

IWDA POSITION PAPER ON SEX WORK

Sex work is work. Everybody has the right to bodily autonomy and integrity, and sex workers must be able to participate without discrimination in decisions affecting their lives, their access to health and social justice. Feminist approaches value lived experience as a critical form of knowledge. There is strong evidence, including from the lived experience of sex workers, that criminalising the buying or selling of sex harms sex workers, and that decriminalising sex work can contribute towards preventing sexual exploitation, trafficking, and reduce stigma.

Introduction

IWDA partners with sex worker representative organisations and seeks to uphold the rights of sex workers through our policy and advocacy work. IWDA is opposed to all forms of modern slavery, including sexual trafficking and sexual exploitation, which violate human rights and is a long-standing global problem. However, legislation targeting modern slavery can sometimes impinge on the rights of sex workers and amount to partial criminalisation of sex work, so should be implemented with caution¹.

Within the global feminist movement, there is disagreement between those who seek to fully decriminalise sex work, and those who support partial decriminalisation of sex work, sometimes called the 'Nordic Model'. In recent years, some European governments who have adopted the Nordic Model have used their feminist foreign policies to 'export' this model to other parts of the world. IWDA conducts research and advocacy on

feminist foreign policy, but we do not support the Nordic Model, nor do we agree that it is a justifiable position within a feminist foreign policy approach.

In this position paper, we outline IWDA's support for the full decriminalisation of sex work. We follow the lead of sex workers' rights organisations in focusing this paper on the issues that they view as most critical to upholding their rights. We first define the key concepts and terms relevant to this paper. After this, we articulate why IWDA supports the full decriminalisation of sex work. Next, we provide a contextual overview of the issues of modern slavery and sex work. We argue that the Nordic Model of partial criminalisation of sex work is incompatible with a feminist foreign policy approach. Last, we include recommendations for donors and others in the global feminist movement.

DEFINITIONS OF KEY TERMS

Sex work²: Sex work is the consensual exchange of sexual services for money or goods, including housing, drugs or necessities, between adults. It may involve working independently, with others or for a third party. Individuals may engage in sex work regularly or sporadically. Sex work occurs in many different forms and settings, including street-based or web-based settings and escort services amongst others³.

Criminalisation: Criminalisation views the selling of sex between consensual adults as a criminal act⁴. Under a criminalised system, part or all of the sex work industry may be illegal. For example, sex work may be illegal, either or both sex workers and clients may be prosecuted, and/or workplaces may be illegal⁵.

Partial decriminalisation; the 'Nordic' model: Partial decriminalisation that criminalises the buying but not the selling of sexual services⁶. The Nordic Model refers to the model of sex work legislation introduced by first Sweden, and later Norway and Iceland that seeks to end the demand for sex work by criminalising the purchase, but not the sale, of sex work and supporting sex workers to exit the profession⁷.

Decriminalisation: Full decriminalisation of sex work refers to the removal of criminal penalties for those who sell sexual services, those who purchase sexual services, and those who work in supporting sex workers labour⁸. Trafficking, victimization, all forms of sexual violence and commercial sex acts involving minors all remain crimes under this model.

Licensing and legalisation: The legalisation of sex work sometimes referred to as licensing, positions the government as the primary regulator of the sex trade⁹.

Modern slavery: Modern slavery is an umbrella term that covers specific legal concepts including forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking. Essentially, it refers to situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception and/or abuse of power¹⁰. Forced Labour includes the forced sexual exploitation and trafficking of adults, imposed by private agents, for commercial exploitation¹¹.

1

DECRIMINALISATION VERSUS THE NORDIC MODEL

A substantial and growing body of evidence confirms that the criminalisation of sex work –even partial criminalisation as per the Nordic Model – harms sex workers and undermines their human rights¹². Criminalisation of sex work can make sex workers more vulnerable to violence and sexual assault by attackers who view sex workers as easy targets because they are stigmatised and are unlikely to receive help from the police and legal aid providers. Criminalisation is often associated with abusive and discriminatory police practices. It may also force sex workers to work in unsafe locations to avoid the police and undermines their ability to seek justice for crimes committed against them. People in the sex industry are also less likely to report crimes they experience or witness due to fear of arrest¹³.

Because the goal of the Nordic Model is to end sex work, it makes it harder for sex workers to find safe places to work, unionise, work together and even support and protect one another, advocate for their rights, or even open a bank account for their business. It can also directly impact the health, well-being, gender justice and social inclusion of sex workers. Some governments and INGOs have called to abolish the sex work industry in order to protect and rescue people who sell sex. However, there is little evidence that criminalising sex workers, their clients and third parties have any positive impact on the lives and human rights of sex workers¹⁴. It stigmatises and marginalises sex workers and leaves them vulnerable to violence and abuse by police¹⁵. Ironically, the criminalisation of sex work is itself one of the factors that promotes impunity for harms to sex workers, as their stigmatised status leaves sex workers acutely more vulnerable to exploitation, violence, and trafficking¹⁶.

Decriminalisation maximises sex workers' legal protection and their ability to exercise other key rights, including access to justice and health care. Legal recognition of sex workers and their occupation maximises their protection, dignity and equality and is an important step towards destigmatising sex work¹⁷. Under a decriminalised framework, sex industry businesses are treated like other businesses, subject to existing regulatory mechanisms, and police are not involved as regulators¹⁸.

There is also growing recognition amongst INGOs, UN Agencies and multilateral organisations that decriminalising sex work could help to address sexual exploitation and trafficking¹⁹. Since sex work was decriminalised in New Zealand in 2003, there have been no reports of trafficking amongst New Zealand citizens within the sex industry. When sex workers are not threatened with criminal charges, they are better able to identify and report cases of trafficking, violence, and abuse, as they are more likely to feel safe when reporting this information to the authorities^{21 22}.

2

SEX WORK VERSUS MODERN SLAVERY

The same social and structural inequalities can influence individual pathways to both sex work and vulnerabilities to sex trafficking and sexual exploitation. For example, women, trans and non-binary people who experience multiple and intersecting forms of discrimination on the basis of gender, sexual orientation, race, caste, ethnicity, migrant or other status, are over-represented in sex work²³ and amongst those affected by modern slavery²⁴. Women and girls account for approximately 71% of all those affected by modern slavery, and 99% of those who experience forced labour and sexual exploitation and trafficking²⁵.

However, sex work and sexual exploitation/trafficking are different phenomenon that require different policy and programmatic responses.

A range of interventions are required to address all forms of modern slavery, including policy and legal responses to help prevent sexual exploitation and trafficking and uphold the human rights of survivors. This is especially so when criminal measures targeting perpetrators are implemented as part of a broader approach that prioritises the protection of victim/survivors and measures to address the root causes of marginalisation²⁶. This includes strengthening protections of the rights of those most vulnerable to modern slavery – migrant worker and those working in the informal and private sectors²⁷.

However, the same cannot be said for criminalising elements of sex work. Evidence confirms that state responses to sex work that seek to criminalise any involvement in sex work, such as the Nordic Model and other models of partial decriminalisation, can exacerbate and compound the human rights abuses experienced by sex workers²⁸.

SEX WORK VS SEX TRAFFICKING

Sex work: When a person willingly takes part in the sale of sex, it is consensual and does not affect their human rights.

Sex trafficking: When a person takes part in the sale of sex through threat, abduction or other means of coercion, this is an abuse of their human rights.

AUSTRALIA'S MODERN SLAVERY ACT (2018)

This Act requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities based, or operating, in Australia may report voluntarily.

It is also critical that modern slavery and anti-trafficking laws are not used to target sex workers. The introduction of the Law on Suppression of Human Trafficking and Sexual Exploitation in Cambodia has been criticised by sex workers and sex worker advocates for failing to distinguish between sex work and sex trafficking; making it difficult for police to enforce the Law and worsening the conditions experienced by sex workers²⁹. By conflating sex work and sex trafficking, the law has meant that voluntary sex workers are now more subject to police harassment, raids and exploitation (including bribery).

IWDA partner United Sisterhood Alliance has been working to improve conditions for sex workers by supporting sex workers to organise and form networks to advocate for greater participation and greater access to social services, and freedom from violence and discrimination³⁰. The alliance works towards promoting sex workers' participation in the development of policies, programs and laws related to sex work and through awareness raising campaigns; including the most recent "Sex work is Work".

RECOMMENDATIONS:

The Australian Government should:

1. Support partner countries to pursue the full decriminalisation of sex work in line with global evidence on the rights and safety of sex workers.
2. Ensure modern slavery laws clearly distinguish between sex work, and sexual exploitation and trafficking, to support appropriate implementation and resourcing to help protect both sex workers and crime victims.
3. Resource the meaningful participation of sex workers and their organisations in developing policy and programmatic solutions that seek up uphold their rights, and in the development and evaluation of laws, policies and program that effect their lives.
4. Provide sex worker organisations and alliances with untied, unrestricted, multi-year funding to enable them to continue to uphold sex worker rights and provide essential services.

3

SEX WORK AND FEMINIST FOREIGN POLICY

Feminist foreign policy is an approach adopted by a growing number of governments around the world, such as Sweden, France, Canada, Luxembourg, Mexico, Spain, Libya, Germany, Chile, and the Netherlands. There is no globally agreed definition of feminist foreign policy, and each government, which has adopted it, has laid out its own interpretation of the principles and approach³¹.

By contrast, definitions of feminist foreign policy developed by civil society, including IWDA through the Australian Feminist Foreign Policy Coalition, point to feminist foreign policy as a framework for transforming global structures of power, grounded in human rights, intersectionality and accountability³².

In 2019, the Government of France and the Government of Sweden released a joint statement announcing their decision to develop a new initiative for combating human trafficking for sexual exploitation in Europe and globally³³. The initiative involved introducing and strengthening sex work legislation in each country to be consistent with the Nordic Model that would make buying sex, but not selling sex, a criminal act. Instead of experiencing prosecution, the sex worker would instead be offered assistance to exit the sex work profession³⁴. The two governments argued that criminalising the purchase of sex work in their own countries would reduce demand, which would therefore help to address modern slavery by removing the incentive to traffic women and girls for sexual exploitation³⁵.

This new initiative was positioned within Sweden's Feminist Foreign Policy (FFP) and France's Feminist Diplomacy Policy³⁶. This led to concerns amongst sex workers and sex worker advocates that the Nordic Model of sex work would be taken up by other countries, which have feminist foreign policies. This concern has been warranted, with Canada since adopting the Nordic Model, and a bill proposing this approach under consideration in Spain³⁷.

IWDA views the Nordic Model as fundamentally inconsistent with feminist foreign policy. Feminist approaches should strongly value lived experience as a form of knowledge and centre the involvement of people with lived experience in the development of policy and programs. They should also be grounded in human rights. Sex worker organisations have consistently called for the decriminalisation of sex work, and international policy increasingly supports the full decriminalisation of sex work³⁸ as an appropriate strategy to both uphold the rights of sex workers and as a strategy to decrease trafficking, exploitation and violence against women and girls³⁹. IWDA affirms their calls in our advocacy towards feminist foreign policy.

RECOMMENDATIONS:

1. Governments who hold, or are considering, feminist foreign policies should not pursue the Nordic Model of criminalisation, whether at home or in other contexts, instead affirming the rights and lived experience of sex workers by supporting full decriminalisation.
2. Feminist civil society in countries with feminist foreign policies which are pursuing the Nordic Model should hold their governments accountable for this inconsistency.
3. Global advocates and researchers on feminist foreign policy should work together to advance a vision of feminist foreign policy which is grounded in human rights, lived experience, and which seeks to transform global structures of power.

ENDNOTES:

- ¹ Knaus, C. (2017) 'Modern slavery laws must fully decriminalise sex work, advocates say'. The Guardian. Accessed 17th July 2022 via: <https://www.theguardian.com/australia-news/2017/dec/22/modern-slavery-laws-must-fully-decriminalise-sex-work-advocates-say>
- ² The term 'sex work' was coined by sex worker and activist Carol Leigh in the 1970's as an alternative to the term 'prostitution' which is seen by many sex workers to have negative social connotations. Many sex worker organisations and activists oppose the term prostitution, and prefer 'sex work' and 'sex worker' instead of 'prostitute' and 'prostitution' as terms to describe their occupations.
- ³ Sex Workers and Alliance Network. June 2020. Sex work vs trafficking: how they are different and why it matters. Issue Brief. Yale Global Health Justice Partnership. Accessed via: https://law.yale.edu/sites/default/files/area/center/ghjp/documents/issue_brief_sex_work_vs_trafficking_v2.pdf
- ⁴ Scarlett Alliance. 2014. The Principles for Model Sex Work Legislation. Accessed via: https://scarlettalliance.org.au/wp-content/uploads/2022/07/principles_2014.pdf
- ⁵ Scarlett Alliance. 2014.
- ⁶ Sex Workers and Alliance Network. June 2020.
- ⁷ Scarlett Alliance. 2014.
- ⁸ Sex Workers and Alliance Network. June 2020.
- ⁹ Sex Workers and Alliance Network. June 2020.
- ¹⁰ International Labour Office (ILO), 2017. Global estimates of modern slavery: Forced labour and forced marriage. Accessed via: https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf
- ¹¹ International Labour Office (ILO), 2017.
- ¹² Human Rights Watch. 2019. Why Sex Work Should Be Decriminalized. Questions and Answers. Accessed via: <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>
- ¹³ Human Rights Watch. 2019.
- ¹⁴ Fein, L. 2019. Has the Nordic Model worked? What does the Research Say? Accessed via: <https://nordicmodelnow.org/2019/12/22/has-the-nordic-model-worked-what-does-the-research-say/>
- ¹⁵ Human Rights Watch. 2019.
- ¹⁶ Sex Workers and Alliance Network. June 2020.
- ¹⁷ Human Rights Watch. 2019.
- ¹⁸ Scarlett Alliance. 2014.
- ¹⁹ Sex Workers and Alliance Network. June 2020.
- ²⁰ Decriminalize Sex Work. October 2021. Human Trafficking and Sex Work. Accessed via: <https://decriminalizesexwork/why-decriminalization/briefing-papers/human-trafficking-and-sex-work/>
- ²¹ Human Rights Watch. 2019.
- ²² Sex Workers and Alliance Network. June 2020.
- ²³ Human Rights Watch. 2019.
- ²⁴ International Labour Office (ILO), 2017; Amnesty International. May 2016. Amnesty International Policy on State obligations to respect, protect and fulfil the human rights of sex workers. Accessed via: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>
- ²⁵ International Labour Office (ILO), 2017.
- ²⁶ International Labour Office (ILO), 2017.
- ²⁷ International Labour Office (ILO), 2017.
- ²⁸ Amnesty International. May 2016.
- ²⁹ Duncan, K. 2021. Criminals or victims? Cambodia's sex workers suffer under legal limbo. Accessed via: <https://southeastasiaglobe.com/cambodias-sex-workers/>
- ³⁰ United Sisterhood Alliance (Us). <https://www.unitedsisterhood.org/>
- ³¹ Ridge, A. et al. May 2019. Feminist Foreign Policy: Key Principles and Accountability Measures. IWDA + ICRW. Accessed via: <https://iwda.org.au/assets/files/Feminist-Foreign-Policy-Discussion-Summary-IWDA-ICRW-NYU.pdf>
- ³² Australian Feminist Foreign Policy Coalition (AFFPC). 2022. Feminist Foreign Policy – An Overview. Accessed via: https://iwda.org.au/assets/files/Feminist-Foreign-Policy-An-Overview_AFFPC.pdf; <https://www.lowyinstitute.org/the-interpreter/solomon-islands-china-security-pact-feminist-foreign-policy-answer>
- ³³ The Ministry for Foreign Affairs in France, The Ministry for Foreign Affairs in Sweden. March 2019. Joint Statement. Accessed via: https://www.diplomatie.gouv.fr/IMG/pdf/joint_statement_-_france_and_sweden_cle08dbbd.pdf
- ³⁴ Le Drian, Jean-Yves, Wallström, Margot. 8 March 2019. Combatting human trafficking and sexual exploitation. <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/news/article/combating-human-trafficking-and-sexual-exploitation-joint-op-ed-by-minister>
- ³⁵ The Ministry for Foreign Affairs in France, The Ministry for Foreign Affairs in Sweden. March 2019.
- ³⁶ Le Drian, Jean-Yves, Wallström, Margot. 8 March 2019.
- ³⁷ Fein, L. 2019.
- ³⁸ Scarlett Alliance. 2014.
- ³⁹ Human Rights Watch. 2019.