physical and mental health,” which is another right frequently denied to sex workers.<sup>62</sup> For sex workers in particular, access to medical care is extraordinarily important.<sup>63</sup> Not only do sex workers who experience physical, sexual, and psychological violence need access to health care, they also need access to condoms, birth control, and regular testing for sexually transmitted diseases.<sup>64</sup>

### C. *The Declaration of the Rights of Sex Workers in Europe*

In Europe, there has been a wide range of legislative schemes to address sex work.<sup>65</sup> Many sex worker organizations feel these legislative measures have been restrictive of sex worker rights and go against the advice of organizations like UNAIDS and the World Health Organization.<sup>66</sup> In response to these legislative measures, the International Committee on the Rights of Sex Workers in Europe embarked on a year-long consultation in 2004 with sex workers across Europe and international human rights experts, which led to the

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58. See *Public Health Fact Sheet: Common Human Rights Violations Experienced by Sex Workers*, OPEN SOCIETY FOUND. 1, 2, <https://www.opensocietyfoundations.org/sites/default/files/common-human-rights-violations-experienced-by-sex-workers-english-20110831.pdf>.

59. ICESCR, *supra* note 57, pt. III, art. 6.

60. *Id.* at pt. III, art. 11.

61. See Corinne Goldenberg et al., *Sex Worker Rights: (Almost) Everything You Wanted to Know But Were Afraid to Ask*, AMERICAN JEWISH WORLD SERVICE 1, 1, 5 (July 2013), [http://www.nswp.org/sites/nswp.org/files/sex\\_worker\\_rights.pdf](http://www.nswp.org/sites/nswp.org/files/sex_worker_rights.pdf).

62. See ICESCR, *supra* note 57, pt. III, art. 12.

63. See Goldenberg et. al., *supra* note 61, at 6.

64. *Id.*

65. See Mgbako & Smith, *supra* note 31, at 1207–09 (explaining various legislative schemes regarding sex work that have been adopted throughout Europe).

66. See *The Declaration of the Rights of Sex Workers in Europe*, INT’L COMM. ON THE RIGHTS OF SEX WORKERS IN EUROPE, <http://www.sexworkeurope.org/resources/declaration-rights-sex-workers-europe> [<http://perma.cc/W2LZYXGQ>].

creation of a draft declaration.<sup>67</sup> The Declaration of the Rights of Sex Workers (Declaration) was eventually endorsed by 120 sex workers and eighty allies from thirty countries in Europe.<sup>68</sup>

The Declaration begins by listing all of the rights individuals in Europe enjoy under international human rights law and provides recommendations to state parties on how to ensure these rights are respected and protected for sex workers.<sup>69</sup> While not intended to be a legal document, the Declaration is instructive in outlining how sex workers' rights are encompassed in various international human rights instruments.<sup>70</sup> The Declaration also serves as a tool to empower sex workers and educate them on their rights, and it serves as a benchmark through which progress can be measured.<sup>71</sup>

#### *D. Domestic Laws Addressing Sex Work*

There are four types of legal regimes used to address sex work: prohibition, legalization, abolition, and decriminalization.<sup>72</sup> Prohibition is the most restrictive of the regimes and generally criminalizes sex work along with all activities corresponding to sex work.<sup>73</sup> In countries where sex work is legalized, usually all aspects of sex work are legal, though the sex trade is subject to state control.<sup>74</sup> Abolitionist countries also follow a policy of criminalization, but such countries adopt a hybrid model that decriminalizes the sex worker and criminalizes the client.<sup>75</sup> The final legal regime, decriminalization, removes all laws related to sex work.<sup>76</sup>

Below is a discussion of three countries that have each taken a different legal approach to sex work. Germany has legalized sex

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67. INT'L COMM. ON THE RIGHTS OF SEX WORKERS IN EUROPE, *The Declaration of the Rights of Sex Workers in Europe*, 1, 3–4 (2005), [http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/dec\\_brussels2005.pdf](http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/dec_brussels2005.pdf).

68. *Id.* at cover page.

69. *Id.* at 7–12.

70. *Id.* at 4.

71. *See id.*

72. *See* Mgbako & Smith, *supra* note 31, at 1205; *see also* Bill McCarthy et al., *Regulating Sex Work: Heterogeneity in Legal Strategies*, 8 ANN. REV. L. & SOC. SCI. 255, 256 (2012).

73. *See* Mgbako & Smith, *supra* note 31, at 1206 (explaining that all parties involved under this regime are subject to criminal laws, including “the sex worker, the procurer, and [all] implicated third parties”).

74. *See id.* at 1207–08 (noting that, in these countries, sex work is treated like any other labor industry).

75. *See id.* at 1206–07 (noting that abolitionists reject the idea that sex work is a legitimate form of work and hold that it inherently harms women).

76. *See id.* at 1208–09 (asserting that “[d]ecriminalization addresses the negative impact that criminalization has on sex workers” and provides a safeguard to sex workers' rights).

work, Sweden has adopted a hybrid model under the abolitionist scheme, and New Zealand has decriminalized sex work.<sup>77</sup> These three countries represent distinct examples in domestic laws and programs that have been implemented to address sex work and sex workers' rights and have been in effect long enough to provide a critical assessment of each regime.

### 1. Germany

The date of legalization of sex in Germany is disputed, but the most recent action to address sex work was taken in 2001, when the German Parliament passed the Law Regulating the Legal Situation of Prostitutes (ProstG).<sup>78</sup> Sex work was already legal at this time, but regulations were mostly limited to zoning, third parties, and contract and public benefits law.<sup>79</sup> Prior to 2001, however, sex work was classified as "immoral," thus excluding sex workers from health insurance, public benefits, and labor rights laws.<sup>80</sup> The passage of ProstG removed the morality language; created recognition of contracts between sex workers and clients, thus allowing sex workers to sue clients for non-payment; removed criminal laws against promoting sex work for those over the age of twenty-one; limited legal recognition for contracts between sex workers and employers; and provided access to employment benefits.<sup>81</sup>

While the 2001 law took great steps in recognizing the legal rights of sex workers, ProstG did not "create federal mandates on zoning, registration, health and safety, and police power," thus giving states jurisdiction over these issues.<sup>82</sup> In practical terms, this means that sex work is not truly legal throughout Germany.<sup>83</sup> For example, brothels are only "legal in some cities, [and] some now pay financial authorities a set fee per day for each sex worker registered."<sup>84</sup> Additionally, street-based sex work is only legal in some areas (for

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77. This Article will not include an example of a country that criminalizes sex work due to the fact most human rights scholars and activists agree that it results in a wide variety of negative consequences. Numerous sources cited in this Article discuss examples of countries that criminalize sex work if you are interested in further reading.

78. See ELAINE MOSSMAN, N.Z. MINISTRY OF JUST., INTERNATIONAL APPROACHES TO DECRIMINALISING OR LEGALISING PROSTITUTION, Table 3 (2007), <http://prostitution.procon.org/sourcefiles/newzealandreport.pdf>.

79. Katherine Koster, *Legal in Theory: Germany's Sex Trade Laws and Why They Have Nothing to Do with Amnesty Sex Work Proposal*, HUFFINGTON POST (Aug. 27, 2015, 11:59 AM), <http://www.huffingtonpost.com/katherine-koster/legal-in-theory-germanys-b8037820.html> [<http://perma.cc/S3ZA5TKV>].

80. *Id.*

81. *Id.*

82. *Id.*

83. *See id.*

84. MOSSMAN, *supra* note 78, at Table 3.

example, Berlin), outright prohibited in others (for example, Munich), and subjected to time and place restrictions in other cities (for example, Hamburg).<sup>85</sup> In areas where sex work is prohibited or restricted, it is criminalized.<sup>86</sup> Aside from those who believe sex work should never be legal, the variances in the regulations from state to state have led some critics to conclude that “Germany’s regulatory system [of sex work] is [merely] liberal in theory,” not in fact.<sup>87</sup>

## 2. Sweden

Sweden became the first country in the world to criminalize buyers of sex, but not sex workers themselves.<sup>88</sup> In 1999, as part of a Violence Against Women bill, Sweden passed the law using an approach which is now popularly known as the “Nordic Model.”<sup>89</sup> This hybrid approach favored by abolitionists “penalizes the demand for commercial sex while decriminalizing individuals in prostitution and providing them with support services.”<sup>90</sup> The goal of the Nordic Model is to end, rather than regulate, sex work.<sup>91</sup> In addition to passing the new law, the Swedish government “invest[ed] in exit programs for those who wish to leave prostitution” in order to provide comprehensive social services, a step viewed as critical in order to take a human-rights-based approach to combating sex trafficking.<sup>92</sup>

Since the passage of this hybrid model in Sweden, several countries followed suit, including Norway and Iceland, thus the reasoning behind calling this approach the Nordic Model.<sup>93</sup> Northern Ireland became the first country in the United Kingdom to adopt this model, and Canada adopted a similar approach.<sup>94</sup> In 2014, the European Union and the Council of Europe adopted resolutions recommending state parties adopt the Nordic Model.<sup>95</sup> Since the passage of the law in Sweden, reports assert that the country has seen a decrease in street prostitution, and the number of male sex

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85. *See id.*

86. *See Koster, supra* note 79 (explaining that, in areas where sex work is prohibited, sex workers face a fine the first two times, and the third time—or if they cannot pay the first or second time—sex workers are put in jail).

87. *Id.*

88. MOSSMAN, *supra* note 78, at 5.

89. WHAT IS THE NORDIC MODEL?, EQUALITY NOW 1 (2016), [http://www.equalitynow.org/sites/default/files/Nordic%20Model%20Fact%20Sheet\\_0.pdf](http://www.equalitynow.org/sites/default/files/Nordic%20Model%20Fact%20Sheet_0.pdf) [hereinafter NORDIC MODEL].

90. *See id.*

91. MOSSMAN, *supra* note 78, at 36.

92. NORDIC MODEL, *supra* note 89, at 2.

93. *See id.*

94. *Id.*

95. *Id.*

buyers has reportedly decreased by nearly six percent.<sup>96</sup> While there is indeed growing support for the Nordic Model as a good method to approach sex work, the model is not without its criticisms, which will be further discussed in Part II.<sup>97</sup>

### 3. *New Zealand*

In 2003, the New Zealand Prostitution Reform Act (PRA) fully decriminalized sex work in New Zealand.<sup>98</sup> Under the law, it is legal for any citizen over the age of eighteen to sell sexual services.<sup>99</sup> Street-based sex work and brothels are legal, and “[s]ex workers’ rights are guaranteed through employment and human rights legislation.”<sup>100</sup> Sex workers can sell sex from their own homes, and they can also sell services from a shared space with up to four people without needing a brothel license.<sup>101</sup>

Critical to the passage of the PRA was the New Zealand Prostitutes Collective, which actively sought parliament members who would champion passage of the reforms.<sup>102</sup> The New Zealand Prostitutes Collective is actually a government-funded organization that works to “advance the health, education, and rights of sex workers.”<sup>103</sup> It was originally created as part of a national effort to combat HIV/AIDS, but now advocates for the human rights and overall well-being of sex workers.<sup>104</sup> Also involved in crafting the bill were many mainstream liberal feminist groups from around New Zealand.<sup>105</sup> While the bill only passed by a single vote, it had broad support from the public, including the public health sector.<sup>106</sup>

While not without complaints, the implementation of the PRA has widely been considered a success.<sup>107</sup> Sex workers report improved

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96. *Id.*

97. *See infra* Part II.

98. Fraser Crichton, *Decriminalising Sex Work in New Zealand: Its History and Impact*, OPENDEMOCRACY (Aug. 21, 2015), <https://www.opendemocracy.net/beyondslavery/fraser-crichton/decriminalising-sex-work-in-new-zealand-its-history-and-impact> [http://perma.cc/6SSEAWCF].

99. *Id.*

100. *Id.*

101. McCarthy et al., *supra* note 72, at 266.

102. *See* Crichton, *supra* note 98.

103. *Id.*

104. *Id.*; *see About NZPC*, NEW ZEALAND PROSTITUTES’ COLLECTIVE, <http://www.nzpc.org.nz/about> [http://perma.cc/7YJH9HQV] (explaining that the Prostitutes Collective recognizes that sex work is a legitimate form of work and they are committed to working towards greater empowerment of all sex workers).

105. *See* Crichton, *supra* note 98 (noting groups involved included the National Council of Women of New Zealand and the National Collective of Independent Women’s Refuges).

106. *Id.*

107. *See id.*

relationships with police, which has led to greater health and well-being of sex workers.<sup>108</sup> The stigma traditionally associated with sex workers is also beginning to fade. In fact, one sex worker was able to successfully sue her employer for sexual harassment.<sup>109</sup> Such actions, advocates of decriminalization believe, will lead to an increase in safer environments for sex workers.<sup>110</sup>

## II. ANALYSIS

### *A. Decriminalization of Sex Work Is the Most Effective Way to Protect Sex Workers' Rights*

The vast differences between sex work laws adopted by countries around the world makes one thing very clear: there is no easy or single solution to protecting the human rights of sex workers. The Swedish government and those who support the Nordic Model argue that it is the feminist solution to addressing sex work.<sup>111</sup> To support that notion, supporters point out that three of the four countries with the highest level of gender equality have adopted the Nordic Model.<sup>112</sup> Yet critics of the Nordic Model insist the opposite is true.<sup>113</sup> In fact, critics assert that the law actually increases the stigmatization of and discrimination against the sex workers who are unable to or refuse to quit selling sex.<sup>114</sup> While there are certainly some benefits to the Nordic Model,<sup>115</sup> a significant amount of evidence weighs in favor of those against it.<sup>116</sup>

Before a country can even consider how to address sex work under its laws, it is critical to consider the effectiveness of the different regimes adopted in other countries. One of the biggest concerns that stems from the Nordic Model is that, by criminalizing the buying, but not the selling of sex, buyers are encouraged to purchase

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108. *See id.* (explaining that the focus is no longer on the sex worker as a criminal, but rather the safety, health, and well-being of the sex worker when it comes to law enforcement).

109. Crichton, *supra* note 98 (noting the brothel owner was sued through the Human Rights Review Tribunal and the sex worker was awarded \$25,000 (NZD) for emotional harm).

110. *See id.*

111. *See* NORDIC MODEL, *supra* note 89.

112. *Id.*

113. *See* ANN JORDAN, AMERICAN UNIV. WASH. COLL. L., THE SWEDISH LAW TO CRIMINALIZE CLIENTS: A FAILED EXPERIMENT IN SOCIAL ENGINEERING, CTR. FOR HUMAN RIGHTS & HUMANITARIAN L. 1, 2, 12 (2012), [http://www.nswp.org/sites/nswp.org/files/Issue-Paper-4\[1\].pdf](http://www.nswp.org/sites/nswp.org/files/Issue-Paper-4[1].pdf).

114. *Id.* at 2.

115. *See* NORDIC MODEL, *supra* note 89 (including, for example, increased government spending for support programs for those who want to leave work).

116. *See* JORDAN, *supra* note 113, at 1, 5–9.

sex in more clandestine markets.<sup>117</sup> Such markets make it easier for third parties to exploit sellers and also mean that sellers are less likely to receive protection from law enforcement.<sup>118</sup> In fact, while street-level prostitution did drop temporarily after the law in Sweden took effect, it actually began to climb again.<sup>119</sup> Swedish sex workers report that “they are forced to rush negotiations” with clients and must rely on third parties to access now nervous clients.<sup>120</sup>

In 2010, the Swedish government released a report touting the effectiveness of the legislation, yet none of the claims were based in evidence.<sup>121</sup> The report was immediately criticized upon release, with experts noting the evaluation completely lacked any scientific vigor.<sup>122</sup> Most importantly, the report “did not have an objective starting point, [because] the terms of reference given were that the purchase of sex must [remain] illegal.”<sup>123</sup> The entire purpose of this approach is to end the demand for sex workers by criminalizing the buyers.<sup>124</sup> Yet the study only raised “the possibility that some men [now] behave differently as a result of the law.”<sup>125</sup> The government did “not know how many men were soliciting [sex] on the street before or after the law,” and, while fear of arrest can certainly serve as a powerful deterrent, it is not a guarantee that behavior will change.<sup>126</sup> In reducing the number of buyers, the government hoped that it would also lead to a decrease in the number of sex workers.<sup>127</sup> The report concluded that there is “[n]o causal connection[] . . . between [the] legislation and changes in prostitution,” yet asserts that “it is reasonable to assume” that the number of sex workers has indeed decreased.<sup>128</sup>

Not only has the Swedish law failed to accomplish a decrease in the number of sex workers, it has caused an increased risk of violence, further entrenching the violations of sex workers’ human rights.<sup>129</sup>

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117. McCarthy et al., *supra* note 72, at 261.

118. *Id.*

119. Noy Thrupkaew, *A Misguided Moral Crusade*, N.Y. TIMES (Sept. 22, 2012), [http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html?pagewanted=all&\\_r=1& \[http://perma.cc/3URZDD39\]](http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html?pagewanted=all&_r=1&[http://perma.cc/3URZDD39]).

120. *Id.*

121. See JORDAN, *supra* note 113, at 1, 5–9.

122. *Id.* at 6 (noting that the study lacked “a satisfying definition of prostitution,” did not take into account various confounding factors, and that the overall report was riddled with inconsistencies and contradictions).

123. *Id.*

124. See *id.* at 1.

125. *Id.* (emphasis removed).

126. See JORDAN, *supra* note 113, at 6 (explaining the evidence the government used regarding whether men had changed their behavior was a 2008 self-reporting survey, which “is not evidence of actual behavior”) (emphasis removed).

127. *Id.*

128. *Id.* at 7 (emphasis removed; brackets included in original).

129. See *id.* at 9–13.



The government's report noted that sex workers are more at risk because there is greater competition among women for fewer clients, yet the government summarily dismissed these concerns and blamed the women for the violence.<sup>130</sup> As the Nordic Model pushes more sex workers underground, they also have more limited access to health services and are less likely to be able to share information on risky clients.<sup>131</sup> In failing to address these abuses and protect those who voluntarily enter sex work, countries like Sweden, which adopt the Nordic Model, further entrench women's subordinate position in society and fail to uphold their obligations under international human rights law.<sup>132</sup>

Legalization schemes like those in Germany present less of a concern over human rights violations. The main aim of such schemes is "to control the excesses, abuses, disorders, and other undesirable social and public health consequences associated with [sex work]."<sup>133</sup> German police officials have noted that, since ProstG was passed in 2001, they have been able to focus more on serious crimes, like sex trafficking and forced prostitution.<sup>134</sup> Yet such schemes are also criticized.<sup>135</sup> One sex worker argues that legalization models still criminalize those "sex workers who cannot or will not fulfill various bureaucratic responsibilities, and therefore retain[] some of the worst harms of criminalization."<sup>136</sup> Further, while some police officers might have good intentions, in areas where there is still an aspect of criminalization, sex workers are vulnerable to police abuse, and they suffer from some of the same human rights violations faced by those under the Nordic Model.<sup>137</sup>

Unlike the other two legislative schemes, decriminalization, which was adopted by New Zealand, has received praise from sex workers, human rights advocacy groups, and international human rights bodies alike as a model that protects the human rights of sex workers, improves sex workers' health and working conditions, and

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130. *See id.* at 9–10 (noting the government relied on a few statements from police and former sex workers that the "real cause [of increased violence] is more heroin").

131. *Id.* at 12.

132. *See* JORDAN, *supra* note 113, at 12–14.

133. *See* Mbgako & Smith, *supra* note 31, at 1208.

134. *See* OPEN SOC'Y FOUND., LAWS AND POLICIES AFFECTING SEX WORK 1, 7 (2012), <https://www.opensocietyfoundations.org/sites/default/files/sex-work-laws-policies-20120713.pdf> [hereinafter LAWS AND POLICIES AFFECTING SEX WORK].

135. *See* Molly Smith, *The Problem with the "Swedish Model" for Sex Work Laws*, NEW REPUBLIC (June 8, 2015), <https://newrepublic.com/article/121981/northern-ireland-sex-work-law-based-wrong-model> [<http://perma.cc/R6EJ9RWC>].

136. *Id.*

137. *See* Koster, *supra* note 79.

alleviates the social exclusion sex workers often endure.<sup>138</sup> In fact, Mandeep Dhaliwal, Director of the United Nation's Development Program's HIV, Health and Development Practice, asserted "I would like to be a sex worker in New Zealand."<sup>139</sup>

New Zealand's legislation called for the establishment of a Prostitution Law Review Committee, which was tasked with reviewing the effect of the law five years after passage.<sup>140</sup> Unlike Sweden's report, this independent assessment resulted in a credible report of the impact of the law.<sup>141</sup> Among its findings, sex workers reported that they finally feel like they can come forward to police when incidents of violence or abuse arise.<sup>142</sup> Contrary to the beliefs of many critics, the report also discovered the number of sex workers did not increase.<sup>143</sup> The report concluded that decriminalization of sex work in New Zealand has led to better working conditions, improved access to health services, increased access to justice, and an overall increased sense of confidence and well-being among sex workers.<sup>144</sup>

Opponents of decriminalization have argued such legislative models will have catastrophic effects on women's human rights, yet the evidence simply does not back such claims.<sup>145</sup> Decriminalization of sex work allows for the full realization of sex workers' human rights by providing access to justice, health, and social services.<sup>146</sup> Decriminalization also helps guard against violence.<sup>147</sup> Contrary to what opponents argue, sex work is not inherently violent, but sex work that is street-based or clandestine can lead to violence.<sup>148</sup> Further,

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138. See Mgbako & Smith, *supra* note 31, at 1208 (noting that decriminalization removes all laws that criminalize sex work).

139. Richard S. Ehrlich, *U.N. Report Calls for Decriminalizing Prostitution*, WASH. TIMES (Oct. 24, 2012), <http://www.washingtontimes.com/news/2012/oct/24/un-report-calls-decriminalizing-prostitution> [<http://perma.cc/5M6Z4Q7B>] (responding to an inquiry about the best countries for sex workers).

140. See LAWS AND POLICIES AFFECTING SEX WORK, *supra* note 134, at 5.

141. *See id.*

142. *See id.*

143. *See id.*

144. See Andrew Breiner, *These 3 Graphs Could Change Your Mind About Legalizing Sex Work*, THINK PROGRESS (July 31, 2015), <http://thinkprogress.org/justice/2015/07/31/3686698/sex-work-legalize> [<http://perma.cc/KW6KD6XP>] (presenting statistics that reveal that seventy percent of sex workers report they are more likely to report violence to police now that sex work is decriminalized, that the estimated number of sex workers has actually decreased, and that there is an estimated over thirty percent drop in the number of HIV infections); Chi Adanna Mgbako et al., *The Case for Decriminalization of Sex Work in South Africa*, 44 GEO. J. INT'L L. 1423, 1437–38 (2013).

145. See Mgbako et al., *supra* note 144, at 1437–38.

146. See OPEN SOC'Y FOUND., TEN REASONS TO DECRIMINALIZE SEX WORK 1, 2, [https://www.opensocietyfoundations.org/sites/default/files/10-reasons-decriminalize-sex-work-20150410\\_0.pdf](https://www.opensocietyfoundations.org/sites/default/files/10-reasons-decriminalize-sex-work-20150410_0.pdf) (last updated Apr. 10, 2015) [hereinafter TEN REASONS].

147. *Id.* at 1.

148. *Id.*

when any aspect of sex work is criminalized, sex workers are prone to abuse at the hands of law enforcement.<sup>149</sup> As reports show, in countries like New Zealand where sex work is decriminalized, sex workers have an increased ability to work in safe areas, better access to security services, an increased ability to screen clients, and are much more likely to report cases of violence to law enforcement.<sup>150</sup>

Decriminalization of sex work also improves sex workers' health.<sup>151</sup> Decriminalization creates greater access to brothels for health outreach workers, which in turn increases knowledge about how to stay safe and increases access to health screenings.<sup>152</sup> Decriminalization also places sex workers in a greater bargaining position with clients in order to negotiate condom use, which translates into lower rates of sexually transmitted diseases and fewer new cases of HIV infections.<sup>153</sup>

While one country's experience with the decriminalization of sex work is not necessarily indicative of all efforts to decriminalize sex work, countries considering how to address sex work under the law would benefit from studying New Zealand and weighing the evidence before moving forward with any new legislation.

### *B. Decriminalization of Sex Work Will Not Likely Increase Sex Trafficking and Forced Sex Work*

For those who believe that sex work is always exploitative and rarely legitimately voluntary, it easily follows that decriminalizing sex work will lead to an increase in sex trafficking. Yet decriminalization of sex work does not mean eliminating criminal penalties for sex trafficking and there is simply no evidence that suggests decriminalization will lead to more trafficking.<sup>154</sup> In fact, one widely cited study, from the London School of Economics and Political Science, that supports the idea that decriminalization of sex work will increase sex trafficking is actually seriously flawed.<sup>155</sup> That study looks at all forms of human trafficking, which includes forms

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149. *See supra* Part I.B.

150. *See* TEN REASONS, *supra* note 146, at 2–3.

151. *Id.* at 4.

152. *See id.*

153. *See id.*

154. Q&A: *Policy to Protect the Human Rights of Sex Workers*, AMNESTY INT'L, <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers> [<http://perma.cc/QUB8MR24>] [hereinafter AMNESTY Q&A].

155. *See* German Lopez, *The Case for Decriminalizing Prostitution*, VOX (Aug. 18, 2015, 8:00 AM), <http://www.vox.com/2015/8/18/9166669/why-legalize-prostitution> [<http://perma.cc/VRA6EZ38>].

of labor beyond sex; therefore, the higher rates of human trafficking could be in industries unrelated to sex work.<sup>156</sup> The researchers themselves have admitted there is no way to determine whether this is the case.<sup>157</sup> Many researchers are also skeptical of human trafficking statistics in general because they are dealing with a practice that is underground.<sup>158</sup>

Contrary to the assertion that decriminalization of sex work will increase sex trafficking, some believe it could actually prevent it.<sup>159</sup> Sex workers may be in a unique position to identify suspected cases of trafficking and have the best access to discovering exploitative or abusive working situations.<sup>160</sup> Because decriminalization of sex work has been proven to remove the fear of reporting to law enforcement, sex workers under decriminalized regimes can actually be in a position to comfortably work with law enforcement to crack down on unlawful practices.<sup>161</sup>

### C. Cultural Hurdles in Decriminalization of Sex Work

Although passing laws to decriminalize sex work is a good first step to protecting the human rights of sex workers, it can be easier said than done. For example, as explained in Part I.D.3, New Zealand's decriminalization law passed by a solitary vote primarily due to conservative control of the parliament.<sup>162</sup> In general, society's negative attitudes towards sex workers can slow down progress in the realization of the protection of sex workers' human rights.<sup>163</sup>

The stigma towards sex workers as valueless members of society runs deep.<sup>164</sup> A serial killer from the United States, Gary Ridgeway, who was ultimately convicted of killing forty-nine women, stated that he "picked prostitutes because I thought I could kill as many of them as I wanted without getting caught."<sup>165</sup> In Sweden, a sex worker who was fighting over custody for her children ultimately lost the battle and was later murdered by her ex-boyfriend—who

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156. *Id.*

157. *Id.*

158. *See, e.g., id.*

159. *See* AMNESTY Q&A, *supra* note 154, at 3.

160. *See* Mgbako et al., *supra* note 144, at 1442.

161. *See id.*

162. *See* Crichton, *supra* note 98.

163. *See* Laura Agustin, *The Sex Worker Stigma: How the Law Perpetuates Our Hatred (and Fear) of Prostitutes*, JACOBIN, *republished by* SALON (Aug. 17, 2013, 11:30 PM), [http://www.salon.com/2013/08/17/the\\_whore\\_stigma\\_how\\_the\\_law\\_perpetuates\\_our\\_hatred\\_and\\_fear\\_of\\_prostitutes\\_partner](http://www.salon.com/2013/08/17/the_whore_stigma_how_the_law_perpetuates_our_hatred_and_fear_of_prostitutes_partner) [<http://perma.cc/C9LSWHZV>].

164. *See id.*

165. *Id.* (quoting Ridgeway).

won custody of the children—when she went to visit the children.<sup>166</sup> Before the woman was brutally murdered, she recounted that, during the custody battle, social workers told her she did not understand that “she was harming herself by selling sex.”<sup>167</sup> Sadly, these stories are not anomalies.<sup>168</sup>

Under the abolitionist theory, this stigma is a direct consequence of the patriarchy.<sup>169</sup> Abolitionists reason that, if sex work was extinct, the stigma would disappear right alongside it.<sup>170</sup> However, as one anthropologist notes, if contemporary movements against slut-shaming and rape culture have thus failed to prevent the “whore stigma,” it is not very likely that the stigma will go away for those women who voluntarily participate in sex work.<sup>171</sup> Criminalization of sex work further entrenches the stigma toward sex work, but that does not mean decriminalization will ultimately reduce that stigma.<sup>172</sup> Laws certainly make a difference, “but if the police and the society that controls the police have decided that [a] life is worthless, they’ll find a way to let you know.”<sup>173</sup>

While decriminalization might not provide an automatic fix for the stigma surrounding sex workers, advocates do believe that through recognizing and normalizing the selling of sex, the stigma toward sex workers will slowly erode.<sup>174</sup> Ironically, that stigma may prevent decriminalization laws from ever being passed.<sup>175</sup> Because of this, it is critical that human rights advocates focus on decreasing the public stigma of sex workers while simultaneously advocating for changes in the law.

### III. RECOMMENDATIONS

#### *A. Holistic Approaches to Addressing Sex Work Must Be Undertaken in Conjunction with Domestic Laws*

The Nordic Model approach to sex work certainly has its flaws, but one thing it gets right is the commitment to providing exit

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166. *Id.*

167. *Id.*

168. See Agustin, *supra* note 163.

169. *Id.*

170. *Id.*

171. See *id.*

172. See Noah Berlatsky, *Concrete Consequences from Sex Work Stigma*, REASON.COM (Feb. 8, 2015), <https://reason.com/archives/2015/02/08/sex-work-stigma> [http://perma.cc/FVK3RFM7].

173. *Id.*

174. Agustin, *supra* note 163.

175. See Berlatsky, *supra* note 172.

programs and comprehensive social services to sex workers.<sup>176</sup> Just because someone enters sex work voluntarily, does not mean she will not eventually want to leave sex work. Government supported programs can make leaving sex work easier for women.<sup>177</sup> Further, as this Article notes, just because a woman chooses sex work does not mean she is not subject to violence.<sup>178</sup> Even under a decriminalization regime, state parties should implement strategies to aid sex workers in order to ensure the full realization of their human rights obligations.<sup>179</sup>

First and foremost, state parties must create programs to help build sex workers' knowledge of their rights in relation to sex work.<sup>180</sup> Providing training about sex work laws gives sex workers the knowledge and awareness they need to report and challenge incidents of violence.<sup>181</sup> Programs like the Human Rights Defenders in South Africa train sex workers as paralegals in basic rights.<sup>182</sup> The paralegals are able to document cases of human rights abuses against sex workers, and they also conduct outreach and weekly community meetings with fellow sex workers.<sup>183</sup> The community meetings provide opportunities to raise awareness of sex workers' rights and how to access justice.<sup>184</sup>

Second, state parties absolutely must work to foster police accountability in order to reduce violence against sex workers and effectively implement decriminalization laws.<sup>185</sup> Violence against sex workers at the hands of law enforcement is a serious issue, one which decriminalization attempts to solve.<sup>186</sup> However, simply decriminalizing sex work is not enough to improve the relationship between sex workers and law enforcement officials.<sup>187</sup> State parties should encourage law enforcement agencies to hold sensitization

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176. See NORDIC MODEL, *supra* note 89.

177. See *id.*

178. See COLLABORATIVE INTERVENTIONS, *supra* note 24, at 22–25.

179. *Id.* at 11, 25.

180. *Id.* at 26.

181. *Id.* at 26, 30.

182. *Id.* at 27.

183. COLLABORATIVE INTERVENTIONS, *supra* note 24, at 27, 58.

184. *Id.*

185. *Id.* at 29.

186. See *Policing Sex Work*, *supra* note 15, at 27 (“A 2002 study found that 30% of exotic dancers and 24% of street-based sex workers who had been raped identified a police officer as the rapist. Approximately 20% of other acts of sexual violence reported by study participants were committed by the police.”); Crichton, *supra* note 98 (noting the PRA’s review committee found that fifty seven percent of sex workers said police attitudes had changed for the better after the PRA was implemented).

187. See COLLABORATIVE INTERVENTIONS, *supra* note 24, at 24.

workshops in order to raise police officers' awareness of the laws related to sex work and sex workers' rights.<sup>188</sup> State parties should also hold regular meetings with police and high-level government officials responsible for law enforcement in order to ensure the reduction of police harassment of sex workers.<sup>189</sup> Finally, states should work towards building institutional accountability with police in order to uphold the human rights of sex workers.<sup>190</sup> For example, in India, "advocacy with the police resulted in getting police administrators to issue a circular to police stations requiring them to follow the rule of law and ensure due process when arresting sex workers. Civil society groups could then monitor adherence."<sup>191</sup> Incorporating these practices will lead to fostering greater trust between sex workers and the police, thus ensuring sex workers feel protected.

State parties can also participate in advocacy campaigns to counter stigma and discrimination against sex workers.<sup>192</sup> In states that have already decriminalized sex work, such campaigns can help to legitimize sex work as actual work.<sup>193</sup> In states that hope to decriminalize sex work, such campaigns can create support among citizens for such legislation.<sup>194</sup> States can pair with advocacy organizations in order to support these campaigns.<sup>195</sup> In San Francisco, California, the St. James Infirmary created an ad campaign to illustrate how sex workers are average people who are valued members of their community.<sup>196</sup> As a part of the campaign, sex workers participated in interviews along with their partners and service providers affiliated with St. James Infirmary.<sup>197</sup> Advertisements were displayed on the side of the city buses and posters were distributed to social and healthcare agencies.<sup>198</sup>

Additionally, it is imperative that state parties promote strategies to increase the safety and security of sex workers in the work place.<sup>199</sup> State parties should encourage owners of sex establishments and owners of establishments where sex work is likely to be

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188. *See id.* at 29 (noting workshops can help to build relationships between sex workers and the police, which will lead to less harassment and violence).

189. *See id.*

190. *Id.* at 30.

191. *Id.*

192. *See* COLLABORATIVE INTERVENTIONS, *supra* note 24, at 27.

193. *See id.* at 28.

194. *See id.*

195. *See id.* at 12.

196. *Id.* at 28.

197. COLLABORATIVE INTERVENTIONS, *supra* note 24, at 28.

198. *Id.*

199. *See id.* at 31.

solicited to protect sex workers from perpetrators of violence.<sup>200</sup> For example, one organization in India incentivizes lodge owners to protect sex workers from abuse by offering owners access to free health services.<sup>201</sup> An organization in Kenya has partnered with bar managers to display a hotline number that enables sex workers to send text messages about violent experiences and receive immediate support.<sup>202</sup> State parties should also support safe spaces or shelters that allow sex workers to receive refuge if they are fleeing violence and provide them with the opportunity to meet and discuss common issues and problems they face with other sex workers.<sup>203</sup>

Finally, state parties should ensure that sex workers have access to physical and mental health services, as well as legal and other support services.<sup>204</sup> Even where sex work is decriminalized, sex workers are still vulnerable to violence.<sup>205</sup> The World Health Organization provides helpful guidelines that should be considered by state parties when crafting health services and psychological support programs for sex workers.<sup>206</sup> The guidelines emphasize the importance of immediate access to support and health services for those who experience violence and note that it is critical that providers “ensure confidentiality, be non-judgmental, provide practical care, ask about the history of violence, [and] listen carefully without pressuring the person to talk.”<sup>207</sup> Robust psychological care, which includes information about symptoms of trauma and stress, should also be available to sex workers who experience violence.<sup>208</sup> Legal support should also be made readily available to sex workers who experience violence.<sup>209</sup> Given the stigma that surrounds sex work, it is imperative that sex workers know they can pursue legal action should they experience harm. State parties should ensure that lawyers and paralegals who are experienced in working with victims of violence are available to aid sex workers in legal claims.

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200. *Id.*

201. *Id.*

202. COLLABORATIVE INTERVENTIONS, *supra* note 24, at 31.

203. *See id.* at 31.

204. *Id.* at 33.

205. *Id.* at 24.

206. *See id.* at 32–33 (explaining that, while these guidelines are geared toward all women who experience violence, they are relevant to female sex workers as well).

207. COLLABORATIVE INTERVENTIONS, *supra* note 24, at 33 (providing additional recommendations that reproductive care be readily available, including emergency contraception and testing for sexually transmitted diseases and noting that health care providers should receive specific training on how to provide services to those who have experienced violence).

208. *Id.*

209. *Id.*



*B. State Parties Must Consult Sex Workers and Sex Workers' Rights Organizations When Crafting Legislation that Addresses Sex Work*

When considering legislation to address sex work, it is critical that state parties consult sex workers and sex workers' advocacy groups in order to enact laws that provide meaningful, effective protection of sex workers' human rights.<sup>210</sup> As explained in Part I.D.3, in examining the legislative history of the PRA in New Zealand, it is clear that much of the law's success can be attributed to the fact that sex workers and advocacy groups were involved in nearly every step of the process.<sup>211</sup> In fact, the bill's main sponsor, Tim Barnett, was recruited by Catherine Healy, the national coordinator of the New Zealand Prostitutes Collective, to support the legislation.<sup>212</sup> A working group comprised of the New Zealand Prostitutes Collective and many mainstream feminist groups was put together to consult in drafting the language of the bill.<sup>213</sup> Further, the committee of jurisdiction received over 200 submissions of input over a period of two years.<sup>214</sup> The submissions came from a diverse number of organizations in support of decriminalization, including the AIDS Foundation, the New Zealand Federation of Business and Professional Women, and the Young Women's Christian Association.<sup>215</sup> Healy noted the most crucial lesson in New Zealand's road to decriminalization was that taking into consideration the views of sex workers themselves makes a huge difference:

Affected communities usually know best about the way their lives can be improved. . . . We were able to take our ideas as sex workers to sympathetic MPs [Members of Parliament] and work closely with others in and outside of government to influence the legislative changes that would have a direct bearing on not only our work but also our lives.<sup>216</sup>

Amnesty International also came to the conclusion that decriminalization was the best legislative method to protect sex workers'

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210. *See id.* at 36.

211. *See* Crichton, *supra* note 98.

212. *See id.* (noting that the New Zealand Prostitutes Collective was founded "as part of a national strategy to combat HIV/AIDS, [so] the NZPC is a government-funded body working to advance the health, education, and rights of sex workers.").

213. *See id.*

214. *Id.*

215. *See id.* (explaining that fifty six of the over two hundred submissions came from feminist organizations. Forty of the submissions supported decriminalization. The other sixteen favored the Nordic Model.).

216. Crichton, *supra* note 98.

human rights, after a long consultation process.<sup>217</sup> The resolution, which “recommends that Amnesty International develop a policy that supports the full decriminalization of all aspects of consensual sex work,” was the result of a two-year period of intense consultations and research.<sup>218</sup> While the policy drew from extensive evidence provided by U.N. agencies, and research conducted in four countries, Amnesty International also consulted sex worker groups, groups representing survivors of prostitution, abolitionist organizations, and other women’s rights representatives.<sup>219</sup> Given the extensive consideration granted to the groups who will be directly impacted by this change of policy, it is not surprising that a petition in support of the policy had garnered more than 6,000 signatures by the time it was introduced, including a significant number of signatures from sex worker support and advocacy groups from around the globe.<sup>220</sup>

Not only does consulting sex workers and sex worker advocacy groups help ensure the group being affected by the legislation has a say in the process, it also better informs the process.<sup>221</sup> “Imagine,” asserts a former sex worker turned sex worker rights advocate, “a study of the alcohol industry which interviewed not a single brewer, wine expert, liquor store owner or drinker, but instead relied solely on the statements of ATF agents, dry-county politicians and members of Alcoholics Anonymous and Mothers Against Drunk Driving.”<sup>222</sup> Such research would obviously prove to be so biased that it is unreliable; thus, such a scenario would likely never occur.<sup>223</sup> However, when you change the topic to sex work, that is precisely what happens.<sup>224</sup>

Take, for example, a study from the Urban Institute that was widely publicized in 2014.<sup>225</sup> The study made claims about the state of the U.S. sex economy based on interviews with seventy-three men

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217. See *Global Movement Votes to Adopt Policy to Protect Human Rights of Sex Workers*, AMNESTY INT’L (Aug. 11, 2015, 5:00 PM), <https://www.amnesty.org/en/latest/news/2015/08/global-movement-votes-to-adopt-policy-to-protect-human-rights-of-sex-workers> [http://perma.cc/9PBBST5H] [hereinafter *Global Movement*].

218. *Id.*

219. *Id.*

220. Hilary Hanson, *Here’s What Amnesty International’s Sex Work Proposal Really Means*, HUFFINGTONPOST (Aug. 4, 2015), [http://www.huffingtonpost.com/entry/amnesty-international-sex-work-prostitution\\_us\\_55bfb184e4b06363d5a2e89b](http://www.huffingtonpost.com/entry/amnesty-international-sex-work-prostitution_us_55bfb184e4b06363d5a2e89b) [http://perma.cc/5SSEYANT].

221. See *id.*

222. Maggie McNeill, *Lies, Damned Lies and Sex Work Statistics*, WASH. POST (Mar. 27, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/03/27/lies-damned-lies-and-sex-work-statistics> [http://perma.cc/MJ3F8NWZ].

223. *Id.*

224. See *id.*

225. *Id.*

convicted as pimps, law enforcement personnel, and only thirty-six incarcerated street workers.<sup>226</sup> One sex worker activist noted that “the average sex worker activist follows more sex workers on Twitter than these researchers managed to find for a supposedly ‘landmark’ study.”<sup>227</sup> Such studies skew the public’s view of sex workers and can perpetuate common myths about sex work.<sup>228</sup> In fact, while street workers actually represent less than fifteen percent of the trade in the United States, one hundred percent of the women interviewed by the Urban Institute researchers were street workers.<sup>229</sup> Further, fewer than half of street workers have pimps and, often times, the pimps are actually employees of the women, not the other way around.<sup>230</sup> Given the fact the researchers interviewed twice as many pimps as they did sex workers, it conflates the role pimps play in sex work. Relying on such research to inform legislative decisions gives lawmakers an incomplete picture as to the real problems that need to be addressed and can lead to making the situation worse rather than improving it.

Legislators must also make an effort not just to create opportunities for consultation with sex workers and advocacy groups, but to create meaningful opportunities for consultation. In 2014, when Canada was considering updating its laws on sex work, they simply provided an online submission process.<sup>231</sup> This system was seriously flawed because it allowed for people to complete the form multiple times, thus creating an opportunity to skew the numbers in support of the government’s preferred position.<sup>232</sup> Many argued that the questions were also biased, leading people to support the criminalization of third parties and clients.<sup>233</sup> As noted by one expert, “[l]aws should not be built on public opinion or moral arguments. Laws should be based on evidence . . . .”<sup>234</sup>

If state parties are truly dedicated to improving the human rights of sex workers, it is clear they must involve them in the reform process. Not only will it set the tone that the government cares about

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226. *Id.*

227. McNeill, *supra* note 222 (quoting sex work activist Melissa Gira Grant).

228. *See id.*

229. *Id.*

230. *Id.*

231. *See Sex Workers in Canada Decry Government Consultation on Sex Work*, GLOB. NETWORK OF SEX WORK PROJECTS (June 3, 2014), <http://www.nswp.org/news/sex-workers-canada-decry-government-consultation-sex-work> [<http://perma.cc/CFW7TISEF>] (sharing observations on the online comment system).

232. *See, e.g., id.* (sharing a representative complaint).

233. *See, e.g., id.* (citing a representative comment).

234. *Id.* (quoting Emily van der Meulen, Assistant Professor in the Department of Criminology at Ryerson University).

the rights of sex workers, but it will ensure that any adopted legislation will have the desired outcome on impacted parties.

#### CONCLUSION

While gender inequality and discrimination certainly have an influence on a woman's decision to enter sex work, criminalizing women for those choices does nothing to protect their human rights.<sup>235</sup> Decriminalization of sex work can ensure that sex workers are no longer seen or treated as criminals, which means they will be less susceptible to abuse.<sup>236</sup> Protecting the human rights of sex workers and decriminalizing sex work will require vast efforts on every level—from federal, state, and local governments, to judiciary bodies and civil society and nonprofit organizations. However, if countries uphold their international obligations and consider holistic approaches to combating this harmful practice, the destigmatization and full protection of the human rights of sex workers is certainly within reach.

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235. See *Global Movement*, *supra* note 217.

236. See *id.*