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### The Mainstreaming of Sex Workers' Rights as Human Rights

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# THE MAINSTREAMING OF SEX WORKERS’ RIGHTS AS HUMAN RIGHTS

CHI ADANNA MGBAKO\*

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## INTRODUCTION

In the past twenty years, an international consensus has slowly emerged: sex workers' rights are human rights.<sup>1</sup> The United Nations (UN) and regional human rights bodies, inter-governmental organizations, and influential nonprofit human rights organizations have institutionalized the concept of sex workers' rights as human rights in direct response to global sex workers' rights advocacy. The international human rights system, birthed in 1948 with the UN adoption of the Universal Declaration of Human Rights, rests on several fundamental principles: 1) all human beings are born with inherent rights, regardless of their social status; 2) these rights are recognized in a series of binding international treaties, customary international law, and guiding principles, and states must respect, protect, and realize these rights; and 3) monitoring and enforcement occur through diverse mechanisms, including the UN system and agencies, regional human rights bodies, and civil society organizations.<sup>2</sup> The sex workers' rights movement frames<sup>3</sup> its cause as a human rights issue in order to connect its fight to this sophisticated international system and to transform sex workers—who are among the most marginalized and stigmatized communities in the world—into rights bearers in the global discourse.

Sex workers' rights advocates have long argued that the principles and legal protections enshrined in international human rights treaties and instruments apply to sex workers, including freedom from discrimination and violence and the rights to association, movement, work, health, privacy, and

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<sup>1</sup> See, e.g., WORLD HEALTH ORG. ET AL., IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES WITH SEX WORKERS xiv (2013). The Global Network of Sex Work Projects (NSWP), Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Program (UNDP), United Nations Population Fund (UNFPA), World Bank, and the World Health Organization (WHO) define sex workers as “[f]emale, male and transgender adults and young people (over 18 years of age) who receive money or goods in exchange for sexual services, either regularly or occasionally.” WORLD HEALTH ORG. ET AL., IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES WITH SEX WORKERS xxi (2013) [hereinafter WHO, IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES], [https://apps.who.int/iris/bitstream/handle/10665/90000/9789241506182\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/90000/9789241506182_eng.pdf) [<https://perma.cc/B8JD-W9ZV>].

<sup>2</sup> See *What are human rights?*, U.N. OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> [<https://perma.cc/Y3PL-6UJP>] (last visited July 17, 2019); *Overview of the Human Rights Framework*, INT’L JUSTICE RES. CTR., <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/> [<https://perma.cc/9YD5-TL7R>] (last visited July 17, 2019).

<sup>3</sup> Scholars have argued that social movements are not simply passive repositories of already existing ideas but “signifying agents actively engaged in the production and maintenance of meaning for constituents, antagonists, and bystanders.” Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 613 (2000). By “framing” an issue, social movements attempt to construct new and shared meanings regarding social problems: they diagnose the causes of a problem, identify the actors responsible for the problem and those tasked with correcting it, and imagine alternative, emancipatory futures. The newly articulated interpretive frames of social movements are often contentious because they challenge commonly accepted understandings of an issue. *Id.* at 614–15.

access to justice.<sup>4</sup> This Article will explore several primary fields of inquiry: how and why has the global sex workers' rights movement applied a human rights frame to its political, social, and economic claims? How have influential international human rights bodies officially responded to this framing, and what are the strengths and limitations of these responses? And, finally, how have sex workers' rights advocates attempted to use mainstream human rights recognition to secure political and legal gains for sex workers on the ground?

Part I will trace the history of the sex workers' rights movement's construction of sex workers' rights as human rights and explore the power of the arguments buttressing this framing. The 1960s and 70s marked the nascence of the sex workers' rights movement. The activism of transgender sex workers involved in the 1960s queer liberation movement in the United States provides some of the earliest examples of sex worker organizing.<sup>5</sup> By 1973, Call Off Your Old Tired Ethics (COYOTE), the first formal sex workers' rights organization in the United States, was founded.<sup>6</sup> The legendary 1975 occupation of the Church of Saint-Nizier by striking French sex workers in Lyon, France, helped spark the movement in Europe.<sup>7</sup> Though these inspiring examples of early sex worker organizing—although at times referencing the concept of “human rights”—did not forcefully lay claim to the legal protections of the international human rights system as a central part of their political activism, this changed in the 1980s and 90s as sex worker organizing began to globalize. In 1985, the International Committee for Prostitutes' Rights adopted the World Charter for Prostitutes' Rights,<sup>8</sup> marking the first time sex workers' rights organizers formally attached a human rights frame to their rhetoric of resistance. Part I will also explore how the effects of the early HIV/AIDS crisis on sex worker communities helped strengthen the sex workers' rights movement's embrace of a human rights framework. It will then highlight how the championing of a human rights frame—necessarily an international endeavor—grew stronger as the movement morphed from focusing largely on Global North women in the sex trades to including and elevating the voices and experiences of diverse Global South sex workers.

Part II will argue that sex workers' rights advocates engage in important feminist intellectual labor by linking a human rights frame to their struggles

<sup>4</sup> See GLOB. NETWORK OF SEX WORK PROJECTS, CONSENSUS STATEMENT ON SEX WORK, HUMAN RIGHTS, AND THE LAW, *passim* (Dec. 16, 2013) [hereinafter CONSENSUS STATEMENT], <https://www.nswp.org/sites/nswp.org/files/ConStat%20PDF%20EngFull.pdf> [<https://perma.cc/4M3N-UPDL>].

<sup>5</sup> MELINDA CHATEAUVERT, SEX WORKERS UNITE: A HISTORY OF THE MOVEMENT FROM STONEWALL TO SLUTWALK 8–9 (2013).

<sup>6</sup> *Id.* at 14.

<sup>7</sup> CHI ADANNA MGBAKO, TO LIVE FREELY IN THIS WORLD: SEX WORKER ACTIVISM IN AFRICA 185 (2016); Eurydice Aroney, *The 1975 French Sex Workers' Revolt: A Narrative of Influence*, 0(0) SEXUALITIES 1, 2, 5 (2018).

<sup>8</sup> See GAIL PHETERSON, A VINDICATION OF THE RIGHTS OF WHORES 33, 40–42 (1989).

of resistance: they push back against whorephobia—the hatred, fear, and dehumanization of sex workers—by asserting sex workers’ humanity, center sex worker agency by upending harmful tropes of the “doomed prostitute” in need of rescue, and reject carceral feminism by identifying the carceral state as the cause of human rights abuses against sex workers and insisting that criminalization in any form has no role to play in the sex worker liberation project.

Part III will explore how international human rights bodies have responded to the sex workers’ rights movement’s human rights framing by institutionalizing the concept of sex workers’ rights as human rights. In a slew of official documents, numerous global human rights mechanisms such as UN treaty bodies and Special Procedures, regional bodies like the Inter-American Commission on Human Rights, UN-affiliated agencies like the Joint United Nations Programme on HIV/AIDS (UNAIDS), and leading nonprofit organizations like Amnesty International (“Amnesty”) have mainstreamed the idea that human rights protections apply to sex workers. These human rights bodies have paid particular attention to issues concerning violence against sex workers, violations of sex workers’ right to health, abusive activities claiming to fight the “traffic in women,” and the legal status of sex work. While the Article lauds this institutionalization of sex workers’ rights as human rights, Part III will urge international bodies to do more to grapple with the full landscape of sex workers’ human rights claims, encouraging a more robust articulation of the human rights distinction between full decriminalization and partial criminalization of sex work and a deeper engagement with sex workers’ labor rights claims.

Part IV will briefly examine how sex workers’ rights advocates have used human rights bodies’ institutionalization of sex workers’ rights as human rights to try to effect legal and political change in sex workers’ lives. A series of case studies will illuminate this on-the-ground advocacy, including examples of lobbying by sex workers’ rights advocates of government officials for implementation of international bodies’ rights-affirming recommendations. The Article will conclude by arguing that the emerging consensus among human rights bodies that sex workers’ rights are human rights is, encouragingly, not in line with the longstanding and damaging anti-prostitution argument that sex work is itself a human rights violation. Among influential human rights institutions, global sex workers’ rights advocates are largely winning the longstanding feminist debates against anti-prostitution activists. The mainstream human rights position, now embraced by the likes of Amnesty, Human Rights Watch (HRW), UNAIDS, and WHO, locates violence not in sex work itself but in the human rights abuses emanating from its criminalization. The human rights frame that sex worker advocates have championed for decades focuses the conversation where it belongs: not on theoretical arguments about the meaning of sex work but on the evidence-based realities of the streets, bars, brothels, clubs, massage parlors,

and truck-stops where sex workers suffer human rights abuses because of the harmful and unrelenting hand of the carceral state.

## I. HISTORY OF THE SEX WORKERS' RIGHTS MOVEMENT'S FRAMING OF SEX WORKERS' RIGHTS AS HUMAN RIGHTS

### A. *1960s and 70s: The Emergence of Collective Action for Sex Workers' Rights*

The 1960s United States political landscape was blanketed in thriving movements for social change, including demands for civil rights for communities of color, black power, women's liberation, and a cultural revolution that challenged mainstream gender and sexual expression. Queer liberation emerged as part of this titanic shift in the political, cultural, and social atmosphere.<sup>9</sup> It is difficult to imagine the birth of the sex workers' rights movement without the example of resistance provided by these movements.<sup>10</sup> The "fiery and forgotten" beginnings of the sex workers' rights movement in the United States can be traced back to the birth of the queer liberation movement. In response to rampant police abuse against the queer community, transgender women who engaged in sex work participated in uprisings such as the 1966 Compton's Cafeteria Strike in San Francisco and the 1969 Stonewall Riots in New York City.<sup>11</sup>

The riot at Compton's Cafeteria, and the role that sex workers played in the uprising, is a relatively recent discovery in queer liberation history.<sup>12</sup> The rescue of this episode from erasure by a whitewashed version of queer protest history helps center the role of members of the queer community who have longed suffered disproportionately at the hands of police violence, including people of color, street-based youth, transgender people, and sex workers.<sup>13</sup> Compton's Cafeteria was located in San Francisco's Tenderloin district, which was home to many trans women who engaged in sex work. They faced severe abuse from police who sexually assaulted them, profiled and arrested them for prostitution, placed them in male jail cells, and shaved their heads in prison, among other indignities.<sup>14</sup> Things came to a head in August of 1966, when sex workers were among the queer patrons at Compton's Cafeteria who resisted arrest when the police attempted to clear

<sup>9</sup> See SUSAN STRYKER, *TRANSGENER HISTORY*, 63–64, 82, 98–99 (2008).

<sup>10</sup> See MELISSA GIRA GRANT, *PLAYING THE WHORE: THE WORK OF SEX WORK* 116 (2014).

<sup>11</sup> CHATEAUVERT, *supra* note 5, at 8–9.

<sup>12</sup> See *id.* at 8–9.

<sup>13</sup> Che Gossett, Reina Gossett & AJ Lewis, *Reclaiming Our Lineage: Organized Queer, Gender-Nonconforming, and Transgender Resistance to Police Violence*, SCHOLAR & FEMINIST ONLINE (2012), <http://sfonline.barnard.edu/a-new-queer-agenda/reclaiming-our-lineage-organized-queer-gender-nonconforming-and-transgender-resistance-to-police-violence/> [https://perma.cc/ERH3-CJL5].

<sup>14</sup> STRYKER, *supra* note 9, at 67.

them from the establishment.<sup>15</sup> The patrons smashed windows and plates, overturned tables, and defaced police cars in protest.<sup>16</sup>

Three years later in 1969, sex workers also played a role in the famous uprising at the Stonewall Inn in New York City, where patrons who had faced unrelenting and violent harassment from police officers resisted arrest during a routine raid of the establishment.<sup>17</sup> In 1970, Sylvia Rivera and Marsha P. Johnson, famous participants of the Stonewall Rebellion and trans women of color who engaged in sex work, founded Street Transvestite Action Revolutionaries (STAR), an activist organization that provided shelter for street-based queer youth and transgender people, including sex workers.<sup>18</sup> Rivera and Johnson engaged in sex work as a survival strategy but also as movement work: earnings from sex work helped fund some of their unpaid movement-building activities. Despite marginalization by the larger queer community in the early movement, including by radical lesbians who derided trans women as “female impersonators,” Rivera spoke out forcefully on behalf of trans women and street-based youth who faced criminalization for engaging in sex work activities that were often the only poverty alleviation options available to them because of rampant discrimination.<sup>19</sup> These examples of the role that sex workers played in the early queer liberation movement laid the groundwork for what would become the prostitutes’ rights movement in the United States that began in the 1970s.<sup>20</sup>

The year 1973 marked the founding of COYOTE, the first organization in the United States dedicated primarily to sex workers’ rights.<sup>21</sup> Founded by former sex worker Margo St. James, COYOTE was one of the earliest examples of sex workers formally mobilizing as political agents. With a focus on state and police violence against sex workers, they sought to change both laws and social mores around sex work.<sup>22</sup> COYOTE’s political demands included the decriminalization of sex work; they also provided legal, medical, and financial assistance to sex workers.<sup>23</sup> The COYOTE advocacy newsletter, which ran from 1974 to 1979, highlighted both national and international events occurring in the nascent sex workers’ rights movement.<sup>24</sup>

<sup>15</sup> *Riot at Compton’s Cafeteria*, GLOB. NETWORK OF SEX WORK PROJECTS, <https://www.nswp.org/timeline/event/riot-comptons-cafeteria> [https://perma.cc/S5QY-JL9Q] (last visited July 17, 2019).

<sup>16</sup> STRYKER, *supra* note 9, at 64–65.

<sup>17</sup> CHATEAUVERT, *supra* note 5, at 8–10.

<sup>18</sup> *Street Transvestite Action Revolutionaries found STAR House*, GLOB. NETWORK OF SEX WORK PROJECTS, <https://www.nswp.org/timeline/event/street-transvestite-action-revolutionaries-found-star-house> [https://perma.cc/J95B-R9MV] (last visited July 17, 2019).

<sup>19</sup> See GRANT, *supra* note 10, at 116–19.

<sup>20</sup> CHATEAUVERT, *supra* note 5, at 8, 14.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> PHETERSON, *supra* note 8, at 5.

<sup>23</sup> See *COYOTE Founded in California*, GLOB. NETWORK OF SEX WORK PROJECTS, <https://www.nswp.org/timeline/event/coyote-founded-california> [https://perma.cc/YU5K-FDMC] (last visited July 17, 2019).

<sup>24</sup> PHETERSON, *supra* note 8, at xix.

The famous June, 1975 occupation of Saint-Nizier church by striking French sex workers in Lyon, France, was an international event that marked an important milestone in the early years of the sex workers' rights movement and helped spark the movement in Europe. Like the previous decade's uprisings at Compton's Cafeteria and Stonewall, the French sex workers' strike was largely driven by grievances regarding police violence.<sup>25</sup> Inspired by the Lyon political action, French sex workers in Grenoble, Marseille, Montpellier, and Paris joined the protest and occupied churches in their cities.<sup>26</sup> The French sex workers' strike presented sex workers as political actors capable of collectively organizing on a scale that could capture sustained international media attention.<sup>27</sup>

Media documentation of the striking French sex workers quoted some of the participants describing their political claims as "human rights concerns,"<sup>28</sup> and Margo St. James referred to sex workers' "demands for human rights" in reflecting on COYOTE's early activism.<sup>29</sup> However, despite these examples of the language of "human rights" appearing in early sex worker advocacy, there is little evidence to suggest that the discourse of the international human rights regime played a significant role in budding sex worker activism of the 1960s and 70s. This changed in the 1980s when the sex workers' rights movement began to globalize and confronted the devastating HIV/AIDS crisis, adopting for the first time an explicit human rights framing.

*B. 1980s and 90s: A Globalizing Movement Frames Sex Workers' Rights as Human Rights in the Shadow of the HIV/AIDS Crisis*

COYOTE and the French sex workers' uprising inspired the beginnings of an internationalizing movement for sex workers' rights: new sex workers' rights organizations were formed throughout the 1980s in countries in the Global North, including France, Germany, Italy, the Netherlands, the United Kingdom, and the United States, and several in the Global South, including Ecuador, Thailand, and Uruguay.<sup>30</sup> It is not surprising that as the movement began to internationalize in the 1980s, sex workers' rights advocates would also begin to link their discourse of resistance to an international system of rights and state accountability that could speak to sex workers' needs throughout the world: a newly globalizing movement required a global language of rights. By championing a human rights framework, the movement would ensure that the international community could no longer ignore abuses against sex workers.

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<sup>25</sup> See MGBAKO, *supra* note 7, at 185; Aroney, *supra* note 7, at 2, 5.

<sup>26</sup> See ARONEY, *supra* note 7, at 6.

<sup>27</sup> *Id.* at 10, 12.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> PHETERSON, *supra* note 8, at xix.

<sup>30</sup> MGBAKO, *supra* note 7, at 185.



In 1985, United States, Canadian, and European representatives from sex workers' rights organizations that had formed in the wake of the movement birthed in the mid-1970s created the International Committee for Prostitutes' Rights (ICPR), which met in Amsterdam the same year for an international gathering referred to as the First World Whores' Congress.<sup>31</sup> During the First World Whores' Congress, the ICPR drafted the World Charter for Prostitutes' Rights ("Charter"), which marked the first time the sex workers' rights movement formally applied a human rights frame to its liberation project.<sup>32</sup> The Charter, which the ICPR formally presented to the press on February 15, 1985, demanded that sex workers be guaranteed "all human rights and civil liberties, including the freedom of speech, travel, immigration, work, marriage, and motherhood and the right to unemployment insurance, health insurance and housing."<sup>33</sup>

The human rights-based approach the ICPR established during the First World Whores Congress continued during the Second World Whores Congress, which took place at the European Parliament in Brussels in 1986. The ICPR held special sessions on human rights to highlight abuses against sex workers in specific countries.<sup>34</sup> Although one sex worker from Thailand gave testimony during the sessions, the vast majority of the sessions featured testimony from sex workers in the Global North, particularly Europe.<sup>35</sup> The sessions resulted in a Statement on Prostitution and Human Rights ("Statement") issued by the ICPR in October, 1986.<sup>36</sup> The Statement marks the first time the sex workers' rights movement appealed to a human rights treaty—in this case, the European Convention on Human Rights—as a basis for its rights claims. The Statement was a more ambitious document than the 1985 Charter. It included a powerful argument for the application of the international human rights system to sex workers in Europe and throughout the world:

The International Committee for Prostitutes' Rights (ICPR) demands that prostitutes, ex-prostitutes and all women regardless of their work, color, class, sexuality, history of abuse or marital status be granted the same human rights as every other citizen. At present, prostitutes are officially and/or unofficially denied rights both by states within the Council of Europe and by States outside of it. No state in the world is held accountable by any international body

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<sup>31</sup> PHETERSON, *supra* note 8, at 33–39.

<sup>32</sup> Penelope Saunders, *Fifteen Years after the World Charter for Prostitutes' Rights*, CARNEGIE COUNCIL FOR ETHICS IN INT'L AFFAIRS (Aug. 6, 2000), [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_03/articles/629](https://www.carnegiecouncil.org/publications/archive/dialogue/2_03/articles/629) [<https://perma.cc/7DVC-LHVL>].

<sup>33</sup> PHETERSON, *supra* note 8, at 40. For more on the history and political dynamics of the First World Whores' Congress, see *id.* at 33–39.

<sup>34</sup> *Id.* at 43, 49.

<sup>35</sup> For a transcript of testimony from the human rights sessions of the Second World Whores' Congress, see *id.* at 52–102.

<sup>36</sup> *Id.* at 103.

for those infractions. To the contrary, denial of human rights to prostitutes is publicly justified as a protection of women, public order, health, morality and the reputation of dominant persons or nations. Those arguments deny prostitutes the status of ordinary persons. . . . Criminalization or state regulation of prostitution does not protect anyone, least of all prostitutes. Prostitutes are systematically robbed of liberty, security, fair administration of justice, respect for private and family life, freedom of expression and freedom of association. In addition, they suffer from inhuman and degrading treatment and punishment and from discrimination in employment and housing. Prostitutes are effectively excluded from the Human Rights Convention.<sup>37</sup>

By framing its claims as a human rights issue, the sex workers' rights movement was creating new social meanings regarding sex work. Through their Statement, advocates diagnosed the issue of "prostitution" as the problem of a marginalized community being denied their human rights—not as one of morality or public order. They described "prostitutes" as "ordinary citizens" and the same as "all women," not as deviant others.<sup>38</sup> They laid the responsibility of human rights violations against sex workers on States, not on sex work itself. And they proposed a new remedy for these violations centered on the monitoring and enforcement power of the international human rights system, not on further criminalization of sex work and sex workers.<sup>39</sup>

The nascent globalization of the sex workers' rights movement helped advocates frame the issue in the global language of human rights, and so did the globalization of the devastating HIV/AIDS crisis that took hold in the 1980s. At the First World Whores' Congress in 1985, there was little mention of HIV/AIDS. But by the Second World Whores' Congress in 1986, sex workers could no longer ignore the epidemic taking root in their communities and throughout the world.<sup>40</sup> Transcripts of testimony from the Second World Whores' Congress committee sessions on health show that sex workers regularly raised the issue of AIDS.<sup>41</sup> The committee sessions ended with the ICPR's release of the Statement on Prostitution and Health, which included a dedicated section on human rights that, among other demands, specifically called for sex workers to have access to free and voluntary counseling and testing for HIV/AIDS.<sup>42</sup> A human rights approach to sex work and HIV/AIDS recognizes that HIV/AIDS in sex work communities will never be resolved if the human rights violations that render sex workers

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<sup>37</sup> *Id.*

<sup>38</sup> In the Statement, the ICPR also acknowledges that men also engage in sex work.  
*Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 35.

<sup>41</sup> For a transcript of testimony from the health sessions of the Second World Whores' Congress, see *id.* at 109–31.

<sup>42</sup> *Id.* at 141–143.

disproportionately vulnerable to HIV—healthcare discrimination, sexual abuse from police officers and criminals posing as clients, lack of access to justice, and condom confiscation—are not addressed.

The HIV/AIDS crisis led to a shift in early sex worker organizing in the United States from a feminist and civil rights orientation to one with an increased focus on human rights and harm reduction.<sup>43</sup> By 1985, advocates in the United States had organized sex worker-run direct services that distributed condoms and conducted HIV/AIDS education in sex work communities. By doing so, they embraced the human rights principle that all people—no matter the moral station assigned to them nor the type of work or sex they engage in—are worthy of life-saving access to healthcare.<sup>44</sup> This human rights framing would eventually expand the scope of the movement in the United States: “The sex workers’ movement could no longer focus only on women; a human rights-based movement needed everyone in the sex trades.”<sup>45</sup> Consequently, beginning in the late 1990s, the movement diversified, particularly by reaching out to male, queer, and transgender sex workers.<sup>46</sup>

The HIV/AIDS crisis, as well as its disproportionate impact on the global sex workers’ rights community, was one of the central factors in the continuing internationalization of the early sex workers’ rights movement.<sup>47</sup> The first decade of the globalizing sex workers’ rights movement was dominated by sex workers from the Global North at international gatherings like the World Whores’ Congresses, with minimal representation from sex workers in the Global South. This began to change in the 1990s, as sex workers from the Global South were first able to access donor funding to participate in international gatherings and global alliances focusing on HIV/AIDS.<sup>48</sup> One of those Global South organizations was the Sex Workers Education and Advocacy Taskforce (SWEAT), which was founded in South Africa in 1994 as one of the first sex workers’ rights organizations in Africa. SWEAT began their work distributing condoms to sex workers to prevent sexually transmitted infections (“STIs”) and HIV/AIDS and soon realized that a

<sup>43</sup> CHATEAUVERT, *supra* note 5, at 15, 110–14.

<sup>44</sup> *See id.* at 14–17.

<sup>45</sup> *Id.* at 205.

<sup>46</sup> *See id.* United States sex worker advocates’ embrace of the human rights framework continues to this day. The United States Sex Workers Outreach Project (SWOP)-USA has chapters in 18 states and characterizes itself as “a national social justice network dedicated to the fundamental human rights of people involved in the sex trade and their communities, focusing on ending violence and stigma through education and advocacy.” *About Us*, SWOPUSA.ORG, <https://swopusa.org/about-us/> [<https://perma.cc/4XNW-5F7W>] (last visited July 17, 2019); *see also* *Chapters*, SWOPUSA.ORG, <https://swopusa.org/chapters/> [<https://perma.cc/PF2E-QNLD>] (last visited July 17, 2019).

<sup>47</sup> INT’L WOMEN’S RIGHTS ACTION WATCH ASIA PACIFIC & GLOB. NETWORK OF SEX WORK PROJECTS, *Framework on Rights of Sex Workers & CEDAW* 10–11 (2017) [hereinafter IWRAP-AP, *Framework*], <https://www.iwraw-ap.org/wp-content/uploads/2018/04/Framework-on-Rights-of-Sex-Workers-CEDAW-1.pdf> [<https://perma.cc/C9R8-3TZA>].

<sup>48</sup> *See* MGBAKO, *supra* note 7, at 184–187.

health approach divorced from a human rights approach was insufficient to address the myriad afflictions affecting sex work communities. A SWEAT advocate noted: “As the program developed, we recognized that the [distribution] of condoms was just merely an access point to sex workers—they would then begin to relate their stories of human rights abuse, the lack of facilities, certainly stigma, and when they were confronted with abuse from health care professionals. We then decided as a SWEAT team that this program would begin to feed the human rights approach.”<sup>49</sup> This approach would eventually involve rights-based legal reform and media advocacy.<sup>50</sup>

In 1992, the Global Network of Sex Work Projects (NSWP), the leading international umbrella organization of sex workers' rights organizations in both the Global North and Global South, was launched at the International AIDS Conference in Amsterdam.<sup>51</sup> NSWP played a pivotal role in the continued globalization of the movement in the wake of the early HIV/AIDS crisis and in advocating for the human rights concerns of both female and male (cisgender and transgender) sex workers.<sup>52</sup> NSWP became a highly active and visible presence in the global response to HIV/AIDS, and the organization played a crucial role in changing the vocabulary used in international HIV/AIDS forums to discuss sex work, encouraging international actors to transition from use of the terms “prostitution”/“prostitutes” to “sex work”/“sex workers” as an essential step in the reframing of sex workers as rights-bearing human beings and laborers rather than stigmatized others.<sup>53</sup>

### C. 1990s – Present: A Diverse, Fully Globalized Movement Embraces Sex Workers' Rights as Human Rights

By the 1990s, the globalizing sex workers' rights movement began to more fully reflect the diversity of sex trades with the founding of influential sex workers' rights organizations in the Global South. This expansion has continued over the past several decades, and the now fully globalized movement has become one of the most geographically diverse and intersectional social movements in the world, representing the interests of sex workers of varied nationalities, races, genders, gender identities, sexual orientations, health, and other statuses.<sup>54</sup> The globalized sex workers' rights movement now includes activist groups working at the local, national, regional, and international level in Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, and North America; one of the core principles that links

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<sup>49</sup> *Id.* at 88.

<sup>50</sup> *Id.*

<sup>51</sup> *History*, GLOB. NETWORK OF SEX WORK PROJECTS, <http://www.nswp.org/history> [<https://perma.cc/2EMA-NWCK>] (last visited July 17, 2019).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See MGBAKO, *supra* note 7, at 183–188.

these diverse groups is their embrace of the idea that universal human rights apply to sex workers.<sup>55</sup>

From the 1990s through the present, a continued commitment to a human rights frame has been evident in the development of the political discourse of the diversifying sex workers' rights movement in the Global South. In 1994, sex workers in Asia founded the regional organization the Asia Pacific Network of Sex Workers (APNSW) with participation from sex workers' rights groups in India, Malaysia, and Thailand who had embraced a health and human rights approach in their work with sex workers.<sup>56</sup> APNSW currently has members representing twenty countries in the region and lists protecting sex workers' human rights as one of the central tenets of its mission statement.<sup>57</sup> In 1997, sex workers in Latin America and the Caribbean formed the regional organization Red de Mujeres Trabajadores Sexuales de Latinoamérica y el Caribe (RedTraSex), which now consists of representatives from fifteen countries.<sup>58</sup> Their organizational statute lists respect for sex workers' human rights as an important aspect of their vision.<sup>59</sup> The year 2002 marked the first time that sex workers throughout the world celebrated International Sex Workers' Rights Day, which seeks to shine a light on human rights abuses against sex workers. This annual event was inspired by the activism of 25,000 sex workers in India from the sex worker collective Durbar Mahila Samanwaya Committee (DMSC), who had organized a festival the previous year and called on the global sex work community to join them in annually marking Sex Workers' Rights Day.<sup>60</sup> In 2009, sex workers launched the African Sex Workers Alliance (ASWA) when representatives from ten African countries gathered at a conference in Johannesburg, South Africa, with the stated goal of advocating for sex workers' human rights in Africa (in the years since, membership has ballooned to represent thirty-

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<sup>55</sup> See *History*, GLOB. NETWORK OF SEX WORK PROJECTS, *supra* note 51.

<sup>56</sup> *Background*, ASIA PAC. NETWORK OF SEX WORKERS, <https://apnsw.info/background/> [<https://perma.cc/OM8E-WZEW>] (last visited Sept. 28, 2019).

<sup>57</sup> *Members*, ASIA PAC. NETWORK OF SEX WORKERS, <https://apnsw.info/memberships> [<https://perma.cc/9DQ4-37BU>] (last visited Sept. 28, 2019); *Our Vision, Goals and Values*, ASIA PAC. NETWORK OF SEX WORKERS, <https://apnsw.info/about-apnsw/our-vision-goals-and-values/> (last visited Sept. 28, 2019).

<sup>58</sup> *Our History*, REDTRASSEX, <http://redtralsex.org/-About-Us-.html> [<https://perma.cc/3ZMW-JU7A>] (last visited Sept. 28, 2019).

<sup>59</sup> *Estatutos de la Red de Trabajadoras Sexuales de Latinoamerica y el Caribe*, REDTRASSEX, [http://www.redtralsex.org/IMG/pdf/estatuto\\_redtralsex.pdf](http://www.redtralsex.org/IMG/pdf/estatuto_redtralsex.pdf) [<https://perma.cc/HRM8-G3KC>] (last visited July 17, 2019).

<sup>60</sup> *March 3rd – International Sex Workers Rights Day*, SEX WORKERS OUTREACH PROJECT-USA, <https://swopusa.org/blog/2019/03/03/march-3rd-international-sex-workers-rights-day/> [<https://perma.cc/375P-TECF>] (last visited July 17, 2019).

three countries).<sup>61</sup> “We want rights, not rescue,” read a communique from the conference participants.<sup>62</sup>

As the global movement diversified, and African, Asian, Caribbean, and Latin American sex workers embraced the human rights frame, European sex workers continued to champion this framing in sophisticated ways. In 2005, the International Committee for the Rights of Sex Workers in Europe (ICRSE), representing sex workers from thirty European countries, issued the Declaration on the Rights of Sex Workers in Europe (“Declaration”). The Declaration is an ambitious document that outlines the panoply of rights to which sex workers in Europe are entitled under international law based on treaties ratified by European countries. The Declaration was also, importantly, one of the first times sex worker advocates stated in an official capacity what they hoped to gain by explicitly appealing to a human rights framing in their advocacy: empowerment of sex workers by basing their rights claims on the authoritative weight of the international justice system, clearly articulated benchmarks for advocates to measure progress and future organizing, the vision of an emancipatory future in which policies and practices related to sex work are rooted in the enhancement of sex workers’ rights, and the long-term goal of swaying public opinion to fully embrace the idea that healthy societies depend on the realization of all peoples’ human rights.<sup>63</sup>

In 2012 and 2013, two global events—the Sex Workers Freedom Festival and the Consensus Statement on Sex Work, Human Rights, and the Law (“Consensus Statement”)—organized sex workers from both the Global North and South in a unified embrace of the human rights frame. Sex workers’ rights advocates organized the 2012 Sex Workers Freedom Festival because sex workers could not participate in the 2012 International AIDS Conference in Washington, D.C. due to discriminatory travel restrictions that bar entry to the United States for people who have engaged in sex work.<sup>64</sup> In response, the Sex Workers Freedom Festival—the largest and most diverse gathering of sex workers’ rights advocates ever recorded, with hundreds of activists representing forty-three countries participating—was “both a protest against sex workers’ exclusion and a demand for respect of their human rights.”<sup>65</sup> The festival ran parallel to the International AIDS Conference and centered on the application of universal human rights to sex workers.<sup>66</sup> Dur-

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<sup>61</sup> *The African Sex Workers Alliance (ASWA) is the Pan African alliance of sex worker led organisations*, AFRICAN SEX WORKERS ALL., <https://aswaalliance.org/about/story/> [<https://perma.cc/89UT-RSGJ>] (last visited July 17, 2019).

<sup>62</sup> “We want rights, not rescue,” INDEP. ONLINE (Feb. 5, 2019), <https://www.iol.co.za/news/south-africa/we-want-rights-not-rescue-433475> [<https://perma.cc/2W3X-Q5DB>].

<sup>63</sup> SEX WORK EUROPE, DECLARATION ON THE RIGHTS OF SEX WORKERS IN EUROPE (2005), [http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/dec\\_brussels2005.pdf](http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/dec_brussels2005.pdf) [<https://perma.cc/DY2B-MC5A>].

<sup>64</sup> MGBAKO, *supra* note 7, at 187.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

ing festival sessions, sex workers' rights advocates from Cambodia, China, India, France, Kenya, Mexico, Myanmar, New Zealand, Russia, Serbia, Thailand, Uganda, and Zimbabwe presented on the rights to associate, to be protected by the law, to be free from violence, to be free from discrimination, to health, to move and to migrate, and to work and choose occupation.<sup>67</sup> These seven enumerated rights, with the addition of the right to privacy and freedom from arbitrary interference, would later form the basis of the eight human rights identified in the Consensus Statement as the fundamental human rights central to sex worker freedom.<sup>68</sup>

The Consensus Statement was the result of a worldwide consultation with 160 NSWP sex worker-led member organizations that represented sixty countries and diverse sex workers from throughout the world.<sup>69</sup> It highlights the eight core human rights the consulted sex workers' rights organizations agreed apply to all sex workers, no matter their "genders, class, race, ethnicity, health status, age, nationality, citizenship, language, education levels, disabilities and other status."<sup>70</sup> The right to associate will ensure sex workers are allowed to join forces to provide life-saving services to their community and advocate on its behalf.<sup>71</sup> The right to be protected by the law will guarantee that sex workers will no longer lack access to justice when they are the victims of violent crime or lack equal protection under the law that other rights-bearers enjoy.<sup>72</sup> The right to be free from violence will ensure that sex workers are protected from the abuse they experience routinely at the hands of police, criminals posing as clients, and healthcare workers.<sup>73</sup> The right to be free from discrimination will prevent and protect sex workers from the rampant discrimination they often face in every facet of their lives, including in employment, housing, healthcare, and the criminal justice system.<sup>74</sup> The right to privacy and freedom from arbitrary interference will prevent sex workers from being victimized by police who routinely and arbitrarily detain them, healthcare workers who force them to undergo mandatory health testing and disclose confidential test results, governments that force them to register in databases, and other privacy violations.<sup>75</sup> The right to health will address the legal oppression that compromises sex workers' health by driving them into the shadows and away from the tools, education, services, and working conditions that could fortify their physical well-being.<sup>76</sup> The right to

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<sup>67</sup> *Sex Worker Freedom Festival Program*, GLOB. NETWORK OF SEX WORK PROJECTS, <https://www.nswp.org/sites/nswp.org/files/Sex%20Worker%20freedom%20Festival%20programme%20v2.pdf> [<https://perma.cc/2QWB-WMFN>] (last visited Sept. 28, 2019).

<sup>68</sup> See CONSENSUS STATEMENT, *supra* note 4.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 1.

<sup>71</sup> See *id.* at 2–3.

<sup>72</sup> See *id.* at 4–6.

<sup>73</sup> See *id.* at 7–9.

<sup>74</sup> See *id.* at 10–12.

<sup>75</sup> See *id.* at 13–15.

<sup>76</sup> See *id.* at 16–19.

move and migrate will protect the rights of migrant sex workers, who are a particularly vulnerable segment of the sex work community because of restrictive immigration policies combined with sex work criminalization.<sup>77</sup> And, finally, the right to work and choose occupation will address the lack of labor and employment protections that condemn sex workers to abusive working conditions and often render them powerless over their labor.<sup>78</sup>

## II. THE SEX WORKERS' RIGHTS MOVEMENT'S HUMAN RIGHTS FRAMING IS A REJECTION OF WHOREPHOBIA, THE POLITICS OF RESCUE, AND CARCERAL FEMINISM

### A. *Rejecting Whorephobia and Whore Stigma*

People engaged in sex work have long been dehumanized as deviant "others" in cultures throughout the world.<sup>79</sup> The sex workers' rights movement's human rights framing affirms sex workers' humanity and repudiates the dehumanization sex workers experience. One of the main vehicles of sex worker dehumanization is "whorephobia," defined as the "social fear and hatred of sex workers."<sup>80</sup> Whorephobia deeply stigmatizes people in the sex work industry, and as historian Melinda Chateauvert contends, it succeeds at "reducing 'hookers,' 'prostitutes,' 'whores,' and 'hustlers' to people who aren't worthy of concern and, indeed, people who should be chased out of neighborhoods or locked up in prison."<sup>81</sup> Sex workers suffer higher rates of murder than the general population, and sex workers' rights activists have maintained that in its most extreme form, "whorephobia kills."<sup>82</sup>

A precursor to the concept of whorephobia is the theory of "whore stigma," a term coined by scholar Gail Pheterson in the 1990s.<sup>83</sup> Pheterson defined whore stigma as the "social and legal branding of women who are suspected of being or acting like prostitutes."<sup>84</sup> She argued that although whore stigma specifically targets sex workers, it also implicitly seeks to regulate the behavior of all women whose autonomy flouts accepted sexual and social behavior. To avoid the stain of whore stigma, non-sex-working wo-

<sup>77</sup> See *id.* at 20–22.

<sup>78</sup> See *id.* at 23–25.

<sup>79</sup> See MGBAKO, *supra* note 7, at 51.

<sup>80</sup> *Id.* at 208 n.13.

<sup>81</sup> *Human Rights for Sex Workers: An Interview with Melinda Chateauvert*, BEACON BROADSIDE (Dec. 10, 2013), <https://www.beaconbroadside.com/broadside/2013/12/human-rights-for-sex-workers.html> [<https://perma.cc/G8QL-XMEA>]; see also CHATEAUVERT, *supra* note 5, at 10.

<sup>82</sup> Thierry Schafausser, *Whorephobia affects all women*, THE GUARDIAN (June 23, 2010), <https://www.theguardian.com/commentisfree/2010/jun/23/sex-workers-whorephobia> [<https://perma.cc/X3QS-59TT>].

<sup>83</sup> Zoe Schlanger, *Waging War on Sex Workers*, GUERNICA (Feb.13, 2013), <https://www.guernicamag.com/the-war-on-sex-workers/> [<https://perma.cc/8CB5-KRM4>]. Modern conceptions of whore stigma include "slut-shaming" and "rape culture."

<sup>84</sup> PHETERSON, *supra* note 8, at 30.



men will often distance themselves from sex workers.<sup>85</sup> Author Melissa Gira Grant has maintained that this distancing perpetuates whore stigma in dire ways: “[S]o long as there are women who are called whores, there will be women who are trained to believe it is next to death to be one or to be mistaken for one. And so long as that is, men will feel they can leave whores for dead with impunity.”<sup>86</sup> Anti-prostitution activists’ efforts to abolish sex work—even when they characterize sex workers not as transgressors but as embodiments of a “narrative of female victimhood”—only serve to strengthen whore stigma.<sup>87</sup> State actors, including police, healthcare workers, and the justice system, have successfully institutionalized whore stigma, which is a leading obstacle to the realization of sex workers’ rights.<sup>88</sup>

The movement’s framing of sex workers’ rights as human rights is a direct rejection of the dehumanizing mandates of whorephobia and whore stigma. When sex workers’ rights advocates fight against the abuses sex workers experience at the hands of societies that dehumanize them, they are insisting that the “whore” is, in fact, a rights-bearing human being. The radical concept at the center of the modern human rights movement birthed in 1948 with the Universal Declaration of Human Rights was the idea that human rights are universal—regardless of one’s social station.<sup>89</sup> When sex workers embrace a human rights frame, they are necessarily advocating for universality. Whorephobia mandates that the “whore” is deserving only of stigma, disregard, disdain, and not rights. A human rights frame mandates that sex workers are deserving only of universally applied rights—like all people everywhere—by simple virtue of their humanity.

### B. *Rejecting Rescue*

Sex workers have long been the focus of a politics of rescue that attempts to negate the agency of people in the sex trades. The movement’s human rights framing rejects the rescue narrative that insists that sex workers are passive victims without agency who need to be saved. It affirms the idea that sex workers—even those in limited and challenging circumstances—are the expert spokespersons on the complexities of their own

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<sup>85</sup> *Id.* at 12.

<sup>86</sup> See GRANT, *supra* note 10, at 127.

<sup>87</sup> Laura Agustín, *The sex worker stigma: How the law perpetuates our hatred (and fear) of prostitutes*, SALON, (Aug. 18, 2013) [https://www.salon.com/2013/08/17/the\\_whore\\_stigma\\_how\\_the\\_law\\_perpetuates\\_our\\_hatred\\_and\\_fear\\_of\\_prostitutes\\_partner/](https://www.salon.com/2013/08/17/the_whore_stigma_how_the_law_perpetuates_our_hatred_and_fear_of_prostitutes_partner/) [<https://perma.cc/7DT6-KUQV>].

<sup>88</sup> PHETERSON, *supra* note 8, at 30.

<sup>89</sup> See G.A. Res. 217A (III), Universal Declaration of Human Rights, at 71 (Dec. 10, 1948) (stating “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”)

lives. "Rights, not rescue" is a central rallying cry of the global sex workers' rights movement.<sup>90</sup>

Rescue politics regarding sex work has a long history. In the late nineteenth century and early twentieth century, a notorious sex panic in the United States and United Kingdom over so-called "white slavery"—based on racist and unfounded fears that society needed to save white women from being forced into prostitution by foreign-born men and men of color—led to anti-prostitution legislation such as the Mann Act in the United States that was in part used as a legal basis to prosecute consensual interracial sexual relationships.<sup>91</sup> Decades later, radical feminists of the 1960s and 1970s believed sex work was the epitome of patriarchal control of female sexuality and claimed that sex workers needed to understand their "oppression" and be rescued from their "false consciousness" in order to join the feminist revolution.<sup>92</sup> In 1989, Gail Pheterson noted that the early sex workers' rights movement was rightly challenging a long history of societal attempts at the moral rescue of sex workers: "Be it the doctors and politicians who fought for state regulation of prostitution or the feminists and religious crusaders who fought for the abolition of prostitution, activists have historically worked to protect, supervise, reform and/or condemn those who sell sex. Never have prostitutes been legitimized as spokespersons or self-determining agents."<sup>93</sup> Despite the devastating worldwide HIV/AIDS crisis taking hold in the 1980s and 1990s, leading anti-prostitution scholar Kathleen Barry argued in 1995 that HIV prevention efforts in sex work communities should not include the distribution of condoms to sex workers. "AIDS prevention," she maintained, "should be oriented toward getting women out of prostitution."<sup>94</sup> Sex worker activist Priscilla Alexander responded forcefully: "Barry's recommendation that we cease promoting condoms and instead rescue women from prostitution is . . . genocidal for the women who continue to work as prostitutes."<sup>95</sup>

Contemporary anti-prostitution efforts also embrace the politics of rescue. One common form of rescue is the proliferation of "rehabilitation" programs targeting sex workers. These programs attempt to "save" sex workers by training them in alternative livelihood programs focused on "respecta-

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<sup>90</sup> Chi Mgbako, *Why the Women's Rights Movement Must Listen to Sex Workers*, HUFFPOST (Aug. 1, 2012), [https://www.huffpost.com/entry/sex-workers\\_b\\_1561428](https://www.huffpost.com/entry/sex-workers_b_1561428) [<https://perma.cc/RQ7V-36BS>].

<sup>91</sup> See JUNO MAC & MOLLY SMITH, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS' RIGHTS* 74 (2018); see also ELIZABETH BERNSTEIN, *BROKERED SUBJECTS: SEX, TRAFFICKING, AND THE POLITICS OF FREEDOM* 9, 191 n.26 (2019).

<sup>92</sup> CHATEAUVERT, *supra* note 5, at 12–13.

<sup>93</sup> PHETERSON, *supra* note 8, at 3–4.

<sup>94</sup> Priscilla Alexander, *Feminism, Sex Workers, and Human Rights, in WHORES AND OTHER FEMINISTS* 83, 90 (Jill Nagle ed., 2010) (citing KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* 248 (1979)).

<sup>95</sup> *Id.* at 90.

ble” gendered work.<sup>96</sup> Sex workers in these programs are forced to quit sex work, even though the alternative activities in which they are trained are often not economically viable and further impoverish them in the process. There is no evidence that rehabilitation programs aimed at “reforming” people in the sex work industry economically empower sex workers, reduce violence against them, or decrease their vulnerability to HIV/AIDS. Instead, rehabilitation programs only further stigma against sex workers and divert resources from efforts that could improve their working conditions.<sup>97</sup>

Perhaps no contemporary rescue narrative related to sex work has been as powerful—or as harmful—as the discourse surrounding the “traffic in women.” In 2007, cultural critic Laura Agustín first coined the term “rescue industry” to describe the grouping of social actors posing as the benevolent saviors of often migrating women whom they claim are the victims of sex trafficking.<sup>98</sup> In a 2018 ethnography of global anti-trafficking discourse, sociologist Elizabeth Bernstein demonstrates how the contemporary rescue industry is comprised of government institutions, secular/carceral feminists, evangelical Christians, and other private and nonprofit organizations who have committed themselves to ending so-called sex trafficking.<sup>99</sup> The efforts of this modern anti-trafficking rescue industry have led to abuses against sex workers, including in the form of brothel raids and administrative detention of sex workers under the guise of rescue and rehabilitation.<sup>100</sup>

The sex workers’ rights movement’s embrace of a human rights frame is a repudiation of the politics of “rescue” and “rehabilitation” that deny sex workers agency. When sex workers declare “rights, not rescue,” when they organize for change in hundreds of groups throughout the world, they are asserting themselves as agents capable of speaking out about the material conditions of their work and their lives. Human rights activism must be based on the notion that in order to fully and adequately address the human rights abuses people face, we must center the voices of directly affected communities who are best equipped to both identify and diagnose the sources of their marginalization and fashion viable solutions.<sup>101</sup> To center these voices, a human rights-based approach demands that we believe in the agency of marginalized communities, their ability to make choices for them-

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<sup>96</sup> Governments fund these programs through national gender budgets. The programs often focus on skills-training classes on sewing, jewelry making, gardening, cooking, embroidery, and candle making, and sometimes include religious doctrine. See OPEN SOCIETY INSTITUTE, RIGHTS NOT RESCUE: A REPORT ON FEMALE, MALE, AND TRANS SEX WORKERS’ HUMAN RIGHTS IN BOTSWANA, NAMIBIA, AND SOUTH AFRICA 69–70 (2009). See also MGBAKO, *supra* note 7, at 163.

<sup>97</sup> MGBAKO, *supra* note 7, at 163–67.

<sup>98</sup> See LAURA MARÍA AGUSTÍN, SEX AT THE MARGINS: MIGRATION, LABOUR MARKETS, AND THE RESCUE INDUSTRY 4–5 (2007).

<sup>99</sup> See BERNSTEIN, *supra* note 91, at 6–13, 42–48.

<sup>100</sup> See, e.g., *id.* at 81–83. I discuss the harms associated with the rescue industry’s sex trafficking discourse and activities in further detail in Part III.

<sup>101</sup> See MGBAKO, *supra* note 7, at 163–65; see also CHATEAUVERT, *supra* note 5, at 17.

selves even under the harsh weight of social and economic forces that may limit their opportunities.<sup>102</sup> As I have argued elsewhere: “In a world of severe and rising economic inequality under global capitalism, very few workers truly exercise unfettered choice in the modern labor market. But sex workers can and do exhibit human agency—they make rational decisions even amid the limited choices of the harsh economic order.”<sup>103</sup> The politics of rescue seeks to convince us that marginalized people like sex workers are incapable of understanding or articulating the forces that oppress them, and thus benevolent saviors must speak on their behalf. This reasoning is false in the face of a decades-old, organized, culturally diverse, and globalized sex worker-led movement for human rights.

### C. *Rejecting Carceral Feminism*

The term “carceral feminism” was first coined in 2007 by Elizabeth Bernstein as the critique of a feminist approach to contemporary social issues that relies on the carceral state—police, prisons, and prosecutions—as the primary method for realizing feminist goals.<sup>104</sup> Anti-prostitution activists practice carceral feminism: they seek to solve the “problem” of sex work by calling for entrenched police power in the form of, for example, the continued criminalization of sex workers’ clients (a position that sex workers have argued puts them in precarious situations).<sup>105</sup> The sex workers’ rights movement rejects carceral feminism and maintains that criminalization is the *cause* of human rights abuses against sex workers.<sup>106</sup> Thus, the carceral state will not be the pathway to sex workers’ liberation.

Scholars have also criticized gender-based human rights movements that rely largely on a carceral approach to human rights.<sup>107</sup> In this regard, the sex workers’ rights movement notably stands apart from other gender-based human rights movements because of the anti-carceral framing of its human rights claims. The sex workers’ rights movement was born out of demands for freedom from carceral intervention: the 1960s early queer liberation

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<sup>102</sup> See AGUSTÍN, *SEX AT THE MARGINS*, *supra* note 98, at 183 (stating “In English, agency means the ability to make decisions and act, to determine what happens to some extent, even in highly structured and restrictive situations . . . The conflicts in ‘prostitution’ debates hinge crucially on whether poor people, migrants, women can be said to have any control over their lives, given the unjust structures of patriarchy, globalization and capitalism they live in. Speakers . . . who advocate labor and human rights believe that even the least advantaged individuals have some power over their destiny; all poor people do not migrate; all poor women do not turn to selling sex. This vision sees individuals as creative.”).

<sup>103</sup> See MGBAKO, *supra* note 7, at 30.

<sup>104</sup> See Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 *DIFFERENCES: A JOURNAL OF FEMINIST CULTURAL STUDIES* 128, 128–51 (2007).

<sup>105</sup> See MAC & SMITH *supra* note 91, at 14, 140–75. In Part III, I will go into further detail on the harms sex workers experience when their clients are criminalized.

<sup>106</sup> See *id.* at 16–17; see also MGBAKO, *supra* note 7, at 4–5, 24.

<sup>107</sup> See BERNSTEIN, *supra* note 91, at 22–23.

movement that featured sex workers at the Compton's Cafeteria and Stonewall uprisings, the 1973 founding of COYOTE, and the 1975 French sex workers' strike that sparked the movement in Europe were all ignited by resistance to police violence and oppression.<sup>108</sup> Sex worker activists and authors Juno Mac and Molly Smith, citing black feminists who have long turned a critical eye to feminism that bolsters and entrenches carceral power, argue that "[f]or sex workers and other marginalised and criminalised groups, the police are not a symbol of protection but a *real* manifestation of punishment and control."<sup>109</sup>

The sex workers' rights movement ties its human rights mandate to an anti-carceral approach by rejecting all forms of sex work criminalization and related legal repressions as a non-negotiable precondition for the realization of sex workers' human rights.<sup>110</sup> The movement opposes anti-prostitution campaigns that call on police targeting of clients and other third parties who facilitate sex work because, regardless of who nominal targets of police power are, sex workers continue to bear the brunt of carceral abuse.<sup>111</sup> The movement instead calls for the realization of an anti-carceral and rights-based vision: the full decriminalization of sex work, including "opposition to all forms of criminalization and other legal oppression of sex work (including sex workers, clients, third parties, families, partners, and friends)."<sup>112</sup>

### III. INTERNATIONAL HUMAN RIGHTS BODIES INSTITUTIONALIZE SEX WORKERS' RIGHTS AS HUMAN RIGHTS

Parts I and II traced the history and meaning of the sex workers' rights movement's framing of sex workers' rights as human rights. Part III will explore how various influential international human rights bodies have institutionalized this framing, often in response to appeals from sex workers' rights organizations that document widespread abuses against sex workers. An analysis of these human rights bodies' official documents reveals the emergence of a consensus over the past several decades that international human rights legal protections apply to sex workers. The international bod-

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<sup>108</sup> See *supra* notes 14, 15, 17, 22, 26.

<sup>109</sup> See MAC & SMITH, *supra* note 91, at 16.

<sup>110</sup> See IWRAW-AP, *Framework*, *supra* note 47, at 11.

<sup>111</sup> See MAC & SMITH, *supra* note 91, at 14, 140–75.

<sup>112</sup> *Who we are*, GLOB. NETWORK OF SEX WORK PROJECTS, <https://www.nswp.org/who-we-are> [<https://perma.cc/7AF5-8ESK>] (last visited July 17, 2019). NSWP defines "third parties" in this context as "managers, brothel keepers, receptionists, maids, drivers, landlords, hotels who rent rooms to sex workers and anyone else who is seen as facilitating sex work." *Id.* In Part III, I will go into greater detail regarding the human rights distinction between partial criminalization, advocated by anti-prostitution activists, and full decriminalization, advocated by sex workers' rights advocates.

ies highlighted in this section include UN treaty bodies,<sup>113</sup> Special Procedures of the UN Human Rights Council,<sup>114</sup> the Universal Periodic Review of the UN Human Rights Council (“UPR”),<sup>115</sup> regional human rights bodies,<sup>116</sup> UNAIDS and WHO, and leading human rights nonprofit organizations Amnesty and HRW. All of these international bodies have found that human rights violations against sex workers occur, with a particular emphasis on the issues of violence against sex workers, violations of sex workers’ right to health, abusive “anti-trafficking” laws and policies, and the human rights implications of the legal status of sex work. These findings would not have been possible without advocacy by sex workers’ rights organizations in international forums, which has included submissions of supplemental information to UN treaty bodies, regional forums, and the Universal Periodic Review during formal reviews of countries’ human rights records; outreach to special rapporteurs; and consultative work with UN agencies and human rights nonprofit organizations. While celebrating the hard-won acknowledgment of sex workers’ rights in mainstream global forums, Part III will also encourage international human rights bodies to more directly engage with pressing issues affecting sex workers that have received less attention on the

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<sup>113</sup> UN treaty bodies monitor government implementation of international human rights treaties. *Human rights treaty bodies*, U.N. OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> [<https://perma.cc/T7RP-LMJH>] (last visited July 31, 2019). The UN treaty bodies referenced in the Article are the Committee against Torture; Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Discrimination against Women; and the Human Rights Committee.

<sup>114</sup> Special Procedures of the UN Human Rights Council are independent human rights experts that monitor, report, and provide guidance on thematic and country-based human rights issues. *Special Procedures of the Human Rights Council*, U.N. OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> [<https://perma.cc/9E52-ZMCM>] (last visited July 31, 2019). The Special Procedures of the UN Human Rights Council referenced in the Article are the Special Rapporteur on Extreme Poverty, Special Rapporteur on the Right to Health, Special Rapporteur on Torture, and the Special Rapporteur on Violence against Women.

<sup>115</sup> The Universal Periodic Review of the UN Human Rights Council is an official review and assessment of the human rights records of all UN Member States. *Basic facts about the UPR*, U.N. OFFICE OF THE HIGH COMM’R OF HUMAN RIGHTS, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> [<https://perma.cc/48GV-QKVN>] (last visited July 31, 2019).

<sup>116</sup> The African Commission on Human and Peoples’ Rights promotes and protects human rights on the African continent and monitors government implementation of the African Charter on Human and Peoples’ Rights. *About ACHPR*, AFRICAN COMM’N ON HUMAN AND PEOPLES’ RIGHTS, <http://www.achpr.org/about/> [<https://perma.cc/TTL6-7Q2X>] (last visited July 31, 2019). The Inter-American Commission of Human Rights monitors human rights conditions in Member States of the Organization of American States. *What is the IACHR?* ORG. OF AM. STATES, <https://www.oas.org/en/iachr/mandate/what.asp> [<https://perma.cc/FWH5-7UXR>] (last visited July 31, 2019). The European Court of Human Rights is an international court that issues binding judgments based on individual or State applications alleging violations of the European Convention on Human Rights. EUROPEAN COURT OF HUMAN RIGHTS, THE COURT IN BRIEF 2 (n.d.), [https://www.echr.coe.int/Documents/Court\\_in\\_brief\\_ENG.pdf](https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf) [<https://perma.cc/746J-YXSS>].

global stage, including the partial criminalization of sex work and the rightful labor rights claims of sex workers.

### A. *Violence against Sex Workers*

International human rights bodies characterize various forms of violence against sex workers as human rights violations and call on governments to prevent and address these abuses. They have paid particular attention to violence sex workers experience at the hands of police officers and medical practitioners, sex workers' lack of access to justice, and the forced administrative detention of sex workers. Human rights bodies have also highlighted, although to a lesser extent, the intersectional violence suffered by transgender sex workers and migrant sex workers.

Human rights bodies have expressed concern over evidence of rampant police abuse of sex workers. For example, in 2010, the United States underwent a UPR by the UN Human Rights Council, during which it received an official recommendation to address violence against sex workers.<sup>117</sup> This recommendation was prompted by a report submitted to the UPR by sex workers' rights organizations in the United States, including Best Practices Policy Project and Desiree Alliance, which documented a disturbing pattern of police abuse of sex workers, including physical and sexual assaults.<sup>118</sup> "U.S. sex workers' greatest fear," the report noted, "is abuse by the police and other state agents."<sup>119</sup> In 2016 and 2017, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee"), which monitors state adherence to the Convention on the Elimination of All Forms of Discrimination against Women, called on the governments of Kyrgyzstan and Nigeria to protect sex workers from widespread police abuse.<sup>120</sup> The Nigeria Sex Workers Association had submitted a report to the CEDAW Committee during Nigeria's review that included gruesome photographic evidence of this abuse.<sup>121</sup> In 2016, the Human Rights Committee, which monitors government implementation of the International Covenant on Civil and Political Rights, reviewed Ghana's human rights record and likewise expressed con-

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<sup>117</sup> U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review United States of America*, at ¶ 92.86. U.N. Doc. A/HRC/16/11 (Jan. 4, 2011).

<sup>118</sup> See BEST PRACTICES POLICY PROJECT, DESIREE ALLIANCE, & SEXUAL RIGHTS INITIATIVE, *REPORT ON THE UNITED STATES OF AMERICA, 9TH SESSION UNIVERSAL PERIODIC REVIEW – NOVEMBER 2010* 3 (2010).

<sup>119</sup> *Id.*

<sup>120</sup> See CEDAW, *Concluding observations on the fourth periodic report of Kyrgyzstan*, at 6, U.N. Doc. CEDAW/C/KGZ/CO/4 (Mar 11, 2015); CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Nigeria*, at 9, U.N. Doc. CEDAW/C/NGA/CO/7-8 (Feb. 1, 2017).

<sup>121</sup> NIGERIA SEX WORKERS ASSOCIATION, *SHADOW REPORT ON THE SITUATION OF SEX WORKERS IN NIGERIA* (2017).

cern about pervasive police abuse of sex workers.<sup>122</sup> In 2017, the Kenya Sex Workers Alliance (KESWA) submitted a report to the CEDAW Committee during Kenya's review decrying that "[s]ex workers still cannot report incidences of rape or violence against them for fear of arrest by the law enforcers. When we report violence to the authorities, we are faced with prejudice and further violated by the same law enforcers who should protect us."<sup>123</sup> In response, the CEDAW Committee called on the Kenyan government to ensure sex workers have access to justice when they are the victims of violent crime—including when the perpetrators are law enforcement officers.<sup>124</sup> The Committee against Torture ("CAT Committee"), which monitors government implementation of the Convention against Torture, highlighted reports of police abuse of sex workers in its 2017 review of Namibia and called on the State Party to "take all effective legislative, administrative, judicial and other measures to prevent persons selling sexual services from being subjected to torture and ill-treatment."<sup>125</sup> This finding and call to action was sparked by a report submitted to the CAT Committee by Namibian sex workers' rights organizations and allies, such as Voices of Hope Trust and Rights not Rescue Trust.<sup>126</sup>

The CAT Committee and the Special Rapporteur on Torture have affirmed that abuse of sex workers by health officials can rise to the level of degrading treatment in contravention of the Convention against Torture. For example, in 2010, the CAT Committee characterized the "humiliating circumstances" of Austria's forced medical testing of sex workers as degrading treatment.<sup>127</sup> The Sex-Worker Forum of Vienna, Austria, submitted a report to the CAT Committee documenting forced STI blood tests and mandatory vaginal exams of sex workers that took place under the gaze of male police officers.<sup>128</sup> (The CEDAW Committee has argued that forced medical check-ups of sex workers are also a violation of their rights to privacy and move-

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<sup>122</sup> Human Rights Committee, *Concluding observations on the initial reports of Ghana*, at 13, U.N. Doc. CCPR/C/GHA/CO/1 (Aug. 9, 2016).

<sup>123</sup> KENYA SEX WORKER ALLIANCE & BAR HOSTESS EMPOWERMENT AND SUPPORT PROGRAM, "AREN'T WE ALSO WOMEN?" KENYA SEX WORKERS' SHADOW REPORT SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 68TH SESSION 7 (2017).

<sup>124</sup> CEDAW, *Concluding observations on the eighth periodic report of Kenya*, at 8, U.N. Doc. CEDAW/C/KEN/CO/8 (Nov. 22, 2017).

<sup>125</sup> U.N. COMM. AGAINST TORTURE, *Concluding observations on the second periodic report of Namibia*, at 5, U.N. Doc. CAT/C/NAM/CO/2 (Feb. 1, 2017).

<sup>126</sup> WALTER LEITNER INTERNATIONAL HUMAN RIGHTS CLINIC, VOICES OF HOPE TRUST, RIGHTS NOT RESCUE TRUST, *TORTURE OF SEX WORKERS IN NAMIBIA* (2016). The international human rights clinic directed by the Article's author was co-signatory of this submission.

<sup>127</sup> U.N. COMM. AGAINST TORTURE, *Concluding Observations on the fourth and fifth periodic reports of Austria*, at 8, U.N. Doc. CAT/C/AUT/CO/4-5 (May 20, 2010).

<sup>128</sup> SEX-WORKER FORUM OF VIENNA, AUSTRIA, *SUBMISSION FROM SEX-WORKER FORUM OF VIENNA, AUSTRIA, TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE* 5–6 (2010).



ment.<sup>129</sup>) Moreover, the CAT Committee has decried sex workers' lack of access to justice when they are the victims of medical and other violence.<sup>130</sup> The Special Rapporteur on Torture later echoed CAT's findings on medical workers' degrading treatment of sex workers.<sup>131</sup>

In addition to highlighting abuses by health workers, the CAT Committee has also condemned the administrative detention and forced "rehabilitation" of sex workers. In its 2015 review of China, the CAT Committee raised concerns over abuses related to the secret administrative detention without due process of people suspected of engaging in sex work, a prima facie breach of the Convention against Torture.<sup>132</sup> Similarly, in 2017, the CAT Committee called on the government of Rwanda to abolish its system of forced administrative detention of people suspected of sex work for the purpose of "rehabilitation," arguing that it increases detainees' vulnerability to abuse.<sup>133</sup> In a country condition report on India, the Special Rapporteur on Violence against Women decried the forced detention and rehabilitation of sex workers, as well as violence sex workers endure at the hands of "clients, family members, the community and State authorities."<sup>134</sup>

Human rights bodies have also highlighted the violence faced by transgender sex workers and migrant sex workers. The Inter-American Commission on Human Rights ("Inter-American Commission") has shown great sensitivity to the plight of transgender sex workers and in 2015 issued a comprehensive report that documented the severe violence transgender sex workers experience in the form of police abuse, arbitrary detention, community violence, and murder.<sup>135</sup> From 2012 to 2017, the Inter-American Commission also issued a string of country condition reports that included evidence of rights violations against transgender sex workers in Jamaica,

<sup>129</sup> CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women Tunisia*, at 8, U.N. Doc. CEDAW/C/TUN/CO/6 (Nov. 5, 2010).

<sup>130</sup> See, e.g., U.N. COMM. AGAINST TORTURE, *Concluding observations on the second periodic report of Namibia*, *supra* note 125 at 8–9.

<sup>131</sup> HUMAN RIGHTS COUNCIL, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez*, at 18, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013). In 2016, the Special Rapporteur on Torture issued another report further condemning abuses against sex workers in medical settings. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Mendez*, at 13, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016).

<sup>132</sup> U.N. COMM. AGAINST TORTURE, *Concluding observations on the fifth periodic report of China*, at 12, U.N. Doc. CAT/C/CHN/CO/5 (Feb. 3, 2016).

<sup>133</sup> U.N. COMM. AGAINST TORTURE, *Concluding observations on the second periodic report of Rwanda*, at 7–8, U.N. Doc. CAT/C/RWA/CO/2 (Dec. 21, 2017).

<sup>134</sup> Rashida Mango, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to India*, at ¶ 20, U.N. Doc., A/HRC/26/38/Add. 1 (Apr. 1, 2014).

<sup>135</sup> INTER-AM. COMM'N ON HUMAN RIGHTS, *VIOLENCE AGAINST LGBTI PERSONS* 15, 65, 68, 86, 91, 96, 159, 160 (2015).

Colombia, Honduras, Mexico, and Guatemala.<sup>136</sup> (In 2017, the Inter-American Commission held its first thematic hearing on the rights of all female sex workers in the Americas at the request of sex workers' rights organizations in Latin America and the Caribbean, including RedTraSex.<sup>137</sup>) In 2011, the Special Rapporteur on Violence against Women issued a report to the UN General Assembly that referenced the increased vulnerability to sexual abuse experienced by undocumented female migrant sex workers.<sup>138</sup> In 2012, the European Court of Human Rights ruled in the case of *B.S. v. Spain* that Spain had violated the European Convention on Human Rights' prohibitions on torture and discrimination when it failed to protect an African migrant sex worker from repeated physical abuse and harassment.<sup>139</sup>

### B. Abuses of Sex Workers' Right to Health

Human rights bodies have also focused welcome attention on violations of sex workers' right to health. In 1999, the CEDAW Committee issued General Recommendation No. 24, which states that "special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups," including "women in prostitution."<sup>140</sup> The Committee on Economic, Social and Cultural Rights ("CESCR Committee") monitors government implementation of the International Covenant on Economic, Social and Cultural Rights, and in its General Comment No. 22, calls on States Parties to "take measures to fully protect persons working in the sex industry," including by ensuring "access to the full range of sexual and reproductive healthcare services."<sup>141</sup>

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<sup>136</sup> INTER-AM. COMM'N ON HUMAN RIGHTS, REPORT ON THE SITUATION OF HUMAN RIGHTS IN JAMAICA 102, 103 (2012); INTER-AM. COMM'N ON HUMAN RIGHTS, TRUTH, JUSTICE AND REPARATION: FOURTH REPORT ON HUMAN RIGHTS SITUATION IN COLOMBIA 409 (2013); INTER-AM. COMM'N ON HUMAN RIGHTS, SITUATION OF HUMAN RIGHTS IN HONDURAS 33 (2015); INTER-AM. COMM'N ON HUMAN RIGHTS, THE HUMAN RIGHTS SITUATION IN MEXICO 123 (2015); INTER-AM. COMM'N ON HUMAN RIGHTS, SITUATION OF HUMAN RIGHTS IN GUATEMALA 191 (2017).

<sup>137</sup> IACHR Holds First Hearing on the Rights of Sex Workers in the Americas, ORG. OF AM. STATES (Mar. 23, 2017), [http://www.oas.org/en/iachr/media\\_center/preleases/2017/036.asp](http://www.oas.org/en/iachr/media_center/preleases/2017/036.asp) [<https://perma.cc/7YFP-MD5T>].

<sup>138</sup> Rashida Manjoo, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, at ¶ 46, U.N. Doc. A/66/215 (Aug. 1, 2011).

<sup>139</sup> European Ct. of Hum. Rights, *B.S. v. Spain*, Oct 24, 2012, App. No. 47159/08, Eur. Ct. H.R. at 8–10 (2012).

<sup>140</sup> CEDAW, *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, at ¶ 5, U.N. Doc. A/54/38/Rev.1 (Aug. 20, 1999).

<sup>141</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health*, at ¶ 32, U.N. Doc. E/C.12/GC/22 (May 2, 2016). However, it must also be noted that the CESCR has been somewhat less responsive to sex workers' concerns in its country review processes than the CAT or CEDAW Committees. For example, the Sex-Worker Forum of Vienna, Austria, submitted a report for Austria's 2013 review by the CESCR, emphasizing violations of sex workers' rights to work and to health. See SEX-WORKER FORUM OF VIENNA, AUSTRIA, *Austria: Discriminations Against Sex Workers in the Rights to Work and to Health, Information from Sex-Worker Forum of Vienna, Austria, to the United Nations Committee on Eco-*

Human rights bodies document how sex workers' rights to health are routinely violated and place special emphasis on how these abuses increase sex workers' vulnerability to HIV/AIDS.<sup>142</sup> The Special Rapporteur on the Right to Health, for example, submitted a 2013 report to the UN General Assembly that argued that migrant sex workers face forced HIV testing, confiscation of condoms as evidence of prostitution, and general barriers to health services—such as the threat of arrest, detention, and deportation—that ensure their poor health outcomes.<sup>143</sup> In 2016, the African Commission on Human and Peoples' Rights (“African Commission”) called on the government of Namibia to protect sex workers' right to health.<sup>144</sup> This recommendation came in response to a report submitted to the African Commission by a consortium of Namibian nonprofit organizations representing sex worker, queer, and HIV-positive communities.<sup>145</sup> The following year, the African Commission released a 2017 report on HIV and human rights that highlighted sex workers' lack of access to adequate healthcare in Africa.<sup>146</sup> In 2018, the African Commission sent a delegation to Botswana, which reported that sex workers there lack access to preventative HIV mea-

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*conomic, Social and Cultural Rights for the examination of the fifth [sic] State Party report of Austria at the 51th Session in November 2013* (2013). The CESCR, however, did not address the issues raised in the report in its concluding observations. See Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth periodic report of Austria*, E/C.12/AUT/CO/4 (Dec. 13, 2013). Similarly, Human Rights Watch submitted a report that addressed sex workers' rights in advance of the CESCR's 2015 review of Greece. See Human Rights Watch, *Human Rights Watch Submission to the United Nations Committee on Economic, Social and Cultural Rights in advance of its review on Greece* (2015). The CESCR Committee did not address the sex workers' rights issues raised in the report in its concluding observations. See Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of Greece*, E/C.12/GRC/CO/2 (Oct. 27, 2015).

<sup>142</sup> Although human rights bodies should be commended for not marginalizing sex workers in the global HIV response, they also should not shy away from exploring a broader acknowledgment of sex workers' health rights outside of HIV/AIDS that includes occupational, reproductive, and mental health. IWRAP-AP, *Framework*, *supra* note 47, at 49.

<sup>143</sup> Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, at ¶¶ 58–59, U.N. Doc. A/HRC/23/41 (May 15, 2013).

<sup>144</sup> *58th Ordinary Session 6-20 April 2016 in Banjul, Islamic Republic of The Gambia, Concluding Observations and Recommendations on Sixth Periodic Reports of the Republic of Namibia on the Implementation of the African Charter on Human and Peoples' Rights (2011–2013)* (2016), [http://www.achpr.org/files/sessions/20th-eo/conc-obs/6th-2011-2014/co\\_namibia\\_6th\\_sr\\_eng.pdf](http://www.achpr.org/files/sessions/20th-eo/conc-obs/6th-2011-2014/co_namibia_6th_sr_eng.pdf) [<https://bit.ly/2Pn75w4>].

<sup>145</sup> OUT-RIGHT NAMIBIA, RIGHTS NOT RESCUE TRUST et al., *REPORT ON HUMAN RIGHTS ISSUES FOR LGBTI PERSONS AND SEX WORKERS IN NAMIBIA UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS IN RESPONSE TO THE 6TH PERIODIC REPORT OF THE GOVERNMENT OF NAMIBIA PRESENTED AT THE 58TH ORDINARY SESSION OF THE COMMISSION* (2016).

<sup>146</sup> AFRICAN COMM'N ON HUMAN AND PEOPLE'S RIGHTS & UNAIDS, *HIV, THE LAW AND HUMAN RIGHTS IN THE AFRICAN HUMAN RIGHTS SYSTEM: KEY CHALLENGES AND OPPORTUNITIES FOR RIGHTS-BASED RESPONSES* 24–25 (2017).

tures, including condoms and antiretrovirals.<sup>147</sup> WHO and UNAIDS, the world's leading inter-governmental organizations focusing on global health, have been at the forefront of championing the idea that confronting human rights abuses against sex workers is a critical strategy in the long-term fight against the global HIV/AIDS epidemic.<sup>148</sup> It will be impossible to achieve the goal of zero HIV infections, the organizations argue, if key populations like sex workers—who are vulnerable to HIV because of stigma and the abuses they face—are not centered in the global HIV response.<sup>149</sup> In developing their policy papers on issues related to sex work and HIV/AIDS, UNAIDS and WHO have routinely cited the work of influential sex workers' rights groups like NSWP.<sup>150</sup> NSWP has also worked in a consultative capacity with these organizations.<sup>151</sup>

In addition to the right to health, human rights bodies have explored (although to a much lesser extent) other economic, social, and cultural rights relevant to sex workers' lives. In its 2013 review of Hungary, for example, the CEDAW Committee voiced concern over sex workers' labor environments, recommending that the State “[a]dopt measures aimed at preventing discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed at national and local levels.”<sup>152</sup> In its 2018 review of El Salvador, the Human Rights Committee lists sex workers as among a group of marginalized communities that face discrimination in access to education, employment, health, and housing.<sup>153</sup>

### C. Abuses Related to Anti-Trafficking Campaigns

International human rights bodies have further condemned abusive practices related to misguided campaigns to “end sex trafficking,” which often fuel human rights abuses against sex workers. Harmful anti-trafficking

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<sup>147</sup> *Press Statement at the Conclusion of the Promotion Mission of the African Commission on Human and Peoples' Rights to the Republic of Botswana* (2018), <http://www.achpr.org/press/2018/07/d410/> [<https://bit.ly/2Wg0iFP>].

<sup>148</sup> See WORLD HEALTH ORG., *Addressing Violence Against Sex Workers* (2013); UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work* 19 (2012) [hereinafter *UNAIDS Guidance Note*].

<sup>149</sup> UNAIDS, *UNAIDS 2016-21 strategy on the fast track to end AIDS* 3, 8, 10, 29 (2015); UNAIDS & WHO, *Guidelines on surveillance among populations most at risk for HIV* 10–11 (2011).

<sup>150</sup> *UNAIDS Guidance Note*, *supra* note 148, at 4 n.18; WORLD HEALTH ORG., IMPLEMENTING COMPREHENSIVE HIV/STI PROGRAMMES, *supra* note 1, at 85 n.11; WORLD HEALTH ORG., HIV AND YOUNG PEOPLE WHO SELL SEX 15 n.161 (2015); WORLD HEALTH ORG., UNITED NATIONS POPULATION FUND, UNAIDS & GLOB. NETWORK OF SEX WORK PROJECTS, PREVENTION AND TREATMENT OF HIV AND OTHER SEXUALLY TRANSMITTED INFECTIONS FOR SEX WORKERS IN LOW AND MIDDLE INCOME COUNTRIES 14, 23, 25, 27, 33 (2012) [hereinafter WHO ET AL., PREVENTION AND TREATMENT].

<sup>151</sup> WHO ET AL., PREVENTION AND TREATMENT, *supra* note 150, at 14.

<sup>152</sup> See CEDAW, *Concluding observations on the combined seventh and eighth period reports of Hungary*, at 6, U.N. Doc. CEDAW/C/HUN/CO/7-8 (Mar. 1, 2013).

<sup>153</sup> Human Rights Committee, *Concluding observations on the seventh periodic report of El Salvador*, at ¶ 9, U.N. Doc. CCPR/C/SLV/CO/7 (May 9, 2018).

activities like police “raid” and “rescue” operations and tightened immigration borders are often championed by the contemporary “rescue industry”: a global coalition of carceral feminists, right-wing Evangelical Christians, nonprofit organizations, and private enterprises that purposefully conflate all sex work with the crime of trafficking and seek to “end sex trafficking” through carceral and economic penalties.<sup>154</sup> Sociologist Elizabeth Bernstein, a leading scholar on discourses related to the “traffic in women,” has astutely argued that “contemporary anti-trafficking campaigns have been far more successful at criminalizing marginalized populations, enforcing border control, and measuring other countries’ compliance with human rights standards based on the curtailment of prostitution than they have been at issuing any concrete benefits to victims.”<sup>155</sup> Trafficking expert and legal scholar Janie Chuang has criticized the rescue industry’s conflation of sex work and human trafficking as thwarting the goals and efforts of legitimate anti-trafficking movements to end forced labor and human trafficking in various sectors. Chuang argues that anti-prostitution activists, to whom she refers as “neo-abolitionists,” have ideologically hijacked human trafficking discourse to realize their goal of abolishing sex work and transformed “the anti-trafficking movement into an anti-prostitution campaign” to the detriment of the much-needed development of nuanced law and policy prescriptions to protect the human rights of survivors of trafficking.<sup>156</sup>

The contemporary rescue industry, and the harmful discourse and policies they advance, pose a threat to the gains of the sex workers’ rights movement. This is why increased scrutiny by human rights bodies of abusive anti-trafficking law and policies has been a welcome development. In 2000, for example, the Special Rapporteur on Violence against Women stated that “[a]ny remedy or strategy proposed to combat trafficking and provide assistance to victims of trafficking must be assessed in terms of whether and how it promotes and provides protection for the human rights of women.”<sup>157</sup> The Special Rapporteur on Violence against Women also criticized anti-trafficking immigration policies that further restrict legal border crossings and thus make migrating women more vulnerable to traffickers,<sup>158</sup> and highlighted women’s rights advocates’ condemnation of anti-trafficking policies that involve the coercive and violent “rescue” and “rehabilitation” of sex workers.<sup>159</sup>

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<sup>154</sup> See BERNSTEIN, *supra* note 91, at 6, 9, 81–83. Definitions of “sex trafficking” and “human trafficking” are ambiguous, amorphous, and contentious, and reliable statistics on prevalence are difficult to pin down. *Id.* at 14, 16, 179.

<sup>155</sup> *Id.* at 61.

<sup>156</sup> See generally Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 UNIV. PA. L. REV. 1655 (2010).

<sup>157</sup> Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, at ¶ 80, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000).

<sup>158</sup> See *id.* at ¶ 83.

<sup>159</sup> See *Id.* at ¶ 81.

In 2010, HRW, one of the world's foremost human rights nonprofit organizations, issued a report that documented in great detail abuses associated with anti-trafficking law and policy in Cambodia, including a government campaign that led to clampdowns on sex work entertainment establishments, the closure of brothels, and the widespread removal of sex workers from parks and street corners.<sup>160</sup> The report characterized Cambodia's *Law on Suppression of Human Trafficking and Sexual Exploitation* as enabling police abuse of sex workers in the form of violence, harassment, and bribes.<sup>161</sup> That same year, the Special Rapporteur on the Right to Health echoed HRW's concerns on the situation in Cambodia, arguing that the law was ostensibly supposed to target trafficking but incongruously included provisions that fully criminalize sex work, thus conflating trafficking with sex work. The Special Rapporteur on the Right to Health further noted that the law has led to the arbitrary detention, sexual assault, and extortion of sex workers following brothel raids.<sup>162</sup>

In its 2014 review of India's human rights record, the CEDAW Committee expressed its concern for the "persecution of women in prostitution as a result of measures taken to address trafficking, such as raid and rescue operations."<sup>163</sup> This finding was related to a report that Indian sex workers' rights organizations, including VAMP and the National Network of Sex Workers, submitted to the CEDAW Committee prior to India's review, documenting abuses that arise from the conflation of sex work, trafficking, and migration.<sup>164</sup> "When trafficking is confused with women's voluntary migration," the report argued, "protectionist measures steeped in patriarchal control over women's mobility result in curbing female migration within and outside the borders of the country."<sup>165</sup> In 2016, Amnesty—like HRW, also one of the world's most influential human rights nonprofit organizations—issued a report that documents violations of the rights of sex workers in Buenos Aires due to the application of anti-trafficking laws that criminalize sex work. The report characterized the government's anti-trafficking efforts as leading to the targeting and punishment of sex workers who were adamant that they were not, in fact, victims of human trafficking.<sup>166</sup> The report discusses the harms resulting from anti-trafficking raids at length: "Every indoor sex worker interviewed for this report described being subjected to repeated

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<sup>160</sup> HUMAN RIGHTS WATCH, *Arbitrary Detention and Other Abuses against Sex Workers in Cambodia* 28 (2010).

<sup>161</sup> *Id.*

<sup>162</sup> Anand Grover, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, at ¶ 32, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010).

<sup>163</sup> CEDAW, *Concluding observations on the combined fourth and fifth periodic reports of India*, at 8, U.N. Doc. CEDAW/C/IND/CO/4-5 ¶ 22 (July 24, 2014).

<sup>164</sup> AARTHI PAI, MEENA SESHU, MANISHA GUPTA & VAMP, *STATUS OF SEX WORKERS IN INDIA* 6–7 (2014).

<sup>165</sup> *Id.* at 7.

<sup>166</sup> AMNESTY INT'L, 'WHAT I'M DOING IS NOT A CRIME': THE HUMAN COST OF CRIMINALIZING SEX WORK IN THE CITY OF BUENOS AIRES, ARGENTINA 27–30 (2016).

raids by multiple agencies of law enforcement, which often involve violence, intimidation and theft of personal property. The sex workers reported being frequently arrested, often violently with fire arms, detained for up to 12 hours, and subjected to coercive questioning.”<sup>167</sup>

#### D. *Human Rights and the Legal Status of Sex Work*

##### 1. *International Human Rights Bodies Reject the Criminalization of Sex Work*

Criminalization is a legal approach to sex work in which the sale, purchase, and/or all sex work-related activities such as solicitation, living off the earnings of sex work, and brothel-keeping are illegal.<sup>168</sup> Various international human rights bodies have directly linked the criminalization of sex work to the human rights abuses they have documented against sex workers. As early as 1992, the CEDAW Committee issued General Recommendation No. 19, which states that “[p]rostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them.”<sup>169</sup> It marked one of the first times that a global human rights body recognized the connection between the illegal status of sex work and human rights abuses against sex workers. UN treaty bodies have also highlighted the direct link between criminalization of sex work and rights abuses against sex workers in reviews of States Parties’ human rights records. In 2010, for example, the CEDAW Committee reviewed Fiji’s human rights record and noted “[t]he Committee is concerned that sex work continues to be criminalized and that, as a result, sex workers are often victims of violence and are particularly vulnerable to torture and ill-treatment by the police.”<sup>170</sup> In its 2017 review of Russia’s human rights record, the CESCR Committee stated it was “concerned that sex workers face obstacles in accessing health-care services owing to the criminalization of sex work.”<sup>171</sup> That same year,

<sup>167</sup> *Id.* at 9, 27–30.

<sup>168</sup> See MGBAKO, *supra* note 7, at 147.

<sup>169</sup> CEDAW, *CEDAW General Recommendation No. 19: Violence against women*, at 3, U.N. Doc. A/47/38, at 1 (Feb. 1, 1992) (interpreting article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women, which calls on States Parties to suppress “exploitation of the prostitution of women.”) The term “exploitation of prostitution” was not concretely defined in CEDAW because different States Parties held opposing views regarding the coercive nature of sex work. See IWRAP-AP, *Framework*, *supra* note 47, at 14 (stating “The *travaux préparatoires* suggest that the CEDAW Convention did not intend to suppress ‘prostitution’ as such but rather the ‘exploitation of prostitution.’ Whereas some delegations made proposals to broaden the purview of Article 6 to encompass prostitution generally, these proposals were ultimately dropped.”).

<sup>170</sup> CEDAW, *Concluding Observations on the Committee on the Elimination of Discrimination against Women, Forty-sixth session*, at 6, U.N. Doc. CEDAW/C/FIJ/CO/4 (July 30, 2010).

<sup>171</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of the Russian Federation*, E/C.12/RUS/CO/6, at 9 (Oct. 16, 2017).

the Special Rapporteur on the Right to Health identified criminalization of sex work as the primary cause of violations of sex workers' right to health.<sup>172</sup> WHO, UNAIDS, HRW, and Amnesty have all similarly argued that the criminalization of sex work is a primary driver of human rights abuses against sex workers.<sup>173</sup>

## 2. *International Human Rights Bodies Champion the Decriminalization of Sex Work*

In addition to criminalization, the other main legal approaches to sex work include partial criminalization, legalization, and decriminalization. Under partial criminalization, also known as the "Nordic model," the purchase of sex and sex work-related activities are criminalized, while the sale of sex is technically decriminalized.<sup>174</sup> Under legalization, the sale and purchase of sex and sex work-related activities are legal only in certain highly regulated circumstances that often include restrictive requirements like mandatory health tests or public registration of sex workers. Sex workers and third parties who refuse or cannot adhere to these requirements remain criminalized.<sup>175</sup> Under decriminalization, the sale and purchase of sex and all sex work-related activities and third parties are fully decriminalized.<sup>176</sup> Arguments that decriminalization gives "pimps"<sup>177</sup> carte blanche to exploit people in the sex industry are incorrect: under decriminalization, although third party managers are decriminalized, the "facilitation of sexual services remain subject to the same reasonable laws on coercion, exploita-

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<sup>172</sup> Dainius Pūras (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), *Twenty-fourth Rep. on the Enjoyment of the Right to Health*, at 12–14, U.N. Doc. A/HRC/14/20 (Apr. 27, 2010).

<sup>173</sup> WORLD HEALTH ORG., *Violence against sex workers and HIV prevention* 1 (2005) ("Criminalization of sex work contributes to an environment in which, violence against sex workers is tolerated, leaving them less likely to be protected from it."); *UNAIDS Guidance Note*, *supra* note 148, at 5 ("The application of criminal law to sex work is often associated with heinous abuses of the rights of sex workers.") See HUMAN RIGHTS WATCH, *World Report 2014* 47 (2014) ("punitive crackdowns on sex work often lead to serious abuses."); AMNESTY INT'L, *Policy on State Obligations to Respect, Protect and Fulfill the Human Rights of Sex Workers* 3 (2016) ("criminalization of adult consensual sex work interferes with the realization of the human rights of sex workers.")

<sup>174</sup> See MAC & SMITH, *supra* note 91, at 140. See also MGBAKO, *supra* note 7, at 148.

<sup>175</sup> See MAC & SMITH, *supra* note 91, at 176. See also MGBAKO, *supra* note 7, at 150. In 2017, the CEDAW Committee implicitly acknowledged one of the harms associated with this legal approach by calling on the government of the Netherlands, where sex work is legalized, to ensure they do not enforce the compulsory registration of sex workers. See CEDAW, *Concluding observations on the sixth periodic report of the Netherlands*, at 9, U.N. Doc. CEDAW/C/NLD/CO/6 (Nov. 24, 2016).

<sup>176</sup> See MAC & SMITH, *supra* note 91, at 190. See also MGBAKO, *supra* note 7, at 149–150.

<sup>177</sup> The term "pimp" is a racialized and problematic one, often involving negative and stereotypical connotations of black male sexuality. See MAC & SMITH, *supra* note 91, at 59–60, 83. I discuss why the criminalization of third-party managers makes sex workers lives more, not less, precarious in Part III.E.



tion, bullying, assault, and rape that apply in other contexts.”<sup>178</sup> Laws banning human trafficking and the purchase of sex from minors remain in effect.<sup>179</sup> In 2000, the Special Rapporteur on Violence against Women described “decriminalization combined with a human rights approach” as the legal framework addressing sex work that calls for the realization of both the human rights and labor rights of sex workers.<sup>180</sup> In light of the harms associated with the criminalization of sex work, over the years many human rights bodies have embraced decriminalization. WHO and UNAIDS have issued forceful calls for decriminalization. In 2012, WHO declared that “[a]ll countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.”<sup>181</sup> In the same year, UNAIDS stressed that decriminalization must include the removal of “criminal laws and penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work.”<sup>182</sup> The Special Rapporteur on the Right to Health argued in 2010 that decriminalization is necessary to address the violations of the right to health sex workers experience because of criminalization.<sup>183</sup> In 2013, the Special Rapporteur on Extreme Poverty issued a report calling for the full decriminalization of sex work in Namibia after meeting with Namibian sex workers’ rights advocates during a country visit and documenting how criminalization leads to discrimination, stigma, and violence.<sup>184</sup>

HRW and Amnesty are two of the most high-profile groups to champion decriminalization as the only human rights-based legal approach to sex work. Prior to adopting a decriminalization policy in 2014, HRW had in its earlier years emphasized the consequences of criminalization for victims of *forced* prostitution and maintained that it took “no position on prostitution per se.”<sup>185</sup> However, by the 2000s, HRW’s position on sex work began to evolve. The organization became an active opponent of United States policy that conditioned HIV/AIDS funding to nonprofit organizations on the adoption of an anti-prostitution policy.<sup>186</sup> It also began issuing reports attributing

<sup>178</sup> *Id.* at 193.

<sup>179</sup> See GILLIAN ABLE, LISA FITZGERALD & CHERYL BRUNTON, *THE IMPACT OF THE PROSTITUTION REFORM ACT ON THE HEALTH AND SAFETY PRACTICES OF SEX WORKERS* 21–23 (2007).

<sup>180</sup> Coomaraswamy, *supra* note 157, at ¶ 21.

<sup>181</sup> WHO ET AL., *PREVENTION AND TREATMENT*, *supra* note 150, at 17.

<sup>182</sup> *UNAIDS Guidance Note*, *supra* note 148, at annex 6.

<sup>183</sup> Dainius Páras, *Twenty-fourth Rep. on the Enjoyment of the Right to Health*, *supra* note 172, at 2.

<sup>184</sup> Magdalena Sepulveda Carmona (Special Rapporteur), *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, at 22, U.N.Doc A/HRC/23/36/Add.1 (May 17, 2013).

<sup>185</sup> See HUMAN RIGHTS WATCH, *HUMAN RIGHTS WATCH GLOBAL REPORT ON WOMEN’S HUMAN RIGHTS* 193 (1995).

<sup>186</sup> HRW issued public comments and joined a public interest lawsuit against the government policy. See Letter from Organizations to President George W. Bush (May 18, 2005), <https://www.hrw.org/news/2005/05/18/us-restrictive-policies-undermine-anti-aids-efforts> [perma.cc/U8YQ-FEZ4]; Brief of Agency for International Development et al.,

sex workers' poor health outcomes to the criminalization of sex work.<sup>187</sup> Simultaneously, HRW's regional divisions began making an additional set of arguments about sex workers' rights focused largely on police violence. HRW's Lesbian, Gay, Bisexual and Transgender Rights Program produced a 2009 report on transgender rights in Honduras that included documentation of police beatings and illegal arrests of transgender sex workers.<sup>188</sup> Similarly, in 2010, HRW published a report on arbitrary detention, police extortion, and physical and sexual violence against Cambodian sex workers.<sup>189</sup> In 2012, HRW documented the use of condoms as evidence of prostitution in the United States and the extensive police abuse of sex workers that has led to their fear of reporting crimes perpetrated against them.<sup>190</sup> In 2014, drawing on the experience of this years-long documentation of human rights abuses against sex workers, HRW officially affirmed its position and called for the decriminalization of adult sex work.<sup>191</sup> The adoption of its decriminalization policy was followed by a series of HRW reports on sex workers' rights in New Orleans, China, and Tanzania, each of which argued for decriminalization in response to human rights abuses linked to the criminalization of sex work.<sup>192</sup> In August, 2019, HRW reaffirmed its support for the full decriminalization of sex work.<sup>193</sup>

Amnesty's 2016 adoption of an official policy calling for the decriminalization of sex work was a highly contentious issue on the world stage and ultimately a coup for the sex workers' rights movement. In the

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*All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev.*, 651 F.3d 218, 236 (2d Cir. 2011), at 6–7; Center for Health and Gender Equity & Human Rights Watch, Comment Letter on Office of Global Health Affairs' Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities, Notice of Proposed Rulemaking, 74 Fed. Reg. 61,096 (Nov. 23, 2009), [https://www.hrw.org/sites/default/files/related\\_material/2010\\_US\\_HHR.pdf](https://www.hrw.org/sites/default/files/related_material/2010_US_HHR.pdf) [<https://perma.cc/N6P7-DYAM>].

<sup>187</sup> See, e.g., *Unprotected: Sex, Condoms and the Human Right to Health*, HUMAN RIGHTS WATCH (May 24, 2004), <https://www.hrw.org/report/2004/05/04/unprotected/sex-condoms-and-human-right-health> [<https://perma.cc/4DUD-PY7T>].

<sup>188</sup> “Not Worth a Penny”: *Human Rights Abuses against Transgender People in Honduras*, HUMAN RIGHTS WATCH (May 29, 2009), <https://www.hrw.org/report/2009/05/29/not-worth-penny/human-rights-abuses-against-transgender-people-honduras> [<https://perma.cc/BHA2-BNN9>].

<sup>189</sup> HUMAN RIGHTS WATCH, *OFF THE STREETS: ARBITRARY DETENTION AND OTHER ABUSES AGAINST SEX WORKERS IN CAMBODIA* (2010).

<sup>190</sup> HUMAN RIGHTS WATCH, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities* (2012).

<sup>191</sup> See HUMAN RIGHTS WATCH, *World Report 2014*, *supra* note 173, at 47.

<sup>192</sup> See HUMAN RIGHTS WATCH, “SWEEP AWAY”: ABUSES AGAINST SEX WORKERS IN CHINA (2013); HUMAN RIGHTS WATCH, “TREAT US LIKE HUMAN BEINGS”: DISCRIMINATION AGAINST SEX WORKERS, SEXUAL AND GENDER MINORITIES, AND PEOPLE WHO USE DRUGS IN TANZANIA (2013), <https://www.hrw.org/report/2013/05/14/swept-away/abuses-against-sex-workers-china> [<https://perma.cc/J3X4-Z853>]; HUMAN RIGHTS WATCH, *IN HARM'S WAY: STATE RESPONSE TO SEX WORKERS, DRUG USERS, AND HIV IN NEW ORLEANS*, <https://www.hrw.org/report/2013/12/11/harms-way/state-response-sex-workers-drug-users-and-hiv-new-orleans> [<https://perma.cc/6F28-N3LG>] (2013).

<sup>193</sup> HUMAN RIGHTS WATCH, *Why Sex Work Should Be Decriminalized*, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized> [<https://perma.cc/DY97-9962>] (last visited Aug. 11, 2019).

years leading up to the adoption of the policy, Amnesty issued a number of brief documents regarding government abuses of sex workers, including a 2012 statement opposing the arrest and forced HIV testing of sex workers in Greece, a 2014 response to the murders of sex workers in Honduras, and a 2014 statement on police abuse and evictions of sex workers in Brazil.<sup>194</sup> During this period, Amnesty also released a report arguing that police abuse of sex workers in Nigeria rises to the level of torture.<sup>195</sup> Amnesty would later characterize this period as part of a years-long effort, involving global consultation and firsthand research, to resolve the question of how to best protect sex workers from human rights violations.<sup>196</sup> In 2013, Amnesty produced draft policy documents favoring decriminalization of sex work and began formal consultations with its members, sex workers' rights organizations, prostitution abolition groups, HIV/AIDS agencies, and other stakeholders to evaluate the proposal.<sup>197</sup> Public voices of opposition to the draft policy from anti-prostitution advocates included prominent opinion and editorial writers.<sup>198</sup> The anti-prostitution organization the Coalition against Trafficking in Women (CATW) drew considerable attention with a petition signed by celebrities including Meryl Streep and Lena Dunham opposing Amnesty's draft decriminalization policy.<sup>199</sup> The CATW petition argued that "Amnesty's reputation in upholding human rights for every individual would be severely and irreparably tarnished if it adopts a policy that sides with buyers of sex, pimps and other exploiters rather than with the exploited."<sup>200</sup>

Supporters of the proposal were similarly public. UNAIDS submitted a public letter of support describing Amnesty's draft decriminalization policy as "a much needed policy position" and "in line with UNAIDS' policy and

<sup>194</sup> See AMNESTY INT'L, PUBLIC STATEMENT: GREECE MUST STOP THE CRIMINALIZATION AND STIGMATIZATION OF ALLEGED SEX WORKERS FOUND TO BE HIV POSITIVE (2012); AMNESTY INT'L, *URGENT ACTION: SEX WORKERS TARGETED AND KILLED IN HONDURAS* (2014); Amnesty Int'l, *URGENT ACTION: Sex Workers Evicted and Abused by Police* (2014).

<sup>195</sup> See AMNESTY INT'L, "WELCOME TO HELL FIRE": TORTURE AND OTHER ILL-TREATMENT IN NIGERIA 32-35 (2014).

<sup>196</sup> AMNESTY INT'L, *SEX WORKERS AT RISK: A RESEARCH SUMMARY ON HUMAN RIGHTS ABUSES AGAINST SEX WORKERS* 4 (2016).

<sup>197</sup> See GLOB. NETWORK OF SEX WORK PROJECTS, *MEASURING THE IMPACTS OF AMNESTY INTERNATIONAL'S RESOLUTION ON PROTECTING THE HUMAN RIGHTS OF SEX WORKERS INCLUDING FULL DECRIMINALISATION OF SEX WORK: A GLOBAL PERSPECTIVE* 3 (2015).

<sup>198</sup> See, e.g., *Nicholas Kristof, Making Life Harder for Pimps*, N.Y. TIMES (Aug. 6, 2015), <https://www.nytimes.com/2015/08/06/opinion/nicholas-kristof-making-life-harder-for-pimps.html> [<https://perma.cc/4XK5-MBZ9>]; *The Guardian View on Amnesty International's Call to Decriminalise Sex Work: Divisive and Distracting*, THE GUARDIAN (Aug. 2, 2015), <https://www.theguardian.com/commentisfree/2015/aug/02/guardian-view-amnesty-international-call-to-legalise-sex-work-divisive-and-distracting> [<https://perma.cc/3CGC-V4GH>].

<sup>199</sup> See *Actors Call on Amnesty to Reject Plans Backing Decriminalisation of Sex Trade*, THE GUARDIAN (July 29, 2015) <https://www.theguardian.com/society/2015/jul/28/actors-streep-winslet-thompson-dunham-amnesty-decriminalisation-sex-trade> [<https://perma.cc/VBU4-JNA5>].

<sup>200</sup> *Id.*

approach to sex work.”<sup>201</sup> HRW was also a signatory to a letter supporting the proposal.<sup>202</sup> Most important, the diverse global sex workers' rights movement came out in full force to vocalize their support for Amnesty's draft decriminalization policy. NSWP published an online petition to counter CATW's petition.<sup>203</sup> Sex workers' rights organizations published letters of support; among them were ICRSE, Sweden's Rose Alliance, the APNSW, the United States' Sex Workers Outreach Project (SWOP), India's SANGRAM, South Africa's Sisonke and SWEAT, the Sex Worker's Rights Advocacy Network from Central and Eastern Europe and Central Asia (SWAN), and the Canadian Alliance for Sex Work Law Reform.<sup>204</sup> In May, 2016, Amnesty adopted a final policy calling for “the decriminalization of all aspects of adult consensual sex work due to the foreseeable barriers that criminalization creates to the realization of the human rights of sex workers,” arguing that “laws [criminalizing sex work] force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex

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<sup>201</sup> *Letter to Mr. Salil Shetty, Amnesty International*, GLOB. NETWORK OF SEX WORK PROJECTS (Aug. 5, 2015), <http://www.nswp.org/sites/nswp.org/files/UNAIDS%20letter%20of%20Support%20to%20Amnesty%20International%20Aug%202015.pdf> [https://perma.cc/7WDT-S7T4].

<sup>202</sup> See Letter from ICRSE and organizations to Amnesty International Secretary General, International Board, Section Directors and Section Chairs 3 (Aug. 4, 2015), <http://www.sexworkeurope.org/sites/default/files/userfiles/files/ICRSE%20letter%20and%20briefing%20note%20to%20AI%20ICM%20Dublin%20August%202015.pdf> [https://perma.cc/NAZ6-RXQD]. Human Rights Watch's Executive Director also expressed his support for the policy on Twitter. See Kenneth Roth (@KenRoth), TWITTER, “Decriminalizing sex work may upset ideologues, but it'd lower HIV transmission and improve sex worker safety,” (June 6, 2017, 4:40 PM), <https://twitter.com/KenRoth/status/872237289673457665> [https://perma.cc/T5LC-SDHU]; see also Kenneth Roth (@KenRoth), TWITTER, “All want to end poverty, but in meantime why deny poor women the option of voluntary sex work?” (Aug. 10, 2015, 2:58 AM), <https://twitter.com/kenroth/status/630677061858930688> [https://perma.cc/S8EH-AM8P].

<sup>203</sup> See GLOB. NETWORK OF SEX WORK PROJECTS, MEASURING THE IMPACTS, *supra* note 197, at 5.

<sup>204</sup> See Letter from ICRSE and organizations to Amnesty International Secretary General, *supra* note 202; Letter From Rose Alliance to Mr. Salil Shetty, Amnesty International Secretary General (Aug. 7, 2015), [http://www.nswp.org/sites/nswp.org/files/Amnesty%20Letter%20of%20Support\\_RoseAlliance\\_Sweden.pdf](http://www.nswp.org/sites/nswp.org/files/Amnesty%20Letter%20of%20Support_RoseAlliance_Sweden.pdf) [https://perma.cc/W3BS-TN66]; Letter from Asia Pacific Network of Sex Worker to Amnesty International (Aug. 5, 2015), [http://www.nswp.org/sites/nswp.org/files/APNSW\\_Letter\\_of\\_support\\_to\\_Amnesty\\_International\\_5aug2015.pdf](http://www.nswp.org/sites/nswp.org/files/APNSW_Letter_of_support_to_Amnesty_International_5aug2015.pdf) [https://perma.cc/RF9Y-ZTLZ]; Press Release, SWOP USA, Sex Workers to Amnesty International: Vote “Yes” on Decriminalization (Aug. 4, 2014), <https://swopusa.org/blog/2015/08/04/sex-workers-to-amnesty-international-vote-yes-on-decriminalization/> [https://perma.cc/387J-UXE8]; Letter from SANGRAM to Salil Shetty, Amnesty International Secretary-General (July 2015), <http://sangram.org/resources/Letter-to-support-Amnesty-International.pdf> [https://perma.cc/62EL-QUMF]; Letter from SWEAT and SISONKE to Salil Shetty and Mpilo Shange-Buthane, Amnesty International (Aug. 5, 2015), <http://www.sweat.org.za/wp-content/uploads/2016/02/SWEAT-and-Sisonke-Letter-Amnesty-International-5-August-2015-1.pdf> [https://perma.cc/2E64-3XWY]; Letter from SWAN to Mr. Shetty, Mr. Hawkins, and Amnesty International Board of Directors, (Aug. 3, 2015), <http://swannet.org/en/content/letter-support-amnesty-international> [https://perma.cc/24F3-736B]; Letter from Canadian Alliance for Sex Work Law Reform to Mr. Salil Shetty, Amnesty International (Aug. 3, 2015), <http://triple-x.org/pdf/amnesty.pdf> [https://perma.cc/VS2U-3DZR].

workers take to maximize their safety, and serve to deny sex workers support or protection from government officials. They therefore undermine a range of sex workers' human rights, including their rights to security of person, housing and health."<sup>205</sup>

### 3. *International Human Rights Bodies Should Highlight Abuses Associated with the "Nordic Model" of Sex Work*

Amnesty's 2016 decriminalization policy was accompanied by four research reports on sex workers' human rights, including, most notably, a report on Norway that documented human rights abuses associated with the legal model of partial criminalization of sex work, in which sex work-related activities, clients, and third parties are criminalized while sex workers are ostensibly decriminalized.<sup>206</sup> Amnesty's issuance of a report firmly criticizing the Nordic model at the same time it formally announced its decriminalization policy demonstrated that Amnesty understood and wanted to communicate the human rights distinction between the legal models of partial criminalization and decriminalization.

Anti-prostitution activists support the Nordic model, which they characterize as decriminalizing the sellers of sex while criminally targeting the "demand" for paid sex.<sup>207</sup> Despite this marketing, the Nordic model is, in practice, a stigmatizing carceral paradigm that leads to human rights abuses against sex workers. Its primary goal is not the increased safety of people working in the sex industry but the abolition of sex work.<sup>208</sup> Even though partial criminalization ostensibly decriminalizes sex workers, as long as sex work-related activities, clients, and third parties remain criminalized, it is sex workers who inevitably bear the brunt of the effects of partial criminalization. In its Norway report, Amnesty documented abuses sex workers in Norway suffer directly due to or compounded by partial criminalization.<sup>209</sup> For example, sex workers in Norway experience evictions because under partial criminalization in Norway it is illegal for landlords to rent to sex workers if they know that sex work may take place on the premises; police will often threaten landlords with prosecution for promoting prostitution if they do not forcibly evict sex workers.<sup>210</sup> Other harms sex workers in Nor-

<sup>205</sup> AMNESTY INT'L, *Policy on State Obligations*, *supra* note 173, at 2.

<sup>206</sup> AMNESTY INT'L, *OUTLAWED AND ABUSED: CRIMINALIZING SEX WORK IN PAPUA NEW GUINEA* (2016); AMNESTY INT'L, *HARMFULLY ISOLATED: CRIMINALIZING SEX WORK IN HONG KONG* (2016); AMNESTY INT'L, "WHAT I'M DOING IS NOT A CRIME": THE HUMAN COST OF CRIMINALIZING SEX WORK IN THE CITY OF BUENOS AIRES, ARGENTINA (2016); AMNESTY INT'L, *THE HUMAN COST OF 'CRUSHING' THE MARKET: CRIMINALIZATION OF SEX WORK IN NORWAY* (2016).

<sup>207</sup> See, e.g., *About this Project*, EQUALITY NOW, [https://www.equalitynow.org/about\\_this\\_project\\_intro](https://www.equalitynow.org/about_this_project_intro) [<https://perma.cc/LE98-3G4P>] (last visited July 31, 2019).

<sup>208</sup> See MGBAKO, *supra* note 7, at 148–49.

<sup>209</sup> AMNESTY INT'L, *THE HUMAN COST OF 'CRUSHING' THE MARKET*, *supra* note 206, at 7–8.

<sup>210</sup> See *id.* at 31.

way experience under partial criminalization include surveillance by the police, fear of deportation or eviction if they report crimes against them, difficulty securing safe locations to engage in sex work, and fear of working with others lest they be prosecuted for promoting prostitution.<sup>211</sup>

By documenting these violations of sex workers' rights to housing, personal security, non-discrimination, and privacy, Amnesty rebuked the idea of the Nordic model as a human rights-based approach to sex work. UNAIDS has also been vocal in its condemnation of the Nordic model: "In Sweden and Norway, the buying of sex is criminalized, an approach based on the idea that the client merits punishment, but the sex worker is a 'victim.' There is very little evidence to suggest that any criminal laws related to sex work stop demand for sex or reduce the number of sex workers. Rather, all of them create an environment of fear and marginalization for sex workers."<sup>212</sup> HRW has similarly critiqued partial criminalization:

Human Rights Watch supports full decriminalization rather than the Nordic model because research shows that full decriminalization is a more effective approach to protecting sex workers' rights. Sex workers themselves also usually want full decriminalization. The Nordic model appeals to some politicians as a compromise that allows them to condemn buyers of sex but not people they see as having been forced to sell sex. But the Nordic model actually has a devastating impact on people who sell sex to earn a living.<sup>213</sup>

The global sex workers' rights movement has long maintained that the Nordic model punishes sex workers.<sup>214</sup> For example, partial criminalization decreases sex workers' bargaining power with clients. Under partial criminalization, to protect their criminalized clients from police detection, sex workers must often go to hidden locations where clients have more control, and sex workers are thus more vulnerable to abuse. Sex workers may also have less time to determine whether potential clients are safe because nervous clients fear police detention and so rush negotiations.<sup>215</sup> It is illegal to "promote prostitution" under partial criminalization; therefore, "decriminalized" sex workers are not able to engage in activities that actually make their work safer. For example, sex workers who live together or work in tandem to increase their safety would be criminally liable for "promoting prostitution."<sup>216</sup> Landlords who accept rental payments from sex workers risk being prosecuted for "promoting prostitution."<sup>217</sup> Bodyguards

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<sup>211</sup> See *id.* at 46, 56, 61, 64.

<sup>212</sup> UNAIDS *Guidance Note*, *supra* note 148, at 4.

<sup>213</sup> HUMAN RIGHTS WATCH, *Why Sex Work Should Be Decriminalized*, *supra* note 193.

<sup>214</sup> See MGBAKO, *supra* note 7, at 149.

<sup>215</sup> *Id.*

<sup>216</sup> See MAC & SMITH, *supra* note 91, at 148, 158–59.

<sup>217</sup> See *id.* at 160–161.

or drivers hired to protect sex workers could likewise be prosecuted.<sup>218</sup> The Nordic model is also an attack on sex workers' economic viability and poverty reduction strategies.<sup>219</sup> If the seller of a service is ostensibly decriminalized, but no one can legally purchase the service or facilitate the exchange, then the transaction and the seller's livelihood remain criminalized. The Nordic model does not view sex workers as rights bearing workers; it is therefore unsurprising that under partial criminalization, sex workers do not have access to labor rights or employment protections.<sup>220</sup> One might argue that partial criminalization is, at least, preferable to total criminalization. In theory, this argument is not without merit—less criminalization is better than more criminalization. But in practice, as detailed above, under partial criminalization, it is *sex workers* who continue to suffer: they are surveilled, harassed, evicted, deported, made poorer, criminalized for engaging in activities to increase their safety like living and working together, and the power imbalance that already exists between them and their clients is worsened.

The partial criminalization model has, alarmingly, already spread from Sweden to France, Iceland, Norway, and Northern Ireland.<sup>221</sup> Other international human rights bodies should follow the lead of Amnesty, UNAIDS, and HRW and help stem the spread of this harmful legal model by drawing attention to its incompatibility with sex workers' rights and actively distinguishing it from decriminalization. The CEDAW Committee, for instance, has been inconsistent in its characterization of decriminalization and has failed to adequately address the human rights implications of partial criminalization. In its 2010 review of Fiji's human rights record, the CEDAW Committee encouragingly called for "decriminalizing *sex work*."<sup>222</sup> Yet, in its 2016 review of Canada, the CEDAW Committee called only for "decriminaliz[ing] women engaged in prostitution,"<sup>223</sup> an embrace of the Nordic model. One of the topics at issue in the CEDAW Committee's review of Canada was a proposed law based on the Nordic model. As part of Canada's review, a consortium of Canadian sex workers' rights organizations submitted a report of supplementary information to the CEDAW Committee highlighting in great detail the risks posed to sex workers under the proposed legal model of partial criminalization.<sup>224</sup> Although the CEDAW Committee briefly noted its concern regarding potential risks to sex workers' health and

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<sup>218</sup> AMNESTY INT'L, THE HUMAN COST OF "CRUSHING" THE MARKET, *supra* note 206, at 64, 92.

<sup>219</sup> See MGBAKO, *supra* note 7, at 148.

<sup>220</sup> See *id.* at 148–49.

<sup>221</sup> See *id.* at 140–41.

<sup>222</sup> CEDAW, *Concluding Observations on the Combined Second, Third, and Fourth Periodic Reports of Fiji*, at 6, U.N. Doc. CEDAW/C/FJI/CO/4 (Sept. 16, 2010) (emphasis added).

<sup>223</sup> CEDAW, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, at 12, U.N. Doc. CEDAW/C/CAN/CO/8-9 (Nov. 25, 2016).

<sup>224</sup> PIVOT, *Joint Submission for Canada's Review before the UN Committee on the Elimination of All Forms of Discrimination against Women, 65th Session 1–9* (2016).

safety because of the proposed law's criminalizing aspects,<sup>225</sup> it ultimately did not fully engage with the problematic human rights implications of the partial criminalization model. This was a failure on the part of the CEDAW Committee that for the sake of sex workers, who suffer under partial criminalization models, must be avoided by other human rights bodies.

There is a vast human rights distinction between partial criminalization, which seeks to abolish sex work by targeting "demand," and decriminalization, where the primary goal is the realization of sex workers' rights. More human rights mechanisms should acquire a nuanced understanding of the human rights difference between partial criminalization and decriminalization, identify abuses against sex workers linked to partial criminalization, and reject the Nordic model as incompatible with the realization of sex workers' human rights. As sex workers' rights activists and authors Juno Mac and Molly Smith powerfully note, "to decriminalize sex work is to treat as important the immediate, material safety of people who are selling sex. . . [D]ecriminalization is a deeply radical demand, far more so than throwing the world's poorest sex workers to the wolves in an attempt to annihilate the sex industry through increased policing."<sup>226</sup>

*E. International Human Rights Bodies Should Advance a Holistic Vision of Decriminalization of Sex Work that Embraces a Labor Rights Framework*

International human rights bodies should embrace an expansive vision of decriminalization that includes labor rights. The removal of criminal and other laws targeting sex workers, buyers, third parties, and sex work-related activities is an important first step in the decriminalization model. However, to fully realize sex workers' human rights, decriminalization must include a labor rights framework.<sup>227</sup> International human rights bodies that have advocated for decriminalization have rarely given prominence to this vital second step. Amnesty's decriminalization policy, for instance, makes no mention of sex workers' labor rights.<sup>228</sup> Due to criminalization, sex workers routinely experience such violations of their right to work as theft of wages, workplace sexual harassment, and lack of access to labor laws, overtime pay, employee benefits, occupational health and safety standards, collective organizing, and formal employment grievance procedures.<sup>229</sup> Therefore, even if sex work is decriminalized, sex workers will not be able to exercise power

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<sup>225</sup> CEDAW, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, *supra* note 223, at 11.

<sup>226</sup> See MAC & SMITH, *supra* note 91, at 207.

<sup>227</sup> See MGBAKO, *supra* note 7, at 157.

<sup>228</sup> See AMNESTY INT'L, *Policy on State Obligations*, *supra* note 173.

<sup>229</sup> See MGBAKO, *supra* note 7, at 60–61; see also GLOB. NETWORK OF SEX WORK PROJECTS, *Sex Work as Work* 1–2 (2017), [<https://perma.cc/YWS3-ETT4>].



over their labor until they also have access to workers' rights and labor protections.

A vision of labor protections for sex workers in a decriminalized environment would include rights-based regulatory regimes that cover occupational health and safety standards and a guarantee of sex workers' equal access to the labor protections, entitlements, and benefits pledged to all other workers.<sup>230</sup> Anti-prostitution activists often deride decriminalization as siding with "pimps."<sup>231</sup> The "pimp" is an easy characterization for anti-prostitution activists to employ: the racialized image of the black male "pimp" and the innocent (often white) female victim is a common trope in representations of prostitution.<sup>232</sup> But the reality of the sex work industry is more complex. Sex workers work in various setups: independently, collectively with other sex workers, or with third parties like managers in brothels, massage parlors, escort agencies, and other settings who facilitate the logistical aspects of their work in exchange for a cut of their earnings.<sup>233</sup> Many of these third party relationships are abusive because legal models of sex work criminalization, in which sex workers have no recognized rights as laborers, ensure sex workers remain vulnerable to and have no real recourse from this abuse.<sup>234</sup> Partial criminalization is no panacea in this regard. When managers are criminalized but sex workers still depend on them for financial and other assistance, this *increases* the power of managers and *decreases* the power of sex workers, often leading to exploitative situations in which the sex worker is forced to accept economic mistreatment in order to protect her own livelihood by protecting the manager.<sup>235</sup>

Decriminalizing the industry strengthens the hand of the sex worker and increases her power over her labor: under decriminalization, the sex worker is a legally recognized worker, and, therefore, if a manager is economically exploiting a sex worker, the sex worker has access to the rights and recourses of other workers. The empowerment of sex workers as workers with state-recognized rights is a welcome threat to the power of managers who try to exploit them in the shadows of carceral regimes. New Zealand

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<sup>230</sup> See GLOB. NETWORK OF SEX WORK PROJECTS, *Sex Work as Work*, *supra* note 229, at 3–5; see also MAC & SMITH, *supra* note 91, at 195 ("Some examples of labour rights that sex workers expect within a decriminalized context include protection from sexual harassment at work, adequate breaks on shifts and between shifts, a requirement for management to supply safer sex materials (and to back up workers in insisting on safer sex with clients), provisions barring workplace discrimination, and the right for sex workers to refuse clients and to receive support from their managers in doing so.").

<sup>231</sup> See *Actors Call on Amnesty to Reject Plans Backing Decriminalisation*, *supra* note 199; see also MAC & SMITH, *supra* note 91, at 13–14.

<sup>232</sup> See MAC & SMITH, *supra* note 91, at 59–60.

<sup>233</sup> *Id.* at 109.

<sup>234</sup> See MGBAKO, *supra* note 7, at 61 ("This is why prostitution's illegality is so clearly a labor issue—if the state outlaws activity that people are going to engage in anyway, it leaves the workers in that illicit industry vulnerable to abuse by bosses who underpay, overwork, and exploit them in the absence of labor protections.").

<sup>235</sup> See MAC & SMITH, *supra* note 91, at 109–10.

is the only country that has decriminalized sex work and brought the sex work industry under labor, employment, and human rights protections: sex workers in New Zealand are now guaranteed the same rights as other workers, which include occupational health and safety standards, anti-discrimination and anti-harassment protections, and recourse to human rights and employment tribunals to confront abusive employers.<sup>236</sup> Yet despite the encouraging progress made in the institutionalization of sex workers' rights as human rights, human rights bodies must do more to affirm to governments and the international community at large that sex work *is work* and sex workers are deserving of labor protections and healthy and safe working conditions.

The rallying cry “sex work is work” has long been a central message of the global sex workers' rights movement, which argues that the “simple yet powerful statement frames sex workers not as criminals, victims, vectors of disease, or sinners but as workers.”<sup>237</sup> The term “sex work” was first coined in 1978 by sex worker activist and artist Carol Leigh; sex workers' rights advocates embraced the term as a political signifier of their fight for economic justice and rejection of the stigmatized and criminalized designations of “prostitution”/“prostitute.”<sup>238</sup> (Encouragingly, the sex workers' rights movement's advancement of the term has influenced the terminology choices of some international human rights bodies: WHO, UNAIDS, HRW, and Amnesty, for example, all shun use of the terms “prostitute” and “prostitution” in official documents and advocacy in favor of the terms “sex worker” and “sex work.”<sup>239</sup>) Sex workers' rights advocates have been committed to a labor rights framework throughout the movement. For instance, the 1985 World Charter for Prostitutes' Rights, the 2005 Declaration on the Rights of Sex Workers in Europe, and the 2013 Consensus Statement on Sex Work, Human Rights, and the Law are formal movement documents that all include demands for the realization of sex workers' labor rights.<sup>240</sup>

International rights bodies should examine whether government laws and policies facilitate or hinder sex workers' labor rights. Some mechanisms have inched in this direction. As noted earlier, the CEDAW Committee's

<sup>236</sup> See IWRAW-AP, *Framework*, *supra* note 47, at 16.

<sup>237</sup> GLOB. NETWORK OF SEX WORK PROJECTS, *Sex Work as Work*, *supra* note 229, at 1.

<sup>238</sup> See MGBAKO, *supra* note 7, at 33.

<sup>239</sup> See generally, WORLD HEALTH ORG., *Addressing Violence Against Sex Workers*, *supra* note 148; HUMAN RIGHTS WATCH, *Why Sex Work Should Be Decriminalized*, *supra* note 193; AMNESTY INT'L, *Policy on State Obligations*, *supra* note 173. However, other human rights bodies, such as the CEDAW and Human Rights Committees—despite having institutionalized the idea that human rights apply to sex workers—unfortunately still generally use terms that rob sex workers of agency, including “women in prostitution.” See, e.g., Human Rights Committee, *Concluding Observations on the Initial Reports of Ghana*, *supra* note 122, at 3; CEDAW, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Canada*, *supra* note 223, at 12.

<sup>240</sup> See PHETERSON, *supra* note 8, at 40–41; SEX WORK EUROPE, *supra* note 63, at 11; CONSENSUS STATEMENT, *supra* note 4, at 23–25.

2013 review of Hungary's human rights record included an affirmation of sex workers' right to safe working conditions.<sup>241</sup> The International Labor Organization, a UN agency that develops standards, policies, and programs on labor rights, has noted that it recognizes sex workers as laborers in the informal economy.<sup>242</sup> Human rights bodies, though, must do much more. One positive example is the Special Rapporteur on the Right to Health's 2010 report, which contained exemplary exhortations on sex workers' labor rights and a call for States to "repeal all laws criminalizing sex work and practices around it, and to establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled."<sup>243</sup> The report went on to argue that

[w]hen sex workers are not recognized as engaging in legitimate work, they are not recognized by standard labour laws in many countries. Sex workers often cannot gain access to State benefits, and are not protected by occupational health and safety regulations that routinely protect employees in other industries. . . . Moreover, the criminalization of practices related to sex work can create barriers to the realization of safe working conditions.<sup>244</sup>

Other human rights bodies should no longer shy away from a similarly full-throated embrace of sex workers' rights as labor rights. The championing of a labor rights framework is critical to the advancement of the full realization of sex workers' human rights.

#### IV. SEX WORKERS' RIGHTS ADVOCATES ATTEMPT TO DOMESTICALLY ENFORCE THEIR GLOBALLY RECOGNIZED HUMAN RIGHTS

Legal scholar Harold Koh has argued that human rights are enforced, however imperfectly, through a three-stage "transnational legal process."<sup>245</sup> The process includes 1) "institutional interaction whereby global norms of international human rights law are debated,"<sup>246</sup> 2) "interpretation of legal

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<sup>241</sup> See CEDAW, *Concluding Observations on the Combined Seventh and Eighth Period Reports of Hungary*, *supra* note 152, at 6.

<sup>242</sup> See IWRAW-AP, *Framework*, *supra* note 47, at 16. See also ILO, *Recommendation 200: Recommendation concerning HIV and AIDS and the world of work* (2010); ILO, *International Labour Conference Provision Record 13 (Rev.) 99th Session, Geneva, Fifth item on the agenda: HIV/AIDS and the World of Work - Report of the Committee on HIV/AIDS* (2010); *Decent Work*, INT'L LABOUR ORG., <https://www.ilo.org/global/topics/decent-work/lang—en/index.htm> [<https://perma.cc/VWZ6-3HR7>] (last visited July 31, 2019).

<sup>243</sup> See UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, *supra* note 162, at 22.

<sup>244</sup> *Id.* at 14. (internal citations omitted).

<sup>245</sup> Harold Hongju Koh, *How is International Human Rights Law Enforced?* 74 *IND. L. J.*, 1397, 1399 (1999).

<sup>246</sup> *Id.*

norms,”<sup>247</sup> and 3) “attempts to internalize those norms into domestic legal systems.”<sup>248</sup> Part III implicitly explored the first two stages of this transnational legal process as it applies to sex workers' rights. It underscored the important role sex workers' rights advocates play in stage one of the process when, during “institutional interaction” with human rights bodies, they provide evidence of human rights violations against sex workers. It documented how, in stage two of the process, human rights bodies' “interpretation of legal norms” have resulted in the normative application of human rights legal protections to sex workers. Part IV will address the third stage by offering a series of brief examples of attempts by sex workers' rights advocates to compel government actors to “internalize” sex workers' globally recognized human rights into the domestic sphere. It will further demonstrate how advocates bolster their advocacy by referencing human rights bodies' mainstreaming of sex workers' rights.

Sex workers' rights advocates have used international recommendations and judgments from the UPR, UN Special Procedures, UN treaty bodies, and regional human rights systems to pressure their governments to act on sex workers' rights at the domestic level. For example, following the 2010 UPR review of the United States, which resulted in a formal recommendation to the United States concerning sex workers' rights, sex workers' rights organizations formed a working group called Human Rights for All that conducted sophisticated advocacy to encourage the government to accept and implement the recommendation, including

the development of a “call to action” addressed to the US government (signed by more than 150 academics, public health leaders, and supporting organisations including national and international human rights groups); the garnering of support from high-profile leaders in the fields of health, criminology, and women's rights; the development of a policy brief tailored to the US federal government context. . .and an educational campaign to inform congressional leaders about the critical issues sex workers face and offer some potential viable solutions.<sup>249</sup>

In another case, after the UN Special Rapporteur on Extreme Poverty issued its 2013 report that called for the decriminalization of sex work in Namibia, Namibian sex workers' rights advocates used the report as a catalyst to begin formal talks with Namibian members of parliament on the legal status of sex

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<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Kari Lerum, Kiesha McCurtis, Penelope Saunders & Stephanie Wahab, *Using Human Rights to Hold the US Accountable for Its Anti-Sex Trafficking Agenda: The Universal Periodic Review and New Directions for US Policy*, 1 ANTI-TRAFFICKING REV., 80, 95–96, (2012).

work in the country.<sup>250</sup> In 2017, sex workers' rights advocates in Europe used the European Court of Human Rights' 2012 judgment in *B.S. v. Spain*, which affirmed the rights of an African migrant sex worker who suffered police abuse, as a basis for arguing in the case of *Koutra & Katzaki v. Greece* that the court should enforce Greece's legal obligation to respect the rights of transgender sex workers who likewise face extreme levels of state violence.<sup>251</sup>

Sex workers' rights advocates have also referenced positive findings from UN agencies to advance their on-the-ground advocacy. In 2005, for example, in the Declaration on the Rights of Sex Workers in Europe, advocates cited UN agencies' institutionalization of sex workers' rights:

legislative measures that restrict the fundamental rights and freedoms of sex workers proliferate at local, national, and international levels, claiming to be in the interests of combating organized crime and promoting public health. However, many of these measures are implemented against the policy and principles set out by advice of UNAIDS and World Health Organisation.<sup>252</sup>

Advocates have similarly used media advocacy to bring attention to human rights bodies' institutionalization of the rights of sex workers and to push their domestic agenda. In 2017, for example, sex workers' rights advocates in Central and Eastern Europe issued a press release hailing the CESCR Committee's findings regarding violations of sex workers' rights in Russia.<sup>253</sup>

Advocates have likewise embraced official calls by human rights bodies for the decriminalization of sex work, which bolsters their advocacy concerning the legal status of sex work. UNAIDS and the United Nations Development Program (UNDP) convened the Global Commission on HIV and the Law ("Commission"), which was comprised of highly respected independent international experts who published a 2012 report that called for the full decriminalization of sex work.<sup>254</sup> A group of anti-prostitution organizations, including the nonprofit organization Equality Now, immediately condemned the Commission's stance, argued in favor of the Nordic model,

<sup>250</sup> Telephone Interview conducted by Morganne Barrett with Tomas Zapata, Regional Advisor Human Resources for Health at World Health Organization (Oct. 25, 2018).

<sup>251</sup> Transgender Europe, ILGA Europe, Greek Transgender Support Association, International Committee on the Rights of Sex Workers in Europe, Written Comments in the European Court of Human Rights, *Electa Leda Koutra and Anastasia Katzaki*, no. 459/16 (July 13, 2017).

<sup>252</sup> SEX WORK EUROPE, *supra* note 63, at 1.

<sup>253</sup> See *UN Committee on Economic, Social and Cultural Rights Recommends Russia Decriminalise Sex Work*, SWANNET, (Oct. 23, 2017), <http://www.swannet.org/en/content/un-committee-economic-social-and-cultural-rights-recommends-russia-decriminalise-sex-work> [<https://perma.cc/9LJV-AESF>].

<sup>254</sup> GLOBAL COMMISSION ON HIV AND THE LAW, RISKS, RIGHTS, AND HEALTH 3, 10 (2012).

and called on the Commission to “listen to survivors” of sex trafficking.<sup>255</sup> Sex workers’ rights advocates were uncowed and issued statements vigorously defending the Commission’s conclusions and pushing back against Equality Now’s exhortations.<sup>256</sup> “When Equality Now suggests ‘we listen’—who are they suggesting we listen to?” asked Kholi Buthelezi, the director of the sex worker-led South African movement Sisonke. “I would like them to listen to me and other sex workers who participated in the deliberations of the Commission.”<sup>257</sup> Indeed, while anti-prostitution activists argue that all sex work is inherently coercive,<sup>258</sup> a human rights-based approach dictates that policies should reflect the needs and vocalized desires of directly affected communities: in this case, people *currently in the sex work industry*, whose lives and health are materially affected by sex work law and policy decisions. Sex workers have been clear, decade after decade, that criminalization in any form has deleterious effects on their health and well-being and increases their susceptibility to exploitation and abuse. Amnesty’s 2016 highly publicized policy on the decriminalization of sex work similarly reinforced sex worker advocacy, as was the case when sex workers’ rights advocates in South Africa used the media interest in the Amnesty policy to announce the launch of a broad law reform coalition to campaign for the decriminalization of sex work in South Africa called Asijiki, which means “no turning back” in Zulu.<sup>259</sup> “With every nongovernmental organisation that adopts a rights-based approach to sex workers’ rights,” wrote NSWP in reflecting on the Amnesty policy’s effect on sex worker advocacy, “the NSWP and its members have more research, reports, policies, and agencies to back-up what sex workers have known from the beginning: criminalisation of sex workers, clients, and third parties puts sex workers at risk.”<sup>260</sup>

These examples of attempts by sex workers’ rights advocates to domesticate globally recognized sex workers’ rights show the movement understands the central role it must play in transforming the institutionalization of sex workers’ human rights by human rights bodies in global forums into victories for sex workers on the ground. By affirming sex workers’ rights, human rights bodies have afforded the movement an international mandate to pursue this agenda of domestic transformation. Sex workers’ rights advocates are taking advantage of this opportunity to “begin systematically im-

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<sup>255</sup> See *Listen to survivors—don’t jeopardize efforts to prevent sex trafficking*, EQUALITY NOW (Sept. 21, 2013), [https://www.equalitynow.org/listen\\_to\\_survivors\\_don\\_t\\_jeopardize\\_efforts\\_to\\_prevent\\_sex\\_trafficking](https://www.equalitynow.org/listen_to_survivors_don_t_jeopardize_efforts_to_prevent_sex_trafficking) [https://perma.cc/2HXR-R3BM].

<sup>256</sup> *Sex workers defend UN recommendations*, RED UMBRELLA FUND (Oct. 17, 2013), <https://www.redumbrellafund.org/sex-workers-defend-un-recommendations/> [https://perma.cc/5UZZ-5FAH].

<sup>257</sup> See *id.*

<sup>258</sup> GLOB. NETWORK OF SEX WORK PROJECTS, *MEASURING THE IMPACTS*, *supra* note 197, at 1.

<sup>259</sup> Melissa Gira Grant, *Amnesty International Calls for an End to the ‘Nordic Model’ of Criminalizing Sex Workers*, THE NATION (May 26, 2016).

<sup>260</sup> GLOB. NETWORK OF SEX WORK PROJECTS, *MEASURING THE IMPACTS*, *supra* note 197, at 7.

plementing human rights principles into. . . 'concrete policy and self-conscious change.'"<sup>261</sup>

### CONCLUSION

This Article traced the historical development of the sex workers' rights movement's human rights framing and argued that this frame serves as a powerful feminist critique of whorephobia, the politics of rescue, and carceral feminism. The Article also documented institutionalization by human rights bodies of the concept of sex workers' human rights and highlighted sex workers' rights advocates' efforts to domesticate this institutionalization. This mainstreaming of sex workers' rights as human rights should mark the end of feminist debates regarding sex work. In these debates, anti-prostitution activists, whose ranks are populated by people who have never sold sex or have exited the sex industry, characterize sex work *itself* as an inherent human rights violation.<sup>262</sup> The sex workers' rights movement—dominated by people currently working in the sex industry whose lives are most directly affected by sex work law and policy—reject this characterization and point, instead, to the oppression of the carceral state as the cause of human rights abuses against sex workers.<sup>263</sup> The mainstreaming of sex workers' human rights means the sex workers' rights movement is largely winning this argument in influential global forums. Human rights bodies have implicitly upended anti-prostitution arguments regarding sex work's supposed inherent harm by clearly identifying criminalization as a primary cause of rights violations against sex workers and by calling for the full decriminalization of sex work. It is sex workers' political, social, and economic fate—and their lives—that are at stake, and it is their perspectives, their courageous and determined global voices, that must take center stage on any issue concerning the realization of sex workers' human rights.

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<sup>261</sup> See Kari Lerum et al., *supra* note 249, at 102–03 (citing in part Harold Koh in his concluding statement to the Human Rights Council).

<sup>262</sup> See MGBAKO, *supra* note 7, at 4–5; Alexander, *supra* note 94, at 84; MAC & SMITH, *supra* note 91, at 13–14.

<sup>263</sup> See MGBAKO, *supra* note 7, at 4–5; Alexander, *supra* note 94, at 84; MAC & SMITH, *supra* note 91, at 38.