

Fordham International Law Journal

Volume 33, Issue 4

2011

Article 2

Sex Work and Human Rights in Africa

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Abstract

This Article serves as the first law review essay to engage the feminist debates regarding sex work and human rights in the African context. This Article surveys “antiprostitution” and “pro-sex-worker” feminist arguments and activities in the sub-Saharan Africa; explores the debate surrounding the legal frameworks of legalization, decriminalization, prohibition, and abolition of prostitution in a number of African countries including Senegal, where prostitution is legal and regulated, and South Africa where prostitution remains illegal despite civil society advocacy for decriminalization; and calls for the empowerment of African sex workers by arguing for a human rights-based transformation in African governments’ legal and policy posture towards sex work. Part I of this Article explores both the feminist arguments against prostitution and in favor of sex workers’ rights. Part II traces the development of the distinction between forced and unforced prostitution in international law and argues that the international human rights system creates a foundation for the realization of sex workers’ rights in Africa. Part III explores the debates regarding the criminalization of prostitution in a number of African countries and includes case studies from Senegal and South Africa.

SEX WORK AND HUMAN RIGHTS IN AFRICA

*Chi Mgbako**

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INTRODUCTION

This Article serves as the first law review essay to engage the feminist debates regarding sex work and human rights in the African context. The Article surveys “antiprostitution” and “pro-sex-worker” feminist arguments and activities in sub-Saharan Africa; explores the debate surrounding the legal frameworks of legalization, decriminalization, prohibition, and abolition of prostitution in a number of African countries including Senegal, where prostitution is legal and regulated, and South Africa where prostitution remains illegal despite civil society advocacy for decriminalization; and calls for the empowerment of African sex workers by arguing for a human rights-based transformation in African governments’ legal and policy posture towards sex work.

The antiprostitution feminist camp characterizes prostitution as an exploitative institution of patriarchy, a form of sexual slavery and violence against women, and therefore a violation of women’s rights.¹ They have used the human rights paradigm as a clarion call to “save” women from prostitution.² The pro-sex-worker feminist camp, on the other hand, uses the language of human rights to advocate for sex workers’ protection by characterizing sex work as a legitimate profession.³

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1. See KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 278 (1995); MAGGIE O’NEILL, *PROSTITUTION & FEMINISM* 18 (2001).

2. Joyce Outshoorn, *The Political Debates on Prostitution and Trafficking of Women*, 12 SOC. POL. 141, 145 (2005).

3. See Melissa Ditmore, *Addressing Sex Work as Labor* (1999) (unpublished essay, Working Group on Contemporary Forms of Slavery) (on file with authors).

This Article's arguments are rooted in the pro-sex-worker feminist tradition but attempts to move beyond the polarized debate in which both sides too often present victimhood and agency in prostitution as mutually exclusive realities. There is growing recognition of the need to transcend the victim/agent dichotomy in antiprostitution and pro-sex-worker feminist theorizing.⁴ Sex workers do not simply exist as victims or agents, criminals or laborers, products of exploitation or products of liberation. The use of the sex worker solely as a symbol clouds the complexity of her life.⁵

Although the international sex workers' rights movement is a relatively recent phenomenon—burgeoning in the past four decades—African sex workers have been largely absent in the global conversation on sex workers' rights. This Article will argue that an African sex workers' rights movement that includes a radical shift in governmental legal and policy positions on prostitution is a necessary prerequisite to fighting the stigma and abuse that African sex workers experience. A critical reflection on the continent's need for collective action around sex work is timely. In recent years, there have been nascent regional attempts to engage the issue of sex workers' rights.⁶

Each sex worker has her own individual story, but many African sex workers enter the trade due to economic stressors.⁷ The lack of financial support from male partners or extended family members, economic pressures of single motherhood, and relative instability of informal sectors, such as subsistence farming and petty trading, can lead African women to view sex work as an economically viable option for themselves and their families.⁸ Women engaged in sex work part-time often do so in order to supplement meager earnings in low-paying trades or to provide their families with economic buffers during lean harvests or times of drought.⁹ Economic upheaval in certain popular sectors, such

4. See BELINDA J. CARPENTER, RE-THINKING PROSTITUTION: FEMINISM, SEX, AND THE SELF 53, 125–26 (2000).

5. See O'NEILL, *supra* note 1, at 24.

6. E.g., *infra* notes 124–128, 132–135.

7. MARGARETHA JÄRVINEN, OF VICE AND WOMEN: SHADES OF PROSTITUTION 20 (Karen Leander trans., Scandinavian Univ. Press 1993).

8. See Akosua Adomako Ampofo, *The Sex Trade, Globalisation and Issues of Survival in Sub-Saharan Africa*, 17.2 RES. REV. 27, 32 (2001) (Ghana).

9. See generally *Niger: Food Crisis Drives Young Women to Sell Their Bodies*, IRIN NEWS, Sept. 12, 2005, <http://www.irinnews.org/report.aspx?reportid=56266>.

as the difficulties resulting from the closure of mines,¹⁰ as well as rising tuition fees out of the economic reach of many families, can also lead African women into sex work.¹¹

Whatever precipitates their entry into sex work, African women engaged in prostitution experience deep societal stigma and discrimination that affect their ability to advocate for their own human rights.¹² African societies promote the stigmatization of sex workers by often casting them as vectors of disease at odds with the sexual mores of conservative societies.¹³ Stigma against sex workers also exists in African hospitals and health centers and discourages sex workers from seeking necessary health services.¹⁴ Sex workers themselves often internalize this deep societal stigma, which can lead to a grinding sense of hopelessness.¹⁵

African sex workers are the victims of physical and sexual abuse and rarely receive protection from the state as victims of gender-based violence.¹⁶ There is a general perception that gender-based violence is part and parcel of sex work and not a crime from which they should be protected.¹⁷ Statistics involving gender-based violence very rarely include instances in which the woman at issue is a sex worker.¹⁸ Far from protecting sex workers from abuse, African states are often complicit in the abuse of sex workers through tolerance of routine police abuse and

10. See *Women Turn to Prostitution*, HERALD (Harare), Apr. 14, 2005, available at <http://allafrica.com/stories/200504140711.html>.

11. See Masuzyo Chakwe, *Prostitution Has Become a Source of Livelihood*, POST (Lusaka), Jan. 27, 2005, available at <http://allafrica.com/stories/200501270576.html>; Bridget Sibanda, Opinion, *Desperate Students Turn to Prostitution*, ZIMBABWE INDEP. (Harare), May 16, 2003, <http://www.theindependent.co.zw/opinion/17714.html>.

12. See CENTER FOR ADVOCACY ON STIGMA & MARGINALIZATION, RIGHTS-BASED SEX WORKER EMPOWERMENT GUIDELINES: AN ALTERNATIVE HIV/AIDS INTERVENTION APPROACH TO THE 100% CONDOM USE PROGRAMME 9 (2008), available at <http://sangram.org/download/d3.pdf>.

13. See Nicole Fick, *The Stigmatisation of Sex Workers*, PAMBAZUKA NEWS (Oxford), Nov. 23, 2006, <http://www.pambazuka.org/en/category/features/38524>.

14. See Sani Aliou et al., *Niger: Sex Workers at the Market*, RESEARCH FOR SEX WORK 5 (Vrije Universiteit Med. Cnt., Amsterdam, Neth.) June 2002, at 23, available at http://www.childtrafficking.com/Docs/research_for_sex_work_no_5_.pdf; Caroline Mango, *Police Demanding Bribes, Say Sex Workers*, E. AFR. STANDARD (Nairobi), Sept. 29, 2002, available at <http://allafrica.com/stories/200209300766.html>.

15. See Fick, *supra* note 13.

16. See Loga Virahsawmy, *Sex Workers Unprotected From Violence*, LEXPRESS (Port Louis), Aug. 9, 2007, available at <http://www.lexpress.mu/services/archive-91649-sex-workers-unprotected-from-violence.html>.

17. *Id.*

18. *Id.*

harassment of sex workers. Police often demand exorbitant bribes from sex workers,¹⁹ detain sex workers through arbitrary arrests,²⁰ and subject sex workers to sexual abuse.²¹ African women engaged in sex work also experience sexual and physical abuse from clients. They risk contracting HIV/AIDS and other sexually transmitted infections (“STIs”) from clients who refuse to wear condoms or vicious beatings and sexual assaults from clients that object to condom use.²²

Sex worker collectives remain a rarity in Africa, and African women’s rights organizations have been slow to embrace women’s rights as sex workers’ rights and fight against gender-based violence aimed at sex workers.²³ The failure of states to recognize sex worker abuse, and a general absence of strong civil society voices arguing that violence against women also includes violence against sex workers, creates an atmosphere in which sex workers are acutely susceptible to abuse.²⁴

The criminalization of prostitution throughout Africa heightens African sex workers’ vulnerability.²⁵ The vast majority of African countries maintain one of two distinct legal frameworks regarding sex work. In the first legal regime, prostitution itself—the exchange of sexual services for monetary payment—is illegal. Prostitution-related activities, including procurement of prostitution (*i.e.*, soliciting, facilitating, or living

19. *Angola: Sex Work in Separatist Cabinda*, IRIN NEWS, Apr. 11, 2008, <http://www.irinnews.org/report.aspx?reportId=77724>; Mango, *supra* note 14; *Mauritania: Sex Work for Survival, Armed with Condoms*, IRIN NEWS, Feb. 17, 2005, <http://www.irinnews.org/report.aspx?reportId=38222>.

20. See Kwaku Baka, *Ghana Police Sweeps*, INTER PRESS SERVICE THIRD WORLD NEWS AGENCY, Aug. 6, 1998, http://walnet.org/csis/news/world_98/ips-980806.html.

21. See Ida Bergstrom, *Commercial Sex Workers Bare Their Souls*, MONITOR (Kampala), June 24, 2005, available at 2005 WLNR 10041344; Virahsammy, *supra* note 16.

22. See Chi Mgbako et al., *We Will Still Live: Confronting Stigma and Discrimination Against Women Living with HIV/AIDS in Malawi*, 31 FORDHAM INT’L L.J. 528, 551–52 (2008); Wezi Tjaronda, *Sex Workers Face Grim Future*, NEW ERA (Windhoek), Jan. 10, 2006, available at <http://allafrica.com/stories/200601100083.html>; Virahsammy, *supra* note 16’.

23. See Mgbako et al., *supra* note 22, at 550.

24. See Gitonga Marete, *Sex Workers’ Rights Abused, Says Lobby*, DAILY NATION (Nairobi), Apr. 3, 2008, <http://allafrica.com/stories/200804021140.html>.

25. See Janet Wojcicki, *Race, Class, and Sex: The Politics of the Decriminalisation of Sex Work*, 42 AGENDA 94, 99 (1999); see also Kathambi Kinoti, Ass’n for Women’s Rights in Dev., *Sex Work in Southern Africa: Criminalization Provides Screen For Other Rights Violations* (Feb. 20, 2009), <http://www.awid.org/eng/issues-and-analysis/library/sex-work-in-southern-africa-criminalization-provides-screen-for-other-rights-violations>.

off the earnings of prostitution, which includes brothel ownership and pimping), are also illegal. A sampling of African countries in which both prostitution itself and procurement are illegal include Angola,²⁶ Equatorial Guinea,²⁷ Eritrea,²⁸ Gabon,²⁹ Ghana,³⁰ Guinea,³¹ Kenya,³² Liberia,³³ Mozambique,³⁴ Namibia,³⁵

26. See Anteproyecto de Código Penal arts. 176–77 (outlawing prostitution, brothel ownership, and pimping), available at <http://www.minjus.gov.ao/servicosdogovernod.aspx?codigo=202>; see also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2008 HUMAN RIGHTS REPORT: ANGOLA (2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118985.htm> (summarizing the pertinent provisions of Angolan law).

27. See U.N. Comm. on the Elimination of Discrimination Against Women, *Responses to the List of Issues and Questions for Consideration of the Combined Second, Third, Fourth and Fifth Periodic Reports—Equatorial Guinea*, at 4–5, U.N. Doc. CEDAW/PSWG/2004/II/CRP.2/Add.2 (Apr. 1, 2004) (quoting article 452 of the domestic Penal Code).

28. See Transitional Penal Code art. 604, as amended by Proclamation No. 4/1991 (proscribing prostitution or living on prostitution of others as the criminal offense of “habitual exploitation for pecuniary gain.”).

29. See Code Pénal art. 260 (criminalizing prostitution, solicitation, and brothel ownership). In addition, “sharing the profits of or living with someone who engages in prostitution is punishable with a fine and imprisonment of 3 months to 1 year.” The Protection Project, *Human Rights Reports of Africa: Gabon 2* (n.d.), <http://www.protectionproject.org/sites/default/files/file/human%20rights%20rpts/gabon.doc> (citing Code Pénal art. 260(2)). The penal code of Gabon was originally printed in Loi 21 of May 31, 1963, *Journal Officiel de la République Gabonaise* [Official Gazette of Gabon], July 25, 1963.

30. See Criminal Code §§ 107(1), 273–77, amendments consolidated in Criminal Code (Amendment) Act, No. 646 (2003) (prohibiting prostitution, solicitation, and a host of surrounding activities including pimping, pandering, and providing for prostitution). A copy of the original code, as it was enacted in 1960, can be found in HENRIETTA J.A.N. MENSA-BONSU, *THE ANNOTATED CRIMINAL CODE OF GHANA* (4th ed., 2005).

31. See Code Pénal arts. 328–29, Loi 36 of Dec. 31, 1998, *Journal Officiel de la République de Guinée* [Official Gazette of Guinea], Jan. 10, 1999 (circumscribing the activities of prostitution and pimping), available at http://www.adh-geneva.ch/RULAC/pdf_state/CODE-PENAL.pdf.

32. See Penal Code, (2009) Cap. 63 §§ 153–56 (criminalizing prostitution, pimping, and brothel ownership). A current copy of the Kenyan penal code is electronically available at <http://www.kenyalaw.org/Downloads/Acts/Penal%20Code%20Cap%2063%28%202009Final%20Final%29.pdf>.

33. See New Penal Law of 1976 §§ 18.1–18.5, in *LIBERIAN STATUTES 1* (rev. ed. 1976) (condemning acts of prostitution, brothel ownership, pimping, and facilitation as criminal offenses) An overview of the pertinent provisions of the Liberian Penal Code can be found in SEXUAL AND GENDER-BASED VIOLENCE CRIMES UNIT, MINISTRY OF JUSTICE, *SEXUAL ASSAULT AND ABUSE PROSECUTION HANDBOOK 263* (Jan. 2009) (Liber.), available at http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf.

34. See Código Penal arts. 71, 405 to 405-A (penalizing prostitution, procurement, maintaining a brothel, and facilitating the practice of prostitution), available at

Rwanda,³⁶ Somalia,³⁷ South Africa,³⁸ Tanzania,³⁹ Uganda,⁴⁰ and Zambia.⁴¹ In the second legal regime, prostitution itself is not explicitly criminalized, however, procurement and solicitation in public places is often times illegal, rendering it nearly impossible for sex workers to legally engage in prostitution, despite the fact that the exchange of money for sex is otherwise legal. African

http://www.portaldogoverno.gov.mz/Legisla/legisSectores/judiciaria/codigo_penal.pdf

35. See Combating of Immoral Practices Act arts. 2, 5, 10, No. 21 (1980) (punishing as criminal acts solicitation, procurement, maintaining a brothel, and living off of the earnings of prostitution); see also Combating of Rape Act, No. 8 of (2000), Government Gazette of the Republic of Namibia, May 10, 2000 (supplementing preexisting legislation on prostitution). As with all legislation enacted prior to 1990, the Combating of Immoral Practices Act can be found in the rather elusive Official Gazette of Southwest Africa, *Offisiële koerant van Suidwes-Afrika*, however, a more accessible full text copy is reproduced in LEGAL ASSISTANCE CENTRE “WHOSE BODY IS IT?”: COMMERCIAL SEX WORK AND THE LAW IN NAMIBIA appen. 39–47 (2002), available at <http://www.lac.org.na/projects/grap/Pdf/commsex.pdf>.

36. See Code Pénal arts. 363–75 (prohibiting prostitution, pimping, solicitation, enticing another into prostitution, and a host of other activities that facilitate prostitution such as assisting or protecting prostitutes and advertising or services). For a copy of the code, as it was originally enacted, see Décret loi 21 of 1977, Journal Officiel de la République Rwandaise [Official Gazette of Rwanda], July 1, 1978. A consolidated copy of the code is available electronically at <http://www.amategeko.net/> and published in I CODES ET LOIS DU RWANDA 383 (Philip Reyntjens & Jan F. S. Gorus eds., 2d ed. 1995).

37. See Codice Penale arts. 405–08, Decree-law 5 of December 16, 1962, Bolletino Ufficiale della Repubblica Democratica Somala [Official Gazette of Somalia], No. 10 of 1962, p. 110 (illegalizing prostitution, inciting, aiding the practice of prostitution, pimping, and living off the proceeds of prostitution), in MARTIN R. GANZGLASS, THE PENAL CODE OF THE SOMALI DEMOCRATIC REPUBLIC: WITH CASES, COMMENTARY, AND EXAMPLES (1971). The official English translation, which is considered to be imperfect, is electronically available at http://www.somalilandlaw.com/Penal_Code_English.pdf. For the official report of the legal committee that drafted the code in full, see RENATO ANGELOTTI, CODICE PENALE SOMALO COMMENTATO ED ANNOTATO IN BASE AI LAVORI PREPARATORI (1967).

38. See Sexual Offences Act, 23 of 1957 ss. 19–21 (sanctioning prostitution, soliciting, and living off the proceeds of prostitution). In 2002, South Africa’s constitutional court upheld the country’s Sexual Offences Act as nondiscriminatory on the basis of gender. See *S. v. Jordan* 2002 (6) SA 642 (CC).

39. See Penal Code, (2002) Cap. 16 §§ 139–42, 176A, available at http://www.imolin.org/doc/amlid/Tanzania_Penal%20Code_part1.pdf.

40. See The Penal Code Act (2000) Cap. 120 §§ 131–32, 136–39 (holding persons involved in prostitution, living on the earnings of prostitution, owning brothels, and procuring criminally liable), available at <http://www.humanrightsjournalists.org/downloads/Penal%20Code%20Act.pdf>.

41. Penal Code, sec. 140–41, 146, 7 L. Rep. of Zambia Ch. 87 (1995), available at <http://www.parliament.gov.zm/downloads/VOLUME%207.pdf> (outlawing prostitution, soliciting, facilitating prostitution, owning a brothel, and living on the earnings of prostitution).

countries that embrace this legal posture include Burkina Faso,⁴² Cape Verde,⁴³ the Central African Republic,⁴⁴ Côte d'Ivoire,⁴⁵ Ethiopia,⁴⁶ Lesotho,⁴⁷ Madagascar,⁴⁸ Malawi,⁴⁹ Sierra Leone,⁵⁰

42. See C. PÉN. arts. 423–27, Loi 43/96/ADP, Journal Officiel du Burkina Faso [Official Gazette of Burkina Faso], Jan. 16, 1997, *available at* <http://www.unhcr.org/refworld/country,legal,,legislation,bfa,456d621e2,3ae6b5cc0,0.html> (permitting prostitution, but banning the corresponding acts of procuring persons for prostitution, assisting the prostitution of others, soliciting for the purpose of prostitution, sharing in profits from the prostitution of others, living with a person regularly employed in prostitution, enticing or supporting a person for the purpose of prostitution, maintaining a house of prostitution, or acting as an intermediary between persons engaged in prostitution and individuals exploiting or paying for prostitution).

43. See Código Penal arts. 148–49, *amendments consolidated in* Decreto Legislativo No. 4, de 11 de novembro 2003, Boletim Oficial da República de Cabo Verde [Official Gazette of Cape Verde] de 18.11.2003 (codifying pimping and solicitation as illegal acts, but ostensibly leaving open prostitution as a legal activity), *available at* http://www.mj.gov.cv/index.php?option=com_docman&task=doc_download&gid=38&&itemid=66. A copy of the criminal code, as it appears in the official journal, is also available at <http://www.glin.gov>.

44. See Code Pénal Centrafricain art. 90, *as amended by* Law No. 10-001, *available at* http://journalofficiel-gouvrc.a.org/index.php?option=com_content&view=article&id=57:code-penal-centrafricain&catid=11:m-de-la-justice-garde-des-sceaux&Itemid=21 (imposing monetary fines only for knowingly assisting prostitutes, living off the proceeds of prostitution, hiring adults to engage in prostitution).

45. See Code Pénal arts. 335, 338 (criminalizing the knowing protection of prostitution, living on the proceeds of prostitution, living with a person that engages in prostitution, procures an adult to engage in prostitution, publicly soliciting persons for the purpose of debauchery, and running a brothel), *available at* <http://www.legis.ci/codepenal.php>. The criminal code was originally published in Law No. 81-640 of July 31, 1981, Journal Officiel de la République de Cote d'Ivoire [Official Gazette of Cote d'Ivoire], Jan. 4, 1982, p. 1, *available at* <http://www.centif.ci/documents/lois/b7b794eadc8875a3c53095f3a02fe424.pdf>.

46. See Criminal Code arts. 634, 846–47, Proclamation No. 414/2004, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia [Official Gazette of Ethiopia], May 9, 2004 (punishing the operation of a brothel for pecuniary gain, solicitation, and public advertising for debauchery). An official copy of the updated criminal code in official Amharic text is available at <http://www.fsc.gov.et/resources/Negarit%20Gazeta/codes/new%20criminal%20code.pdf>, and an English translation is available at <http://www.unhcr.org/refworld/pdfid/49216b572.pdf>.

47. See Sexual Offences Act §§ 4, 10–12, No. 3 (2003), Lesotho Government Gazette, Apr. 22, 2003, p. 239 (repealing the Women and Protection Proclamation No. 4 of 1949 and common law rape, but promulgating new penalties for compelling others to partake in unlawful sexual acts), *available at* <http://webapps01.un.org/vawdatabase/uploads/Lesotho%20-%20Sexual%20Violence%20Act%202003.pdf>.

48. See Code Pénal arts. 334–35 (criminalizing pimping, which is defined to include knowingly protecting prostitutes, living on the proceeds of prostitution, living with a person who habitually engages in prostitution, hires someone for the purpose of prostitution, or maintains a house of prostitution), *available at* <http://www.icrc.org/>

Swaziland,⁵¹ and Zimbabwe.⁵² Senegal is the only African country in which prostitution is both legal and regulated.⁵³ There is no African country in which prostitution is entirely decriminalized.⁵⁴

Part I of this Article explores both the feminist arguments against prostitution and in favor of sex workers' rights. It presents ways in which antiprostitution and pro-sex-worker arguments have developed into realities in Africa through government crackdowns on prostitution and budding civil society attempts to embrace sex workers' rights. It argues that the establishment of

ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/389f4e63a8fac95c12570a50046ed32/\$file/penal%20code%20-%20madagascar%20-%20fr.pdf. A copy of the code, consolidated as of 1998, can be found in MINISTÈRE DE LA JUSTICE, FEHEZANDALANA FAMAIZANA: CODE PENAL, MIS AJOUR A 30 JUIN 1998 (1998) (Madag.).

49. See Penal Code §§ 140, 142, Laws of Malawi Cap. 7:01 (L.R.O. 1/2000) (placing criminal sanctions on procuring a woman and minors for purposes of prostitution), available at https://www.unodc.org/tldb/pdf/Malawi_Penal_Code.pdf.

50. See Anti-Human Trafficking Act § 2(2)–(3), No. 7 (2005), Sierra Leone Gazette (supp.), Aug. 18, 2005 (prescribing sexual exploitation, which includes pimping, pandering, procuring, profiting from prostitution, and running a brothel, as a form of human trafficking), available at <http://www.sierra-leone.org/Laws/2005-7p.pdf>; Prevention of Cruelty to Children Act §§ 9–12, Laws of Sierra Leone Cap. 31 (1926 ed.) (prohibiting various acts of prostitution involving minors), available at <http://www.unhcr.org/refworld/category,legal,,sle,477e65c42,0.html>; see also Statute of the Special Court of Sierra Leone, art. 2(g), Jan. 16, 2002, 2178 U.N.T.S. 175 (specifying “forced prostitution” as a punishable offense under the Geneva Convention).

51. See The Girls' and Womens' Protection Act § 3(1), No. 39 (1920) (prohibiting the solicitation of girls under the age of sixteen for “immoral or indecent acts”); Crimes Act §§ 41–44, No. 6 (1889) (criminalizing the procurement of a woman, not already a common prostitute, for entry into prostitution or a brothel). Both laws can be found in the “Criminal Law and Procedure” section of *Statutes of Swaziland* (1979), however, the pertinent provisions of each law is also reproduced in GENDER LINKS, REPORT OF THE SWAZILAND MEDIA TRAINING WORKSHOP ON COVERING GENDER VIOLENCE 10–13 (2002), available at http://www.genderlinks.org.za/attachment.php?aa_id=10347

52. See Criminal Law (Codification and Reform) Act §§ 81–83, No. 23 (2004), Statute Law of Zimbabwe Cap. 9:23 (2005) (penalizing the acts of soliciting, maintaining a brothel or otherwise living off the proceeds of prostitution, procuring for the purpose of prostitution). A copy of this newly enacted codification of Zimbabwe's positive criminal law can be found in [*Zimbabwe*] *Government Gazette*, June 3, 2005.

53. Prostitution has been legal since 1969. See Law No. 66-20 of Feb. 1, 1966, *Journal Officiel de la République du Sénégal* [Official Gazette of Senegal], Feb. 5, 1966, p. 152. However, the current criminal code prohibits a number of prostitution-related activities, such as soliciting, aiding and abetting the practice of prostitution, living off the profits of prostitution, acting as an intermediary in the business of prostitution, and impeding efforts to control, assist, and reeducate persons vulnerable to prostitution. See Code Pénal arts. 323, available at <http://www.justice.gouv.sn/droitp/CODE%20PENAL.PDF>.

54. See 100 Countries and Their Prostitution Policies, ProCon.org, <http://prostitution.procon.org/view.resource.php?resourceID=772>.

African sex workers collectives and women's rights organizations—working in partnership with sex workers—would create a fertile environment for the birth of a sex workers' rights movement on the continent.

Part II traces the development of the distinction between forced and unforced prostitution in international law and argues that the international human rights system creates a foundation for the realization of sex workers' rights in Africa. Many African nations have ratified treaties in the international human rights corpus that set forth rights that relate to sex work including the right to the free choice of work; freedom from discrimination, violence, and arbitrary arrest; and freedom of association.

Part III explores the debates regarding the criminalization of prostitution in a number of African countries and includes case studies from Senegal and South Africa. As early as 1969, the government of Senegal launched a program to prevent the spread of STIs through the legalization and regulation of sex work. In 2002, the South African Constitutional Court rendered a judgment that upheld the country's Sexual Offences Act, which criminalizes prostitution. Based on an assessment of these two cases this part calls for the decriminalization of prostitution throughout Africa.

I. *FEMINISM AND SEX WORK*

The prostitution debate has long divided the feminist world. Feminists have struggled with the following questions: Why does prostitution exist? What role should sex work play in society? Can a woman consent to prostitution? How can societies protect women in the sex trade? What are the best legal and policy approaches to prostitution? While such questions have evoked a variety of responses, two main camps have established the foundational parameters of the prostitution debate. The "antiprostitution" camp characterizes prostitution as violence against women and embraces an abolitionist stance. The "pro-sex-worker" camp, on the other hand, recognizes prostitution as a viable economic channel and seeks to empower sex workers to take matters of health and human rights into their own hands. The polarized positions of these two groups have driven a wedge between feminists who are often forced to choose between

supporting sex workers and condemning prostitution.⁵⁵ It reflects the ongoing schism in the feminist movement over the contours of sexual exploitation.⁵⁶ It also reflects the need for the creation of broad coalitions to wed the two groups so that no woman or girl is forced into prostitution; violence against sex workers is re-imagined and embraced as an issue of violence against women; and women who remain in the trade can realize and demand their rights.⁵⁷

A. *Antiprostitution Arguments*

Antiprostitution feminists, widely known as abolitionists, have dominated prostitution discourse since the turn of the twentieth century. The roots of the abolitionist movement can be traced to Western Europe and the United States, where antiprostitution principles continue to retain a stronghold in legislation, politics, and social mores.⁵⁸ According to abolitionists, prostitution results from poverty, coercion, and unequal gender relations.⁵⁹ They fashion prostitution as a manifestation of patriarchy rooted in the sexual exploitation of women, which reinforces gender stereotypes and entrenches female subjugation.⁶⁰

Abolitionist organizations, such as the Coalition Against Trafficking in Women and WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt), aim to abolish prostitution.⁶¹ Abolitionists point to the violent crime associated with

55. See CARPENTER, *supra* note 4, at 35, 49–50.

56. See Priscilla Alexander, *Feminism, Sex Workers, and Human Rights*, in *WHORES AND OTHER FEMINISTS* 83, 83 (Jill Nagle ed., 1997).

57. SANGRAM & POINT OF VIEW, *ARE WE NOT WOMEN?: WOMEN IN PROSTITUTION, FEMINIST ACTIVISTS, AND SEX WORKERS' RIGHTS GROUPS IN DIALOGUE* 14 (2008) [hereinafter SANGRAM].

58. JO BINDMAN, *ANTI-SLAVERY INT'L, REDEFINING PROSTITUTION AS SEX WORK ON THE INTERNATIONAL AGENDA* cap. 3(b) (1997) (unpublished report), available at <http://www.walnet.org/csis/papers/redefining.html> (arguing that Wales and the United States follow the abolitionist model).

59. See ROGER MATTHEWS, *PROSTITUTION, POLITICS AND POLICY* 29 (2008).

60. See Jody Freeman, *The Feminist Debate Over Prostitution Reform: L Prostitutes' Rights Groups, Radical Feminists, and the (Im)Possibility of Consent*, *APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN'S LIVES: SEX, VIOLENCE, WORK AND REPRODUCTION* 237, 242 (D. Kelly Weisberg ed., 1996); see also BARRY, *supra* note 1, at 9, 11; O'NEILL, *supra* note 1, at 18.

61. See Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 *WOMEN'S STUD. INT'L F.* 1, 1–9 (1998).

prostitution, human trafficking, public health crises, and high rates of substance abuse among sex workers as reasons for society to pursue the eradication of prostitution.⁶² Antiprostitution feminists argue that sex workers, who exit the trade and survive the beatings, rapes, STIs, drugs, alcohol, and emotional abuse associated with prostitution, emerge traumatized and often as poor as when they entered.⁶³

The antiprostitution platform rejects the legitimacy of prostitution as a viable means of economic survival. They argue that voluntary prostitution cannot exist because the exchange of sexual services for compensation amounts to sexual exploitation.⁶⁴ The global labor market is highly segmented, differentiated along lines of class, age, and gender with access to employment often a function of education, skills, and social status.⁶⁵ Abolitionists contend that women entering prostitution generally have low levels of education and minimal skills, and are therefore restricted to low paying labor.⁶⁶ They argue that because a sex worker's "choice" is to sell her sexual labor or starve, it amounts to compulsion and really amounts to no choice at all.⁶⁷

Following from the abolitionist belief that prostitution is a violation of women's rights, many antiprostitution feminists endorse "rescue" operations, which seek to "save" sex workers from the industry. Rescue work largely rose out of the social purity and "antivice" campaigns of the nineteenth century. Throughout the twentieth century, an alliance of the Christian right and radical feminists waged a so-called "moral crusade" against prostitution.⁶⁸ Police aided in the effort by raiding sex work establishments and arresting and detaining sex workers.⁶⁹ It

62. See MATTHEWS, *supra* note 59, at 45–59.

63. See Donna M. Hughes, *Legalizing Prostitution Will Not Stop the Harm*, in MAKING THE HARM VISIBLE, GLOBAL SEXUAL EXPLOITATION OF WOMEN AND GIRLS (Donna M. Hughes & Claire M. Roche, eds., 1999); Jody Williams, *Barriers to Service for Women Escaping Nevada Prostitution and Trafficking*, in, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 159, 163–72 (Melissa Farley ed., 2007).

64. See Raymond, *supra* note 61, at 1–9.

65. See MATTHEWS, *supra* note 59, at 30.

66. See *id.*

67. See *id.*

68. See Ronald Weitzer, *Moral Crusade Against Prostitution*, 43 SOC'Y 33, 33–38 (2006).

69. See Rahul Saha, Surya Bala & Rohan Saha, *Looking Beyond Law: A Review of the Indian Sex Workers' Movement*, 4 NALSAR STUDENT L. REV. 1, 6 (2008).

is a horrible irony that raids led by police—who are often a primary source of sex worker exploitation—have often led to abuses of sex workers and that some in the women’s rights movement have been complicit in this abuse.⁷⁰ The notion of the “suffering third world prostitute” has often been invoked to justify Western interventionist programs.⁷¹ Rescue work attempts to force sex workers to leave prostitution without providing real solutions to the larger issues of poverty, unemployment, violence, and female subordination.⁷²

B. *Antiprostitution Camp in Africa*

Antiprostitution arguments have found fertile ground in Africa. In a 1991 article on prostitution in Mali, Fatoumata Sire Diakite, the founder of the Association for the Progress and Defense of Malian Women and a Board member of the Coalition Against Trafficking in Women, one of the world’s largest anti-prostitution organizations, wrote that: “Prostitution is violence against women and a violation of human rights Prostitution is a form of slavery and must be recognized as such.”⁷³ One need only survey the antiprostitution legal framework in most African countries to affirm that African societies embrace the antiprostitution view articulated by Ms. Diakite and held by many feminists. The overwhelming majority of African countries have criminalized prostitution itself and/or prostitution-related activities.⁷⁴

African government officials have publicly characterized prostitution as incompatible with African culture. In March 2007, President Paul Kagame of Rwanda used the occasion of International Women’s Day to deliver an abolitionist speech

70. See SANGRAM, *supra* note 57, at 12.

71. See generally Jo Doezema, *Ouch! Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute,’* 67 FEMINIST REV. 16 (2001).

72. See TAIMUR KHAN ET AL., SEX WORKERS PROJECT AT THE URBAN JUSTICE CENTER, CRITIQUE OF THE ANTI-PROSTITUTION PLEDGE AND ITS GLOBAL IMPACT 5 (2007), available at <http://www.sexworkersproject.org/working-group/downloads/20070330-BriefingPaperOnAnti-ProstitutionPledge.pdf>.

73. FATOUMATA SIRE DIAKITE, THE COALITION AGAINST TRAFFICKING IN WOMEN, MAKING THE HARM VISIBLE: GLOBAL SEXUAL EXPLOITATION OF WOMEN AND GIRLS, SPEAKING OUT AND PROVIDING SERVICES, PROSTITUTION IN MALI (1999), available at <http://www.uri.edu/artsci/wms/hughes/mhvmali.htm>.

74. See *supra* notes 26–53.

targeting prostitution.⁷⁵ He argued that prostitution was a grave threat to Rwanda's moral and cultural fabric and contrary to the country's development agenda.⁷⁶ Kagame encouraged Rwandan sex workers to "go to other countries where the vice is accepted as part of development."⁷⁷ Government efforts to crack down on prostitution preceded this strong rhetoric. In 2005, for instance, the Rwandan National Police "flushed out" over one hundred sex workers in an operation in the nation's capital, Kigali, aimed at curbing rising rates of prostitution in the area.⁷⁸

Similar aggressive abolitionist government action against prostitution has occurred in other African countries. In 2002, President Yahya Gammeh of the Republic of Gambia, citing to the correlation between rising immorality and the increase in prostitution, declared an "uncompromising war against prostitution."⁷⁹ This public declaration soon resulted in police raids on brothels and bars in the capital, which led to the arrests of over seventy sex workers.⁸⁰ Similarly, in 2001, police in Sierra Leone engaged in raids dubbed 'Operation arrest prostitutes,' in which they detained twenty-three sex workers.⁸¹ In 2004, Zimbabwean officials, declaring prostitution a social ill resulting from illegal immigration, extended strict antiprostitution laws involving fines and imprisonment in "Operation No To Prostitution."⁸²

Since 2000, Nigerian state governments have intensified their efforts to eradicate prostitution.⁸³ Officials in Edo State launched an aggressive campaign against sex workers by passing

75. See Robert Mukombozi, *Govt Toughens On Prostitution*, *NEW TIMES* (Kigali), Mar. 9, 2007, available at http://www.rwandagateway.org/article.php3?id_article=4558.

76. *Id.*

77. *Id.*

78. Daniel Sabiiti, *Police Round Up 100 Sex Workers*, *NEW TIMES* (Kigali), Apr. 29, 2005, available at <http://allafrica.com/stories/200504290030.html>.

79. Lamin Njie, *Jammeh Talks Tough On Prostitution*, *INDEPENDENCE* (Banjul), Nov. 22, 2002, available at <http://allafrica.com/stories/200211220137.html>.

80. *See id.*

81. Alhassan Spear Kamara, *Crack Down on Prostitutes in Lungi*, *CONCORD TIMES* (Freetown), Mar. 14, 2001, available at <http://allafrica.com/stories/200103140483.html>.

82. Wilson Johwa, *Time's Up for the 'Kerb Crawlers'*, *INTER PRESS SERVICE*, Aug. 18, 2004, available at <http://www.ipsnews.net/print.asp?idnews=25131>.

83. Nicholas Ibewuiké, *Nigeria Intensifies Campaign Against Prostitution*, *PANAFRICAN NEWS AGENCY* (Dakar), Oct. 5, 2000, available at 10/5/00 PANA (Westlaw); Stephen Oladipupo, *War On Sex Workers*, *P.M. NEWS* (Lagos), May 17, 2002, available at <http://allafrica.com/stories/200205170483.html>.

a severe antiprostitution law in which sex workers and their clients face prison terms ranging from two to ten years as well as hefty fines.⁸⁴ At the ceremonial signing of the law, then Edo State Governor Lucky Igbinedion stated that, “Prostitution is not part of our culture It is one of the things that came with civilization.”⁸⁵ Perpetuating the stigmatizing notion that sex workers are vectors of disease, the Edo State Women Affairs Ministry described prostitution as “a means for the rapid spread of the dreaded, AIDS.”⁸⁶ African sex workers in Rwanda, Gambia, Nigeria, Sierra Leone, Zimbabwe, and throughout the African continent remain marginalized and shunned members of their societies. Government efforts to target sex workers strengthen and ingrain this marginalization.

C. *Pro-Sex-Worker Arguments*

Despite the traditional dominance of the abolitionist viewpoint in the prostitution debate and its foothold in Africa, the voices of pro-sex-worker feminists have emerged to call for the realization of sex workers’ rights. The idea that oppression need not be the sole narrative of prostitution paved the way for the introduction of sex workers’ rights.⁸⁷ In the 1970s, the prostitutes’ rights movement in the United States and Western Europe introduced the concept of “sex work” in an effort to move beyond the rigid bounds of traditional prostitution discourse.⁸⁸ This alternative movement was rooted in a shared belief by advocates and sex workers that the established dialogue failed to reflect the diverse experiences of sex workers.⁸⁹ As a result, pro-sex-worker feminists attempted to move the debate from questions of morality and deviance to issues of work and human rights.⁹⁰

84. Ibewuiké, *supra* note 83; Oladipupo, *supra* note 83.

85. Victor Ofure Orehobo, *Legal Clamp on Sex Workers Taking Effect*, P.M. NEWS (Lagos), Sept. 15, 2000, available at <http://allafrica.com/stories/200009150231.html>.

86. *Id.*

87. See O’NEILL, *supra* note 1, at 19.

88. See Kamal Kempadoo, *Introduction: Globalizing Sex Workers’ Rights*, in GLOBAL SEX WORKERS 1, 4–9 (Kamala Kempadoo & Jo Doezema eds., 1998); Gail Pheterson, *Not Repeating History*, in A VINDICATION OF THE RIGHTS OF WHORES 3, 3–8 (Gail Pheterson ed., 1989).

89. See Ana Lopes, *Stigmatizing Sex Workers*, CHARTIST, Mar. 2006, <http://www.chartist.org.uk/articles/econsoc/march06lopes.htm>.

90. See O’NEILL, *supra* note 1, at 17.

Under the “sex work” model, the ills of the industry are not inherent in prostitution itself but are primarily products of the stigma and discrimination that plague sex workers. In other words, it is “vulnerability, not sex work, which creates victims.”⁹¹ Abolitionist feminists put forth important arguments about the often violent nature of the sex work industry.⁹² However, the abolitionist emphasis on what they believe to be the inherently oppressive nature of the exchange of money for sex⁹³ turns all sex workers into victims, whether or not that is in fact how all sex workers view themselves. Without question, many women in the sex trade are in fact victims—of abuse at the hands of police and clients, of societies that shun and revile them—but the abolitionist determination to turn the institution of prostitution into an evil in and of itself, clouds the real evils of violence that many sex workers face because their illicit status leaves them without recourse to justice. Only after the prostitution debate moves from a moral paradigm to a framework of human rights will sex workers be able to negotiate the rights and protections that they deserve as laborers struggling to secure a livelihood.

Because sex work is rarely considered work, and often characterized as morally reprehensible, societies often fail to view women in prostitution as women at all.⁹⁴ Female sex workers are also mothers, daughters, sisters, wives, and individuals who struggle to provide for themselves and their families, and therefore, they should not be defined solely by their livelihood.⁹⁵ They engage in acts of negotiation, resistance, and subversion no less than any other woman.⁹⁶ Women experience the institution of prostitution in complex ways, negotiating spaces and struggling for survival.⁹⁷ Pro-sex-worker advocates believe that sex

91. Lopes, *supra* note 89.

92. *Cf. id.* (claiming that a “zero-tolerance approach towards street prostitution . . . [forces sex workers] to work in more isolated areas where they are more vulnerable to violence . . . [and] reduces [their] negotiating powers”).

93. *See id.*

94. *See* SANGRAM, *supra* note 57, at 10.

95. *See id.* at 36.

96. *See* O’NEILL, *supra* note 1, at 23.

97. *See* MEENA SESHU, UNAIDS GLOBAL REFERENCE GROUP ON HIV/AIDS AND HUMAN RIGHTS, SEX WORK AND HIV/AIDS: THE VIOLENCE OF STIGMATIZATION 9 (2003), available at http://data.unaids.org/Topics/Human-Rights/hr_refgroup2_11_en.pdf.

workers have the capacity to exist as rational actors,⁹⁸ and reject the abolitionist viewpoint that renders all sex workers incapable of exhibiting agency.⁹⁹ Sex workers' ability to control their lives is most undermined by state regulations that criminalize, penalize, stigmatize, and therefore isolate sex workers, rendering them unable to counter harassment and abuse.¹⁰⁰

Although this Article embraces the "pro-sex-worker" feminist camp, prostitute rights advocates have at times sought to emphasize the sometimes "liberating" nature of the industry at the expense of acknowledging the victimization that many women in the sex trade experience. It is possible for women in prostitution to experience both victimhood and agency, and camps on both sides of the debate do them an injustice when they compartmentalize sex workers as either victims or agents.

D. *International Sex Workers' Rights Movement*

Pro-sex-worker feminist arguments are rooted in the sex workers' rights movement. The international sex workers' rights movement blossomed in the 1970s, with the emergence of prostitutes' rights organizations in Western Europe and North America, and evolved into a crusade to legitimize the status of prostitutes and to decriminalize prostitution.¹⁰¹ Prior to this international movement, "never before had [sex workers] and their advocates . . . challenged commonly held notions about prostitution, offered proposals for reform, and [affirmed prostitution] as reasonable and moral."¹⁰²

Scholars attribute the official launch of the prostitutes' rights movement to an uprising in Lyons, France, in 1975, when local French prostitutes took over a church, made public a list of grievances, and initiated a strike that demanded protection from police harassment and the repeal of French antiprostitution laws.¹⁰³ The Lyons rebellion received unprecedented media

98. See MATTHEWS, *supra* note 58, at 29.

99. See Marjan Wijers, *Women, Labor and Migration: The Position of Trafficked Women and Strategies for Support*, in GLOBAL SEX WORKERS, *supra* note 88, at 73.

100. See Jo Bindman, *An International Perspective on Slavery in the Sex Industry*, in GLOBAL SEX WORKERS, *supra* note 88, at 68.

101. See VALERIE JENNESS, MAKING IT WORK: THE PROSTITUTES' RIGHTS MOVEMENT IN PERSPECTIVE 2, 19 (1993); Kempadoo, *supra* note 88, at 19–20.

102. JENNESS, *supra* note 101, at 119 (emphasis omitted).

103. See *id.* at 2.

attention, which raised public awareness of the hardships that sex workers faced.¹⁰⁴

In addition to the Lyons rebellion, scholars point to the founding of the U.S. prostitutes' rights organization COYOTE (Call Off Your Old Tired Ethics) in 1973 as an important catalyst in the movement.¹⁰⁵ In the years following the Lyons strike and the establishment of COYOTE there was a surge in the formation of sex worker advocacy groups. The English Collective of Prostitutes in the United Kingdom advocated for the normalization and de-stigmatization of prostitution and opposed state interference in the sex market.¹⁰⁶ Red Thread in the Netherlands argued that governments should treat prostitution as a profession and employ pragmatic regulatory tactics that would improve working conditions.¹⁰⁷

These events led to the creation of the International Committee for Prostitutes Rights, which sponsored the two World Whores Congresses held in Amsterdam in 1985, and Brussels in 1986.¹⁰⁸ Founders, representatives, and members of prostitutes' rights organizations attended the conferences and called for a reevaluation of the traditional feminist stance against prostitution.¹⁰⁹ The two World Whores Congresses culminated in the drafting of the World Charter for Prostitutes Rights, which demanded the recognition of sex workers' human rights in the women's movement and the decriminalization of prostitution throughout the world.¹¹⁰

Initially, sex workers and advocates living in the Global North dominated the movement. Sex workers from the Global South did not attend international meetings on sex work,

104. See, e.g., Clyde Farnsworth, *200 Prostitutes of Lyons in Siege at Church*, N.Y. TIMES, June 7, 1975, at A2.

105. See JENNESS, *supra* note 101, at 2–3; MATTHEWS, *supra* note 59, at 4.

106. MATTHEWS *supra* note 59, at 4.

107. See *id.* at 5.

108. JENNESS, *supra* note 101, at 67.

109. See *id.*; Int'l Comm. for Prostitutes' Rights, *International Committee for Prostitutes' Rights World Charter and World Whores' Congress Statements*, in *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* 305, 307 (Frédérique Delacoste & Priscilla Alexander eds., 2d ed. 1998).

110. See Kempadoo, *supra* note 88, at 19–20. For a copy of the charter, see Int'l Comm. for Prostitutes Rights, *World Charter for Prostitutes Rights*, reprinted in *A VINDICATION OF THE RIGHTS OF WHORES*, *supra* note 88, 40–42. The contents of the charter are also available at http://www.walnet.org/csis/groups/icpr_charter.html.

including the two World Whores Congresses, and early research and policy documents excluded their stories, strategies, and skills.¹¹¹ The unique experiences of sex workers in Latin America, Asia, and Africa also did not inform the drafting of the World Charter of Prostitutes Rights, which was written by a predominantly Western audience of sex workers and advocates.¹¹² In the early days of the movement, this marginalization was partially due to the fact that many sex workers in the Global South had not structured themselves into collectives.¹¹³

The early marginalization of sex workers' voices from the Global South is apparent in the literature and theory on sex work. Ratna Kapur attributes this gap in research to an "artificial divide" between sex workers in the Global South (who are seen by researchers and advocates in the Global North to be in a state of "perpetual victimization") and sex workers in the Global North (who are seen by the same people as participating in the struggle for their rights and self-determination).¹¹⁴ This divide initially restricted the level of global involvement that might otherwise be expected from sex workers in the Global South because it positioned them as helpless victims in need of rescue.¹¹⁵

Collective action by sex workers in the Global South, however, is on the rise. In the 1990s, sex workers from around the world gathered at international conferences to address the threat of the HIV/AIDS crisis.¹¹⁶ For the first time, because of AIDS, there was a clear need for increased dialogue and collaboration among global sex workers. International conferences offered opportunities for cross-cultural and international information sharing. Unlike the previous World Whores Congresses, sex workers from the Global South engaged in these conferences as equal participants.¹¹⁷

A number of sex workers' rights organizations in the Global South have risen to global prominence, including the Asia-Pacific

111. See Kempadoo, *supra* note 88, at 20.

112. *See id.*

113. *See id.*

114. Ratna Kapur, *Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern*, 78 DENV. U. L. REV. 855, 868 (2001).

115. *See id.* at 869.

116. See Kempadoo, *supra* note 88, at 21.

117. *See id.* at 21–22.

Network of Sex Workers; SANGRAM/VAMP (India), AMBAR (Venezuela), Association for the Rights of Women (Chile), and SWEETLY (Dominican Republic).¹¹⁸ South African sex workers have been particularly active fighting for the decriminalization of sex work, as will be discussed in Part III below.¹¹⁹ In 2007, Cameroonian sex workers under the auspices of the Nkwen Association of Sex Workers organized a strike to protest police abuse of sex workers.¹²⁰ In Zambia, sex workers formed a union to promote their rights in light of distressing HIV/AIDS statistics.¹²¹ Kenyan sex workers formed the Commercial Sex Workers Association in order to regulate themselves.¹²² In 1993, the now-prominent Senegalese sex worker organization the Association of Women at Risk from AIDS was born out of an AIDS prevention campaign held at a polyclinic in Senegal's capital, Dakar.¹²³

Despite these examples of collectivization from Africa, the voices of African sex workers are still largely unheard on the global stage. One cannot underscore enough the importance of collectivization among sex workers in the fight for sex workers' rights. In order to battle the stigma and discrimination that sex workers experience from all corners of society, they must have collective spaces where they can reflect and strategize for group action. Feminists must engage the voices of sex workers themselves who have had to fight to have their say on the international, national, and local stage. African sex workers must be included in any programs designed to cater to their health and well-being. Too often policies and targeted interventions are designed without the participation or leadership of sex workers. The establishment of African sex workers collectives and women's rights organizations that view themselves as partners

118. *Id.* at 20–21.

119. *See infra* notes 253–58.

120. Martin Nkematabong, *Bemanda: Sex Workers Strike!*, CAMEROON TRIB. (Yaoundé), Nov. 28, 2007, available at <http://www.cameroon-info.net/stories/0,21135,@,bamenda-sex-workers-strike.html>.

121. *See* Singy Hanyona, *Prostitutes Form Union*, READER'S FORUM (Zambia), Feb. 21, 2000, available at <http://allafrica.com/stories/200002210121.html>.

122. Caroline Mango, *In Mombasa Pimps And 'Madams' Reign*, E. AFR. STANDARD (Nairobi), July 8, 2007, available at <http://allafrica.com/stories/200707090523.html>.

123. Victoria Ebin, *Sex Workers Promote AIDS Awareness in Senegal*, POPULATION REFERENCE BUREAU, <http://www.prb.org/articles/2000/sexworkerspromoteaidsawarenessinsenegal.aspx>.

and supporters of sex workers will provide African sex workers with the tools, skills, knowledge, and confidence necessary to advocate for their rights in different forums.

E. *Pro-Sex-Worker Activities in Africa*

The need for a “pro-sex-worker” rights-based feminist transformation in African countries’ legal and policy posture towards prostitution is timely due to nascent pro-sex-worker activities on the continent. In March 2008, women’s rights groups and development organizations joined forces to hold one of the first sex workers’ rights conferences on the continent.¹²⁴ African advocates gathered to identify the links between health and human rights and sex workers’ rights.¹²⁵ They argued that East African governments have failed to protect sex workers’ human rights by ignoring rampant sex worker abuse.¹²⁶ They further maintained that government toleration of discrimination and abuse of sex workers increases sex workers’ vulnerability by driving them underground and out of the reach of health, social, and justice services.¹²⁷ “It’s time for dialogue and action on the violation of sex workers’ rights,” proclaimed Solome Nakaweesi Kimbugwe, the Executive Director of Akina Mama wa Afrika, an African organization that co-organized the workshop with the Open Society Institute (“OSI”).¹²⁸ She continued, “Why are sex workers denied the rights that everyone else is enjoying?”¹²⁹

The conference was originally scheduled to occur in Uganda, where prostitution is illegal, but was transferred to Kenya after the Ugandan government banned the workshop, stating that the sex workers, women’s rights advocates, and development workers involved in the conference planning were co-conspirators attempting to “commit a criminal offense.”¹³⁰

124. See Marete, *supra* note 24; Editorial, *Uganda: Sex Workers Need Help, Not Denial*, OBSERVER (Kampala), March 27, 2008, available at <http://allafrica.com/stories/200803270738.html>.

125. See Marete, *supra* note 24; Editorial, *supra* note 124.

126. See Marete, *supra* note 24.

127. See *id.*

128. Press Release, Open Soc’y Instit., Groups Meet to Improve Access to Health and Human Rights for East African Sex Workers (Mar. 31, 2008), available at http://www.soros.org/initiatives/osiea/news/press_20080403.

129. *Id.*

130. See Marete, *supra* note 24; see also *Uganda Prostitute Workshop Banned*, BBC NEWS, Mar. 25, 2008, <http://news.bbc.co.uk/1/hi/world/africa/7313310.stm>.

The Ugandan Minister of Ethics and Integrity, James Nsaba Buturo, stated that: “We don’t take any delight at all in the idea that prostitutes are coming together to devise ways of spreading their vice.”¹³¹

A precursor to the Akina Mama wa Afrika/OSI sex workers’ rights conference was an “HIV and Sex Work” Conference that took place in Mozambique in October 2007.¹³² The Mozambique National AIDS Council and the United Nations Fund for Population Activities organized the conference, which drew participants, including sex workers, from all over Southern Africa.¹³³ The conference publicly embraced a pro-sex-worker agenda that included calls for African governments to interrogate their legal and policy positions regarding prostitution.¹³⁴ The conference resulted in the Maputo all for Action, which calls for the elimination of violence, stigma, and discrimination against sex workers; the strengthening of legal and health support systems targeting sex workers; and the creation of partnerships advocating for sex workers’ rights.¹³⁵

Mozambique’s Deputy Minister of Women’s Affairs and Social Welfare, Joao Kandiyane, used the conference as an opportunity to lay out a powerful pro-sex-worker platform, which was significant due to the fact that it came from a high level official.¹³⁶ He argued that countries in southern Africa should acknowledge that prostitution is a reality and that in light of abuses against sex workers, countries should craft legal frameworks that uphold sex workers’ rights and safeguard their

131. *Uganda Prostitute Workshop Banned*, *supra* note 130.

132. *Conference on HIV and the Sex Trade Opens*, AGENCIA DE INFORMACAO DE MOCAMBIQUE (Maputo), Oct. 31, 2007, *available at* <http://allafrica.com/stories/200710310821.html>.

133. *See id.*

134. *See id.*

135. MOZAMBIQUE PROGRESS REPORT FOR THE UNITED NATIONS GENERAL ASSEMBLY SPECIAL SESSION ON HIV AND AIDS 45 (2008), *available at* http://data.unaids.org/pub/Report/2008/mozambique_2008_country_progress_report_en.pdf; *see also* Special Session of the African Union Conference of Ministers of Health, Sept. 18–22, 2006, *Maputo Plan of Action for the Operationalisation of the Continental Policy Framework for Sexual Reproductive Health and Rights 2007–2010*, OAU Doc. Sp/MIN/CAMH5(I) (2006).

136. *See Legal Framework for Rights of Prostitutes Needed*, AGENCIA DE INFORMACAO DE MOCAMBIQUE (Maputo), Nov. 5, 2007, *available at* <http://allafrica.com/stories/200711051442.html>.

health.¹³⁷ Kandiyane also underscored the importance of involving sex workers in the planning and implementation of HIV/AIDS prevention efforts. He rejected discrimination against and the criminalization of women engaged in prostitution: “what we want is that sex workers should be seen as human beings . . . rather than the current situation, where they are exploited and have nobody to defend them.”¹³⁸

II. *PROSTITUTION AND INTERNATIONAL HUMAN RIGHTS LAW*

Nascent pro-sex-worker activities in Africa are supported by a body of international human rights law that provides a foundation for the realization of sex workers’ rights in Africa. Sex workers in Africa face systematic discrimination that puts them at risk of abuse, exploitation, and violation of their human rights. They experience police extortion, arbitrary detention, violence, discrimination by health services providers, and numerous other human rights violations. Although many international human rights treaties refer solely to the welfare of “forced” sex laborers, and are silent on standards for women who are not trafficked into prostitution,¹³⁹ the human rights corpus does speak to the types of abuses that sex workers endure.

A. *International Human Rights Instruments That Specifically Address Prostitution*

While prostitution has long existed in most societies throughout the world, international legal protections for sex workers have evolved slowly. Many international legal instruments reflect the abolitionist movement’s historical position of influence. However, an examination of the evolution of international instruments shows a gradual shift from abolitionist ideology towards recognition of the right to self-determination and sex workers’ rights.¹⁴⁰

137. *Id.*

138. *Id.*

139. See Jane E. Larson, *Prostitution, Labor and Human Rights*, 37 U.C. DAVIS L. REV. 673, 676–83 (2004).

140. See Jo Doezema, *Forced to Choose: Beyond Voluntary v. Forced Prostitution Dichotomy*, in *GLOBAL SEX WORKERS*, *supra* note 88, at 34, 37–38.

In 1949, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others¹⁴¹ (“1949 Convention”) in an effort to consolidate all prior international legal instruments on the trafficking in women and children.¹⁴² The 1949 Convention establishes a feminist, antiprostitution position by declaring: “[P]rostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”¹⁴³ The 1949 Convention provides for punishment for the procurement, enticement, and exploitation of the prostitution of a person, with or without consent.¹⁴⁴ Also prohibited are brothel keeping and the renting of accommodations for prostitution purposes.¹⁴⁵ The inclusion of the term “consent” in the document implies that the 1949 Convention recognized a distinction between voluntary and forced prostitution.¹⁴⁶ However, the general consensus is that the 1949 Convention adopts an abolitionist viewpoint, which rejects the idea that an individual can ever consent to prostitution.¹⁴⁷

In 1979, the United Nations and the international community took a major step towards advancing women’s rights by adopting the Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW].¹⁴⁸ CEDAW specifically addresses prostitution. Article 6 calls upon state parties to “take all appropriate measures . . . to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁴⁹ The history of the drafting process suggests CEDAW

141. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271 [hereinafter 1949 Trafficking Convention].

142. *See id.* pmbll.; *see also* S. AFR. LAW COMM’N, ISSUE PAPER 19: SEXUAL OFFENSES: ADULT PROSTITUTION 136 (2002), http://www.justice.gov.za/salrc/ipapers/ip19_ptj107_2002.pdf [hereinafter SALC Report]; Doezema, *supra* note 140, at 36.

143. 1949 Trafficking Convention, *supra* note 141, pmbll.

144. *Id.* art. I.

145. *Id.* art. II.

146. *See* Doezema, *supra* note 140, at 38–39 (outlining the debate on the issue of voluntary and forced prostitution).

147. *See id.* at 39 (“Apart from abolitionists themselves, there is general agreement that the Trafficking Convention reflects an abolitionist viewpoint.”).

148. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

149. *See id.* art. 6.

does not expressly embrace an abolitionist standpoint. Morocco introduced an amendment to article 6 to include the phrase “suppression of prostitution” in addition to the phrase “suppression of the exploitation of prostitution” in the document.¹⁵⁰ The Netherlands and Italy expressly rejected this move, which signifies that article 6 does not consider all prostitution inherently coercive.¹⁵¹

CEDAW also represents a shift from an emphasis on measures to eradicate prostitution to a view of sex workers as individuals who hold fundamental rights.¹⁵² CEDAW general recommendation 19 includes a paragraph that states: “Poverty and unemployment force many women . . . into prostitution. Prostitutes 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.”¹⁵³ Such pro-sex-worker language illustrates a rising recognition that states must safeguard sex workers’ rights because the illicit status of their trade puts them at heightened risk of abuse.

In 1993, the United Nations made its first clear departure from the abolitionist view of prostitution in the Declaration on the Elimination of Violence Against Women (“DEVAW”).¹⁵⁴ In article 2, DEVAW limits violence against women in the context of prostitution to “trafficking in women and forced prostitution.”¹⁵⁵ The absence of a general reference to prostitution shows a recognized distinction between forced and voluntary prostitution.¹⁵⁶ Since the adoption of the DEVAW, most international agreements distinguish between forced and voluntary prostitution.¹⁵⁷

150. See Doezema, *supra* note 140, at 39.

151. See *id.*

152. See Doezema, *supra* note 140, at 40.

153. See Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination Against Women: Eleventh Session*, at 3, U.N. Doc. A/47/38 (Jan. 29, 1992).

154. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/Res/48/104 (Feb. 23, 1994) [hereinafter DEVAW]; see also Doezema, *supra* note 140, at 40.

155. DEVAW, *supra* note 154, art. 2.

156. See Doezema, *supra* note 140, at 40.

157. *Id.*

In 1995, the United Nations Fourth World Conference on Women resulted in the Beijing Declaration and Platform of Action.¹⁵⁸ Sex workers' rights groups, including Network of Sex Workers Project and the Global Alliance Against Trafficking in Women, lobbied to ensure that every use of the word "prostitution" as a form of violence against women in the final conference document was prefaced by the word "forced."¹⁵⁹ While lobbying efforts did not result in the final document specifically referencing sex workers' rights, the absence of antiprostitution language was a significant achievement.¹⁶⁰

In 2003, member states of the African Union took part in a summit meeting in Maputo, Mozambique, which concluded with the adoption of the Protocol to the African Charter on Human and Peoples Rights for the Rights of Women in Africa ("Maputo Protocol").¹⁶¹ Article 4 of the Maputo Protocol requires state parties to take appropriate and effective measures to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk."¹⁶² Thus, the Maputo Protocol does not expressly forbid all forms of prostitution, only prostitution within the context of trafficking.

B. *International Human Rights Treaties that Cover Human Rights Violations Applicable to Sex Workers*

While the concept of sex workers' rights is gaining more global traction, international human rights law has yet to provide for comprehensive protections specific to the enforcement of the rights of sex workers. However, certain provisions of international instruments can be applied to a number of rights violations that affect sex workers. Therefore, there already exists a legal basis—through treaties which enshrine the right to free choice of work; the right to be free from arbitrary arrest, detention, discrimination and violence; and the right to free

158. Fourth World Conference on Women, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).

159. See Doezema, *supra* note 140, at 34.

160. See *id.*

161. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sept. 13, 2000, OAU Doc. CAB/LEG/66.6 (2003), in 1 AFR. HUM. RTS. L.J. 40, 53 (2001).

162. *Id.* art. 4(2)(g).

association—upon which African nations should aim to advance sex workers’ rights.

The right to free choice of work and to just and favorable work conditions are fundamental economic rights that are embodied in international human rights law. Article 23(1) of the Universal Declaration of Human Rights (“UDHR”) clearly enumerates these rights.¹⁶³ CEDAW recognizes “the right to work as an inalienable right of all human beings.”¹⁶⁴ Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) also includes the right to free choice of work.¹⁶⁵ These rights are violated when states create legal obstacles to prevent individuals from engaging in sex work.

The International Covenant on Civil and Political Rights preserves the right to be free from arbitrary arrest and detention.¹⁶⁶ This fundamental civil and political right is frequently denied to sex workers. Police use antiprostitution laws to arrest sex workers on an arbitrary basis, often as an instrument of intimidation or extortion.¹⁶⁷ Such practices violate the right to liberty encompassed by UDHR article 3 and to freedom from arbitrary arrest and detention in the International Covenant on Civil and Political Rights (“ICCPR”) article 9(1).¹⁶⁸

The criminalization of sex work, which is primarily a female form of labor, constitutes a restriction on the right to work on the grounds of sex.¹⁶⁹ Such restrictions violate the human right to live freely from discrimination. The laws against the sex industry are almost exclusively aimed at sex workers, most often women, and not to clients, most often men. The gender-specific application of antiprostitution laws is an affront to the principle

163. Universal Declaration of Human Rights, G.A. Res. 217A, art. 23(1), U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR] (“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”).

164. CEDAW, *supra* note 148, art. 11(a).

165. International Covenant on Economic, Social and Cultural Rights, art. 6(1), Dec. 16, 1966, S. TREATY DOC. NO. 95-19 (1978), 999 U.N.T.S. 3 [hereinafter ICESCR].

166. International Covenant on Civil and Political Rights, art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

167. BINDMAN, *supra* note 58, cap. 6(b)(i).

168. UDHR, *supra* note 163, art. 3; ICCPR, *supra* note 166, art. 9(1).

169. See BINDMAN, *supra* note 58, cap. 6(a) (“The identifying of female prostitution as a characteristic or status, and not as an activity, can itself be considered an act of direct sex discrimination . . .”).

of gender equality enshrined in UDHR article 2, ICCPR article 3, ICESCR article 3, and CEDAW article 2(g), which calls on states parties “[t]o repeal all national penal provisions which constitute discrimination against women.”¹⁷⁰

Sex workers are often the targets of violence. Clients, pimps, and police commit physical, psychological, and sexual abuse against sex workers with impunity.¹⁷¹ These abuses violate the right to security of person under UDHR article 3 and the right under ICCPR article 10(1) to be “treated with humanity and with respect for the inherent dignity of the human person.”¹⁷² They also constitute “[p]hysical, sexual and psychological violence perpetrated or condoned by the State,” as described in article 2(c) of DEVAW.¹⁷³

Sex workers are regularly prevented from enjoying the right to freedom of association.¹⁷⁴ Included under this entitlement is the right to organize and join free trade unions, which is protected by UDHR article 23(4) and ICESCR article 8(1)(a).¹⁷⁵ The isolated nature of the sex industry, wherein sex workers may be reluctant to identify themselves for fear of social or legal backlash, often precludes enjoyment of this right.¹⁷⁶ In recent years sex workers have started to organize themselves to collectively defend their rights and to improve their working and living conditions.¹⁷⁷ However, even when sex workers are allowed to form collectives or to establish workers’ rights organizations, they continue to face hostility from other trade groups and are typically barred from joining forces with the greater labor movement.¹⁷⁸

170. See CEDAW, *supra* note 148, art. 2(g); ICCPR, *supra* note 166, art. 3; ICESCR, *supra* note 165, art. 3; UDHR, *supra* note 163, art. 2.

171. See BINDMAN, *supra* note 58, cap. 6(b)(i).

172. ICCPR, *supra* note 166, art. 10(1); UDHR, *supra* note 163, art. 3.

173. DEVAW, *supra* note 154, art. 2(c).

174. See BINDMAN, *supra* note 58, cap. 6(b) (arguing that antiprostitution laws that force sex workers to work alone violates the right to freedom of association).

175. See ICESCR, *supra* note 165, art. 8(1)(a); UDHR, *supra* note 163, art. 23(4).

176. See BINDMAN, *supra* note 58, cap. 6(b)(ii) (describing social and legal backlash, and concluding that isolated nature of the sex industry prevents sex workers from enjoying the right to establish or join trade unions).

177. See MARJAN WIJERS & LIN LAP-CHEW, *TRAFFICKING IN WOMEN, FORCED LABOR AND SLAVERY-LIKE PRACTICES IN MARRIAGE, DOMESTIC LABOUR AND PROSTITUTION* 121 (1997).

178. See BINDMAN, *supra* note 58, cap. 6(b)(ii).

Forty or more countries in sub-Saharan Africa have ratified CEDAW,¹⁷⁹ ICESCR,¹⁸⁰ and ICCPR.¹⁸¹ These countries include Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Togo, Uganda, Tanzania, Zambia, and Zimbabwe.¹⁸² They are therefore bound to provide a foundation for the advancement of sex workers' rights.

III. *PROHIBITION, ABOLITION, LEGALIZATION, AND DECRIMINALIZATION OF PROSTITUTION IN AFRICA*

African states have adopted different domestic legislative policies to address prostitution, most of which do not safeguard sex workers' human rights. States generally employ one of four major legal regimes on prostitution: prohibition, abolition, legalization, and decriminalization. States rarely implement these basic categories in their pure forms, thus they tend to serve as "ideal types" rather than formalized legal structures.¹⁸³ These classifications signify a state's policy direction, which in practice will be subject to qualifications and contradictions.¹⁸⁴

Prohibition is the most stringent of the four legal approaches to prostitution. Prohibition is the absolute

179. See Status of the Convention on the Elimination of All Forms of Discrimination Against Women, http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=IV-8&chapter=4&lang=en (last visited Feb. 1, 2010).

180. See Status of the International Covenant on Economic, Social and Cultural Rights, http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=IV-3&chapter=4&lang=en (last visited Feb. 1, 2010).

181. See Status of the International Covenant on Civil and Political Rights, http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=IV-4&chapter=4&lang=en (last visited Feb. 1, 2010).

182. See *supra* notes 179–81.

183. See MATTHEWS, *supra* note 59, at 97.

184. See *id.*

criminalization of the exchange of sexual services for payment.¹⁸⁵ Under a prohibitionist system, prostitution itself is a criminal offense, and most, if not all, activities corresponding to prostitution are also outlawed.¹⁸⁶ The state criminalizes all parties involved in commercial sex transactions, including the sex worker, the procurer, and implicated third parties.¹⁸⁷ In practice, however, resources and regulatory efforts often solely target sex workers.¹⁸⁸

Prohibitionist legal regimes take a hard line approach to a complex and multidimensional challenge. Violence, corruption, and exploitation continue to plague illicit sex industries and are proof that an outright ban on prostitution is an ineffective deterrent to the sex trade.¹⁸⁹ Illegality renders sex workers dependent upon pimps, brothel owners, clients, and police officers.¹⁹⁰ Criminalization affords sex workers little to no legal recourse and denies them the rights granted to average citizens. Lack of access to basic rights and protections relegates sex workers to the shadows of society, where they are vulnerable to abuse and exploitation. Criminalization also discourages collectivization and union formation among sex workers, which could otherwise foster environments for safe sex practices and positive self-esteem.

Like prohibition, abolition is a policy of criminalization. While the sale of sex is either technically or *de facto* legal under an abolitionist regime, prostitution-related activities such as solicitation and brothel keeping are banned.¹⁹¹ Abolitionists envision a world where the sale of sexual services does not exist for any reason.¹⁹² Therefore, abolitionists reject all policies that legitimize prostitution. They argue that legalization does not elevate the social status of women but rather further entrenches

185. *See id.* at 112.

186. *See* Wijers, *supra* note 99, at 72.

187. *See id.* at 72–73.

188. *See* MATTHEWS, *supra* note 59, at 112–13.

189. *See* Wijers, *supra* note 99, at 73.

190. *See id.*

191. *See* BINDMAN, *supra* note 58, caps. 2(b), 3(b) (describing the abolitionist model); *see also id.* at 3(a) (citing to the legal regimes in Brazil, England, and Whales as illustrative of the abolitionist approach).

192. Prostitutes' Education Network, Prostitution Law Reform: Defining Terms, <http://www.bayswan.org/defining.html> (last visited Feb. 1, 2010).

hegemonic patriarchy and women's subordinate position in society.¹⁹³

Abolitionists often promote a hybrid model, calling for the decriminalization of sex workers and the criminalization of clients. The focus on the "demand side" of prostitution follows from the abolitionist belief that prostitution is the product of unequal and exploitative social and economic systems.¹⁹⁴ However, with less demand, sex workers' choices of clients become more limited.¹⁹⁵ Sex workers in countries where clients alone have been criminalized assert that such laws frighten away the "good guys" but not the dangerous or abusive clients.¹⁹⁶ This hybrid model may force sex workers to move into more dangerous and clandestine areas to shield clients, thus making it more difficult for necessary aid to reach sex worker populations.¹⁹⁷ Critical services provided by non-governmental organizations, such as health education, condom distribution, and counseling, become inaccessible, and investigations into exploitative working conditions become more difficult.¹⁹⁸

Under regimes of legalization prostitution is legal and the sex trade is subject to state control. Legalization allows states to regulate sex work in the same way they regulate other sectors of the labor industry.¹⁹⁹ In states where prostitution is legalized, governments may institute state-approved brothels or designate "toleration zones" where street prostitution is allowed to operate freely.²⁰⁰ States may also prescribe health status registration for sex workers or require that sex workers have working licenses.²⁰¹ Sex workers and businesses that operate without the necessary

193. See Janice G. Raymond, *10 Reasons for Not Legalizing Prostitution And a Legal Response to the Demand for Prostitution*, 2 J. PSYCHOL. TRAUMA 315, 315–32 (2003), available at <http://action.web.ca/home/catw/attach/Ten%20Reasons%20for%20Not%20Legalizing%20Prostitution.pdf>.

194. Prostitutes' Education Network, *supra* note 192.

195. See *Criminalizing the Client: Why It Doesn't Work*, SEX WORKER EDUC. & ADVOCACY TASKFORCE [SWEAT], April 8, 2006, http://www.sweat.org.za/index.php?option=com_content&view=article&id=15&Itemid=18.

196. See *id.*

197. See *id.*; *Different Legal Models for the Sex Work Industry*, SWEAT, April 8, 2006, http://www.sweat.org.za/index.php?option=com_content&view=article&id=14.

198. See SWEAT, *supra* note 195.

199. See MATTHEWS, *supra* note 59, at 105; see also SWEAT, *supra* note 197.

200. See MATTHEWS, *supra* note 59, at 105.

201. See *id.*

permits may be subject to criminal penalties.²⁰² Currently, prostitution is legal and regulated in countries such as Austria, Germany, Greece, the Netherlands, Switzerland, and Turkey.²⁰³

The main aim of government regulation of sex work is to control the excesses, abuses, disorders, and other undesirable social and public health consequences associated with its operation.²⁰⁴ Proponents of legalization also contend that legalization reduces criminal activity associated with prostitution (*e.g.*, organized crime, police and state corruption, child prostitution, and sex trafficking); decreases the level of street prostitution and relocates prostitution to controlled environments away from residential areas; provides regular health checks to women in licensed brothels; controls the spread of STIs and HIV/AIDS; and protects sex workers from violence and coercive pimps.²⁰⁵ Legalized regimes, however, face practical obstacles. Many sex workers may not want to register because of the stigma associated with prostitution or may be unable to register because of their illegal immigration status.²⁰⁶ Legalized systems therefore may lead to two classes of sex workers—those who register and are regulated by the state and an underground class of sex workers who do not register and remain marginalized and vulnerable.

Decriminalization is the legal regime most often embraced by pro-sex-worker advocates and stands against the legal control of people in prostitution. Decriminalization is the removal of all laws relating to prostitution.²⁰⁷ Decriminalization addresses the negative impact that criminalization has on sex workers. For example, criminal records for prostitution-related offenses reinforce the marginalization of sex workers, while making it more difficult for workers in the sex industry to find alternative

202. *See, e.g.*, ELAINE MOSSMAN, MINISTRY OF JUSTICE, INTERNATIONAL APPROACHES TO DECRIMINALISING OR LEGALISING PROSTITUTION 12 (2007), available at http://www.procon.org/sourcefiles/new_zealand_gov.pdf (N.Z.).

203. *See id.* (providing that prostitution has been legalized in countries including Austria, Denmark, Germany, Greece, Iceland, the Netherlands, Senegal, Switzerland, Turkey, the U.S. state of Nevada, and some Australian states); *see also* ProCon.org, *supra* note 54 (last visited Feb. 1, 2010) (providing a list of countries where prostitution is legalized, partially legalized, or criminalized).

204. *See* MATTHEWS, *supra* note 59, at 97.

205. *See id.* at 105; MOSSMAN, *supra* note 202, at 12.

206. Wijers, *supra* note 99, at 73.

207. *See* MATTHEWS, *supra* note 59, at 101; Raymond, *supra* note 193, at 12.

employment.²⁰⁸ This increased marginalization heightens sex workers' vulnerability to abuse and assault from clients, pimps, and partners, who violate the rights of sex workers with impunity.²⁰⁹ Sex workers' illegal status acts as a barrier to reporting abuse and creates difficulties in accessing necessary health and social services.²¹⁰ Decriminalization would safeguard the human rights of sex workers, alleviate the social exclusion that people in prostitution endure, and improve sex workers' health and working conditions.²¹¹

The difference between legalization and decriminalization lies in the means by which prostitution is "made legal." Legalization imposes more state regulations to control prostitution, while decriminalization removes all laws that criminalize prostitution. Those who support decriminalization over legalization argue that legalization essentially exchanges one exploitative system for another.²¹² Under a legalized system, women work out of government-regulated brothels, which can leave sex workers with little control over their work conditions and which can substitute abuse and exploitation by police officers and pimps with rights violations by the state.²¹³ Both laws which legalize and regulate prostitution and laws that criminalize prostitution target the sex worker.²¹⁴ Furthermore, the main goal of regulationist policies, including legalization, is often to keep prostitutes isolated and separate from the rest of society, which reinforces the stigma surrounding prostitution.²¹⁵

A. *Contemporary Debates in Africa*

Contemporary debates regarding the legalization, decriminalization, and abolition of prostitution are taking root in Africa. In Ghana, where prostitution and procurement are

208. See MATTHEWS, *supra* note 59, at 101.

209. See *id.*

210. See *id.*

211. See *id.* at 101–02; Raymond, *supra* note 193, at 8.

212. See Prostitution—Decriminalization vs. Legalization—What's the Difference?, <http://www.freedomusa.org/coyotela/decrim.html> (last visited Feb. 2, 2010); see also Raymond, *supra* note 193, at 12–13 (comparing decriminalization and legalization).

213. See Prostitution—Decriminalization vs. Legalization—What's the Difference?, *supra* note 212.

214. See SANGRAM, *supra* note 57, at 11.

215. See MATTHEWS, *supra* note 59, at 101.

illegal,²¹⁶ the debate regarding the potential legalization of prostitution has revolved around the express desire of both those against and for the legalization of prostitution to stem the spread of HIV/AIDS.²¹⁷ Those arguing for legalization believe that licensing Ghanaian sex workers, taxing their incomes, and subjecting them to routine medical examinations would curb the spread of HIV/AIDS.²¹⁸ Those arguing against legalization counter that it would put more people at risk of HIV/AIDS by attracting more women to the profession and encouraging the patronage of more men.²¹⁹ In addition, they argue that the government does not have the resources to provide sex workers with the specialized medical services that often accompany legalized prostitution regimes in which sex work is regulated.²²⁰ Those who have argued against prostitution in Ghana also fear that a legalized regime would attract sex workers from throughout West Africa and transform Ghana into a destination for sex tourism.²²¹

The debate regarding the legal status of prostitution is also taking hold in Kenya where prostitution and procurement are illegal.²²² Some Kenyan women's rights activists have argued for the legalization and regulation of prostitution.²²³ They maintain that sex work is a legitimate form of labor in which money is exchanged for a service and that legalization would cast sex work as a viable economic option for women who may face limited economic opportunities and thus decrease the vulnerability of

216. See *supra* note 30.

217. See *Legalise It! Or Not?*, ACCRA DAILY MAIL (Accra), Mar. 30, 2005, available at <http://allafrica.com/stories/200503300773.html>.

218. *Id.*

219. See, e.g., Patrick G. Awuah, Jr., *Why Legalizing Prostitution in Ghana is a Bad Idea*, ACCRA DAILY MAIL (Ghana), April 26, 2005, available at 2005 WLNR 6529485; Martha Eshun-Oppong, *Women Say No to Legalisation of Prostitution*, ACCRA DAILY MAIL (Accra), Apr. 22, 2005, available at 2005 WLNR 6312639; Eric Gyan, Op-Ed., *A Glance At Prostitution*, GHANAIAN CHRONICLE (Accra), Mar. 27, 2008, available at 2008 WLNR 5822507.

220. See Awuah, *supra* note 219.

221. See *id.*

222. See *supra* note 32.

223. See *Activists Want Prostitution Made Legal*, DAILY NATION (Nairobi), Aug. 5, 2005, available at <http://allafrica.com/stories/200508041150.html>.

women who enter the trade.²²⁴ Like those arguing for legalization in Ghana, they also believe that legalizing sex work would help curb the spread of HIV/AIDS.²²⁵

Prominent Namibian activists have called not for the legalization of sex work but the decriminalization of prostitution. In 2005, the Legal Assistance Centre (“LAC”), Namibia’s foremost legal services organization, declared publicly that the decriminalization of sex work would advance sex workers’ human rights and help stem the spread of HIV/AIDS by allowing for more effective HIV/AIDS prevention programs targeting sex workers.²²⁶ Years prior, the Swapo Women’s Council argued that “open-minded” law reform was needed in order to protect Namibian sex workers from abuse.²²⁷ A LAC legal expert made one of the strongest arguments for decriminalization when she noted that sex workers who are not legally treated as criminals are more likely to report instances of abuse to the police.²²⁸

The debate has also taken root in Uganda. Those in the pro-legalization camp in Uganda argue that women engaged in prostitution are responding to legitimate economic pressure and should not be forced to remain silent victims of abuse at the hands of police and clients.²²⁹ Those against legalization and decriminalization in Uganda have painted arguments for reform as foreign imports²³⁰ attempting to legalize immorality.²³¹ Nowhere have debates over legalization and decriminalization been as vibrant as in Senegal, where prostitution is legal and

224. See Karegwa Muchiri, Op-Ed., *The World’s Oldest Trade is Unfairly Demonised*, E. AFR. STANDARD (Nairobi), July 26, 2006, available at <http://allafrica.com/stories/200607251040.html>.

225. See *id.*

226. See Luqman Cloete, *Namibia Urged to Decriminalise Sex Workers*, NAMIBIAN (Windhoek), Nov. 9, 2005, available at [http://www.namibian.com.na/index.php?id=28&tx_ttnews\[tt_news\]=18612&no_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=18612&no_cache=1).

227. See Max Hamata, *Open-Minded Law Reform Needed On Prostitution*, NAMIBIAN (Windhoek), Oct. 9, 2002, available at <http://allafrica.com/stories/200210090684.html>.

228. See *id.*

229. See Agnes Asiimwe, Op-Ed., *Allow Women to Sell Their Bodies to Earn a Living*, MONITOR (Kampala), Aug. 25, 2006, available at <http://allafrica.com/stories/200608250075.html>.

230. See Ema Were Belinda, Op-Ed., *Never Accept Legalised Prostitution*, NEW VISION (Kampala), May 16, 2007, available at 2007 WLNR 9405787.

231. See Judy Kamanyi, Op-Ed., *Women’s Points of View on Prostitution Laws*, NEW VISION (Kampala), June 15, 2004, available at 2004 WLNR 7305389.

regulated, and South Africa, where pro-sex-worker advocates continue to fight for the decriminalization of prostitution.

B. *Legalization: Case Study from Senegal*

In 1969, Senegal legalized prostitution and institutionalized the health regulation of self-identified female sex workers.²³² Under this program women working in the commercial sex industry must report to designated registration sites for monthly health check-ups.²³³ The law also requires sex workers to acquire and keep current a *carnet sanitaire*, or health book, in order to avoid arrest.²³⁴ The law also led to the creation of the National Bureau for the Battle against STDs and the creation of several STI treatment centers across the country.²³⁵

Under Senegal's penal code, specifically articles 318 to 327 bis, prostitution is legalized within a tightly controlled regulatory framework.²³⁶ While prostitution itself is legal, soliciting, brothel ownership, and pimping are prohibited.²³⁷ Later in 1969, the Penal Code was updated to prohibit registration for women under the age of twenty-one.²³⁸ The government strictly regulates

232. See Law No. 66-20 of Feb. 1, 1966, *Journal Officiel de la République du Sénégal*, Feb. 5, 1966, p. 152, available at <http://rds.refer.sn/IMG/pdf/5d66-02-01luttecontreMST.pdf> (original law); see also Decree 69-616 of May 20, 1969, *Journal Officiel de la République du Sénégal*, June 7, 1969, p. 682 (implementing legislation), available at <http://rds.refer.sn/IMG/pdf/5f69-05-20applicMSTprost.pdf>; Ministerial statement No. 69-73 of August 28, 1969 (same), available at <http://rds.refer.sn/IMG/pdf/5g69-08-28INSTRMINISTMST.pdf>. For a brief overview of the Senegalese legislation regulating prostitution, see OPEN SOCIETY INSTITUTE, EIGHT WORKING PAPERS/CASE STUDIES EXAMINING THE INTERSECTIONS OF SEX WORK LAW, POLICY, RIGHTS AND HEALTH 18 (2006), available at http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/casestudies_20060601/casestudies_20061012.pdf. See also Nazaneen Homaifar, *Taking a Step Towards Prevention: Senegal's Policy of Legalizing the Sex Trade*, EXCHANGE MAG., at 14.

233. See Decree 69-616 of May 20, 1969 art. 6. For greater detail on the contents of a health book, see Ministerial statement No. 69-73 of August 28, 1969 art. XXII.

234. See Decree 69-616 of May 20, 1969 arts. 1-4.

235. HOMAIFAR, *supra* note 232, at 1.

236. Code Pénal arts. 318-27 bis, available at www.justice.gouv.sn/droitp/CODE%20PENAL.PDF.

237. See *id.* art. 322.

238. See Law 69-27 of April 23, 1969, *Journal Officiel de la République du Sénégal*, May 10, 1969, p. 530, available at <http://rds.refer.sn/IMG/pdf/5e69-04-23codepenalMST.pdf>; see also Ministerial statement No. 69-73 of August 28, 1969 arts. IX-X (clarifying that police have authority to act on their own initiative or at the request of a guardian under Law No. 69-27 to investigate and arrest persons practicing

locations for commercial sex work.²³⁹ Police monitor sex workers to ensure that they attend regular health check-ups.²⁴⁰

Some have argued that the early identification of sex workers as both a vulnerable and high-risk group for contracting and transmitting HIV gave Senegal a significant advantage over other African countries when formulating HIV prevention programs. They also contend that Senegal's legalization of prostitution allowed for a more open and productive dialogue with religious and community leaders about sexual behavior and its relationship with HIV infection.²⁴¹ There are indeed some uniquely positive aspects of Senegal's registration system including the fact that it extends health and dental benefits to the children of sex workers who comply with the registry.²⁴² Although Senegal has been applauded for its legalization and regulation of sex work as a viable method of confronting the HIV/AIDS epidemic,²⁴³ questions remain. In the decades since Senegal first implemented its registration program, statistical reports have indicated increases in HIV prevalence among sex workers in different regions of the country.²⁴⁴ Such reports cast doubt on the impact that policies legalizing sex work have on controlling the HIV/AIDS epidemic and question whether Senegal's policy has been truly effective in reducing HIV transmission among sex workers.²⁴⁵

Legalization and registration have also failed to engage all sex workers in Senegal. Beneath the surface of Senegal's visible community of registered sex workers lies a large underground

prostitution who are under the age of twenty one). This mandate is currently codified in Code Pénal art. 327 bis (Sen.).

239. See Decree 69-616 of May 20, 1969 arts. 7–8 (limiting the application of several requirements to the region of Cape Verde); Ministerial statement No. 69-73 of August 28, 1969 art. XVIII (same).

240. See Decree 69-616 of May 20, 1969 art. 7 (authorizing police to inspect a prostitute's health book upon request and arrest those who have not complied with the regular check-up requirements).

241. Homaifar, *supra* note 232.

242. John Donnelly, *In Africa, Hope Emerges: Senegal's Aggressive AIDS Strategy Saves Thousands from Infection*, BOSTON GLOBE, Aug. 13, 2003, at A1.

243. See generally U.N. PROGRAMME ON HIV/AIDS [UNAIDS], ACTING EARLY TO PREVENT AIDS: THE CASE OF SENEGAL (1999), available at http://data.unaids.org/publications/irc-pub04/una99-34_en.pdf.

244. Homaifar, *supra* note 232.

245. See *id.*

sex industry.²⁴⁶ Sex workers in this underground industry are known as *les clandestines*.²⁴⁷ Many women in the clandestine sex industry fail to register because they do not meet the legal age requirement of twenty-one and are consequently excluded from the clinical, educational, and preventative services that are provided to registered sex workers.²⁴⁸ Other reasons for lack of registration under the government system include the lack of identity papers and ignorance of the substance and procedure of the legal requirements.²⁴⁹ Some women also fail to register because deregistration after one leaves the sex trade is tediously slow if not impossible.²⁵⁰ The social stigma attached to being a sex worker in a predominantly Muslim country is another reason for the existence of underground sex workers. Despite their legal status, sex workers are still considered social outcasts in Senegal.²⁵¹

The absence of clandestine sex workers from official health clinic lists is a cause of concern for public health experts.²⁵² Not only are these women not being treated or tested for STIs or HIV, but official data collected from registered sex workers' monthly check-ups for the purpose of calculating Senegal's HIV/AIDS prevalence rate may not be representative of true HIV rates among Senegal's sex worker populations.²⁵³ Many experts, physicians, and social workers feel there is a need to lower the age for legal prostitution, but agree that such a step is near to impossible because of Senegal's powerful religious leaders.²⁵⁴ There is also heightened recognition of the need to target services towards groups of clandestine sex workers who fall beneath the radar of Senegal's registration program.²⁵⁵ External pressures inhibit many of these efforts, however, as funding from

246. *See id.*

247. *See id.*; *Cote D Ivoire-Senegal: Activists Warn Against Complacency Over HIV/AIDS*, AEGIS.COM, Jan. 1, 2004, available at <http://www.aegis.com/news/irin/2004/IR040101.html> (defining *les clandestines* as "sex workers who operate in secret").

248. Homaifar, *supra* note 232.

249. *See id.*

250. David Hecht, *AIDS is No Problem Among Senegal's Legal Prostitutes*, GUARDIAN (London), Mar. 25, 1997, available at http://www.walnet.org/csis/news/world_97/guardian-970325.html.

251. *See* MOSSMAN, *supra* note 202, at 30.

252. *See* EBIN, *supra* note 123, at 3.

253. *Id.*

254. *Id.*

255. *See* UNAIDS, *supra* note 243, at 14.

abroad has been limited by countries, including the United States, in response to Senegal's refusal to change its policy of legalized prostitution.²⁵⁶

The potential legalization and regulation of sex work in other African countries would be a step forward from criminalization, but legalization still targets the sex worker in a way that may not lead to complete sex worker protection. As exhibited in the Senegal case study, legalization and government regulation may result in the creation of vast underground sex worker communities that exist outside the reach of government regulation and thus are divorced from government-provided health and social services. Most African sex workers already live in the shadows of their societies because of criminalization. A legal regime that draws all sex workers out of the shadows is what is needed.

C. *Decriminalization: Case Study from South Africa*

South Africa provides an insightful case study on the contemporary debate over legal approaches to prostitution and social movements for decriminalization. Despite strong civil society advocacy for reform, South Africa's formal legal position on prostitution is one of total criminalization.²⁵⁷ The Sexual Offences Act of 1957 ("SOA"), the primary governing legal authority on prostitution in South Africa, criminalizes the various acts associated with prostitution—including brothel keeping, solicitation, and procurement.²⁵⁸ In 1988, the SOA was amended to include section 20(1), which reads, "[a]ny person who . . . has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward . . . shall be guilty of an offence."²⁵⁹ Prior to this amendment, prostitution itself—the sale of sexual services for reward—was not illegal.

In a 2001 appeal by three persons convicted of various crimes under the SOA, the Pretoria High Court held that section

256. Larry Rohter, *Prostitution Puts U.S. and Brazil at Odds on AIDS Policy*, N.Y. TIMES, July 24, 2005, at A3.

257. SALC Report, *supra* note 142, at 185–86.

258. Sexual Offences Act [SOA] 23 of 1957 ss. 2, 3(b)–(c), 20(1) (criminalizing brothel keeping, management or assisting in the management of a brothel receiving proceeds from a brothel, and prostitution itself, respectively).

259. *Id.* s. 20(1).

20(1) was unconstitutional under the equality clause of the South African Constitution because it penalizes the sex worker and not the client.²⁶⁰ The High Court also found that the provisions that outlawed brothel keeping did not violate the South African Constitution.²⁶¹

In 2002, the brothel owner, brothel employee, and sex worker who were the subjects of the 2001 judgment appealed to the constitutional court of South Africa to affirm the ruling that the prostitution provision of the SOA was unconstitutional and reverse the ruling that the brothel-keeping provisions of the SOA were constitutional on the basis that the latter violated their rights to liberty, privacy, gender equality, security of the person, and equality before the law.²⁶² The state argued that prostitution posed a danger to public health, threatened the moral integrity of the South African community, created a public nuisance, and was directly linked to other crimes.²⁶³ In October 2002 the South African Constitutional Court handed down the seminal decision, *Jordan v. State*, which upheld the constitutionality of criminalizing unlawful sexual intercourse for reward under section 20(1) of the SOA as well as the brothel keeping provisions.²⁶⁴ Much to the dismay of sex worker advocacy groups who submitted amicus briefs examining the health and human rights implications of criminalization, a majority of judges on the constitutional court found section 20(1) did not discriminate because it was gender neutral and applied to both male and female prostitutes.²⁶⁵ The court agreed that the provision made a distinction between the sex worker and the client, but held that because the purpose of the SOA is to outlaw commercial sex, and because prostitutes are more likely to be repeat offenders, the distinction is constitutionally permissible.²⁶⁶

In 2007, then-South African President Thabo Mbeki signed into law a new SOA in an effort to intensify South Africa's efforts

260. *See S. v. Jordan* 2002 (1) SA 797 (T) at 800.

261. *See id.*

262. *See S. v. Jordan* 2002 (6) SA 642 (CC) at 642–43.

263. *See id.* at 671.

264. *See id.* at 642; *see also* Prostitution “Still Illegal” in SA, BBC NEWS, Oct. 9, 2002, <http://news.bbc.co.uk/1/hi/world/africa/2314547.stm>; Nawaal Deane, *South Africa: Fighting for the Right to Sell Sex*, MAIL & GUARDIAN (Johannesburg), Mar. 8, 2002, available at <http://allafrica.com/stories/200203070430.html>.

265. *See Jordan* 2002 (6) SA at 643–45.

266. *See id.*

to fight sexual crimes, especially crimes against children and the mentally disabled.²⁶⁷ Drafters of the new SOA failed to integrate sex workers in the legislative process or to hold any form of open debate on the provisions relating to prostitution.²⁶⁸

In addition to the SOA, municipal by-laws generally relating to public nuisances such as noise, littering, loitering, and public indecency are employed against sex workers and prostitution establishments.²⁶⁹ Police often selectively enforce the laws against street-based sex workers.²⁷⁰ These arrests often do not lead to prosecutions or convictions but often result in severe violations of sex workers' rights in the form of unlawful arrest and detention, bribery, and assault.²⁷¹ In 2002, the South African Law Commission ("SALC") issued a report that examined the impact of criminalization on prostitution.²⁷² The report concluded that criminalization had failed to eliminate the market for commercial sex, largely because it does not address the determinants of the market.²⁷³ It found that antiprostitution legislation actually aggravated sex workers' working conditions.²⁷⁴

Despite setbacks in efforts to reform South Africa's hard line approach to prostitution, there has been continued civil society advocacy for decriminalization. Decriminalization would mean the removal of the provisions of the SOA that expressly relate to

267. See Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, available at <http://www.info.gov.za/view/DownloadFileAction?id=77866>; see also Nozipho Dlamini, *Gender Activists Welcome Approval of Sexual Offences Bill*, BUANEWS (Tshwane), May 23, 2006, http://www.onlinewomeninpolitics.org/newsfolder_may25/genderactivistswelcomeapproval.doc; Gabi Khumalo, *Sexual Offences Act Came Into Operation*, BUANEWS (Tshwane), Dec. 18, 2007, available at <http://www.buanews.gov.za/rss/07/07121812151001>.

268. *High Cost of Paying for Sex*, STAR (Johannesburg), Dec. 15, 2007, at 5, available at http://www.int.iol.co.za/index.php?set_id=1&click_id=3045&art_id=vn20071215092403829C607947.

269. SALC Report, *supra* note 142, at 71; *The Current Context of Sex Work in South Africa*, Apr. 8, 2006, SWEATS, http://www.sweat.org.za/index.php?option=com_content&view=article&id=13.

270. Legal Resources Centre, *Difficulties Faced by Sex Workers to Continue*, May 27, 2009, http://www.lrc.org.za/index.php?option=com_content&view=article&id=961.

271. See Peta Krost Maunder, *Decriminalise Prostitution to Prevent Abuse by Police - ICD*, WEEKENDER (Johannesburg), July 18, 2009, at 1, available at http://www.monitoringsa.com/pdfs/2009_07_18_948858.pdf; see also SALC Report, *supra* note 142, at 71, 186.

272. SALC Report, *supra* note 142.

273. See SALC Report, *supra* note 142, at 186.

274. See *id.*

prostitution.²⁷⁵ Additionally, decriminalization would require repeal of relevant provisions in the Aliens Control Act, the Liquor Act, and municipal by-laws that are exclusively aimed at the prohibition of prostitution-related activities.²⁷⁶

At the forefront of the decriminalization movement in South Africa is the Sex Worker Education and Advocacy Taskforce (“SWEAT”), a nonprofit organization based in Cape Town that works with sex workers on matters of health and human rights. SWEAT first emerged in 1994, responding to an escalating need to address HIV/AIDS issues and human rights abuses experienced by people working in the sex industry.²⁷⁷ SWEAT advocates for a dramatic change in the social, legal, and political status of sex work as a profession.²⁷⁸ A driving force behind SWEAT’s mission is to ensure that the democratic principles embodied in the South African Constitution, namely freedom of economic activity and freedom of association, are extended to sex work.²⁷⁹ SWEAT has implemented a series of direct service-based interventions targeting sex workers including counseling, safer sex and HIV education skills building, an extensive condom distribution network, legal advice, and the establishment of sex worker and police liaison forums.²⁸⁰

In 2002, SWEAT facilitated a national meeting of sex workers from across South Africa, who demanded their rights and critical legal reform.²⁸¹ They asserted that laws that seek to control sex workers in matters of personal or public health lead

275. *See id.* at 199.

276. *See* Alien Controls Act 96 of 1991 s. 39(2)(c) (prohibiting any person from living on the earnings of prostitution and procuring persons for immoral purposes); Liquor Act 27 of 1989 s. 160 (criminalizing the holder of an on-consumption liquor license to allow the licensed premises to be used as a brothel or to be frequented by persons who are regarded as prostitutes); *see also* SALC Report, *supra* note 142, at 200 (arguing for amendments to the Alien Control Act and the Liquor Act, and repealing municipal laws that criminalize prostitution in South Africa).

277. *See* Shane A. Petzer & Gordon M. Issacs, *SWEAT: The Development and Implementation of a Sex Worker Advocacy and Intervention Program in Post-Apartheid South Africa (With Special Reference to the Western City of Cape Town)*, in *GLOBAL SEX WORKERS*, *supra* note 88, at 192, 193.

278. *See id.*

279. *See id.* at 195–96.

280. *See id.* at 195.

281. Jayne Arnott, *Sex Workers and Law Reform in South Africa*, 9 *HIV/AIDS POLICY & L. REV.* 78, 79 (2004).

to the oppression of sex workers,²⁸² and that decriminalization would facilitate progress in other areas such as increased sex worker access to health services and the curbing of police harassment.²⁸³ At a second national meeting in 2003, SWEAT launched the Sisonke movement.²⁸⁴ The Sisonke movement works with sex workers of all races, sexual orientations and areas of work in South Africa and fights for decriminalization of sex work.²⁸⁵ SWEAT and Sisonke serve as models for burgeoning pro-sex-worker organizations in Africa. Strong civil society advocacy combined with the amplified force of the greater sex workers' rights movement, can affect critically needed change in sex workers' lives.

African states should reform their legal posture towards sex work and decriminalize prostitution. The legal status of prostitution has a direct effect on sex workers' ability to organize and demand their rights. The criminalization of prostitution makes access to legal and health protection for sex workers nearly impossible and further entrenches the stigma and discrimination that increases sex workers' vulnerability to abuse. Thus, in societies where such a framework is tolerated, violence against sex workers is the acceptance of violence against women and a violation of their fundamental rights.

CONCLUSION

In order to address abuses and discrimination faced by African sex workers the establishment of an African sex workers' rights movement is necessary. African sex worker collectives need the space to grow and flourish, and African women's rights organizations should include violence against sex workers in their portfolio of activities targeting violence against women. African states should interrogate their current political and legal stances towards prostitution and question whether criminalization has made women safer. They should seriously consider implementing regimes of decriminalization, the legal system most likely to lead to the realization of sex workers' rights,

282. *See id.*

283. *See id.* at 79–80.

284. *See id.* at 80.

285. *See* Background on Sisonke Movement, Apr. 13, 2006, http://www.sweat.org.za/index.php?option=com_content&view=53&Itemid=26.

a concept indirectly supported by the international human rights corpus. African states cannot continue to treat sex workers like criminals, to relegate them to societal positions in which they are beyond the reach of necessary health and legal assistance. Decriminalization will lead to destigmatization and provide the foundation from which sex workers can form collectives and fight against violence and abuse.