



## Demand, Prostitution Regimes and Human Rights

When talking about 'demand' it is always good to go back to where it came from. The original 'demand' article stems from the UN Trafficking Protocol, to be more precisely Article 9.5. It was a compromise between those who wanted to have all sex work defined as trafficking and those who distinguished between trafficking and sex work. To be clear: I belonged to the latter (NGO) bloc and participated in the lobby around the UN Protocol as member of the Human Rights Caucus, an alliance of anti-trafficking, sex workers' rights and human rights organisations. While the Protocol's definition distinguishes between trafficking and sex work – so in favour of the latter bloc – the 'demand' article was the result of the lobby efforts of the first bloc. This may also explain the quite cryptic formulation “*demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking*”. It would, of course, have been more logical and in line with the definition to say “trafficking that leads to exploitation” instead of “exploitation that leads to trafficking”. Significantly, however, it was turned around: if you consider all prostitution as exploitation, then the formulation bears more logic. From there it is only a small step to 'demand that fosters sexual exploitation = prostitution'.

It, of course, makes sense to look at the factors that feed into and facilitate trafficking and the exploitation of human beings under forced labour and slavery-like conditions. However, what we foresaw - given the wording of the article, the persistent conflation of trafficking and sex work and the distinction the Protocol makes between what became to be called 'sexual' and 'labour' exploitation - was that it would be only (or predominantly) applied to sex work and, moreover, in a very specific and limited way, notably as a justification to criminalise clients of sex workers. And that is precisely what happened. The article became the 'lifeline' in the Protocol for anti-prostitution measures. Despite the distinction the Protocol makes between sex work and trafficking and despite the fact that the article states '*all forms of exploitation*'.

This research tries to avoid this pitfall. Noting that all the debates on demand-side measures did not lead to any political consensus, it does not advocate any specific measures, but instead aims to offer policy makers analytical tools and data that can help in clarifying these debates. One of the ways it does so is by offering a new way to classify prostitution policy regimes. Instead of the traditional classification of regimes as prohibitionist, abolitionist or regulationist (but where do we put the approach of sex work as work?), it proposes a new typology, distinguishing between repressive, restrictive and integrative regimes, based on a number of specific features. That, to me, seems definitely a step forwards and should help to avoid fruitless discussions and frustration because the traditional categories do not cover nowadays realities. I hope it will also help avoiding confusing debates on, for example, the



difference between legalisation and decriminalisation (but who or what is exactly legalised or decriminalised?) and how a certain regime should be qualified.

The interesting thing of the proposed typology is that it looks at a combination of features, rather than reducing prostitution policies to criminal law, as in essence the old typology does. In doing so it makes space for the entire range of instruments States use to regulate (or suppress) the sex industry and sex workers, varying from criminal law to administrative and labour law. More precisely, from behaviour rehabilitation programs for sex workers and/or their clients to campaigns to combat the stigma on sex work, and from local ordinances and licensing systems to the collaborative development of codes of conduct and ethical standards. So, there is also the answer to my question “where do we put the approach of sex work as work”? What later in the brief is mentioned but what I would explicitly add to this list, is migration law, e.g. a prohibition on the issuing of work permits for sex work (like in New Zealand and the Netherlands) or the deportation of migrants on the suspicion of prostitution (like in Sweden and Finland). The first creates in fact two separate, parallel regimes: a repressive one for migrant workers and a restrictive and/or integrative one for domestic workers. The second seriously undermines any efforts to address trafficking and exploitation of migrant sex workers (and keeps the trafficking figures low).

The typology not only looks at the underlying ideology and intention of policies, but also at the actual impact on the sector and the legal situation of sex workers, including their access to labour rights, social security, social and medical assistance and the ability to (self-)organise and to collaborate with each other and the authorities. This is important for (at least) two reasons. The first reason is that it protects us from the kind of simplistic reasoning as for instance found in the Cho et al. study (2012) - bluntly said: legalisation leads to trafficking - on three levels (I am leaving aside the problems around definitions and numbers). One: it does not reduce prostitution policy to criminal law ('does the law criminalise brothels/third parties or not'), but requires us to look at the entire range of instruments employed within a specific policy regime. That enables a much more nuanced assessment of a specific policy. Two: it prevents us from solely focusing on what is written in the law, 'law in the books', but forces us to look at how the law actually is implemented: 'law in action'. By doing so, it recognises that 'the same words' can have very different meanings and work out very differently in different countries and times. An example is the definition of trafficking. Although most countries adopted the Palermo Protocol definition, the way it is interpreted and implemented varies widely, for example on the question whether or not prostitutes can be trafficked. Or what the difference is between 'trafficking' and 'pimping' or 'trafficking' and 'pimping with the use of force'. Or whether the phenomenon of so-called 'loverboys' falls under the definition of trafficking or pimping or neither. Three: it requires us to look at the total impact of a policy, and not just one aspect. Not only, for example, 'does it help to prevent trafficking', but also 'does it increase access of sex workers to health and social services', 'does it help to protect sex workers against violence and abuse, including by the police' or 'does it increase access to justice for sex workers'.

That brings me to the second reason why it is important to look at the total impact of prostitution policies on the sector and the situation of sex workers (and I would like to extend



'sex workers' to all groups affected by a certain policy, including victims of trafficking, migrants and refugees). In the end we are talking about real people and lives. While the method of classification can (and should) be neutral, impacts of policy regimes are not. A crucial touchstone, as far as I'm concerned, is human rights. States not only have a duty to combat trafficking, they also have a duty to protect the human rights of persons, no matter whether they like those individuals or approve of them. Precisely that is the meaning of 'human rights are universal': they apply to everybody, including sex workers. When prostitution policies negatively impact fundamental human rights of an already marginalised and vulnerable group, such as the right to health and safety and to organise, and when States persist in such policies despite knowing and acknowledging its harmful effects, there is a serious human rights problem. A problem which cannot be remedied by justifying it as collateral damage. Or that even should be considered as a positive effect as the aim is to fight prostitution, as stated in the 2010 Swedish evaluation. If there is anything fundamentally against the very principle of human rights, it is the idea that it is all right to sacrifice some for the sake of all. It is also a profound reversal of values: human rights are there to protect the individual against the State, not the State against the individual. Besides, it sends the message that the human rights of sex workers are less worthy to protect. Ironically, it is precisely the idea that sex workers do not have the same value as other human beings that fosters trafficking and other abusive and exploitative practices.

## References

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## About the Author

Marjan Wijers works as independent researcher, consultant and trainer on human rights, human trafficking, sex workers rights and women's rights. She is co-founder of Rights4Change, a cooperative of gender and human rights experts specialized in the development and application of human rights impact assessment tools. She is especially interested in the impact of laws and policies on trafficking and sex work on the human rights of trafficked persons, sex workers and migrants. She has worked at the Dutch Foundation against Trafficking in Women, the Clara Wichmann Institute and the Verwey-Jonker Institute. She has wide experience in providing assistance and support to victims of trafficking, as well as in policy development, lobby and advocacy. Amongst others she was actively involved in the NGO lobby around the UN Trafficking Protocol as part of the Human Rights Caucus, a coalition of anti-trafficking, human rights and sex workers rights organizations. She also was one of the organizers of the first European sex workers conference in Brussels in 2005. From 2003-2007 she was President of the Experts Group on Trafficking in Human Beings, established by the European Commission.